



CASE AT.40113 - SPARK PLUGS

(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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Brussels, 21.2.2018
C(2018) 929 final

COMMISSION DECISION

of 21.2.2018

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

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(Text with EEA relevance)

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Table of Contents

1. INTRODUCTION.....	6
2. THE INDUSTRY SUBJECT TO THE PROCEEDINGS	6
2.1. The product	6
2.2. The undertakings subject to the proceedings	7
2.2.1. Bosch.....	7
2.2.2. Denso.....	7
2.2.3. NGK	7
3. PROCEDURE.....	8
4. DESCRIPTION OF THE EVENTS.....	10
4.1. Nature of the cartel.....	10
4.2. Scope of the cartel.....	11
4.3. Duration of the cartel.....	11
5. LEGAL ASSESSMENT	11
5.1. Application of Article 101(1) of the Treaty and Article 53(1) of the EEA Agreement	11
5.1.1. Agreements and concerted practices	11
5.1.2. Single and continuous infringement.....	12
5.1.3. Restriction of competition.....	14
5.1.4. Effect upon trade between Member States and between Contracting Parties to the EEA Agreement.....	14
5.2. Non-applicability of Article 101(3) of the Treaty and Article 53(3) of the EEA Agreement	15
6. DURATION OF THE PARTICIPATION OF THE PARTIES IN THE INFRINGEMENT.....	16
7. LIABILITY	16
7.1. Bosch.....	16
7.2. Denso.....	17
7.3. NGK	17
8. REMEDIES.....	17
8.1. Article 7 of Regulation (EC) No 1/2003	17
8.2. Article 23(2) of Regulation (EC) No 1/2003 – Fines.....	17
8.3. Calculation of the fines	18
8.3.1. The value of sales.....	18

8.3.2.	Determination of the basic amount of the fine	19
8.3.3.	Determination of the additional amount.....	20
8.3.4.	Calculations and conclusions on basic amounts	21
8.4.	Adjustments to the basic amount of the fine	21
8.4.1.	Aggravating or mitigating circumstances	21
8.4.2.	Specific increase for deterrence	21
8.5.	Application of the 10% turnover limit	22
8.6.	Application of the Leniency Notice	22
8.6.1.	Immunity from fines.....	22
8.6.2.	Reduction of fines	22
8.7.	Application of the Settlement Notice	23
8.8.	Conclusion: final amount of individual fines to be imposed in this Decision	23

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(Text with EEA relevance)

(Only the English text is authentic)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,¹

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,² and in particular Article 7 and Article 23(2) thereof,

Having regard to Commission Regulation (EC) No 773/2004 of 7 April 2004 relating to the conduct of proceedings by the Commission pursuant to Articles 81 and 82 of the EC Treaty,³ as amended by Commission Regulation (EC) No 622/2008 of 30 June 2008 as regards the conduct of settlement procedures in cartel cases,⁴ and in particular Article 10a thereof,

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 ("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 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". The terminology of the Treaty is used throughout this Decision.

³ OJ L 123, 27.4.2004, p. 18.

⁴ OJ L 171, 1.7.2008, p. 3.

Having regard to the Commission Decision of 17 October 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 case,⁵

Whereas:

1. INTRODUCTION

- (1) The addressees of this Decision participated in 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 spark plugs in the whole of the European Economic Area (“EEA”) and lasted from 19 January 2000 to 28 July 2011.
- (2) This Decision is addressed to the following legal entities, being part of the undertakings mentioned below:
 - Robert Bosch GmbH (“Bosch”);
 - Denso Corporation (“Denso”); and
 - NGK Spark Plug Co., Ltd. and NGK Spark Plug Europe GmbH (collectively “NGK”).

2. THE INDUSTRY SUBJECT TO THE PROCEEDINGS

2.1. The product

- (3) The products concerned by the coordination of prices and the allocation of supplies are spark plugs for cars⁶.
- (4) Spark plugs are devices built in a petrol engine delivering high voltage electric sparks to the combustion chamber.
- (5) Three main sub-groups of spark plugs are used in petrol engines for cars: the Nickel-based spark plug (“Ni-plug”), the Iridium spark plug (“Ir-plug”), and the Platinum

⁵ See final report of the hearing officer of 19 February 2018.

⁶ 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.

spark plug (“Pt-plug”). All three sub-groups of spark plugs sold to car manufacturers with production facilities in the EEA are concerned by this Decision.

- (6) The distribution channel concerned was mainly the Original Equipment Manufacturers (“OEM”) supply channel.⁷ The Original Equipment Spare Parts (“OES”) channel⁸ was also concerned insofar as the price of OES supplies is contractually linked to the price of OEM supplies.

2.2. The undertakings subject to the proceedings

2.2.1. Bosch

- (7) The relevant legal entity is:
- Robert Bosch GmbH with statutory seat in Stuttgart and registered office in Gerlingen-Schillerhöhe, Germany.
- (8) Bosch is the operative parent company of a group which is a global supplier of advanced automotive technologies, systems and components. The worldwide turnover of Bosch in 2017 was approximately EUR 78 billion.

2.2.2. Denso

- (9) The relevant legal entity is:
- Denso Corporation with its registered office in Kariya, Japan.
- (10) Denso is a supplier of advanced automotive technologies, systems and components. Denso's worldwide turnover in the fiscal year ending on 31 March 2017 was approximately EUR 38 billion.

2.2.3. NGK

- (11) The relevant legal entities are:
- NGK Spark Plug Co., Ltd. with its registered office in Mizuho, Japan;
 - NGK Spark Plug Europe GmbH with its registered office in Ratingen, Germany.
- (12) NGK is an automotive supplier mainly active in manufacturing combustion cycle products, such as spark plugs, oxygen sensors, ignition coils and other wire sets. The worldwide turnover of NGK for the fiscal year ending on 31 March 2017 was approximately EUR 3.1 billion.

⁷ OEM supplies are those for first assembly of a new car.

⁸ OES supplies are those branded with the logo of the car make and earmarked to be used in the authorised network of repairers.

3. PROCEDURE

- (13) On 23 February 2011, Denso applied for a marker as provided for in points 14 and 15 of the 2006 Leniency Notice (the "Leniency Notice")⁹ with regard to an alleged cartel concerning the supply of spark plugs in the EEA.
- (14) On 28 February 2011, the Commission rejected Denso's application for a marker.
- (15) On 20 April 2011, Denso submitted an application for immunity and included a corporate statement and contemporaneous evidence covering spark plugs. Denso submitted further information and contemporaneous evidence in subsequent corporate statements.
- (16) On 22 July 2011, the Commission sent a request for information to NGK pursuant to Article 18(2) of Regulation (EC) No 1/2003¹⁰.
- (17) On 2 September 2011, NGK applied for a marker pursuant to points 14 and 15 of the Leniency Notice.
- (18) On 6 September 2011, the Commission rejected NGK's application for a marker.
- (19) On 7 September 2011, NGK applied for leniency and submitted a corporate statement and contemporaneous evidence. NGK submitted further information and contemporaneous evidence in subsequent corporate statements.
- (20) On 31 May 2013, Bosch applied for leniency and submitted a corporate statement and contemporaneous evidence. Bosch submitted further information and contemporaneous evidence in subsequent corporate statements.
- (21) In October 2015, the Commission carried out unannounced inspections at the premises of an undertaking which is not an addressee of this Decision.
- (22) On 17 October 2016, the Commission granted Denso conditional immunity from fines pursuant to point 8(a) of the Leniency Notice.
- (23) On 17 October 2016, the Commission also initiated proceedings pursuant to Article 2(1) of Regulation 773/2004 against the addressees of this Decision (collectively referred to as "parties" or individually "party") with a view to engaging in settlement discussions with the parties.
- (24) On 22 November 2016, the Commission began to engage in settlement discussions after each party had confirmed its willingness to do so.
- (25) [...], the Commission took part in settlement meetings with the parties. During those meetings, the Commission informed the parties of the potential objections it

⁹ Notice of 8 December 2006 on Immunity from fines and reduction of fines in cartel cases (OJ C 298, p.17).

¹⁰ Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (OJ L 1, 4.1.2003, p. 1).

envisaged raising against them and disclosed the main pieces of evidence to establish those objections.

- (26) The parties were also given access to the relevant parts of the corporate leniency statements at the Commission premises and received a copy of the relevant pieces of documentary evidence and a list of all the documents in the Commission file. The Commission also provided the parties with an estimate of the range of fines likely to be imposed by the Commission.
- (27) Each party expressed its view on the objections which the Commission envisaged raising against them. The parties' comments were carefully considered by the Commission and, where appropriate, taken into account.
- (28) At the end of the settlement discussions, each party considered that there was a sufficient common understanding between it and the Commission as regards the potential objections as well as the estimation of the range of likely fines in order to continue the settlement process.
- (29) [...], the parties submitted their formal requests to settle to the Commission pursuant to Article 10a (2) of Regulation (EC) No 773/2004¹¹ (the "settlement submissions"). The settlement submission of each party contained:
- an acknowledgement in clear and unequivocal terms of the party's liability for the infringement summarily described as regards its object, the main facts, their legal qualification, including the party's role and the duration of its participation in the infringement;
 - an indication of the maximum amount of the fine the party expects to be imposed by the Commission and which it would accept in the framework of a settlement procedure;
 - the party's confirmation that it has been sufficiently informed of the objections the Commission envisages raising against it and that it has been given sufficient opportunity to make its views known to the Commission;
 - the party's confirmation that it does not envisage requesting access to the Commission file or requesting to be heard again in an oral hearing, unless the Commission does not reflect its settlement submission in the statement of objections and the decision;
 - the party's agreement to receive the statement of objections and the final decision pursuant to Articles 7 and 23 of Regulation (EC) No 1/2003 in English.

¹¹ Commission Regulation (EC) No 773/2004 of 7 April 2004 relating to the conduct of proceedings by the Commission pursuant to Articles 81 and 82 of the EC Treaty (OJ L 123, 27.4.2004, p. 18), as amended by Commission Regulation 1792/2006/EC of 23 October 2006 (OJ L 362, 20.12.2006, p.1) and by Commission Regulation 622/2008 /EC of 30 June 2008 (OJ L 171, 1.7.2008, p.3).

- (30) Each party made the submission referred to in recital (29) conditional upon the imposition of a fine by the Commission which would not exceed the amount as specified in its settlement submission.
- (31) On 4 December 2017, the Commission adopted a Statement of Objections addressed to the parties. Each party replied to the Statement of Objections by confirming that it corresponded to the contents of the settlement submissions and that each party therefore remained committed to following the settlement procedure.
- (32) Having regard to the clear and unequivocal acknowledgments of all the parties to those proceedings described in their settlement submissions and to their clear and unequivocal confirmation that the Statement of Objections reflected their settlement submissions, the addressees of this Decision are held liable for the infringement as described in this Decision.

4. DESCRIPTION OF THE EVENTS

4.1. Nature of the cartel

- (33) The evidence indicates a pattern of bilateral contacts between Bosch and NGK and between Denso and NGK, aimed at avoiding fierce competition by respecting each other's traditional markets, and at maintaining the existing *status quo* in the spark plugs industry in the EEA.¹²
- (34) Bosch, Denso and NGK coordinated to varying degrees their responses to: (i) Requests For Quotations ("RFQs"); (ii) requests for discounts or Annual Price Reductions ("APRs"); (iii) requests to change contractual clauses and pricing policies and (iv) requests to end the dual pricing policy for OEM and OES supplies.
- (35) Bosch, Denso and NGK engaged in such coordination by exchanging commercially sensitive information and in some instances agreeing on (i) prices quoted or to be quoted to specific customers; (ii) the share of supplies of a specific customer;¹³ (iii) the so-called "bottom-line price", that is the lowest price they intended to put in at the end of a bidding process;¹⁴ and (iv) respecting historical supply rights, meaning that if a party already had business with a given customer and the new product was intended to replace the current one, the understanding was that a party would not undercut the other party's prices, so that the incumbent supplier would keep the business.¹⁵
- (36) The bilateral contacts occurred either in person or via telephone calls.¹⁶ When the bilateral contacts occurred in person, they took place in Japan or in Germany, either

¹² [...].

¹³ [...].

¹⁴ [...].

¹⁵ [...].

¹⁶ [...].

at the headquarters of Bosch, Denso and NGK or in restaurants next to their headquarters.

4.2. Scope of the cartel

- (37) The conduct related to sales of all types of spark plugs for petrol engines for cars sold to car manufacturers with production facilities in the EEA.
- (38) Although the coordination of Bosch, Denso and NGK mainly concerned the OEM supply channel, it also extended to the OES supply channel insofar as the price of OES supplies was contractually linked to the price of OEM supplies¹⁷

4.3. Duration of the cartel

- (39) As regards Bosch and NGK, the conduct started on 19 January 2000 when Bosch and NGK bilaterally exchanged information regarding prices they intended to offer to a specific customer.¹⁸
- (40) The conduct ended on 28 July 2011 when Bosch and NGK bilaterally discussed the request of a specific customer to end the dual pricing policy for OEM and OES supplies.¹⁹
- (41) As regards Denso, the conduct started on 16 February 2001 when Denso and NGK bilaterally exchanged information regarding prices for several customers.²⁰ It ended on 8 February 2010 when Denso and NGK bilaterally exchanged information regarding prices for a specific customer²¹.

5. LEGAL ASSESSMENT

- (42) Having regard to the body of evidence, the facts as described in Section 4, the parties' clear and unequivocal acknowledgement of the facts, the legal qualification thereof contained in their settlement submissions and parties' replies to the Statement of Objections, the Commission makes the following legal assessment.

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

5.1.1. Agreements and concerted practices

- (a) Principles

¹⁷ [...].

¹⁸ [...].

¹⁹ [...].

²⁰ [...].

²¹ [...].

- (43) Article 101(1) of the Treaty prohibits agreements between undertakings, decisions by associations of undertakings and concerted practices which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the internal market. Similarly, Article 53(1) of the EEA Agreement prohibits agreements and concerted practices between undertakings which may affect trade between Contracting Parties to the EEA Agreement and which have as their object or effect the prevention, restriction or distortion of competition within the territory covered by the EEA Agreement.
- (44) 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 this Article 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.²²
- (45) 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.²³
- (b) Application to this case
- (46) The conduct described in section 4 presents all the characteristics of an agreement or a concerted practice, as it emerges from the facts that Bosch, Denso and NGK took part in various actions of price coordination, as well as in information exchanges, whereby they knowingly substituted practical co-operation between them for the risks of competition.
- (47) The Commission has therefore reached the conclusion that the conduct described in Section 4 constitutes an "agreement" or "concerted practice" within the meaning of Article 101(1) of the Treaty and Article 53(1) of the EEA Agreement.

5.1.2. *Single and continuous infringement*

(a) Principles

²² Case T-7/89 *Hercules v Commission*, EU:T:1991:75, paragraph 256. See also Case 48/69 *Imperial Chemical Industries v Commission*, EU:C:1972:70, paragraph 64, and Joined Cases 40-48/73 etc. *Suiker Unie and others v Commission*, EU:C:1975:174, paragraphs 173-174.

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

- (48) 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
- (b) Application to this case
- (49) Bosch, Denso and NGK pursued a single anticompetitive objective, namely that of stopping the decline of the price of spark plugs sold to car manufacturers in the EEA.
- (50) The parties aimed to avoid fierce competition by respecting each other’s traditional market and commercial rights, and maintaining the existing *status quo* in the spark plugs industry in the EEA.
- (51) To that end, on the one hand, Bosch and NGK and, on the other hand, Denso and NGK regularly exchanged – on a bilateral basis – commercially sensitive information and in some instances agreed on: (i) prices quoted or to be quoted to specific customers; (ii) the share of supplies of a specific customer; (iii) the so-called “bottom-line price”; and (iv) the respect of historical supply rights.
- (52) The pattern of the conduct was similar for various car manufacturers and can therefore be treated as one single and continuous infringement covering all car manufacturers with production facilities in the EEA. This is confirmed by the following elements: similar bidding procedures, respect of historical supply rights²⁵ which can involve arbitrage between several customers, in some instances the same individuals discussing several different car manufacturers and/or several types of spark plugs during meetings and contacts.²⁶
- (53) The Commission therefore reached the conclusion that the conduct described in section 4 constitutes a single and continuous infringement of Article 101 of the Treaty and Article 53 of the EEA Agreement.
- (54) NGK participated in bilateral contacts with both Bosch and Denso. The Commission therefore holds NGK liable for the entirety of the single and continuous infringement of Article 101 of the Treaty and Article 53 of the EEA Agreement.
- (55) However, there is insufficient evidence that: (i) Bosch was aware or could reasonably have foreseen the bilateral contacts between NGK and Denso; and (ii) Denso was aware or could reasonably have foreseen the bilateral contacts between

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

²⁵ [...].

²⁶ [...].

NGK and Bosch. The Commission therefore holds Bosch liable only for its bilateral contacts with NGK and Denso liable only for its bilateral contacts with NGK.

5.1.3. *Restriction of competition*

(a) Principles

- (56) To come within the prohibition laid down in Article 101(1) of the Treaty and Article 53(1) of the EEA Agreement, an agreement, a decision by an association of undertakings or a concerted practice must have as its object or effect the prevention, restriction or distortion of competition in the internal market.
- (57) 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.²⁷ This 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.²⁸
- (58) Consequently, certain collusive behaviour, such as that leading to horizontal price-fixing, 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 they have actual effects on the market.²⁹

(b) Application to this case

- (59) Through the conduct described in Section 4, Bosch, Denso and NGK coordinated their behaviour to reduce uncertainty between themselves in relation to the supply of spark plugs to car manufacturers with production facilities in the EEA.
- (60) Such conduct, by its very nature, restricts competition within the meaning of Article 101(1) of the Treaty and of Article 53(1) of the EEA Agreement.
- (61) The Commission has therefore reached the conclusion that the object of the conduct of the parties 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 between Contracting Parties to the EEA Agreement*

(a) Principles

²⁷ Case C-67/13 P *Groupement des Cartes Bancaires v Commission*, EU:C:2014:2204, paragraph 49; Case C-286/13 P *Dole Food and Dole Fresh Fruit Europe v Commission*, EU:C:2015:184, paragraph 113.

²⁸ Case C-67/13 P *Groupement des Cartes Bancaires v Commission*, EU:C:2014:2204, paragraph 50; Case C-286/13 P *Dole Food and Dole Fresh Fruit Europe v Commission*, EU:C:2015:184, paragraph 114.

²⁹ Case C-67/13 P *Groupement des Cartes Bancaires v Commission*, EU:C:2014:2204, paragraph 51; Case C-286/13 P *Dole Food and Dole Fresh Fruit Europe v Commission*, EU:C:2015:184, paragraph 115.

(62) Article 101(1) of the Treaty is aimed at agreements and concerted practices which might harm the attainment 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 that undermine the achievement of a homogeneous EEA between the Contracting Parties to the EEA Agreement.³⁰

(b) Application to this case

(63) During the relevant period, spark plugs were supplied to car manufacturers with production facilities in the EEA. Significant cross-border trade within the EEA and supplies into several countries in the EEA took place or could have taken place.

(64) Those supplies also involved a substantial volume of trade between Member States.

(65) The Commission has therefore reached the conclusion that the infringement was capable of having an appreciable effect upon the trade between Member States and between the Contracting Parties to the EEA Agreement.³¹

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

(a) Principles

(66) 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 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.

(b) Application to this case

(67) On the basis of the evidence in the Commission file, there is no indication that the conduct described in Section 4 resulted in any efficiency benefits or otherwise promoted technical or economic progress.

(68) The Commission has therefore reached the conclusion that 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.

³⁰ Joined Cases T-25/95 etc. *Cement*, EU:T:2000:77, paragraph 3930 ; Case C-306/96 *Javico International and Javico AG v Yves Saint Laurent Parfums SA*, EU:C:1998:173, paragraphs 16 and 17.

³¹ Case C-125/07 P *Erste Bank der österreichischen Sparkassen v Commission*, EU:C:2009:576, paragraph 39.

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

- (69) For the reasons set out in Section 4.3, the Commission concludes that Bosch and NGK started their participation in the infringement on 19 January 2000 and ended it on 28 July 2011, while Denso started its participation in the infringement on 16 February 2001 and ended it on 8 February 2010.

7. LIABILITY

(a) Principles

- (70) 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.³²
- (71) When such an entity infringes Union 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, particular regard being had to the economic, organisational and legal links between those two legal entities.³³
- (72) In the particular case in which a parent holds all or almost all of the capital in a subsidiary that has committed an infringement of 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.³⁴

(b) Application to this case

- (73) Having regard to the body of evidence and the facts described in Section 4, the parties' clear and unequivocal acknowledgements of the facts and the legal qualification thereof contained in their settlement submissions, as well as their replies to the Statement of Objections, this Decision should be addressed to the following legal entities and undertakings listed in Sections 7.1 to 7.3.

7.1. Bosch

- (74) Robert Bosch GmbH has acknowledged liability for its direct participation in the infringement.

³² Case C-511/11 P *Versalis v Commission*, EU:C:2013:386, paragraph 51.

³³ Case C-521/09 P *Elf Aquitaine v Commission*, EU:C:2011:620, paragraph 54.

³⁴ Case C-97/08 P *Akzo Nobel and others v Commission*, EU:C:2009:536, paragraph 60.

(75) The Commission therefore imputes liability for the infringement to Robert Bosch GmbH.

7.2. Denso

(76) Denso Corporation has acknowledged liability for its direct participation in the infringement.

(77) The Commission therefore imputes liability for the infringement to Denso Corporation.

7.3. NGK

(78) NGK Spark Plug Co., Ltd. and NGK Spark Plug Europe GmbH have acknowledged liability for their direct participation in the infringement.

(79) NGK Spark Plug Co., Ltd. has further acknowledged that it is jointly and severally liable as a parent for the conduct of its wholly-owned subsidiary NGK Spark Plug Europe GmbH.

(80) The Commission therefore imputes liability for the infringement jointly and severally to NGK Spark Plug Co., Ltd. and NGK Spark Plug Europe GmbH.

8. REMEDIES

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

(81) 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.

(82) Given the secrecy in which the arrangements were carried out, it is not possible to declare with absolute certainty that the infringement has ceased. The Commission therefore intends to require the undertakings to which this Decision is addressed to bring the infringement to an end (if they have not already done so) and to refrain from any agreement, concerted practice or decision of an association which may have the same or similar object or effect.

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

(83) Pursuant to Article 23(2) of Regulation (EC) No 1/2003,³⁵ 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 the infringement, the fine shall not exceed 10% of its total turnover in the preceding business year.

³⁵ Pursuant to Article 5 of Council Regulation (EC) No 2894/94 of 28 November 1994 concerning arrangements of 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 EC Treaty [...] shall apply *mutatis mutandis*”.

- (84) In this case, the Commission has reached the conclusion that, based on the facts described in this Decision and the assessment contained above, the infringement was committed intentionally.
- (85) The Commission therefore imposes fines in this case on the undertakings to which this Decision is addressed.
- (86) Pursuant to Article 23(3) of Regulation (EC) No 1/2003, the Commission must, in fixing the amount of fine, have regard to both the gravity and to the duration of the infringement. In setting the fines to be imposed, the Commission will also refer to the principles laid down in its Guidelines on the method of setting fines imposed pursuant to Article 23(2)(a) of Regulation (EC) No 1/2003 (the “Guidelines on fines”).³⁶
- (87) Finally, the Commission will apply, as appropriate, the provisions of the Leniency Notice and the Commission Notice on the conduct of settlement procedures in view of the adoption of Decisions pursuant to Article 7 and Article 23 of Council Regulation (EC) No 1/2003 in cartel cases³⁷ (the "Settlement Notice").

8.3. Calculation of the fines

- (88) In applying the Guidelines on fines, the basic amounts for each undertaking result from the addition of a variable amount and an additional amount. The variable amount results from a percentage of up to 30% of the value of sales of goods or services to which the infringement relates in a given year (normally, the last full business year of the infringement) multiplied with the number of years of the undertaking’s participation in the infringement. The additional amount (“entry fee”) is calculated as a percentage between 15% and 25% of the value of sales. The resulting basic amount can then be increased or reduced for each undertaking if either aggravating or mitigating circumstances are retained.

8.3.1. The value of sales

- (89) The basic amount of the fine to be imposed on the undertakings concerned is to be set by reference to the value of their sales³⁸, that is to say 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. In this case the relevant value of sales is the sales of spark plugs supplied to car manufacturers with production facilities in the EEA (as set out in Section 4).
- (90) In determining the amount of the fine to be imposed the Commission normally takes the value of the sales made by the undertakings during the last full business year of their participation in the infringement.³⁹ If the last year is not sufficiently

³⁶ OJ C 210, 1.9.2006, p. 2.

³⁷ OJ C 167, 2.7.2008, p. 1.

³⁸ Point 12 of the Guidelines on fines.

³⁹ Point 13 of the Guidelines on fines.

representative, the Commission may take into account another year and/or other years for the determination of the value of sales.

- (91) Based on the foregoing and on the information provided by the undertakings, the Commission will use the undertakings' sales of spark plugs in the EEA generated during the last full business year of their participation in the infringement, i.e. 2010 for Bosch and 2009 for Denso.
- (92) For NGK, the Commission reached the conclusion that 2010 is the last full business year of its participation in the infringement. However, as the Commission has decided, when setting NGK's fine, not to take into account NGK's participation in the infringement for, *inter alia*, the period from 9 February 2010 to 28 July 2011 (see recital (111)), the last full business year for the purpose of determining the value of its relevant sales is 2009.⁴⁰
- (93) Accordingly, the Commission takes into account the following value of sales for each undertaking, as set out in Table 1:

Table 1: The value of sales

Undertaking	Value of sales (EUR)
Bosch	[...]
Denso	[...]
NGK	[...]

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

- (94) The basic amount consists of an amount of up to 30% of an undertaking's relevant sales, depending on the degree of gravity of the infringement and multiplied by the number of years of the undertaking's participation in the infringement, and an additional amount of between 15% and 25% of the value of an undertaking's relevant sales, irrespective of the duration of the infringement.⁴¹

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

⁴⁰ Case T-128/11 *LG Display v Commission*, EU:T:2014:88, paragraph 201.

⁴¹ Points 19-26 of the Guidelines on fines.

- (96) In its assessment, the Commission considers the facts described in this Decision and in particular the fact that horizontal price-fixing and market-sharing agreements are, by their very nature, among the most harmful restrictions of competition. The Commission therefore, sets the proportion of the value of sales taken into account for such an infringement at the higher end of the scale of the value of sales.⁴²
- (97) Given the specific circumstances of this case, having particular regard to the fact that: (i) the infringement featured several kinds of anti-competitive elements, in particular the coordination of prices and the allocation of supplies; and (ii) the infringement covered the entire EEA, the proportion of the value of sales to be taken into account is 17%.

8.3.2.2. Duration

- (98) In calculating the fine to be imposed on each undertaking, the Commission also takes into account the respective duration of the infringement, as described in Section 4.3. The increase for the duration of the infringement is calculated on the basis of the number of days of duration of the respective infringement, as indicated in Table 2.
- (99) For NGK, the Commission reached the conclusion that it participated in the infringement from 19 January 2000 to 28 July 2011. However, as the Commission has decided, when setting NGK's fine, not to take into account NGK's participation in the infringement for the periods from 19 January 2000 to 24 May 2002 and from 9 February 2010 to 28 July 2011 (see recitals (92) and (112)), the multiplying factor for duration is accordingly reduced, as shown in Table 2.

Table 2: Duration for the purpose of determining the basic amount of the fine

Undertaking	Duration	Days	Multiplying factor
Bosch	From 19 January 2000 to 28 July 2011	4209	11.52
Denso	From 16 February 2001 to 8 February 2010	3280	8.98
NGK	From 25 May 2002 to 8 February 2010	2817	7.71

8.3.3. Determination of the additional amount

- (100) The infringement committed concerns horizontal price-fixing and market sharing within the meaning of point 25 of the Guidelines on fines. The Commission therefore, includes in the basic amount a sum of between 15% and 25% of the value of sales to deter the undertakings from even entering into such illegal practices on the basis of the criteria listed with respect to the variable amount.
- (101) Taking into account the factors indicated in Section 8.3.2.1 relating to the nature and the geographic scope of the infringement, the percentage to be applied for the purposes of calculating this additional amount is 17%.

⁴² Point 23 of the Guidelines on fines.

8.3.4. *Calculations and conclusions on basic amounts*

- (102) Based on the criteria explained in this Section, the basic amount of the fine for each undertaking is presented in Table 3.

Table 3: Basic amounts of the fine

Undertaking	Basic amount (EUR)
Bosch	[55-70 million]
Denso	[800 000-1 million]
NGK	[50-65 million]

8.4. Adjustments to the basic amount of the fine

8.4.1. *Aggravating or mitigating circumstances*

- (103) The Commission may consider aggravating circumstances that result in an increase of the basic amount. Those circumstances are listed non-exhaustively in point 28 of the Guidelines on fines. The Commission may also consider mitigating circumstances that result in a reduction of the basic amount. Those circumstances are listed non-exhaustively in point 29 of the Guidelines on fines.
- (104) The Commission considers that there are no aggravating circumstances in this case.
- (105) The Commission considers that a mitigating circumstance for Bosch and Denso is the lack of evidence that: (i) Bosch was aware or could reasonably have foreseen the bilateral contacts between NGK and Denso; and (ii) Denso was aware or could reasonably have foreseen the bilateral contacts between NGK and Bosch. As a result, the Commission applies a reduction of 10% of the basic amount of the fine to be imposed on Bosch and Denso.

8.4.2. *Specific increase for deterrence*

- (106) Particular attention should be paid to the need to ensure that fines have a sufficiently deterrent effect; to that end, the fine to be imposed on undertakings which have a particularly large turnover beyond the sales of goods or services to which the infringement relates may be increased.⁴³
- (107) In this particular case, such an increase for deterrence should be applied to Bosch and Denso which had respectively an annual world-wide turnover of approximately EUR 78 billion and EUR 38 billion in the last full business year. A multiplying factor of 1.2 should be applied to Bosch and a multiplying factor of 1.1 should be applied to Denso so as to take account of the comparatively large size of those undertakings.

⁴³ Point 30 of the Guidelines on fines.

8.5. Application of the 10% turnover limit

- (108) Article 23(2) of Regulation (EC) No 1/2003 provides that for each undertaking participating in the infringement, the fine imposed shall not exceed 10% of its total turnover in the preceding business year. That 10% ceiling is applied before any reduction granted for leniency and/or for settlement.⁴⁴
- (109) In this case, none of the fines calculated exceed 10% of the respective undertaking's total turnover in the last full business year.

8.6. Application of the Leniency Notice

8.6.1. Immunity from fines

- (110) Denso submitted an application under the Leniency Notice on 20 April 2011 and was granted conditional immunity from fines on 17 October 2016. Denso's cooperation fulfilled the requirements under the Leniency Notice. Denso is, therefore, granted immunity from fines in this case.

8.6.2. Reduction of fines

8.6.2.1. NGK

- (111) NGK applied for immunity or, in the alternative, a reduction of fines under the Leniency Notice, in September 2011 and did so at an early stage of the investigation (shortly after a request for information was sent by the Commission in July).

(a) Application of point 26

- (112) NGK was the first to submit compelling evidence that enabled the Commission to extend the duration of the infringement to the periods from 19 January 2000 to 24 May 2002 and from 9 February 2010 to 28 July 2011. Pursuant to point 26 of the Leniency notice, these periods are not taken into account when setting the fine for NGK⁴⁵.

(b) Application of points 24 and 25

- (113) NGK provided the Commission with evidence of the cartel that represented significant added value with respect to the evidence already in the Commission's possession at the time it was provided. NGK provided evidence that was relevant for the Commission to clarify the scope of the infringement and to reinforce in certain instances the evidence already in the Commission's possession.

⁴⁴ Points 32 and 34 of the Guidelines on fines and points 32-33 of the Settlement Notice. See also Case T-52/02 *SNCZ v Commission*, EU:T:2005:429, paragraph 41.

⁴⁵ The Commission therefore counts 2817 days and applies a duration multiplying factor of 7.71 when determining the fine for NGK.

- (114) The evidence provided in respect of the early and late period of the cartel is already taken into account for the proposed application of point 26 (see recital (111)) and therefore cannot be considered for the level of reduction for the remaining conduct.⁴⁶
- (115) In light of the assessment carried out in recitals (112) to (113), a reduction of the fine of 42% is granted to NGK.

8.6.2.2. Bosch

- (116) Bosch applied for immunity or, in the alternative, a reduction of fines under the Leniency Notice in May 2013, approximately two years after the immunity application by Denso and a year and a half after the end of the infringement.
- (117) Despite the late application, Bosch provided a detailed description of the functioning of the cartel and a large number of elements that allowed the Commission to fill gaps, thus allowing it to reinforce the evidence already in its possession and to strengthen its finding of a single and continuous infringement covering all sales of spark plugs in(to) the EEA.
- (118) In light of the assessment carried out in recitals (115) to (116), a reduction of the fine of 28% is granted to Bosch.

8.7. Application of the Settlement Notice

- (119) In accordance with point 32 of the Settlement Notice, the reward for settlement results in a reduction of 10% of the amount of the fine to be imposed after the 10% turnover cap has been applied having regard to the Guidelines on fines. Pursuant to point 33 of the Settlement Notice, when settled cases involve leniency applicants, the reduction of the fine granted to them for settlement will be added to their leniency reward.
- (120) As a result of the application of the Settlement Notice, the amount of the fine imposed on NGK and Bosch is reduced by 10% and this reduction is added to their leniency reward.

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

- (121) The fines to be imposed pursuant to Article 23(2) of Regulation (EC) No 1/2003 are set out in Table 4.

Table 4: Fines

Undertaking	Fines (in EUR)
Bosch	45 834 000
Denso	0

⁴⁶ Case T-154/09 *MRI v Commission*, EU:T:2013:260, paragraph 119.

NGK	30 265 000
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HAS ADOPTED THIS DECISION:

Article 1

The following undertakings infringed Article 101 of the Treaty and Article 53 of the EEA Agreement by participating, during the periods indicated below, in a single and continuous infringement covering the whole of the EEA which consisted of the coordination of prices and the allocation of supplies of spark plugs for cars:

- (a) Robert Bosch GmbH from 19 January 2000 to 28 July 2011, its liability for the single and continuous infringement being limited to the bilateral contacts it engaged in with NGK Spark Plug Co., Ltd. and NGK Spark Plug Europe GmbH;
- (b) Denso Corporation from 16 February 2001 to 8 February 2010, its liability for the single and continuous infringement being limited to the bilateral contacts it engaged in with NGK Spark Plug Co., Ltd. and NGK Spark Plug Europe GmbH; and
- (c) NGK Spark Plug Co., Ltd. and NGK Spark Plug Europe GmbH from 19 January 2000 to 28 July 2011.

Article 2

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

- (a) Robert Bosch GmbH: EUR 45 834 000;
- (b) Denso Corporation: EUR 0;
- (c) NGK Spark Plug Co., Ltd. and NGK Spark Plug Europe GmbH, jointly and severally: EUR 30 265 000.

The fines shall be paid 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.40113

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

Where an undertaking referred to in Article 1 lodges an appeal, that undertaking shall cover the fine by the due date, 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 1268/2012⁴⁷.

Article 3

The undertakings listed in Article 1 shall immediately bring to an end the infringement 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

- Robert Bosch GmbH, Robert-Bosch-Platz 1, D-70839 Gerlingen-Schillerhöhe, Germany;
- Denso Corporation, 1-1, Showa-cho, Kariya, Aichi 448-8661, Japan;
- NGK Spark Plug Co., Ltd., 14-18, Takatsuji-cho, Mizuho-ku, 467-8525 Nagoya, Japan;
- NGK Spark Plug Europe GmbH, Harkortstrasse 41, D-40880 Ratingen, 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

⁴⁷ OJ L 362, 31.12.2012, p. 1.