



EUROPEAN COMMISSION
Competition DG

CASE AT.39920 Braking Systems

(Only the English text is authentic)

CARTEL PROCEDURE

Council Regulation (EC) 1/2003

Article 7 Regulation (EC) 1/2003

Date: 21/02/2018

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EUROPEAN
COMMISSION

Brussels, 21.2.2018
C(2018) 925 final

COMMISSION DECISION

of 21.2.2018

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

(AT.39920 – Braking Systems)

(Text with EEA relevance)

(Only the English text is authentic)

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THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union¹,

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 Treaty², 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 Treaty³ and in particular Article 10a thereof,

Having regard to Commission Decision of 22 September 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 case⁴,

Whereas:

¹ OJ C 115, 9.5.2008, p. 47.

² 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 ("TFEU"). The two sets of provisions are, in substance, identical. For the purposes of this Decision, references to Articles 101 and 102 of the TFEU should be understood as references to Articles 81 and 82, respectively, of the EC Treaty when where appropriate. The TFEU also introduced certain changes in terminology, such as the replacement of "Community" by "Union" and "common market" by "internal market".

³ OJ L 123, 27.4.2004, p. 18.

⁴ Final Report of the Hearing Officer of 20 February 2018.

1. INTRODUCTION

- (1) The addressees of this Decision participated in a set of agreements and concerted practices amounting to two single and continuous infringements of Article 101 of the Treaty on the Functioning of the European Union ('the Treaty') and Article 53 of the Agreement on the European Economic Area ('the EEA Agreement'). The agreements and concerted practices concerned the sale of hydraulic braking system components and electronic braking systems for passenger cars and covered the European Economic Area ('the EEA'). The agreements and concerted practices concerned the exchange of sensitive business information for the purposes of reducing competitive uncertainty in the area of sales of hydraulic braking system components and electronic braking systems for passenger cars to a number of car manufacturers. The infringements took place between 2007 and 2011.
- (2) This Decision is addressed to the following legal entities being part of the undertakings mentioned below:
 - (a) for the undertaking *TRW*: ZF TRW Automotive Holdings Corp., TRW KFZ Ausrüstung GmbH and Lucas Automotive GmbH;
 - (b) for the undertaking *BOSCH*: Robert Bosch GmbH;
 - (c) for the undertaking *CONTINENTAL*: Continental AG, Continental Teves AG & Co. oHG and Continental Automotive GmbH.

2. THE INDUSTRY CONCERNED

2.1. The product

- (3) Braking systems are an essential input for car manufacturers and the two main braking systems available are **hydraulic braking systems** and **electronic braking systems**. **Hydraulic braking systems** consist of an actuation system (brake booster / main brake cylinder) and a foundation system (disc brake with saddle or drum brake and wheel brake cylinder). **Electronic braking systems** prevent cars from skidding by providing electronic stability controls when braking (ABS) or under all driving conditions (ESC).
- (4) It is possible to combine hydraulic and electronic braking systems of different suppliers in the same car.

2.2. The undertakings

2.2.1. *TRW*

- (5) The undertaking TRW ("*TRW*") is a global supplier of advanced automotive technologies, systems and components with its group headquarters in the US. TRW Automotive Holding Corp. (US) was the group parent company at the time of the infringement. It was merged with another company and later renamed ZF TRW Automotive Holdings Corp. *TRW*'s worldwide turnover in 2017 was ca. EUR 14 billion.⁵
- (6) The relevant legal entities are:

⁵ [...].

- (a) **ZF TRW Automotive Holdings Corp.** with registered offices in 12001 Tech Center Drive, Livonia, MI 48150 (USA);
- (b) **TRW KFZ Ausrüstung GmbH** with registered offices in Rudolf-Diesel-Straße 7, D-56566 Neuwied (Germany);
- (c) **Lucas Automotive GmbH** with registered offices in Carl-Spaeter-Straße 8, D-56070 Koblenz (Germany).

2.2.2. *BOSCH*

- (7) The undertaking Bosch ("*BOSCH*") is a global supplier of advanced automotive technologies, systems and components with its group headquarters in Germany. Robert Bosch GmbH is the operative parent company of the group. *BOSCH*'s worldwide turnover in 2017 was ca. EUR 78 billion.⁶
- (8) The relevant legal entity is:
 - (a) **Robert Bosch GmbH** with its statutory seat in Stuttgart and headquarters in Robert-Bosch-Platz 1, D-70839 Gerlingen (Germany).

2.2.3. *CONTINENTAL*

- (9) The undertaking Continental ("*CONTINENTAL*") is a global supplier of advanced automotive technologies, systems and components with its group headquarters in Germany. Continental AG is the group parent company. *CONTINENTAL*'s worldwide turnover in 2017 was ca. EUR 44 billion.⁷
- (10) The relevant legal entities are:
 - (a) **Continental AG** with registered offices in Vahrenwalder Straße 9, D-30165 Hannover (Germany);
 - (b) **Continental Teves AG & Co. oHG** with registered offices in Guerickestraße 7, D-60488 Frankfurt (Germany);
 - (c) **Continental Automotive GmbH** with registered offices in Vahrenwalder Straße 9, D-30165 Hannover (Germany).

3. **PROCEDURE**

- (11) On 13 July 2011, *TRW* applied for immunity under the Commission Notice on immunity from fines and reduction of fines in cartel cases⁸ (the "Leniency Notice") in respect of bilateral contacts with *BOSCH* concerning sales of braking systems for passenger cars to customer Daimler. On 14 November 2011, the Commission granted *TRW* conditional immunity from fines for the infringement regarding braking systems for Daimler, pursuant to point 8(a) of the Leniency Notice.
- (12) From 22 to 24 November 2011, the Commission carried out inspections at the premises of *BOSCH* based on the information provided by *TRW*.
- (13) On 24 November 2011, *BOSCH* submitted a leniency application under the Leniency Notice in respect of sales of hydraulic braking systems for passenger cars to

⁶ [...].

⁷ [...].

⁸ Commission Notice on immunity from fines and reduction of fines in cartel cases, OJ C 298, 8.12.2006, p. 17.

customer Daimler and reported its bilateral contacts with *TRW* and *CONTINENTAL* in that regard.

- (14) From 16 to 19 September 2014, the Commission carried out inspections at the premises of *CONTINENTAL*.
- (15) On 9 December 2014, *CONTINENTAL* submitted a leniency application in respect of sales of hydraulic braking systems for passenger cars to customer Daimler and BMW and reported its bilateral contacts with both *TRW* and *BOSCH* in that regard. *CONTINENTAL* also reported its bilateral contacts with *BOSCH* in respect of sales of electronic braking systems for passenger cars to customer VW.
- (16) On 22 September 2016, the Commission initiated proceedings pursuant to Article 11(6) of Regulation (EC) No 1/2003 against the addressees of this decision (referred to as the "parties" or, for each undertaking separately, as "party") with a view to engaging in settlement discussions with them under the Commission Notice on the conduct of settlement procedures in cartel cases⁹ (the "Settlement Notice"). On 22 September 2016, the Commission adopted three separate decisions by which it informed (a) *CONTINENTAL* that it intended to grant conditional immunity for the conduct concerning sales of electronic braking systems to customer VW and a leniency reduction for the conduct concerning sales of hydraulic braking systems for passenger cars to customers Daimler and BMW; and (b) *BOSCH* that it intended to grant it leniency reductions for both alleged infringements.
- (17) After each party had confirmed its willingness to engage in settlement discussions, settlement meetings and further contacts took place between October 2016 and September 2017.
- (18) In the course of the settlement procedure, the Commission informed the parties of the essential elements it considered relevant to substantiate the alleged infringements as well as the main facts supporting its early findings, and disclosed to them the key evidence on file which the Commission relied upon to establish the alleged infringements. The parties had access to the relevant documentary evidence on file, to a list of all documents in the case file and, at the premises of the Commission, to the oral statements submitted under the Leniency Notice.
- (19) Each party expressed its view on the alleged infringements. The comments of the parties were carefully considered by the Commission and taken into account where justified.
- (20) At the end of the settlement discussions, all parties acknowledged that there was sufficient common understanding between them and the Commission regarding i) the alleged infringements; and ii) the range of possible fines, which the Commission had provided to the parties, to continue the settlement process.
- (21) Between [...], the parties submitted to the Commission their formal requests to settle pursuant to Article 10a (2) of Regulation (EC) No 773/2004 (the "settlement submissions"). In particular, the settlement submission of each party contained, for each of the infringements in which it participated:

⁹ 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.

- 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 the party expected to be imposed by the Commission 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 that the Commission envisaged 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 did not envisage requesting access to the file or requesting to be heard again in an oral hearing, unless the Commission does not reflect its settlement submission in the statement of objections and the decision that the Commission may adopt;
- 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.

(22) Each party made its settlement submission conditional upon the imposition of a fine by the Commission which would not exceed the amount specified in its settlement submission.

(23) On 4 December 2017, the Commission adopted a statement of objections addressed to the parties. All 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.

4. DESCRIPTION OF THE CONDUCT

4.1. Nature, scope and duration

(24) This case comprises two separate infringements. One infringement concerned the supply of hydraulic braking system components for passenger cars in the EEA and the other infringement concerned the supply of electronic braking systems for passenger cars in the EEA.

(25) The two infringements can be summarised as follows:

Infringement I: Coordination between *TRW*, *BOSCH* and *CONTINENTAL* concerning supplies of hydraulic braking system components to customers Daimler and BMW.

Infringement II: Coordination between *CONTINENTAL* and *BOSCH* concerning supplies of electronic braking systems to customer VW.

(26) In the following sections, the two infringements are described in detail.

4.1.1. *Infringement I*

(27) Infringement I consists of contacts between the three automotive suppliers *TRW*, *BOSCH* and *CONTINENTAL* concerning sales in the EEA of **hydraulic braking system components** (brake booster / main brake cylinder, disc brake with saddle or

drum brake and wheel brake cylinder) excluding brake discs ('HBS') for passenger cars to customers Daimler (Mercedes-Benz brand) and BMW (BMW brand).

- (28) The collusive conduct consisted of bilateral exchanges of competitively sensitive business information between the three suppliers. With the aim of coordinating their market conduct relating to Daimler and BMW, the participants exchanged information regarding their willingness to accept Daimler's 3-year-policy and BMW's 4-year-policy clause¹⁰, respectively, and discussed the purchasing terms and conditions of Daimler and BMW. The exchanges concerning Daimler also related to raw material cost compensation, cost transparency and volume reductions.
- (29) The conduct primarily took place in the form of meetings and phone conversations, but it also comprised email exchanges between *TRW*, *BOSCH* and *CONTINENTAL*. The contacts served to exchange sensitive business information with a view to reducing competitive uncertainty for the participants' supplies of HBS to Daimler¹¹ and BMW¹².
- (30) The contacts concerning Daimler took place mainly between *TRW* and *BOSCH* and between *BOSCH* and *CONTINENTAL*, and often involved the same employees within the undertakings. One of the main individuals directly involved for *BOSCH* was in contact with both *CONTINENTAL* and *TRW*. The contacts concerning BMW took place between *TRW* and *CONTINENTAL* and between *BOSCH* and *CONTINENTAL*.

Duration

- (31) The Commission considers that Infringement I started on 13 February 2007¹³ and lasted until 18 March 2011¹⁴. The collusive contacts between *TRW*, *BOSCH* and *CONTINENTAL* concerning sales of HBS to Daimler in the EEA took place between 13 February 2007 and 18 March 2011 for *TRW* and *BOSCH* and between 13 February 2007 and 19 March 2010¹⁵ for *CONTINENTAL*. The collusive contacts concerning sales of HBS to BMW in the EEA took place between 29 June 2010 and 18 March 2011 for *TRW*, *BOSCH* and *CONTINENTAL*. The contacts took place within sufficient proximity of time and accordingly are considered to constitute a continuous conduct.

4.1.2. Infringement II

- (32) Infringement II consists of bilateral collusive exchanges between *CONTINENTAL* and *BOSCH* concerning sales in the EEA of electronic braking systems (EBS) for passenger cars for the MLB evo-platform of customer VW.¹⁶ Following RFQs for the MLB evo-platform, the parties discussed their interest in the contract, disclosed their intentions to each other and exchanged information on their respective offers.

¹⁰ In 2008, Daimler asked for price commitments for after-series components. Suppliers were asked to supply components for 3 years after the end of production at the same price as during the active series production phase of a given vehicle, hence '3 year policy' or '3YP'. BMW's '4YP' (also 4JPB or '4-Jahrespreisbindung') led to a similar customer request.

¹¹ [...].

¹² [...].

¹³ [...].

¹⁴ [...].

¹⁵ [...].

¹⁶ This platform is used to produce certain Audi models and the Porsche Macan.

- (33) The conduct consisted of meetings and phone conversations and served to exchange sensitive business information with a view to reducing competitive uncertainty for supplies of EBS for the MLB evo-platform of VW.¹⁷
- (34) The same two individuals – one employed by *CONTINENTAL* and the other by *BOSCH* - were involved in all of the relevant anticompetitive contacts.

Duration

- (35) The collusive contacts between *CONTINENTAL* and *BOSCH* concerning EBS-sales to VW for the MLB evo-platform in the EEA took place between 29 September 2010¹⁸ and 7 July 2011¹⁹. The contacts took place within sufficient proximity of time and accordingly are considered to constitute a continuous conduct.

4.2. Geographical scope

- (36) In the Union, braking systems are produced notably in Germany, France, United Kingdom, Poland and the Czech Republic. The customers concerned are large car producing multi-nationals which are present across the whole of the EEA.
- (37) The geographical scope of both infringements is EEA-wide, given that the anti-competitive contacts concerned the supply of certain parts of braking systems for passenger cars to production facilities of Daimler, BMW and VW in the EEA, no matter where exactly in the EEA these facilities were located.

5. LEGAL ASSESSMENT

- (38) The legal assessment set out in this Section takes into account the facts as described in Section 4, the body of evidence on which they are based, 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) EEA Agreement

5.1.1. Agreements and concerted practices

5.1.1.1. Principles

- (39) Article 101 of the Treaty prohibits agreements between undertakings, decisions by associations of undertakings and concerted practices which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the internal market. 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.
- (40) An *agreement* under Article 101 of the Treaty and Article 53 of the EEA Agreement may be said to exist when the parties adhere to a common plan which limits or is likely to limit their individual commercial conduct by determining the lines of their mutual action or abstention from action in the market. Although Article 101(1) of the Treaty and Article 53 of the EEA Agreement draw a distinction between the concept

¹⁷ [...].

¹⁸ [...].

¹⁹ [...].

of *concerted practice* and that of *agreements 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.²⁰ 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 collusive devices which facilitate the coordination of their commercial behaviour.²¹ Article 101(1) of the Treaty and Article 53(1) of the EEA Agreement preclude any direct or indirect contact between economic operators of such a kind as either to influence the conduct on the market of an actual or potential competitor or to reveal to such a competitor the conduct which an operator has decided to follow itself, or contemplates adopting, on the market, where the object or effect of those contacts is to restrict competition.²²

- (41) It is not necessary, particularly in the case of a complex infringement, for the Commission to characterise the conduct as exclusively one or other of these forms of illegal behaviour. The concepts of agreement and concerted practice may overlap. The anti-competitive behaviour may well be varied from time to time, or its mechanisms adapted or strengthened to take account of new developments. Indeed, it may not even be possible to make such a distinction, as an infringement may present simultaneously the characteristics of each form of prohibited conduct, while when considered in isolation some of its manifestations could accurately be described as one rather than the other. It is not necessary to define exactly whether a certain conduct constitutes an agreement or a concerted practice as long as it is established that the infringement involved anti-competitive agreements and/or concerted practices and that the participating undertakings intended to contribute by their own conduct to the common objectives pursued by all the participants and were aware of the actual conduct planned or put into effect by the other undertakings in pursuit of the same objectives (or could reasonably have foreseen it and were prepared to take the risk).²³

5.1.1.2. Application to this case

- (42) For both infringements, it emerges from the facts described in Section 4 that the parties took part in information exchanges between competitors with the aim of coordinating their respective market behaviours, including their pricing practices, that can be classified as agreements and/or concerted practices within the meaning of Article 101(1) of the Treaty and Article 53(1) of the EEA Agreement, whereby the undertakings knowingly substituted practical co-operation between them for the risks of competition.

²⁰ Case 48/69 *Imperial Chemical Industries v Commission*, ECLI:EU:C:1972:70, paragraph 64.

²¹ Case T-7/89, *Hercules v Commission*, ECLI:EU:T:1991:75, para. 256 | Case 48/69, *Imperial Chemical Industries v Commission*, ECLI:EU:C:1972:70, para. 64 | Joined Cases 40-48/73, *Suiker Unie and Others v Commission*, ECLI:EU:C:1975:174, paras. 173-174.

²² Case T-396/10, *Zucchetti v Commission*, ECLI:EU:T:2013:446, para. 56 and case law cited therein.

²³ Case C-49/92 P, *Commission v Anic Partecipazioni*, ECLI:EU:C:1999:356, paras. 81-87.

5.1.2. *Single and continuous infringement*

5.1.2.1. Principles

- (43) 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 common market, the Commission is entitled to impute responsibility for those actions on the basis of participation in the infringement considered as a whole.²⁴
- (44) An undertaking that has participated in such a single and complex infringement through its own conduct, which fell within the definition of an agreement or a concerted practice having an anti-competitive object for the purposes of Article 101(1) of the Treaty and was intended to help bring about the infringement as a whole, may accordingly be liable also in respect of the conduct of other undertakings in the context of the same infringement throughout the period of its participation in the infringement. That is the position where it is shown that the undertaking intended, through its own conduct, to contribute to the common objectives pursued by all the participating undertakings and that it was aware of the anti-competitive conduct planned or put into effect by other undertakings in pursuit of the same objectives or that it could reasonably have foreseen it and was prepared to take the risk.²⁵
- (45) An undertaking may thus have participated directly in all the aspects of anti-competitive conduct comprising a single infringement, in which case the Commission is entitled to attribute liability to it in relation to that conduct as a whole and, therefore, in relation to the infringement as a whole. Equally, the undertaking may have participated directly in only some of the anti-competitive conduct comprising a single infringement, but have been aware of all the other unlawful conduct planned or put into effect by the other participants in the cartel in pursuit of the same objectives, or could reasonably have foreseen that conduct and have been prepared to take the risk. In such a case, the Commission is also entitled to attribute liability to that undertaking in relation to all the anti-competitive conduct comprising such an infringement and, accordingly, in relation to the infringement as a whole.²⁶
- (46) On the other hand, if an undertaking has participated directly 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

²⁴ Joined Cases C-204/00 etc., *Aalborg Portland et al.* ECLI:EU:C:2004:6, para. 258.

²⁵ Case C-441/11 P, *Commission v Verhuizingen Coppens*, ECLI:EU:C:2012:778, para. 42.

²⁶ Case C-441/11 P *Commission v Verhuizingen Coppens*, ECLI:EU:C:2012:778, para. 43.

where it has been shown that the undertaking was aware of that conduct or could reasonably have foreseen it and was prepared to take the risk.²⁷

5.1.2.2. Application to this case

- (47) Each of the two sets of conduct described in Section 4 constitutes a separate, single and continuous infringement of Article 101 of the Treaty and Article 53 of the EEA Agreement.
- (48) Each of the two separate infringements involves a coherent set of repeated collusive contacts in the form of bilateral competitor cooperation which continued without interruption throughout the respective periods. In each infringement, the different incidents of collusive conduct were interlinked, took place in a common context and served the same object and economic aim, namely to coordinate the respective market behaviours of the participants.
- (49) In Infringement I, the body of evidence relating to HBS-sales in the EEA to customers Daimler and BMW shows that a single and continuous infringement by *TRW*, *BOSCH* and *CONTINENTAL* in the form of collusive contacts took place in the period between 13 February 2007 and 18 March 2011.
- (50) The pattern of collusive contacts concerning customers Daimler and BMW was similar. The participants exchanged market-sensitive information with the aim of increasing transparency between the competitors. The communication relating to price commitment clauses in contracts with both Daimler and BMW for the period after the end of series production had the common aim of increasing transparency and, as a result, of improving the suppliers' own negotiation position vis-à-vis the customers. The collusive contacts were not limited to specific models or platforms of Daimler or BMW.
- (51) The evidence shows that all three participants were aware of the general scope and essential characteristics of the infringement by all three suppliers involved. While there were no trilateral meetings, each of the cartel participants had collusive contacts with both of the other cartel participants. Certain individuals working for *BOSCH* and *CONTINENTAL* had contacts with employees of both other competitors. Information obtained from competitors was shared within the respective organisations. The fact that each of the cartel participants had collusive contacts with both of the other cartel participants implies that they could at the very last have foreseen and were prepared to take the risk that those other cartel participants had similar anti-competitive contacts with each other. The parties did not necessarily have to engage in trilateral contacts to remove or limit strategic uncertainty on the market as to their future behaviour.
- (52) In Infringement II, the body of evidence relating to EBS-sales for the MLB evo-platform in the EEA to customer VW shows a single and continuous infringement by *CONTINENTAL* and *BOSCH* in the form of bilateral collusive contacts lasting, at least, from 29 September 2010 to 7 July 2011. The individuals involved in this infringement on behalf of both undertakings were the same in all instances. The communication had the common aim of reducing competitive uncertainty for supplies of EBS for the MLB evo-platform of VW.

²⁷ Case C-441/11 P *Commission v Verhuizingen Coppens* ECLI:EU:C:2012:778, para. 44.

5.1.3. *Restriction of competition*

5.1.3.1. Principles

- (53) To come within the prohibition laid down in Article 101(1) of the Treaty and Article 53(1) of the EEA Agreement, an agreement, a decision by an association of undertakings or a concerted practice must have as its object or effect the prevention, restriction or distortion of competition in the internal market.
- (54) In that regard, it is apparent from the case-law of the Court that certain types of coordination between undertakings reveal a sufficient degree of harm to competition that it may be found that there is no need to examine their effects.²⁸ That case-law arises from the fact that certain types of coordination between undertakings can be regarded, by their very nature, as being harmful to the proper functioning of normal competition.²⁹ 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 such.³⁰
- (55) 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 Treaty, to prove that it has actual effects on the market.³¹

5.1.3.2. Application to this case

- (56) In both infringements, the participants co-ordinated their behaviour to reduce uncertainty between themselves in relation to the supply of certain parts of braking systems in the EEA.
- (57) Therefore, the object of the conduct of the parties in both infringements was to restrict competition within the meaning of Article 101 of the Treaty and Article 53 of the EEA Agreement.

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

5.1.4.1. Principles

- (58) 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

²⁸ Case C-67/13 P, *Groupement des Cartes Bancaires v Commission*, ECLI:EU:C:2014:2204, para. 49 | Case C-286/13 P, *Dole Food and Dole Fresh Fruit Europe v Commission*, ECLI:EU:C:2015:184, para. 113.

²⁹ Joined Cases 56/64 and 58/64, *Consten and Grundig v Commission*, ECLI:EU:C:1966:41. | Joined Cases C-238/99 P, C-244/99 P, C-245/99 P, C-247/99 P, C-250/99 P to C-252/99 P and C-254/99 P, *Limburgse Vinyl Maatschappij and Others v Commission*, ECLI:EU:C:2002:582, para. 508 | Case C-389/10 P, *KME Germany and Others v Commission*, ECLI:EU:C:2011:816, para. 75 | Case C-67/13 P, *Groupement des Cartes Bancaires v Commission*, ECLI:EU:C:2014:2204, para. 50 | Case C-286/13 P, *Dole Food and Dole Fresh Fruit Europe v Commission*, ECLI:EU:C:2015:184, para. 114.

³⁰ Joined Cases C-501/06 P, C-513/06 P, C-515/06 P and C-519/06 P, *GlaxoSmithKline Services and Others v Commission and Others*, ECLI:EU:C:2009:610, para. 63.

³¹ 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.

EEA Agreement is directed at agreements that undermine the achievement of a homogeneous EEA between the Contracting Parties to the EEA Agreement.³²

- (59) Article 101 of the Treaty does not require that agreements referred to in that provision have actually affected trade between Member States; it is sufficient that the agreements 'are capable of having that effect'.³³ According to case-law, for an agreement, decision or practice is to be capable of affecting trade between Member States, it must be possible to foresee 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 insignificant.³⁴

5.1.4.2. Application to this case

- (60) In both infringements, the relevant braking system components were supplied to production facilities of the relevant automotive customers throughout the EEA. Significant cross-border trade within the EEA took place or could have taken place, which entails that trade was or could have been affected.
- (61) These supplies involved a substantial volume of trade between Member States. Both infringements were therefore capable of having an appreciable effect upon trade between Member States and between the contracting parties to the EEA Agreement within the meaning of Article 101 of the Treaty and Article 53 of the EEA Agreement.³⁵

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

5.2.1.1. Principles

- (62) 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.

5.2.1.2. Application to this case

- (63) On the basis of the evidence on file, there is no indication that the conduct of *TRW*, *BOSCH* or *CONTINENTAL* entailed any efficiency benefits or otherwise promoted technical or economic progress. The conditions for exemption provided for in Article 101(3) of the Treaty and Article 53(3) of the EEA Agreement are not met in this case in respect of any of the two infringements.

³² Joined Cases T-25/95 a.o., *Cement*, ECLI:EU:T:2000:77, para. 3930 | Case C-306/96, *Javico International and Javico AG v Yves Saint Laurent Parfums SA*, ECLI:EU:C:1998:173, paras. 16-17.

³³ Case C-306/96 *Javico*, ECLI:EU:C:1998:173, paragraphs 16 and 17; see also Case T-374/94 *European Night Services*, ECLI:EU:T:1998:198, paragraph 136 and Case C-238/05 *Asnef-Equifax*, ECLI:EU:C:2006:734, paragraph 43.

³⁴ Case C-125/07 P, *Erste Group Bank v Commission*, ECLI:EU:C:2009:576, para. 36.

³⁵ Case C-125/07 P, *Erste Group Bank v Commission*, ECLI:EU:C:2009:576, paras. 36-39.

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

(64) In view of the evidence set out in Section 4, the duration of the participation of the parties in the infringements was as follows:

Infringement	Undertaking	Scope: Sales of	Start	End
I	TRW, BOSCH	HBS (to Daimler to BMW)	13/02/2007 29/06/2010	18/03/2011 18/03/2011
	CONTINENTAL	HBS (to Daimler to BMW)	13/02/2007 29/06/2010	19/03/2010 18/03/2011
II	CONTINENTAL, BOSCH	EBS (to VW for MLB evo-platform)	29/09/2010	07/07/2011

7. LIABILITY

7.1. Principles

- (65) Union/EEA competition law refers to the activities of undertakings and the concept of an undertaking covers any entity engaged in an economic activity, irrespective of its legal status and the way in which it is financed.³⁶
- (66) When such an entity infringes the competition rules, it falls, according to the principle of personal responsibility, to that entity to answer for that infringement. The conduct of the subsidiary can be imputed to the parent where the parent exercises a decisive influence over it, namely where that subsidiary does not decide independently upon its own conduct on the market. In effect, as the controlling company in the undertaking, the parent is deemed to have itself committed the infringement of Article 101 of the Treaty and Article 53 of the EEA Agreement.³⁷
- (67) The Commission cannot merely find that a legal entity is able to exert decisive influence over another legal entity, without checking whether that influence was actually exerted. On the contrary, it is, as a rule, for the Commission to demonstrate such decisive influence on the basis of factual evidence, including, in particular, any management power one of the legal entities may have over the other.³⁸
- (68) 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 Union/EEA competition rules, there is a rebuttable presumption that that parent company in fact does exercise a decisive influence over its subsidiary. In such a situation, it is sufficient for the Commission to prove that all or almost all of the capital in the

³⁶ Case C-511/11 P, *Versalis v Commission*, ECLI:EU:C:2013:386, para. 51.

³⁷ Case C-97/08 P, *Akzo Nobel and others v Commission*, ECLI:EU:C:2009:536, para. 61 | Case C-521/09 P, *Elf Aquitaine v Commission*, ECLI:EU:C:2011:620, paras. 57 and 63 | Joined cases C-628/10 P and C-14/11 P, *Alliance One International and Standard Commercial Tobacco v Commission* and *Commission v Alliance One International and Others*, ECLI:EU:C:2012:479, paras. 43 and 46 | Case C-508/11 P, *ENI v Commission*, ECLI:EU:C:2013:289, para. 47 | Case C-286/98 P, *Stora Kopparbergs Bergslags v Commission*, ECLI:EU:C:2000:630, para. 29 | Case T-391/09, *Evonik Degussa et AlzChem v Commission*, ECLI:EU:T:2014:22, para. 77 | Case C-440/11 P, *Commission v Stichting Administratiekantor Portielje*, ECLI:EU:C:2013:514, para. 41.

³⁸ Joined Cases T-56/09 and T-73/09 *Saint-Gobain Glass France and others v Commission*, ECLI:EU:T:2014:160, para. 311.

subsidiary is held by the parent company in order to take the view that that presumption applies.³⁹

- (69) In addition, when an entity which has committed an infringement of the competition rules is subject to a legal or organisational change, this change does not necessarily create a new undertaking free of liability for the conduct of its predecessor which infringed the competition rules, when, from an economic point of view, the two entities are identical. Where two entities constitute one economic entity, the fact that the entity that committed the infringement still exists does not as such preclude imposing a penalty on the entity to which its economic activities were transferred. In particular, applying penalties in this way is permissible where those entities have been under the control of the same person and have therefore, given the close economic and organisational links between them, carried out, in all material respects, the same commercial instructions.⁴⁰
- (70) 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 to this case

- (71) Having regard to the body of evidence and the facts described in Section 4, the clear and unequivocal acknowledgements by the parties of the facts and the legal qualification thereof, the Commission imputes liability to the undertakings as follows:

7.2.1. TRW

- (72) For Infringement I, the Commission holds the following legal entities jointly and severally liable:
- (a) **TRW KFZ Ausrüstung GmbH;**
 - (b) **Lucas Automotive GmbH** and
 - (c) **ZF TRW Automotive Holdings Corp.**
- (73) TRW KFZ Ausrüstung GmbH and Lucas Automotive GmbH have clearly and unequivocally acknowledged their direct participation in cartel contacts and their liability for their respective participations in the infringement.
- (74) During the period of Infringement I, TRW KFZ Ausrüstung GmbH and Lucas Automotive GmbH were subsidiaries wholly owned by the ultimate parent company of the group, ZF TRW Automotive Holdings Corp. which is therefore presumed to have exercised decisive influence over TRW KFZ Ausrüstung GmbH and Lucas Automotive GmbH. ZF TRW Automotive Holdings Corp. also clearly and unequivocally acknowledged liability for the conduct of these subsidiaries.
- (75) The Commission therefore imputes liability, for participating in Infringement I, jointly and severally to **TRW KFZ Ausrüstung GmbH** and **Lucas Automotive GmbH** (for their direct participation) and **ZF TRW Automotive Holdings Corp.** (as parent of TRW KFZ Ausrüstung GmbH and Lucas Automotive GmbH), from 13 February 2007 to 18 March 2011.

³⁹ Case C-97/08 P, *Akzo Nobel and others v Commission*, ECLI:EU:C:2009:536, para. 60.

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

7.2.2. *BOSCH*

(76) For both Infringements I and II, the Commission holds the following legal entity liable:

(a) **Robert Bosch GmbH.**

(77) Robert Bosch GmbH directly participated in cartel contacts and clearly and unequivocally acknowledged liability for its direct participation.

(78) The Commission therefore imputes liability for both infringements to Robert Bosch GmbH as follows:

- for Infringement I, to **Robert Bosch GmbH** (for its direct participation), from 13 February 2007 to 18 March 2011;
- for Infringement II, to **Robert Bosch GmbH** (for its direct participation), from 29 September 2010 to 7 July 2011.

7.2.3. *CONTINENTAL*

(79) For both Infringements I and II, the Commission holds the following legal entities jointly and severally liable:

- (a) **Continental Teves AG & Co. oHG;**
- (b) **Continental Automotive GmbH;** and
- (c) **Continental AG.**

(80) Continental Teves AG & Co. oHG and Continental Automotive GmbH participated directly in cartel contacts and clearly and unequivocally acknowledged liability for their direct participation.

(81) During the period of both Infringements I and II, Continental Teves AG & Co. oHG and Continental Automotive GmbH were wholly owned by the ultimate parent company of the group, Continental AG, which is therefore presumed to have exercised decisive influence over Continental Teves AG & Co. oHG and Continental Automotive GmbH. Continental AG also clearly and unequivocally acknowledged liability for the conduct of these subsidiaries.

(82) The Commission therefore imputes liability for the infringements to Continental Teves AG & Co. oHG, Continental Automotive GmbH and Continental AG, as follows:

- for Infringement I, jointly and severally to **Continental Teves AG & Co. oHG** and **Continental Automotive GmbH** (for their direct participation) and **Continental AG** (as parent of Continental Teves AG & Co. oHG and Continental Automotive GmbH), from 13 February 2007 to 18 March 2011;
- for Infringement II, jointly and severally to **Continental Teves AG & Co. oHG** (for its direct participation) and **Continental AG** (as parent of Continental Teves AG & Co. oHG), from 29 September 2010 to 7 July 2011.

8. **REMEDIES**

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

(83) 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.

- (84) Given the secrecy in which the cartel arrangements are usually carried out and the gravity of such infringements, it is appropriate for the Commission to require the undertakings to which this Decision is addressed to immediately bring the infringement to an end if, they should 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

- (85) Under Article 23(2) of Regulation (EC) No 1/2003⁴¹, the Commission may by decision impose on undertakings fines where, either intentionally or negligently, they infringe Article 101 of the Treaty and Article 53 of the EEA Agreement. For each undertaking participating in one of the two infringements, the fine per infringement shall not exceed 10% of its total turnover in the preceding business year.
- (86) Based on the facts described in Section 4, the Commission considers that both infringements were committed intentionally.
- (87) Fines should therefore be imposed on the undertakings to which this Decision is addressed for each of the two infringements in which they participated.
- (88) 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 duration of the infringements. In setting the fines to be imposed, the Commission also refers 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 1/2003⁴² (“Guidelines on fines”).
- (89) Finally, the Commission applies, as appropriate, the provisions of the Leniency Notice and the Settlement Notice.

8.3. Calculation of the fines

- (90) In accordance with the Guidelines on fines, for each of the two infringements, a basic amount is to be determined for each undertaking's fine, which results from the addition of a variable amount and an additional amount. The variable amount results from a percentage of up to 30% of the value of sales of goods or services to which the infringement relates in a given year (normally, the last full business year of the infringement) multiplied with the number of years of the undertaking's participation in the given infringement. The additional amount (“entry fee”) is calculated as a percentage between 15% and 25% of the value of sales, irrespective of the duration of the infringement. The resulting basic amount can then be increased or reduced for each undertaking if either aggravating or mitigating circumstances are found to be applicable. 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 (point 37 of the Guidelines on Fines).

⁴¹ Under Article 5 of Council Regulation (EC) No 2894/94 of 28 November 1994 concerning arrangements of implementing the Agreement on the European Economic Area (OJ L 305, 30.11.1994, p. 6) “*the Community rules giving effect to the principles set out in Articles 85 and 86 of the EC Treaty [now Articles 101 and 102 of the Treaty] [...] shall apply mutatis mutandis*”.

⁴² OJ C 210, 1.9.2006, p. 2.

8.3.1. The value of sales

- (91) The basic amount of the fine to be imposed on the undertakings concerned is to be set by reference to the value of their sales⁴³, 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 in the EEA.
- (92) The Commission normally takes the sales made by the undertakings during the last full business year of their participation in the infringement.⁴⁴ 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.

Infringement I

- (93) The relevant value of sales is the sales of HBS in the EEA to Daimler (Mercedes-Benz brand) and BMW (BMW brand). In view of the significant fluctuations of sales during the infringement period, the Commission uses the average sales in the EEA of the relevant HBS products for passenger cars to Daimler during the full years of the parties' participation in this aspect of the infringement.⁴⁵ In the absence of any full years of infringement, the Commission takes into account the average sales in the EEA of the relevant HBS products for passenger cars to BMW in 2010/2011.
- (94) Accordingly, the value of sales for each undertaking is the following:

Infringement	Undertaking	Customer	Value of Sales (EUR)
I	<i>TRW</i>	Daimler	[30 000 000-70 000 000]
		BMW	[30 000 000-70 000 000]
	<i>BOSCH</i>	Daimler	[10 000 000-30 000 000]
		BMW	[2 000 000-7 000 000]
	<i>CONTINENTAL</i>	Daimler	[30 000 000-70 000 000]
		BMW	[60 000 000-110 000 000]

Infringement II

- (95) The relevant value of sales is the sales of EBS in the EEA to VW for the MLB platform, which preceded the MLB evo-platform. In view of the significant fluctuations of sales during the infringement period and in the absence of any full years of infringement, the Commission takes into account for *BOSCH* the average sales in the EEA of the relevant EBS products for passenger cars to VW for the MLB-platform in 2010/2011. *CONTINENTAL* made no sales for this platform. To achieve sufficient deterrent effect, the Commission calculates a fictional value of sales for *CONTINENTAL*, as a proxy of its relative size and responsibility in the infringement as follows. Firstly, the Commission calculates the ratio between the respective total turnovers of *CONTINENTAL* and *BOSCH* in 2016. Secondly, the

⁴³ Point 12 of the Guidelines on fines.

⁴⁴ Point 13 of the Guidelines on fines.

⁴⁵ In 2008 to 2010 as concerns *TRW* and *BOSCH* and in 2008 to 2009 as concerns *CONTINENTAL*.

Commission applies the resulting ratio to BOSCH's value of sales for the MLB-platform in 2010/2011 to determine *CONTINENTAL*'s fictional value of sales for that platform.

(96) Accordingly, the retained value of sales for each undertaking is the following:

Infringement	Undertaking	Customer	Value of Sales (EUR)
II	<i>CONTINENTAL</i>	VW	[30 000 000-70 000 000]
	<i>BOSCH</i>	VW	[60 000 000-110 000 000]

(97) Each party has, in its settlement submission, confirmed the relevant value of sales for the calculation of the fines in respect of each infringement.

8.3.2. Determination of the basic amount of the fines

(98) The basic amount consists of an amount of up to 30% of an undertaking's relevant sales in the EEA, 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 duration.⁴⁶

8.3.2.1. Gravity

(99) The gravity of each of the infringements determines the percentage of the value of sales taken into account in setting the fine. In assessing the gravity of each infringement, the Commission has 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.

(100) The collusive conduct described in this Decision is, by its 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.⁴⁷

(101) Furthermore, each infringement concerned the entire EEA.

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

8.3.2.2. Duration

(103) In calculating the fine to be imposed on each undertaking for each infringement, the Commission takes into consideration the duration of each infringement, as set out in Section 4. The increase for duration is calculated on the basis of days.

Infringement	Party	Customer	Factor
I	TRW	Daimler	4.09
		BMW	0.72
	BOSCH	Daimler	4.09
		BMW	0.72
	CONTINENTAL	Daimler	3.09

⁴⁶ Points 19-26 of the Guidelines on fines.

⁴⁷ Point 23 of the Guidelines on fines.

		BMW	0.72
II	CONTINENTAL	VW	0.77
	BOSCH	VW	0.77

8.3.2.3. Additional amount

- (104) Both infringements committed concerned collusive conduct with a view of reducing competitive uncertainty. Therefore, the basic amount of the fine to be imposed should include a sum of between 15% and 25% of the value of sales to deter parties from even entering into such illegal practices, which is determined on the basis of the criteria listed above in recital (98) with respect to the variable amount.⁴⁸
- (105) In this case, taking into account the nature of the infringement, the proportion of the value of sales to be taken into account for the purpose of calculating the additional amount is 16% for each infringement.

8.3.3. Adjustments to the basic amount: Aggravating or mitigating factors

- (106) 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 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.
- (107) The Commission considers recidivism as an aggravating circumstance for *CONTINENTAL* given that *CONTINENTAL* previously participated in a cartel infringement (Continental AG was an addressee of the Commission decision of 28 January 2009 in case AT.39406 *Marine Hoses* finding an infringement under Article 101 of the Treaty). After the adoption of the *Marine Hoses* decision, *CONTINENTAL*⁴⁹ continued a similar infringement for a significant time (infringement I) and repeated a similar infringement (infringement II). For both infringements the basic amount for *CONTINENTAL* will therefore be increased by 50%.
- (108) There are no further aggravating or mitigating circumstances.

8.3.4. Deterrence

- (109) 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 related may be increased.⁵⁰
- (110) In this case, such an increase for deterrence should be applied to *BOSCH* and *CONTINENTAL* which had an annual world-wide turnover of approximately EUR 78 billion and EUR 44 billion respectively, in 2017. A multiplier of 1.1 should be applied to *CONTINENTAL* and a multiplier of 1.2 should be applied to *BOSCH* to take account of the comparatively large size of those undertakings.

⁴⁸ Point 25 of the Guidelines on fines.

⁴⁹ As found in paragraphs (79) to (82) and acknowledged by *CONTINENTAL*, Continental AG, Continental Teves AG & Co. oHG and Continental Automotive GmbH are all part of the undertaking *CONTINENTAL*.

⁵⁰ Point 30 of the Guidelines on fines.

(111) The resulting adjusted basic amounts are set out as follows:

Infringement	Undertaking	Amount (EUR)	
I	TRW	DAIMLER	[30 000 000-60 000 000]
		BMW	[10 000 000-30 000 000]
	BOSCH	DAIMLER	[10 000 000-30 000 000]
		BMW	[1 000 000-5 000 000]
	CONTINENTAL	DAIMLER	[30 000 000-70 000 000]
		BMW	[30 000 000-60 000 000]
II	CONTINENTAL	VW	[10 000 000-30 000 000]
	BOSCH	VW	[20 000 000-40 000 000]

8.4. Application of the 10% turnover limit

(112) The fine imposed on each undertaking for each infringement in which it participated shall not exceed 10% of its total turnover relating to the business year preceding the date of the Commission decision.⁵¹

8.5. Application of the Leniency Notice

8.5.1. Immunity

(113) *TRW* was granted conditional immunity from fines for Infringement I. *TRW's* co-operation fulfilled the requirements of the Leniency Notice throughout the procedure. *TRW* should therefore be granted immunity from fines for Infringement I.

(114) *CONTINENTAL* was granted conditional immunity from fines for Infringement II. *CONTINENTAL's* co-operation fulfilled the requirements of the Leniency Notice throughout the procedure. *CONTINENTAL* should therefore be granted immunity from fines for Infringement II.

8.5.2. Partial Immunity

(115) If an applicant for a reduction of the fine is the first to submit compelling evidence which the Commission uses to establish additional facts increasing the gravity or duration of the infringement, such additional facts will not be taken into account when setting the fine for this applicant.

(116) *CONTINENTAL* was the first party to submit compelling evidence within the meaning of point 25 of the Leniency Notice that enabled the Commission to include the customer BMW in Infringement I. As the infringement is limited to specific customers (and does not cover the whole braking systems market), evidence in respect of an additional customer provided by *CONTINENTAL* resulted in an increase in the gravity of the infringement. In accordance with point 26 of the

⁵¹ Article 23(2) of Regulation (EC) No 1/2003.

Leniency Notice, the value of sales to customer BMW should not be taken into account when setting the fine to be imposed on *CONTINENTAL* for Infringement I.

8.5.3. *Reduction of fines*

- (117) The Commission has already informed *BOSCH* of its intention to grant *BOSCH* a leniency reduction within the range of 30%-50% of any fine that would otherwise have been imposed for Infringements I and II. *BOSCH* was the first undertaking to meet the requirements of points 24 and 25 of the Leniency Notice as regards both infringements. *BOSCH* applied for leniency immediately after the Commission inspections in November 2011 and provided evidence which was relevant to prove the duration and the scope of the infringements. However, as regards infringement I, *BOSCH's* statements were focussed on customer Daimler. As concerns infringement II, *BOSCH* only confirmed the statements of *CONTINENTAL*. *BOSCH* should therefore be granted a reduction of 35% of the fine that would otherwise have been imposed for Infringement I and a reduction of 30% of the fine that would otherwise have been imposed for Infringement II.
- (118) The Commission has already informed *CONTINENTAL* of its intention to grant *CONTINENTAL* a leniency reduction within the range of 20%-30% of any fine that would otherwise have been imposed for the Daimler-related aspect of Infringement I. *CONTINENTAL* was the second undertaking to meet the requirements of points 24 and 25 of the Leniency Notice as regards the Daimler-related aspect of Infringement I. *CONTINENTAL* applied for leniency only at a late stage and several weeks after the Commission inspections in September 2014, but still provided evidence which was relevant as concerns the Daimler-related conduct. The cooperation provided in respect of the BMW-related aspect of Infringement I is already taken into account in the context of the partial immunity granted in that regard and should not be considered again for the level of reduction concerning the remaining Daimler-related conduct. *CONTINENTAL* should therefore be granted a reduction of 20% of the fine that would otherwise have been imposed for Infringement I.

8.6. **Application of the Settlement Notice**

- (119) 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 involve leniency applicants, that reduction is added to the reductions for their cooperation under the Leniency Notice.
- (120) 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**

- (121) The fines to be imposed pursuant to Article 23(2) of Regulation (EC) No 1/2003 are as follows:

Infringement	Undertaking	Amount (EUR)
I	TRW	0
	BOSCH	12 072 000
	CONTINENTAL	44 006 000
II	CONTINENTAL	0

	BOSCH	19 348 000
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HAS ADOPTED THIS DECISION:

Article 1

The following undertakings infringed 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') by participating in a single and continuous infringement lasting from 13 February 2007 until 18 March 2011 and covering the whole EEA, which consisted of the exchange of sensitive business information with a view to reducing competitive uncertainty for sales of hydraulic braking system components for passenger cars to customers Daimler and BMW, during the periods indicated below:

- (a) ZF TRW Automotive Holdings Corp., TRW KFZ Ausrüstung GmbH and Lucas Automotive GmbH from 13 February 2007 until 18 March 2011 in relation to customer Daimler and from 29 June 2010 until 18 March 2011 in relation to customer BMW;
- (b) Robert Bosch GmbH from 13 February 2007 until 18 March 2011 in relation to customer Daimler and from 29 June 2010 until 18 March 2011 in relation to customer BMW; and
- (c) Continental AG, Continental Teves AG & Co. oHG and Continental Automotive GmbH from 13 February 2007 until 19 March 2010 in relation to customer Daimler and from 29 June 2010 until 18 March 2011 in relation to customer BMW.

Article 2

The following undertakings infringed Article 101 of the Treaty and Article 53 of the EEA Agreement by participating in a single and continuous infringement lasting from 29 September 2010 until 7 July 2011 and covering the whole EEA, which consisted of the exchange of sensitive business information with a view to reducing competitive uncertainty for sales of electronic braking systems for passenger cars to customer VW for the MLB evo-platform, during the period indicated below:

- (a) Robert Bosch GmbH from 29 September 2010 until 7 July 2011; and
- (b) Continental AG and Continental Teves AG & Co. oHG from 29 September 2010 until 7 July 2011.

Article 3

For the single and continuous infringement referred to in Article 1 of this Decision, the following fines are imposed:

- (a) on ZF TRW Automotive Holdings Corp., TRW KFZ Ausrüstung GmbH and Lucas Automotive GmbH jointly and severally: EUR 0;
- (b) on Robert Bosch GmbH: EUR 12 072 000;
- (c) on Continental AG, Continental Teves AG & Co. oHG and Continental Automotive GmbH jointly and severally: EUR 44 006 000.

Article 4

For the single and continuous infringement referred to in Article 2 of this Decision, the following fines are imposed:

- (a) on Robert Bosch GmbH : EUR 19 348 000;
- (b) on Continental AG and Continental Teves AG & Co. oHG jointly and severally: EUR 0 .

Article 5

The fines shall be credited, in euros, 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.39920

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

Where an undertaking referred to in Articles 1 and 2 lodges an appeal, that undertaking shall cover the fine by the due date, either by providing an acceptable financial guarantee or by making a provisional payment of the fine in accordance with Article 90 of Commission Delegated Regulation (EU) No 1268/2012.⁵²

Article 6

The undertakings to which this decision is addressed shall immediately bring to an end the infringements referred to in Articles 1 and 2, if they have not already done so.

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

Article 7

This Decision is addressed to:

- (a) ZF TRW Automotive Holdings Corp., 12001 Tech Center Drive, Livonia, MI 48150, USA;
- (b) TRW KFZ Ausrüstung GmbH, Rudolf-Diesel-Straße 7, D-56566 Neuwied, Germany;
- (c) Lucas Automotive GmbH with registered offices in Carl-Spaeter-Straße 8, D-56070 Koblenz, Germany;
- (d) Robert Bosch GmbH, Robert-Bosch-Platz 1, D-70839 Gerlingen, Germany;

⁵² Commission Delegated Regulation (EU) No 1268/2012 of 29 October 2012 on the rules of application of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council on the financial rules applicable to the general budget of the Union (OJ L 362, 31.12.2012, p. 1).

- (e) Continental AG, Vahrenwalder Straße 9, D-30165 Hannover, Germany;
- (f) Continental Teves AG & Co. oHG, Guerickestraße 7, D-60488 Frankfurt, Germany;
- (g) Continental Automotive GmbH, Vahrenwalder Straße 9, D-30165 Hannover, Germany.

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

Done at Brussels, 21.2.2018

*For the Commission
Margrethe VESTAGER
Member of the Commission*