



EUROPEAN COMMISSION  
Competition DG

***CASE AT.40028 –  
ALTERNATORS AND STARTERS***

(Only the English text is authentic)

**CARTEL PROCEDURE**  
**Council Regulation (EC) 1/2003 and**  
**Commission Regulation (EC) 773/2004**

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Article 7 Regulation (EC) 1/2003

Date: 27/01/2016

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Brussels, 27.1.2016  
C(2016) 223 final

**COMMISSION DECISION**

**of 27.1.2016**

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

**(AT.40028 - Alternators and Starters)**

(Only the English text is authentic)

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# COMMISSION DECISION

of 27.1.2016

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

**(AT.40028 - Alternators and Starters)**

(Only the English text is authentic)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union<sup>1</sup>,

Having regard to the Agreement on the European Economic Area,

Having regard to Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty<sup>2</sup>, and in particular Article 7(1) and Article 23(2) thereof,

Having regard to Commission Regulation (EC) No 773/2004 of 7 April 2004 relating to the conduct of proceedings by the Commission pursuant to Articles 81 and 82 of the EC Treaty<sup>3</sup>, as amended by Commission Regulation (EC) No 622/2008 of 30 June 2008<sup>4</sup> and by Commission Regulation (EU) 2015/1348 of 3 August 2015<sup>5</sup>, and in particular Article 10a thereof,

Having regard to the decisions of 24 September 2014 and 14 September 2015 to initiate proceedings in this case,

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

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

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<sup>1</sup> OJ C 115, 9.5.2008, p.47.

<sup>2</sup> OJ L 1, 4.1.2003, p.1. With effect from 1 December 2009, Articles 81 and 82 of the EC Treaty have become Articles 101 and 102, respectively, of the Treaty on the Functioning of the European Union ("the Treaty"). The two sets of provisions are, in substance, identical. For the purposes of this Decision, references to Articles 101 and 102 of the Treaty should be understood as references to Articles 81 and 82, respectively, of the EC Treaty when where appropriate. The Treaty also introduced certain changes in terminology, such as the replacement of "Community" by "Union" and "common market" by "internal market".

<sup>3</sup> OJ L 123, 27.4.2004, p. 18.

<sup>4</sup> OJ L 171, 1.7.2008, p. 3.

<sup>5</sup> OJ L 208, 5.8.2015, p. 3.

Having regard to the final report of the Hearing Officer in this case<sup>6</sup>,

Whereas:

## **1. INTRODUCTION**

- (1) This Decision relates to a single and continuous infringement of Article 101 of the Treaty and Article 53 of the EEA Agreement. The infringement consisted of the coordination of prices and the allocation of supplies of alternators and starters in the European Economic Area ("EEA").
- (2) This Decision is addressed to the following legal entities:
  - Denso Corporation ("Denso");
  - Mitsubishi Electric Corporation ("Melco"); and
  - Hitachi, Ltd. and Hitachi Automotive Systems, Ltd. (together referred to as "Hitachi").

## **2. THE INDUSTRY SUBJECT TO THE PROCEEDINGS**

### **2.1. The product**

- (3) The products concerned by the anticompetitive conduct in this case are alternators and starters supplied to manufacturers of cars<sup>7</sup> referred to as Original Equipment Manufacturers ("OEMs").
- (4) An alternator is a device located inside a vehicle's engine which converts mechanical energy to electrical energy, thereby producing electric power for the vehicle's electric devices whilst the vehicle is running. A distinction is made between alternators depending on their electric charge, which is measured in amperes.
- (5) A starter is a motor and is located inside a vehicle's engine. Starters are available at different voltage levels, according to their electric power.
- (6) Alternators and starters are products that are adapted for a particular car or group of cars. For that purpose, OEMs issue Requests for Quotations ("RFQs") for alternators and/or starters. Depending on the OEM, RFQs cover one or more regions of the world and can include requests from several OEMs belonging to the group that issued the RFQ (global sourcing).

### **2.2. Undertakings subject to the proceedings in this case**

#### **2.2.1. Denso**

- (7) The relevant legal entity is Denso Corporation, which has its registered office in Aichi, Japan (1-1, Showa-cho, Kariya-shi, Aichi-ken 448-8661, Japan).

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<sup>6</sup> Final Report of the Hearing Officer of 25 January 2016.

<sup>7</sup> For the purpose of this case, a car is defined as a power-driven vehicle, having at least four wheels, the maximum authorised weight of which is 3.5 tonnes and which may not be used for the transport of more than nine persons. Vans/minivans, therefore, fall within this definition. By contrast, alternators and starters sold to manufacturers of two-wheel motorcycles, trucks, agricultural vehicles and heavy industry machines fall outside of this definition.

- (8) Denso is a global supplier of advanced automotive technology, systems and components for cars, trucks and other vehicles. It manufactures and supplies various automotive products including alternators and starters for passenger cars in the EEA. The world-wide turnover of Denso in 2014 (business year 1 April 2014 – 31 March 2015) was JPY 4,308,754 million, that is to say, approximately EUR 31 074.2 million<sup>8</sup>.

#### 2.2.2. *Melco*

- (9) The relevant legal entity is Mitsubishi Electric Corporation, which has its registered office in Tokyo, Japan (Tokyo Building, 7-3, Marunouchi 2-Chome, Chiyoda-ku, Tokyo 100-8310, Japan).
- (10) Melco is active in the manufacturing and sales of various electronic and automotive systems, including alternators and starters in the EEA. The world-wide turnover of Melco in 2014 (business year 1 April 2014 – 31 March 2015) was JPY 4,323,041 million, that is to say, approximately EUR 31 177.27 million.

#### 2.2.3. *Hitachi*

- (11) The relevant legal entities are:
- Hitachi, Ltd., which has its registered office in Tokyo, Japan (6-6, Marunouchi 1-Chome, Chiyoda-ku, Tokyo 100-8280, Japan); and
  - Hitachi Automotive Systems, Ltd., which has its registered office in Ibaraki, Japan (2520 Takaba, Hitachinaka-shi, Ibaraki-ken 312-8503, Japan).
- (12) On 1 July 2009, the former automotive parts business division of Hitachi, Ltd., was transferred to Hitachi Automotive Systems, Ltd., a newly established legal entity that is 100% owned by Hitachi, Ltd.
- (13) Hitachi is active in various business segments, including the manufacturing and supply of electronic and automotive systems including alternators and starters. The world-wide turnover of Hitachi in 2014 (business year 1 April 2014 – 31 March 2015) was JPY 9,774,930 million, that is to say, approximately EUR 70 495.67 million.

### **3. PROCEDURE**

- (14) On 23 February 2011, Denso applied for a marker pursuant to points 14 and 15 of the "Leniency Notice"<sup>9</sup>. The application was followed by a number of submissions consisting of oral statements and documentary evidence. On 24 September 2014, the Commission granted Denso conditional immunity from fines pursuant to point 8(a) of the Leniency Notice.
- (15) Between 22 July 2011 and 11 December 2014, the Commission sent out several rounds of requests for information pursuant to Article 18(2) of Regulation (EC) No 1/2003.

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<sup>8</sup> The conversion EUR-JPY is made on the basis of the average rate calculated by the European Central Bank for the period of 1 April 2014 – 31 March 2015 (1 EUR = 138.66 JPY).

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

- (16) On 27 July 2011, Hitachi applied for immunity or, in the alternative, for a reduction of a fine, under the Leniency Notice.
- (17) On 6 November 2012, Melco applied for immunity or, in the alternative, for a reduction of a fine, under the Leniency Notice.
- (18) On 24 September 2014, the Commission initiated proceedings against Denso Corporation, Mitsubishi Electric Corporation and Hitachi, Ltd. with a view to engaging in settlement discussions with them under the Settlement Notice<sup>10</sup>. On 14 September 2015, the Commission also initiated proceedings against Hitachi Automotive Systems, Ltd.
- (19) Settlement meetings between Denso, Melco and Hitachi (also referred to as the "parties" or individually the "party") and the Commission took place between 11 November 2014 and 25 September 2015. During those meetings, the Commission informed the parties of the potential objections it envisaged raising against them and disclosed the main pieces of evidence in the Commission file relied on to establish those objections.
- (20) The parties were also given access to the relevant parts of the oral statements submitted by the parties at the Commission premises, received a copy of the relevant pieces of documentary evidence and a list of all the documents in the file, and were offered the opportunity to access all the documents listed. The Commission also provided the parties with an estimation of the range of fines likely to be imposed.
- (21) Each party expressed its view on the objections which the Commission envisaged raising against them. The parties' comments were carefully considered by the Commission and, where appropriate, taken into account. At the end of the settlement discussions, all parties considered that there was a sufficient common understanding as regards the potential objections and the estimation of the range of likely fines to continue the settlement process.
- (22) On [...], the parties submitted their formal request to settle pursuant to Article 10a(2) of Regulation (EC) No 773/2004 (the "settlement submissions") to the Commission. The settlement submission of each party contained:
- an acknowledgement in clear and unequivocal terms of the party's liability for the infringement summarily described as regards its object, the main facts, their legal qualification, the party's role and the duration of its participation in the infringement;
  - an indication of the maximum amount of the fine the party expected the Commission to impose on it and which it would accept in the framework of a settlement procedure;
  - the party's confirmation that it had been sufficiently informed of the objections the Commission envisaged raising against it and that it had been given sufficient opportunity to make its views known to the Commission;

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<sup>10</sup> 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).



- 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 did not reflect its settlement submission in the statement of objections and the decision;
  - the party's agreement to receive the statement of objections and the final decision pursuant to Articles 7 and 23 of Regulation (EC) No 1/2003 in English.
- (23) Each party made their settlement submission on the condition that any fine imposed by the Commission in this case would not exceed the amount as specified in their submission.
- (24) On 23 November 2015, the Commission adopted a statement of objections addressed to the parties. All the parties replied to the statement of objections by confirming that it reflected the contents of their settlement submissions and that they, therefore, remained committed to following the settlement procedure.

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

##### **4.1. Nature and scope of the cartel**

- (25) Denso, Melco and Hitachi coordinated prices and allocated the supply of alternators and starters to certain OEMs in the EEA.
- (26) There was a common understanding among the parties to respect supply rights with certain OEMs, where those rights already existed ("incumbency principle") and not to undercut each other's prices so as to maintain existing shares of supply<sup>11</sup>.
- (27) The overall aim of the cartel was to avoid a decline of prices and to at least maintain the market shares of the parties in the EEA. This was achieved by:
- the coordination of responses to certain RFQs issued by OEMs, in particular with respect to determining the price at which they would quote<sup>12</sup>;
  - the allocation of certain OEMs or projects relating to the supply of alternators and starters<sup>13</sup>; and
  - the exchange of commercially sensitive information such as price elements and market strategies<sup>14</sup>.
- (28) While each party took part in the conduct described in recital (27), it did so with respect to a varying number of OEMs:
- Hitachi engaged in the practices outlined in recital (27) with respect to the supply of alternators and starters to the GM group and to the Nissan/Renault Alliance;
  - Denso and Melco engaged in the same practices outlined in recital (27) with respect to the GM group, the Nissan/Renault Alliance, and certain additional OEMs (see recital (32)).

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<sup>11</sup> [...]  
<sup>12</sup> [...]  
<sup>13</sup> [...]  
<sup>14</sup> [...]

## 4.2. Functioning of the cartel

(29) The evidence shows that the parties in the cartel engaged in the contacts set out in sections 4.2.1 - 4.2.2.

### 4.2.1. *Contacts between Denso, Melco and Hitachi*

(30) When the GM group (which, in addition to GM itself, included Fiat, Opel, Saab, Suzuki and Isuzu<sup>15</sup>) and the Nissan/Renault Alliance<sup>16</sup>, either as groups (via global sourcing)<sup>17</sup> or as individual OEMs within one of those groups, issued a RFQ for the supply of alternators and/or starters for a car model or platform, Denso, Melco and Hitachi, exchanged information on various price elements and coordinated their responses to the RFQ<sup>18</sup>. Usually the incumbent supplier initiated bi-lateral or tri-lateral contacts (both face-to-face meetings and phone conversations) to inquire whether the other parties had received a RFQ and if so, to coordinate their quotations to be submitted in response to that RFQ<sup>19</sup>.

(31) The parties exchanged sensitive market information to varying degrees, including information on prices that had been submitted in the framework of certain RFQs<sup>20</sup>, general or specific contract terms<sup>21</sup>, their intentions vis-à-vis specific customers<sup>22</sup> and sensitive information received from customers<sup>23</sup>.

### 4.2.2. *Contacts between Denso and Melco*

(32) The collusion between Denso and Melco extended beyond the GM group and the Renault/Nissan Alliance and covered the supply of alternators and starters to certain additional OEMs, namely: Ford, the P.A.G. group (including Jaguar/Land Rover and Volvo, together referred to as "P.A.G. group"), the Daimler-Chrysler group, VW/Audi, BMW, PSA (including Peugeot/Citroën, together referred to as "PSA"), Hyundai, Toyota, Honda, and Mitsubishi Motors Corporation (Nedcar).

(33) This extension of the collusion between Denso and Melco covering the supply of alternators to those additional OEMs was achieved by way of a general agreement for customer allocation (the so-called "marketing solution")<sup>24</sup>.

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<sup>15</sup> The parties perceived the GM group as including GM itself, Opel, Saab, Fiat, Suzuki and Isuzu. This is supported by [...]. See for example [...]. This is further corroborated by [...]. See for example [...]. Although GM reduced its ownership in Fiat and Suzuki during the period of the infringement, there is evidence in the file that the parties continued colluding with regard to these OEMs independently of the change of GM's ownership. See for example [...].

<sup>16</sup> The parties perceived Renault and Nissan as one group. This is confirmed by [...]. Furthermore, in [...], the two OEMs are also often referred to together. See for example [...]. The parties' perception of Renault and Nissan as one group is also confirmed by the fact that Renault and Nissan had a common sales organisation, the Renault Nissan Purchasing Organization ("RNPO"), equally owned by both, set up in 2001 in order to develop the sourcing strategy, to choose suppliers and meet the purchasing objectives of both companies [...]. RNPO issued RFQs for either Nissan or Renault car/platforms separately.

<sup>17</sup> The infringement with regard to the GM group started with a global sourcing and then later also covered RFQs issued separately by the individual OEMs belonging to the GM group.

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

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

<sup>20</sup> [...]

<sup>21</sup> [...]

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

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

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

In the marketing solution, Denso and Melco also agreed to respect Hitachi's existing share of business with regard to the GM group<sup>25</sup> and the Nissan/Renault Alliance<sup>26</sup>.

- (34) Denso and Melco later expanded their collusion to the supply of starters to the OEMs<sup>27</sup> referred to in recital (32).
- (35) In the context of the marketing solution and the subsequent expansion of the collusion to the supply of starters, Denso and Melco divided OEMs by "zones". Zones "A" and "B" were the "exclusive zones" that included OEMs traditionally supplied by Denso and Melco, respectively and for which each held vested rights that the other party had to respect<sup>28</sup>:
- Zone "A" was Denso's exclusive zone, where Denso's priority rights had to be respected for: (i) alternators and starters for Toyota; (ii) alternators for the GM group (excluding Suzuki); (iii) alternators for the P.A.G. group; (iv) alternators for BMW; (v) alternators for Hyundai; and (vi) starters for Honda.
  - Zone "B" was Melco's exclusive zone, where Melco's priority rights had to be respected for: (i) alternators and starters for Mitsubishi Motors Corporation; (ii) alternators for the Nissan/Renault Alliance (where Melco had to be respected along with Hitachi); and (iii) starters for Nissan.
- (36) Because of the existence of exclusive zones for these OEMs, few or no follow-up contacts were needed for the allocation of the projects.
- (37) Zone "C" for alternators and "C" and "D"<sup>29</sup> for starters included the OEMs where other suppliers, including European suppliers of alternators and starters, were active and where Denso and Melco saw an opportunity to expand their market shares or to keep their market shares stable by not undercutting each other's prices. For those OEMs, there was no agreed incumbency and any coordination between Denso and Melco took the form of case-by-case discussions when a RFQ was issued to both of them in order to decide between them who would try to win the contract and, therefore, would quote a lower price. In that context Denso and Melco also exchanged sensitive market information (see also recital (31)<sup>30</sup>).
- (38) More particularly these zones included: (i) alternators and starters for Ford-EU; (ii) alternators and starters for the Daimler-Chrysler group; (iii) starters for BMW; (iv) alternators and starters for VW/Audi; (v) alternators and starters for PSA; (vi) alternators for Honda; (vii) starters for the GM group and alternators and starters for Suzuki (as part of the GM group); (viii) starters for Renault (as part of the Nissan/Renault Alliance); (ix) starters for P.A.G.; and (x) starters for Hyundai.

### 4.3. Geographic scope of the cartel

- (39) The cartel concerned the supply of alternators and starters to the production facilities of various OEMs across the EEA.

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

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

<sup>27</sup> [...]

<sup>28</sup> [...]

<sup>29</sup> Zone "D" is differentiated to include foreign, i.e. mainly European OEMs.

<sup>30</sup> [...]

#### 4.4. Duration

- (40) The cartel started on 14 September 2004<sup>31</sup> when Denso, Melco and Hitachi discussed and fixed prices for a global sourcing of the GM group for the supply of alternators in the EEA.
- (41) The scope of the cartel subsequently evolved differently for Denso and Melco, and for Hitachi, depending on the car part (alternator or starter) and on the OEM concerned:
- Denso and Melco participated in contacts regarding the supply of alternators to: Ford, P.A.G., the Daimler-Chrysler Group, VW/Audi, BMW, PSA, Hyundai, Toyota, Honda, the Nissan/Renault Alliance, Mitsubishi Motors Corporation (Nedcar) from 19 October 2004<sup>32</sup>;
  - Denso, Melco and Hitachi participated in contacts regarding the supply of starters to the GM group from 3 February 2005<sup>33</sup>;
  - Denso and Melco participated in contacts regarding the supply of starters to: Ford, P.A.G., the Daimler-Chrysler Group, VW/Audi, BMW, PSA, Hyundai, Toyota, Honda, the Nissan/Renault Alliance, Mitsubishi Motors Corporation (Nedcar) from 11 March 2008<sup>34</sup>;
  - Denso, Melco and Hitachi participated in contacts regarding the supply of:
    - alternators to the Nissan/Renault Alliance from 24 April 2008<sup>35</sup>;
    - starters to the Nissan/Renault Alliance from 10 July 2008<sup>36</sup>.
- (42) The cartel ended on 23 February 2010<sup>37</sup>, the date on which the inspections were first launched by the Commission in the electronic and electrical car components sector.

### 5. LEGAL ASSESSMENT

- (43) Having regard to the body of evidence, the facts as described in section 4 and the parties' clear and unequivocal acknowledgement of these facts and the legal qualification thereof in their settlement submissions and their replies to the statement of objections, the Commission's legal assessment is set out in sections 5.1 and 5.2.

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

##### 5.1.1. Agreements between undertakings and concerted practices

###### 5.1.1.1. Principles

- (44) 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

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31 [...]   
32 [...]   
33 [...]   
34 [...]   
35 [...]   
36 [...]   
37 [...]

EEA Agreement prohibits agreements, decisions by associations of undertakings 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.

- (45) 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 agreements between undertakings, the object 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. Thus, conduct may fall under Article 101(1) of the Treaty and Article 53(1) of the EEA Agreement as a concerted practice even where the parties have not explicitly subscribed to a common plan defining their action in the market but knowingly adopt or adhere to collusive devices which facilitate the coordination of their commercial behaviour<sup>38</sup>.
- (46) The concepts of agreement and concerted practice are fluid and may overlap. Indeed, it may not even be possible to make such a distinction, as an infringement may present simultaneously the characteristics of each form of prohibited conduct, while when considered in isolation some of its manifestations could accurately be described as one rather than the other.

#### 5.1.1.2. Application in this case

- (47) The conduct described in section 4 presents all the characteristics of an agreement and/or a concerted practice within the meaning of Article 101(1) of the Treaty and Article 53(1) of the EEA Agreement. Indeed, the various aspects of the conduct of the parties were interlinked and served the same goal: to restrict competition between them, in particular by coordinating prices, allocating the supply of alternators and starters and exchanging sensitive market information. The conduct of the parties can be characterised as a complex infringement consisting of various actions which can be classified as an agreement and/or concerted practice, whereby they knowingly substituted practical cooperation between them for the risks of competition.
- (48) Such conduct, therefore, qualifies as an agreement between undertakings and/or a concerted practice within the meaning of Article 101(1) of the Treaty and Article 53(1) of the EEA Agreement.

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<sup>38</sup> Judgment of the Court of Justice of 14 July 1972, *Imperial Chemical Industries v Commission*, C-48/69, ECLI:EU:C:1972:70, paragraph 64; Judgment of the Court of Justice of 16 December 1975, *Suiker Unie and others v Commission*, C-40-48/73 etc., ECLI:EU:C:1975:174, paragraphs 173-174; Judgment of the General Court of 17 December 1991, *Hercules v Commission*, T-7/89, ECLI:EU:T:1991:75, paragraph 256.

## 5.1.2. *Single and continuous infringement*

### 5.1.2.1. Principles

- (49) An infringement of Article 101(1) of the Treaty and of Article 53(1) of the EEA Agreement can result not only from an isolated act, but also from a series of acts or from continuous conduct, even if one or more aspects of that series of acts or continuous conduct could also, in themselves and taken in isolation, constitute an infringement of those provisions. Accordingly, if the different actions form part of an "overall plan", because their identical object distorts competition within the internal market, the Commission is entitled to impute responsibility for those actions on the basis of participation in the infringement considered as a whole<sup>39</sup>.
- (50) The mere fact that each participant in a cartel may play the role which is appropriate to its own specific circumstances does not exclude its responsibility for the infringement as a whole, including acts committed by other participants but which share the same anticompetitive object or effect. An undertaking which takes part in the common unlawful enterprise by actions which contribute to the realisation of the shared objective is equally responsible, for the whole period of its adherence to the common scheme, for the acts of the other participants pursuant to the same infringement, where it is established that the undertaking in question was aware of the unlawful behaviour of the other participants or could reasonably have foreseen it and was prepared to take the risk<sup>40</sup>.
- (51) Furthermore, if an undertaking has directly taken part in one or more of the forms of anti-competitive conduct comprising a single and continuous 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 offending 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 had participated directly and for the conduct planned or put into effect by the other participants, in pursuit of the same objectives as those pursued by the undertaking itself, where it has been shown that the undertaking was aware of that conduct or was able reasonably to foresee it and prepared to take the risk<sup>41</sup>.

### 5.1.2.2. Application in this case

- (52) The conduct described in section 4 constitutes a single and continuous infringement of Article 101(1) Treaty and Article 53(1) of the EEA Agreement.

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<sup>39</sup> Judgment of the Court of Justice of 7 January 2004, *Aalborg Portland et al.*, C-204/00 P etc., ECLI:EU:C:2004:6, paragraph 258.

<sup>40</sup> Judgment of the Court of Justice of 8 July 1999, *Commission v Anic Partecipazioni*, C-49/92 P, ECLI:EU:C:1999:356, paragraph 83.

<sup>41</sup> Judgment of the Court of Justice of 6 December 2012, *Commission v Verhuizingen Coppens*, C-441/11 P, ECLI:EU:C:2012:778, paragraph 44.

- (53) The collusion between Denso, Melco and Hitachi was in pursuit of an identical object, which remained the same throughout the entire period of the infringement, namely to avoid price decline and to maintain the parties' market shares in the EEA. To that end, the parties engaged to varying degrees in customer or project allocation, and price coordination.
- (54) Moreover, Denso, Melco and Hitachi engaged in regular exchanges of sensitive commercial information such as price elements and market strategies.
- (55) The evidence demonstrates that the contacts between Denso, Melco and Hitachi were of a continuous nature, with numerous and regular contacts (face-to-face meetings and phone calls). The different elements of the infringement were in pursuit of a single anti-competitive object as described in recitals (27) and (53), which remained the same throughout the entire period of the infringement.
- (56) The existence of a single and continuous infringement is supported by the fact that the cartel followed the same pattern throughout the entire period of infringement, and there was a continuity and similarity of the arrangements between the parties.
- (57) As set out in recital (33), Hitachi was not a party to the "marketing solution". In addition, Hitachi was not a party to the subsequent expansion of the collusion, except with respect to the supply of starters to the GM group and alternators and starters to the Nissan/Renault Alliance (see recitals (28) and (32)-(33)). There is also no evidence that Hitachi was aware of, or that it could have reasonably foreseen, the existence of the marketing solution and collusion between Denso and Melco regarding the supply of alternators and starters beyond the GM group and the Nissan/Renault Alliance.<sup>42</sup>
- (58) For the reasons set out in recitals (53) - (57), the conduct qualifies as a single and continuous infringement of Article 101(1) of the Treaty and Article 53(1) of the EEA Agreement.

### 5.1.3. *Restriction of competition*

#### 5.1.3.1. Principles

- (59) 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.
- (60) Certain types of coordination between undertakings reveal a sufficient degree of harm to competition that it may be found that there is no need to examine their effects<sup>43</sup>. That principle arises from the fact that certain types of coordination between undertakings can be regarded, by their very nature, as being harmful to the proper functioning of normal competition<sup>44</sup>.

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<sup>42</sup> Judgment of the Court of Justice of 6 December 2012, *Commission v Verhuizingen Coppens*, C-441/11 P, ECLI:EU:C:2012:778, paragraph 44.

<sup>43</sup> Judgment of the Court of Justice of 11 September 2014, *Groupement des Cartes Bancaires v Commission*, C-67/13 P, ECLI:EU:C:2014:2204, paragraph 49; Judgment of the Court of Justice of 19 March 2015, *Dole Food and Dole Fresh Fruit Europe v Commission*, C-286/13 P, ECLI:EU:C:2015:184, paragraph 113.

<sup>44</sup> Judgment of the Court of Justice of 11 September 2014, *Groupement des Cartes Bancaires v Commission*, C-67/13 P, ECLI:EU:C:2014:2204, paragraph 50; Judgment of the Court of Justice of

(61) Consequently, it is established that certain collusive behaviour, such as that leading to horizontal price-fixing by cartels, may be considered 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 and Article 53(1) of the EEA Agreement, to prove that it has actual effects on the market<sup>45</sup>.

#### 5.1.3.2. Application in this case

(62) Through the conduct described in section 4, the parties coordinated prices and allocated the supply of alternators and starters in the EEA.

(63) Such conduct, by its very nature, restricts competition within the meaning of Article 101(1) of the Treaty and Article 53(1) of the EEA Agreement.

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

##### 5.1.4.1. Principles

(64) Article 101(1) of the Treaty is aimed at agreements, decisions by associations of undertakings and concerted practices which might harm the completion of an internal 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, decisions by associations of undertakings and concerted practices that undermine the completion of a homogeneous EEA between the Contracting Parties to the EEA Agreement<sup>46</sup>.

##### 5.1.4.2. Application in this case

(65) During the relevant period, the sales of alternators and starters involved a substantial volume of trade between Member States and between Contracting Parties to the EEA Agreement. Denso, Melco and Hitachi sold large quantities of alternators and starters to OEM customers with production sites in the EEA. The sales data submitted by Denso, Melco and Hitachi provide ample evidence of direct sales made in the EEA.

(66) The conduct described in section 4 is, therefore, capable of having an appreciable effect upon trade between Member States and between Contracting Parties to the EEA Agreement.<sup>47</sup>

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19 March 2015, *Dole Food and Dole Fresh Fruit Europe v Commission*, C-286/13 P, ECLI:EU:C:2015:184, paragraph 114.

<sup>45</sup> Judgment of the Court of Justice of 11 September 2014, *Groupement des Cartes Bancaires v Commission*, C-67/13 P, ECLI:EU:C:2014:2204, paragraph 51; Judgment of the Court of Justice of 19 March 2015, *Dole Food and Dole Fresh Fruit Europe v Commission*, C-286/13 P, ECLI:EU:C:2015:184, paragraph 115.

<sup>46</sup> Judgment of the General Court of 15 March 2000, *Cement*, T-25/95 etc., ECLI:EU:T:2000:77, paragraph 3930; Judgment of the Court of Justice of 28 April 1998, *Javico International and Javico AG v Yves Saint Laurent Parfums SA*, C-306/96, ECLI:EU:C:1998:173, paragraphs 16 and 17.

<sup>47</sup> Judgment of the Court of Justice of 24 September 2009, *Erste Bank der österreichischen Sparkassen v Commission*, C-125/07 P, ECLI:EU:C:2009:576, paragraph 39.



## **5.2. Article 101(3) of the Treaty and Article 53(3) of the EEA Agreement**

### *5.2.1. Principles*

(67) The provisions of Article 101(1) of the Treaty and Article 53(1) of the EEA Agreement may be declared inapplicable pursuant to Article 101(3) of the Treaty and Article 53(3) of the EEA Agreement where an agreement, decision by an association of undertakings 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.

### *5.2.2. Application in this case*

(68) On the basis of the facts before the Commission, there are no indications that the conduct of Denso, Melco and Hitachi entailed any efficiency benefits or otherwise promoted technical or economic progress.

(69) The conditions for exemption provided for in Article 101(3) of the Treaty and Article 53(3) of the EEA Agreement are, therefore, not met in this case.

## **6. DURATION OF THE PARTIES' PARTICIPATION IN THE INFRINGEMENT**

(70) In view of the facts described in section 4, the participation in the infringement of all three parties lasted from 14 September 2004 until 23 February 2010.

## **7. LIABILITY**

### **7.1. Principles**

(71) Union competition law refers to the activities of undertakings and the concept of an undertaking covers any entity engaged in an economic activity, irrespective of its legal status and the way in which it is financed<sup>48</sup>.

(72) 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. Thus the conduct of a subsidiary may be imputed to the parent company in particular where that subsidiary, despite having a separate legal personality, 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, regard being had in particular to the economic, organisational and legal links between those two legal entities<sup>49</sup>.

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<sup>48</sup> Judgment of the Court of Justice of 13 June 2013, *Versalis v Commission*, C-511/11 P, ECLI:EU:C:2013:386, paragraph 51.

<sup>49</sup> Judgment of the Court of Justice of 29 September 2011, *Elf Aquitaine v Commission*, C-521/09 P, ECLI:EU:C:2011:620, paragraph 54.

- (73) The Commission cannot merely find that an undertaking is able to exert decisive influence over another undertaking, 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 undertakings may have over the other<sup>50</sup>.
- (74) In the particular case, however, in which a parent holds all or almost all of the capital in a subsidiary that has committed an infringement of the Union competition rules, there is a rebuttable presumption that that parent company in fact exercises a decisive influence over its subsidiary. In such a situation, it is sufficient for the Commission to prove that all or almost all of the capital in the subsidiary is held by the parent company in order to take the view that that presumption applies<sup>51</sup>.

## **7.2. Application in this case**

- (75) Having regard to the body of evidence, the facts as described in section 4, the parties' clear and unequivocal acknowledgement of those facts and their legal qualification thereof in their settlement submissions and their replies to the statement of objections, liability for the infringement found in this Decision should be imputed to the undertakings concerned as set out in recitals (76)- (78).

### *7.2.1. Denso*

- (76) Denso Corporation is held liable for its direct participation in the infringement committed by Denso.

### *7.2.2. Melco*

- (77) Mitsubishi Electric Corporation is held liable for its direct participation in the infringement committed by Melco.

### *7.2.3. Hitachi*

- (78) The following legal entities are held jointly and severally liable for the infringement committed by Hitachi:
- Hitachi Automotive Systems, Ltd. for its direct participation in the infringement from 1 July 2009 until 23 February 2010; and
  - Hitachi, Ltd. for its direct participation in the infringement from 14 September 2004 until 30 June 2009 and as a 100% parent of Hitachi Automotive Systems, Ltd. from 1 July 2009 until 23 February 2010.

## **8. REMEDIES**

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

- (79) 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.

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<sup>50</sup> Judgment of the General Court of 27 March 2014, *Saint Gobain v Commission*, T-56/09 and T-73/09, ECLI:EU:T:2014:160, paragraph 311.

<sup>51</sup> Judgment of the Court of Justice of 10 September 2009, *Akzo Nobel and others v Commission*, C-97/08 P, ECLI:EU:C:2009:536, paragraph 60.

- (80) Given the secrecy in which the cartel arrangements were carried out in this case, it is not possible to declare with absolute certainty that the infringement has ceased. It is, therefore, necessary for the Commission to require the undertakings to which this Decision is addressed to bring the infringement to an end (if they have not already done so) and to refrain from any agreement, decision of an association of undertakings 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 – Fines**

- (81) Under Article 23(2) of Regulation (EC) No 1/2003, the Commission may by decision impose fines on undertakings and associations of undertakings where, either intentionally or negligently, they infringe Article 101 of the Treaty and Article 53 of the EEA Agreement<sup>52</sup>. For each undertaking participating in the infringement, the fine must not exceed 10% of its total turnover in the preceding business year.
- (82) Based on the facts described in section 4, the Commission considers that the infringement was committed intentionally.
- (83) Fines should, therefore, be imposed on the undertakings to which this Decision is addressed.
- (84) Pursuant to Article 23(3) of Regulation (EC) No 1/2003, the Commission must, in fixing the amount of fine, have regard both to the gravity and duration of the infringement. In setting the fines, the Commission also refers to the principles laid down in its Guidelines on fines<sup>53</sup>.
- (85) Finally, the Commission applies, as appropriate, the provisions of the Leniency Notice and the Settlement Notice.

## **8.3. Calculation of the fines**

- (86) In accordance with the Guidelines on fines, a basic amount is to be determined for the fine to be imposed on each undertaking, 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 directly or indirectly 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 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 if there are any aggravating or mitigating circumstances. That amount may also be increased for undertakings which have a particularly large turnover beyond the sales of goods or services to which the infringement relates.<sup>54</sup>

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<sup>52</sup> According to Article 5 of Council Regulation (EC) No 2894/94 of 28 November 1994 concerning arrangements for implementing the Agreement on the European Economic Area, "the Community rules giving effect to the principles set out in Articles 85 and 86 [now Articles 101 and 102 of the Treaty] of the EC Treaty [...] shall apply *mutatis mutandis*" (OJ L 305, 30.11.1994, p.6.).

<sup>53</sup> 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).

<sup>54</sup> Point 30 of the Guidelines on fines and Judgement of the Court of Justice of 18 July 2013, *Dow Chemical Company and Others v Commission*, C-499/11, ECLI:EU:C:2013:482, paragraphs 86-88.

### 8.3.1. *The value of sales*

- (87) The basic amount of the fine to be imposed on the undertakings concerned is to be set by reference to the value of their sales<sup>55</sup>, 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 of the EEA. In this case the relevant value of sales is the undertaking's direct sales<sup>56</sup> of alternators and starters (as defined in section 2.1) in the geographic area of the EEA (see section 4.3).
- (88) When calculating the basic amount of the fine, the Commission normally takes into account the sales made by the undertakings during the last full business year of their participation in the infringement<sup>57</sup>. If the last year is not sufficiently representative, the Commission may exceptionally take into account another year and/or other years for the determination of the value of sales. According to the information provided by the parties in this case, their sales fluctuated to a significant extent during the entire period of the infringement. In order to adequately reflect this, the Commission will, therefore, use the annual average value of direct sales of alternators and starters made by the undertakings throughout the entire infringement period.
- (89) Each party has, in its settlement submission and in its reply to the statement of objections, confirmed the relevant value of sales for the calculation of its fine.
- (90) In light of the evolution of the cartel (see recital (41)), the value of sales corresponding to the annual average sales figures depending on the products and OEMs affected for each party during each of the four relevant sub-periods (see recital (100)), are set out in recitals (91) - (92).
- (91) For Denso and Melco, the four annual average value of sales figures should be as follows:
- Figure A corresponds to sales of alternators to [...] (consisting of [...]) from 14 September 2004 until 23 February 2010;
  - Figure B corresponds to Figure A plus sales of alternators to [...] from 19 October 2004 until 23 February 2010;
  - Figure C corresponds to Figure B plus sales of starters to [...] (consisting of [...]) from 03 February 2005 until 23 February 2010; and
  - Figure D corresponds to Figure C plus sales of starters to [...] from 11 March 2008 until 23 February 2010.
- (92) For Hitachi, the four annual average value of sales figures should be as follows:
- Figure A corresponds to sales of alternators to [...] (consisting of [...]) from 14 September 2004 until 23 February 2010;
  - Figure B corresponds to Figure A plus sales of starters to [...] (consisting of [...]) from 03 February 2005 until 23 February 2010;
  - Figure C corresponds to Figure B plus sales of alternators to [...] from 24 April 2008 until 23 February 2010; and

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<sup>55</sup> Point 12 of the Guidelines on fines.

<sup>56</sup> Direct sales refer to those instances where the cartelised product was directly shipped to an OEM's plant located in the EEA and where the car was assembled in the EEA.

<sup>57</sup> Point 13 of the Guidelines on fines.

– Figure D corresponds to Figure C plus sales of starters to [...] from 10 July 2008 until 23 February 2010.

(93) The value of sales for each party, therefore, corresponds to the four annual average figures calculated for each respective sub-period, as set out in Table 1:

**Table 1: Value of Sales**

<b>Undertaking</b>	<b>Figures</b>	<b>Annual average value of sales (EUR)</b>
<i>Denso</i>	A	[40 000 000 – 50 000 000]
	B	[130 000 000 – 140 000 000]
	C	[130 000 000 – 140 000 000]
	D	[160 000 000 – 170 000 000]
<i>Melco</i>	A	[5 000 000 - 10 000 000]
	B	[60 000 000 - 70 000 000]
	C	[80 000 000 – 90 000 000]
	D	[130 000 000 – 140 000 000]
<i>Hitachi</i>	A	[5 000 000 – 10 000 000]
	B	[25 000 000 – 30 000 000]
	C	[25 000 000 – 30 000 000]
	D	[25 000 000 – 30 000 000]

### 8.3.2. Determination of the basic amount of the fine

(94) The basic amount of the fine to be imposed consists of an amount of up to 30% of an undertaking's relevant value of sales, depending on the degree of gravity of the infringement, multiplied by the number of years of the undertaking's participation in the infringement, and an additional amount of between 15% and 25% of the value of an undertaking's relevant value of sales, irrespective of duration<sup>58</sup>.

#### 8.3.2.1. Gravity

(95) The gravity of the infringement determines the percentage of the value of sales taken into account in setting the fine. In assessing the gravity of the infringement, the Commission 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 whether or not the infringement has been implemented.

<sup>58</sup> Points 19 to 26 of the Guidelines on fines.

- (96) Horizontal price-fixing and market-sharing agreements are, by their very nature, among the most harmful restrictions of competition. The proportion of the value of sales taken into account for such infringements will, therefore, generally be set at the higher end of the scale of the value of sales<sup>59</sup>.
- (97) Furthermore, the infringement featured several different kinds of anti-competitive elements (multi-faceted infringement) and covered the entire EEA.
- (98) The proportion of the value of sales to be taken into account in this case is, therefore, 17%.

#### 8.3.2.2. Duration

- (99) The Commission also has regard to the duration of each party's participation in the infringement, as set out in section 6. The increase for duration should be calculated on the basis of calendar days.
- (100) For each relevant sub-period of the infringement (see recital (41)), the four annual average value of sales figures in Table 1 should, therefore, be multiplied by the respective duration multipliers as set out in Table 2:

**Table 2**

<b>Undertaking</b>	<b>Relevant sub-period</b>	<b>Duration multiplier for that sub-period (number of days / 365)</b>
<i>Denso and Melco</i>	14 September 2004 – 18 October 2004	0.09
	19 October 2004 – 2 February 2005	0.29
	3 February 2005 – 10 March 2008	3.09
	11 March 2008 – 23 February 2010	1.95
	<b>Total</b>	<b>5.42</b>
<i>Hitachi</i>	14 September 2004 – 2 February 2005	0.38
	3 February 2005 – 23 April 2008	3.21
	24 April 2008 – 9 July 2008	0.21
	10 July 2008 – 23 February 2010	1.62
	<b>Total</b>	<b>5.42</b>

#### 8.3.2.3. Additional amount

- (101) The infringement committed by the parties involves horizontal price-fixing and market sharing within the meaning of point 25 of the Guidelines on fines. The basic amount of the fine should, therefore, include a sum of between 15% and

<sup>59</sup> Point 23 of the Guidelines on fines.

25% of the value of sales to deter them from even entering into such illegal practices in the future.

- (102) For the purpose of deciding the proportion of the value of sales to be taken into account, the Commission took into consideration the factors set out in recital (97). The proportion of the value of sales to be taken into account in this case should, therefore, be 17%.
- (103) The entry fee should be applied only once and calculated by applying 17% to the sum: (i) of the four annual average value of sales figures in Table 1 for each undertaking multiplied by the corresponding duration multipliers as set out in Table 2; and (ii) divided by the overall duration multiplier (5.42).

#### 8.3.2.4. Calculation of the basic amount

- (104) The application of the criteria set out in sections 8.3.2.1 to 8.3.2.3. leads to basic amounts of the fines to be imposed on each party as set out in Table 3:

**Table 3. Basic amounts of the fine**

<b>Undertaking</b>	<b>Basic Amount in EUR</b>
<i>Denso</i>	[150 000 000 – 160 000 000]
<i>Melco</i>	[100 000 000 – 110 000 000]
<i>Hitachi</i>	[20 000 000 – 30 000 000]

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

##### 8.3.3.1. Aggravating circumstances

- (105) As follows from point 28 of the Guidelines on fines and from the case-law of the Court of Justice, the aggravating circumstance of repeated infringement is characterised by the continuation or repetition by an undertaking of the same or a similar infringement after the Commission or a national competition authority has made a finding that the undertaking infringed Article 101 or 102 of the Treaty<sup>60</sup>.
- (106) Where the first and second infringements are contemporaneous, and the greater part of the second infringement takes place after the first decision, the Commission is entitled to increase the amount of the fine on account of repeated infringement for the entire duration of the infringement and not only from the time of the adoption of the first decision penalising the undertakings concerned for one of those infringements<sup>61</sup>.
- (107) In this case, the greater part of the infringement took place after 24 January 2007, the date on which the Commission adopted a decision addressed to Melco and Hitachi concerning cartel activities in relation to gas insulated switchgear<sup>62</sup>.

<sup>60</sup> Judgment of the Court of Justice of 5 March 2015, *Commission and Others v Versalis and Others*, C-93/13 P and C-123/13 P, ECLI:EU:C:2015:150, paragraph 87.

<sup>61</sup> Judgment of the Court of the General Court of 8 July 2008 *BPB v Commission*, Case T-53/03, ECLI:EU:T:2008:254, paragraphs 391-396.

<sup>62</sup> Commission Decision of 24.01.2007 in Case COMP/F/38.899. The finding of infringement against Hitachi and Melco was upheld by the Union Courts in the Judgment of the General Court of

(108) The basic amount of the fines to be imposed on Melco and Hitachi should, therefore, be increased by 50%.

#### 8.3.3.2. Mitigating circumstances

(109) The Commission may also reduce the basic amount of the fine to be imposed if there are mitigating circumstances. These circumstances are listed in a non-exhaustive way in point 29 of the Guidelines on fines.

(110) As set out in recitals (28) and (57), Hitachi is responsible for the single and continuous infringement only in so far as it participated in contacts regarding the supply of alternators and starters to the GM group and to the Nissan/Renault Alliance.

(111) The basic amount of the fine to be imposed on Hitachi should, therefore, be reduced by 15%.

#### 8.3.4. Deterrence

(112) The total world-wide turnover of Denso, Melco and Hitachi for the business year 2014 was particularly large compared to their respective sales of alternators and starters.

(113) The basic amount of the fines to be imposed on Denso, Melco and Hitachi should, therefore, be adjusted as set out in Table 4:

**Table 4. Basic amounts after the adjustment**

<b>Undertaking</b>	<b>Deterrence multiplier</b>	<b>Adjusted basic amount in EUR</b>
<i>Denso</i>	1.1	[170 000 000 – 180 000 000]
<i>Melco</i>	1.1	[170 000 000 – 180 000 000]
<i>Hitachi</i>	1.2	[40 000 000 – 50 000 000]

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

(114) In this case, none of the fines calculated (see Table 4) exceeds 10% of the respective undertaking's total turnover in 2014.

#### 8.5. Application of the Leniency Notice

##### 8.5.1. Immunity from fines

(115) Denso applied for a marker pursuant to points 14 and 15 of the Leniency Notice on 23 February 2011 (see recital (14)) and was granted conditional immunity from fines on 24 September 2014.

(116) Denso's cooperation has fulfilled the requirements under the Leniency Notice. Denso should, therefore, be granted immunity from fines in this case.

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12 July 2011, *Hitachi v Commission*, Cases T-112/07, ECLI:EU:T:2011:342, *Mitsubishi Electric v Commission*, T-133/07, ECLI:EU:T:2011:345 and in the Judgment of the Court of Justice of 19 December 2013, *Mitsubishi Electric v Commission*, C-489/11 P, ECLI:EU:C:2013:866.



### 8.5.2. *Reduction of fines*

- (117) Hitachi applied for immunity or, in the alternative, for a reduction of the fine on 27 July 2011. It was the first undertaking to provide the Commission with evidence of the infringement which represented significant added value with respect to the evidence already in the Commission's possession at the time it was provided.
- (118) Hitachi provided evidence that strengthened the Commission's ability to establish the existence of contacts regarding [...], and the existence of contacts regarding [...].
- (119) However, the rest of the evidence submitted by Hitachi did not represent significant added value because at the time it was submitted that information had either already been provided to the Commission by Denso or Melco through contemporaneous evidence, or had been gathered by the Commission via replies to requests for information pursuant to Article 18(2) of Regulation (EC) No 1/2003.
- (120) In view of the assessment in recitals (118)-(119), the fine to be imposed on Hitachi should be reduced by 30%.
- (121) Melco applied for immunity or, in the alternative, for a reduction of a fine on 6 November 2012. Melco was the second undertaking to provide the Commission with evidence of the infringement which represented significant added value with respect to the evidence already in the Commission's possession at the time it was provided.
- (122) Melco provided evidence that strengthened the Commission's ability to establish [...].
- (123) However, Melco submitted its application for immunity, or a reduction of a fine, more than 15 months after it first received a request for information pursuant to Article 18(2) of Regulation (EC) No 1/2003.
- (124) In view of the assessment in recitals (121)(121)-(123), the fine to be imposed on Melco fine should be reduced by 28%.

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

- (125) 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 their leniency reward.
- (126) Consequently, the amount of the fines to be imposed on each party should be reduced by 10% and that reduction should be added to its leniency reward.

### **8.7. Conclusion: final amount of individual fines to be imposed in this Decision**

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

**Table 5. Fines**

<b>Undertaking</b>	<b>Fines (in EUR)</b>
<i>Denso</i>	0
<i>Melco</i>	110 929 000
<i>Hitachi</i>	26 860 000

HAS ADOPTED THIS DECISION:

*Article 1*

The following undertakings infringed Article 101 of the Treaty and Article 53 of the EEA Agreement by participating in a single and continuous infringement covering the whole EEA consisting in the fixing of prices and the allocation of supplies of alternators and starters for passenger cars from 14 September 2004 until 23 February 2010:

- (a) Denso Corporation;
- (b) Mitsubishi Electric Corporation; and
- (c) Hitachi, Ltd. and Hitachi Automotive Systems, Ltd.

*Article 2*

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

- (a) Denso Corporation: EUR 0;
- (b) Mitsubishi Electric Corporation: EUR 110 929 000; and
- (c) Hitachi, Ltd. and Hitachi Automotive Systems, Ltd., jointly and severally liable: EUR 26 860 000.

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

BANQUE 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.40028

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

Where an undertaking referred to in Article 1 lodges an appeal, that undertaking must 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<sup>63</sup>.

### *Article 3*

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

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

### *Article 4*

This Decision is addressed to:

- (a) Denso Corporation, 1-1, Showa-cho, Kariya-shi, Aichi-ken 448-8661, Japan;
- (b) Mitsubishi Electric Corporation, Tokyo Building, 7-3, Marunouchi 2-Chome, Chiyoda-ku, Tokyo 100-8310, Japan;
- (c) Hitachi, Ltd., 6-6, Marunouchi 1-Chome, Chiyoda-ku, Tokyo 100-8280, Japan;  
and
- (d) Hitachi Automotive Systems, Ltd., 2520 Takaba, Hitachinaka-shi, Ibaraki-ken 312-8503, Japan.

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

Done at Brussels, 27.1.2016

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

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<sup>63</sup> OJ L 362, 31.12.2012, p. 1.