



EUROPEAN COMMISSION
Competition DG

CASE AT.40009 – Maritime Car Carriers

(Only the English text is authentic)

CARTEL PROCEDURE

Council Regulation (EC) 1/2003

Articles 7 and 23(2) Regulation (EC) 1/2003

Date: 21/02/2018

This text is made available for information purposes only. A summary of this decision is published in all EU languages in the Official Journal of the European Union.

Parts of this text have been edited to ensure that confidential information is not disclosed. Those parts are replaced by a non-confidential summary in square brackets or are shown as [*].



Brussels, 21.2.2018
C(2018) 983 final

COMMISSION DECISION

of 21.2.2018

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

(AT.40009 – Maritime Car Carriers)

(Text with EEA relevance)

(Only the English text is authentic)

TABLE OF CONTENTS

1.	INTRODUCTION.....	5
2.	THE INDUSTRY SUBJECT TO THE PROCEEDINGS	6
2.1.	The services.....	6
2.2.	The undertakings subject to the proceedings	6
2.2.1.	MOL.....	6
2.2.2.	“K” Line.....	7
2.2.3.	NYK.....	7
2.2.4.	The WWL and EUKOR undertaking.....	7
2.2.5.	CSAV	8
3.	PROCEDURE.....	8
4.	DESCRIPTION OF THE CONDUCT.....	10
4.1.	Nature and scope of the infringement	10
4.1.1.	The rule of respect.....	11
4.1.2.	Contacts.....	11
4.2.	Geographic scope of the conduct concerned.....	13
4.3.	Duration of the conduct concerned	13
5.	LEGAL ASSESSMENT	13
5.1.	Jurisdiction	13
5.2.	Application of Article 101(1) of the Treaty and Article 53(1) of the EEA Agreement	14
5.2.1.	Agreements and concerted practices.....	14
5.2.1.1.	Principles.....	14
5.2.1.2.	Application in this case	14
5.2.2.	Single and continuous infringement.....	15
5.2.2.1.	Principles.....	15
5.2.2.2.	Application in this case	16
5.2.3.	Restriction of competition.....	17
5.2.3.1.	Principles.....	17
5.2.3.2.	Application in this case	17

5.2.4.	Effect on trade between Member States and between Contracting Parties to the EEA Agreement	18
5.2.4.1.	Principles	18
5.2.4.2.	Application to this case	18
5.3.	Non-applicability of Article 101(3) of the Treaty and Article 53(3) of the EEA Agreement	18
6.	DURATION OF THE INFRINGEMENT	18
7.	LIABILITY	19
7.1.	Principles	19
7.2.	Application in this case	19
7.2.1.	MOL	20
7.2.2.	“K” Line	20
7.2.3.	NYK	20
7.2.4.	CSAV	21
7.2.5.	The WWL and EUKOR undertaking	21
8.	REMEDIES	22
8.1.	Article 7 of Regulation (EC) No 1/2003	22
8.2.	Article 23(2) of Regulation (EC) No 1/2003 – Fines	22
8.3.	Calculation of the fines	22
8.3.1.	The value of sales	23
8.3.2.	Determination of the basic amount of the fine	24
8.3.2.1.	Gravity	24
8.3.2.2.	Duration	25
8.3.2.3.	Determination of the additional amount	25
8.3.2.4.	Calculation of the basic amount	25
8.4.	Adjustments to the basic amount of the fine	26
8.4.1.	Aggravating or mitigating circumstances	26
8.5.	Application of the 10% of turnover limit	27
8.6.	Application of the Leniency Notice	27
8.6.1.	Immunity from fines	27
8.6.2.	Reduction of fines	27
8.6.2.1.	“K” Line	27

8.6.2.2. CSAV 27

8.6.2.3. NYK 28

8.6.2.4. The WWL and EUKOR undertaking 28

8.7. Application of the Settlement Notice 29

8.8. Conclusion: final amount of individual fines to be imposed in this Decision 29

COMMISSION DECISION

of 21.2.2018

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

(AT.40009 – Maritime Car Carriers)

(Text with EEA relevance)

(Only the English text is authentic)

THE EUROPEAN COMMISSION,

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

Having regard to the Agreement on the European Economic Area,

Having regard to Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty¹, and in particular Article 7 and Article 23(2) thereof,

Having regard to Commission Regulation (EC) No 773/2004 of 7 April 2004 relating to the conduct of proceedings by the Commission pursuant to Articles 81 and 82 of the EC Treaty², and in particular Article 10a thereof,

Having regard to the Commission decision of 12 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,

¹ OJ L 1, 4.1.2003, p.1. With effect from 1 December 2009, Articles 81 and 82 of the EC Treaty have become Articles 101 and 102, respectively, of the Treaty on the Functioning of the European Union ("the Treaty"). The two sets of provisions are, in substance, identical. For the purposes of this Decision, references to Articles 101 and 102 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".

² OJ L 123, 27.4.2004, p. 18. This Regulation has been amended by Commission Regulation (EC) No 622/2008 (OJ L 171, 1.7.2008, p. 3) and Commission Regulation (EU) 2015/1348 (OJ L 208, 5.8.2015, p.3).

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

Having regard to the final report of the Hearing Officer in this case³,

Whereas:

1. INTRODUCTION

- (1) This Decision concerns a single and continuous infringement of Article 101 of the Treaty and Article 53 of the EEA Agreement. The single and continuous infringement, in which the addressees of this Decision participated, consisted in the coordination of prices and the allocation of customers with regard to the provision of deep sea⁴ carriage services for new motor vehicles, cars, trucks and high and heavy vehicles⁵ on various routes at least to and from the European Economic Area (“EEA”). The infringement lasted from 18 October 2006 to 6 September 2012.
- (2) This Decision is addressed to the following legal entities:
 - (a) Mitsui O.S.K. Lines, Ltd., MOL (Europe Africa) Ltd. (former name during the whole period of infringement: Mitsui O.S.K. Bulk Shipping (Europe) Ltd.) and Nissan Motor Car Carrier Co., Ltd. (together referred to as “MOL”);
 - (b) Kawasaki Kisen Kaisha, Ltd. (hereinafter referred to as “K Line”);
 - (c) Nippon Yusen Kabushiki Kaisha (hereinafter referred to as “NYK”);
 - (d) Wallenius Wilhelmsen Logistics AS (“WWL”, if referred to as a separate legal entity), EUKOR Car Carriers, Inc. (“EUKOR”, if referred to as a separate legal entity) (the two of them together being referred to as “WWL and EUKOR”) and their parent companies Wallenius Lines AB (Walleniusrederierna AB), Wallenius Logistics AB, Wallenius Wilhelmsen Logistics ASA (former name: Wilh. Wilhelmsen ASA) and Wilhelmsen Ships Holding Malta Limited (WWL and EUKOR and their parent companies being hereinafter together referred to as the “WWL and EUKOR undertaking”);
 - (e) Compañía Sudamericana de Vapores S.A. (hereinafter referred to as “CSAV”).

³ Final report of the Hearing Officer of 19 February 2018.

⁴ Interoceanic or intercontinental.

⁵ High and heavy vehicles are vehicles of large dimensions.

2. THE INDUSTRY SUBJECT TO THE PROCEEDINGS

2.1. The services

- (3) The services concerned by the infringement consist in the provision of deep-sea car carriage of new motor vehicles: cars, trucks and high and heavy vehicles⁶ on various routes.
- (4) Deep sea car carriage services generally include the loading, shipment and unloading of new motor vehicles, as described in recital (1) above. This Decision focuses on the deep sea car carriage services which started or ended in the EEA.⁷
- (5) This Decision does not concern either short sea car carriage services, or the transportation of used motor vehicles, military vehicles or vehicles other than those mentioned in recital (1).

2.2. The undertakings subject to the proceedings

2.2.1. MOL

- (6) MOL is a global provider of international ocean shipping. The worldwide consolidated turnover of the MOL group for the fiscal year starting on 1 April 2016 and ending on 31 March 2017 amounted to JPY 1 504 373 million, or approximately EUR 12 678 million.
- (7) For the purposes of this Decision, the relevant legal entities are:
 - (a) Mitsui O.S.K. Lines, Ltd., which has its registered offices at 1-1, Toranomon 2-chome, Minato-ku, Tokyo 105-8688, Japan;
 - (b) MOL (Europe Africa) Ltd. (former name during the whole period of infringement: Mitsui O.S.K. Bulk Shipping (Europe) Ltd.), which has its registered offices at 3, Thomas More Square, London, E1W 1WY, United Kingdom⁸;
 - (c) Nissan Motor Car Carrier Co., Ltd. which has its registered offices in Hibiya Daibiru Bldg., 1-2-2 Uchisaiwai-cho, Chiyoda-ku, Tokyo 100-0011, Japan.
- (8) Mitsui O.S.K. Lines, Ltd. is the ultimate parent company of the MOL group. It owned MOL (Europe Africa) Ltd. (former name during the whole period of infringement: Mitsui O.S.K. Bulk Shipping (Europe) Ltd.) by 100% during the whole period of the infringement. Mitsui O.S.K. Lines, Ltd. also owned Nissan Motor Car Carrier Co. by [*] in the period from [*], by [*] in the period from [*] and by [*] in the period from [*].

⁶ Not all parties were necessarily active in the deep sea carriage of all types of vehicles. In addition, not all parties participated in conduct concerning high & heavy vehicles.

⁷ Not all parties were necessarily active on all the trade routes, but the routes served by all parties combined encompassed several continents.

⁸ As from 3 April 2017, the name of Mitsui O.S.K. Bulk Shipping (Europe) Ltd. was changed to MOL (Europe Africa) Ltd. and [*].

2.2.2. “K” Line

- (9) “K” Line is a global provider of international ocean shipping. The worldwide consolidated turnover of “K” Line group for the fiscal year starting on 1 April 2016 and ending on 31 March 2017 amounted to JPY 1 030 191 million, or approximately EUR 8 671 million.
- (10) For the purposes of this Decision, the relevant legal entity is Kawasaki Kisen Kaisha, Ltd., which has its registered offices in Iino Building, 1-1, Uchisaiwaicho 2-Chome, Chiyoda-ku, Tokyo 100-8540, Japan.

2.2.3. NYK

- (11) NYK is a global provider of international ocean shipping. The worldwide consolidated turnover of NYK for the fiscal year starting on 1 April 2016 and ending on 31 March 2017 amounted to JPY 1 923 800 million, or approximately EUR 16 159 million.
- (12) For the purposes of this Decision, the relevant legal entity is Nippon Yusen Kabushiki Kaisha, which has its registered offices at 3-2, Marunouchi 2-chome, Chiyuda-Ka, Tokyo 100-0005, Japan.

2.2.4. The WWL and EUKOR undertaking

- (13) The WWL and EUKOR undertaking is a global provider of international ocean shipping. The worldwide consolidated turnover of the WWL and EUKOR undertaking for the fiscal year starting on 1 January 2016 and ending on 31 December 2016 amounted to USD [*] or approximately EUR [*].⁹
- (14) For the purposes of this Decision, the relevant legal entities of the WWL and EUKOR undertaking are:
- (a) Wallenius Wilhelmsen Logistics AS, which has its registered offices at Strandveien 20, PO Box 33, NO-1366 Lysaker, Norway;
 - (b) EUKOR Car Carriers, Inc., which has its registered offices at 24th floor, Gangnam Finance Center, 152 Teheran-ro Gangnam-gu, Seoul, 06236, Republic of Korea;
 - (c) Wallenius Logistics AB, which has its registered offices at Swedenborgsgatan 19, SE-118 27 Stockholm, Sweden;
 - (d) Wilhelmsen Ships Holding Malta Limited, which has its registered offices in Wilhelmsen House, Valletta Waterfront, Pinto Wharf, Floriana FRN1915, Malta;
 - (e) Wallenius Lines AB (Walleniusrederierna AB), which has its registered offices at Swedenborgsgatan 19, SE-118 27, Stockholm, Sweden;

⁹ At the date of the adoption, the consolidated worldwide turnover for the WWL and EUKOR undertaking for 2017 (1 January 2017 – 31 December 2017) is not available ([*]).

- (f) Wallenius Wilhelmsen Logistics ASA (former name: Wilh. Wilhelmsen ASA¹⁰) which has its registered offices at Strandveien 20, PO Box 33, NO-1366, Lysaker, Norway.
- (15) During the entire period of the infringement, WWL and EUKOR were two joint ventures held by their immediate parents, Wallenius Logistics AB and Wilhelmsen Ships Holding Malta Limited, by 50-50% and 40-40%, respectively. Due to the strong links between WWL and EUKOR, as separate legal entities, they formed part, together with their parents, of the same economic unit (the WWL and EUKOR undertaking) during the entire period of the infringement. As WWL and EUKOR formed a single undertaking because of their joint ownership structure, their decision to not both operate on the same routes (and the related contacts between them as separate legal entities) do not fall within the scope of this Decision.
- (16) Wallenius Logistics AB was owned by Wallenius Lines AB by 100% during the whole period of the infringement. Wilhelmsen Ships Holding Malta Limited was indirectly¹¹ owned by 100% by Wilh. Wilhelmsen ASA (now Wallenius Wilhelmsen Logistics ASA) also during the whole period of the infringement.

2.2.5. CSAV

- (17) CSAV is a provider of international ocean shipping. The worldwide consolidated turnover of CSAV for the fiscal year starting on 1 January 2017 and ending on 31 December 2017 amounted to [...]. [*]
- (18) For the purposes of this Decision, the relevant legal entity is Compañía Sudamericana de Vapores S.A., which has its registered offices at Hundaya 60, 14th Floor, PC 7550188, Las Condes, Santiago, Chile.

3. PROCEDURE

- (19) On 24 May 2012, MOL submitted a marker application to the Commission for immunity or a reduction of fines under the Leniency Notice¹². The marker was perfected at the time requested by the Commission. On 14 August 2012, the Commission granted MOL conditional immunity from fines pursuant to point 8(a) of the Leniency Notice.
- (20) In September 2012, the Commission carried out unannounced inspections under Article 20(4) of Regulation (EC) No 1/2003. After the inspections, the Commission received the following leniency applications: (i) "K" Line on 8 September 2012;

¹⁰ Wilh. Wilhelmsen ASA was renamed as Wallenius Wilhelmsen Logistics ASA as of 4 April 2017. As of this date, Wallenius Wilhelmsen Logistics ASA owns 100% of WWL and 80% of EUKOR. In return, approximately 40% of the shares of Wallenius Wilhelmsen Logistics ASA are owned by Wallenius Lines AB.

¹¹ Through an intermediary company also owned by 100% by Wilh. Wilhelmsen ASA during the whole period of the infringement.

¹² Commission notice on immunity from fines and reduction of fines in cartel cases, (OJ C 298, 8.12.2006, p. 17.)

(ii) CSAV on 14 September 2012; (iii) NYK on 22 October 2012 at 15:10 pm; (iv) WWL and EUKOR on 22 October 2012, at 22:26 pm.¹³

- (21) The Commission sent out several rounds of requests for information ("RFIs") pursuant to Article 18(2) of Regulation (EC) No 1/2003 to various undertakings between September 2012 and November 2015.
- (22) On 12 October 2016, the Commission initiated proceedings pursuant to Article 11(6) of Regulation (EC) No 1/2003 against the addressees of this Decision (also referred to as "parties" or individually, "party") with a view to engaging in settlement discussions with the parties pursuant to the Settlement Notice¹⁴. On 12 October 2016, the Commission adopted decisions in which it preliminarily concluded that "K" Line, CSAV, NYK, WWL and EUKOR had met the conditions of point 27 of the Leniency Notice and established the applicable ranges of reduction in the level of fines for each of the concerned undertakings in respect of the infringement in which they had been involved, provided that they continued to meet the conditions of point 12 of the Leniency Notice.
- (23) Following each party's confirmation of its willingness to engage in settlement discussions, the settlement meetings between each party and the Commission took place between 8 November 2016 and 20 October 2017. During those meetings, the Commission informed the parties of the objections that it envisaged raising against them as well as the main facts supporting those envisaged objections and disclosed to them a selection of evidence on file that the Commission relied on to establish the envisaged objections. The parties had access to the relevant parts of the file at the Commission premises, including the oral statements. Later the parties were also given a copy of the relevant pieces of evidence to which they had already had access as well as a [*] in the file and were also 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 by the Commission.
- (24) Each party expressed its views 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.
- (25) [*], the parties submitted their formal request to settle to the Commission pursuant to Article 10a(2) of Commission Regulation (EC) No 773/2004 ("the settlement submissions"). The settlement submission of each party contained:

¹³ WWL and EUKOR submitted separate leniency applications via the same law firm at the same time.

¹⁴ Commission Notice on the conduct of settlement procedures in view of the adoption of Decisions pursuant to Article 7 and Article 23 of Council Regulation (EC) No 1/2003 in cartel cases (OJ C 167, 2.7.2008, p. 1).

- an acknowledgement in clear and unequivocal terms of the party's liability for the infringement summarily described 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 foresaw to be imposed by the Commission 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;
- 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.

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

(27) On 8 December 2017, the Commission adopted a Statement of Objections addressed to the parties. All the parties replied to the Statement of Objections by confirming that it corresponded to the contents of their settlement submissions and that they therefore remained committed to following the settlement procedure.

(28) Having regard to the clear and unequivocal acknowledgments of all of the parties to those proceedings described in their settlement submissions and to their clear and unequivocal confirmation that the Statement of Objections reflected their settlement submissions, the Commission concludes that the addressees of this Decision should be held liable for the infringement as set out in this Decision.

4. DESCRIPTION OF THE CONDUCT

4.1. Nature and scope of the infringement

(29) With regard to deep sea shipments to and from the EEA, the parties were involved to varying degrees¹⁵ in conduct that sought to: (i) coordinate the prices of certain tenders, (ii) allocate the business of certain customers and (iii) reduce capacity by coordinating the scrapping of vessels.

¹⁵ See recitals (34) to (40) for a description of the different types of conduct and the extent of the involvement therein of the different parties.

(30) The conduct followed the so-called “rule of respect”. According to that principle, shipments of new motor vehicles related to already existing businesses on certain routes for certain customers would continue to be carried by the undertaking traditionally carrying it (the incumbent).

(31) The evidence shows that the parties engaged in the following behaviours, with varying intensity:

4.1.1. *The rule of respect*

(32) The parties applied the rule of respect as a guiding principle for their practices.¹⁶ Some carriers were considered to be incumbents concerning specific routes and/or specific customers. In order to maintain the *status quo* in the market, the carriers would respect the business of the incumbent carrier, by either providing a quote above the incumbent’s rates, or refraining from quoting.¹⁷ The conduct also covered single and general Requests for Quotations (“RFQs”) (or tenders) issued by certain vehicle manufacturers. In return, the other carriers would generally be reassured that they would secure other specific routes/business on which they were the incumbent.¹⁸ In some cases, the carriers followed the rule of respect only in order to avoid possible conflict among themselves.¹⁹

(33) The affected EEA inbound shipments concerned, for example, certain shipments from Asia, South Africa, and the Americas to the EEA.²⁰ The affected EEA outbound shipments concerned, for example, certain shipments from the EEA to Asia, Oceania, South Africa, and to the Americas.²¹

4.1.2. *Contacts*

(34) The parties engaged in various types of contacts, during which they, to varying degrees:²²

- (a) coordinated rates for certain routes and for certain customers, except for CSAV that was engaged in this type of conduct only as of June 2011 onwards²³. In addition, other participants than CSAV were engaged in coordination concerning the BAF (Bunker Adjustment Factor) and CAF (Currency Adjustment Factor)²⁴ for certain routes and for certain customers.
- (b) allocated various RFQs, and the business of certain customers (including agreements on which party should win the RFQ or business or a certain share

¹⁶ See, for example, [*].

¹⁷ See, for example, [*].

¹⁸ See, for example, [*].

¹⁹ See, for example, [*].

²⁰ See, for example, [*].

²¹ See, for example, [*].

²² See recital (39) in relation to CSAV and recital (40) in relation to EUKOR.

²³ [*].

²⁴ See, for example, [*].

thereof and the details of the offers²⁵) as well as replies submitted in the framework of contract renewals and annual price negotiations;²⁶

- (c) discussed and coordinated capacity reductions through scrapping of vessels,²⁷ except for CSAV; and
 - (d) exchanged commercially sensitive information as a means to support the conduct described in points (a), (b) and (c) above.²⁸
- (35) The various types of contacts consisted of the following:
- Four Carriers Meetings ("FCMs");
 - "3J" meetings;
 - bilateral contacts.
- (36) A significant part of the coordination took place at the FCMs. The FCMs were usually held on a monthly basis in Japan and were attended by the representatives of MOL, NYK, "K" Line and WWL. In addition to the conduct related to routes from Japan (and certain other Asian countries) to the EEA,²⁹ the FCMs also touched upon operational issues, which fall outside the scope of this Decision.
- (37) Trilateral meetings took place between the "3Js", i.e. the three Japanese carriers: MOL, "K" Line and NYK. Without forming a separate set of arrangements, those discussions concerned certain issues/contracts relevant to the three carriers.³⁰
- (38) In addition to these, multiple bilateral contacts took place between parties to varying degrees.³¹ As not all carriers were present on all trades and did not serve all customers, the carriers participating in these contacts depended on the route and customer involved.
- (39) CSAV did not participate in the FCMs or the 3J meetings, or in actions concerning capacity reduction. CSAV's contacts with its competitors were bilateral. With regard to the EEA, CSAV's participation was limited to specific routes between South America or Mexico and the EEA. On those routes, at the beginning, CSAV's contacts were limited to MOL and were structured around their joint service agreement. Under the cover of this joint service agreement (the legality of which is not the subject of this Decision), CSAV and MOL allocated certain customers and RFQs, and continued to do so after the joint service agreement was terminated with varying degrees of intensity.³² Later, in addition to contacts with MOL, CSAV's participation

²⁵ See, for example, [*].

²⁶ See, for example, [*].

²⁷ See, among others, [*].

²⁸ See for example, [*].

²⁹ See, among others, [*].

³⁰ See, among others, [*].

³¹ See, for example, (i) concerning MOL: [*]; (ii) concerning "K" Line: [*]; (iii) concerning NYK: [*]; (iv) concerning WWL and EUKOR: [*], and (v) concerning CSAV, see footnotes 32-33.

³² [*].

included contacts with “K” Line and NYK with regard to shipments on these specific, above-mentioned routes.³³ There was no collusion between CSAV and either WWL or EUKOR.

- (40) EUKOR, as a separate legal entity, did not participate in the FCMs or in the 3J meetings, discussions in relation to CAF, or in actions concerning capacity reduction. EUKOR’s contacts with its competitors were bilateral and structured around the routes that it served, which were predominantly between the Far East and Europe, and concerned certain customers and tenders.

4.2. Geographic scope of the conduct concerned

- (41) The geographic scope of the conduct concerned covered at least shipments into and from the EEA (hereafter "inbound" and "outbound" shipments).

4.3. Duration of the conduct concerned

- (42) The rules for the implementation of competition law apply to all maritime transport services, including to *cabotage* and international tramp services since the entry into force of Council Regulation (EC) No 1419/2006 of 25 September 2006 repealing Regulation (EEC) No 4056/86 on 18 October 2006. That date is the earliest date from which the Commission can exercise its jurisdiction to sanction the conduct of the parties. In order to reflect this jurisdictional change and for the purposes of the present decision, the conduct is deemed to have started for all parties on 18 October 2006.
- (43) The end date of the conduct for the purposes of the present decision is set at 6 September 2012, on which day the Commission's inspections started and RFIs were sent to several undertakings. For MOL, its conduct is considered to have ended on 24 May 2012, when it applied for immunity.

5. LEGAL ASSESSMENT

- (44) Having regard to the body of evidence, leading to the factual findings described in Section 4, and the parties' clear and unequivocal acknowledgement of such facts and the legal qualification thereof contained in their settlement submissions, and considering their replies to the Statement of Objections, the Commission's legal assessment is set out below.

5.1. Jurisdiction

- (45) In this case, the Commission is competent to apply Article 101 of the Treaty and Article 53 of the EEA Agreement on the basis of Article 56 of the EEA Agreement. Through the inbound shipments, the parties delivered new motor vehicles into the EEA, while through the outbound shipments new motor vehicles produced by [*] manufacturers were transported outside of the EEA. Accordingly, the cartel arrangements were capable of having an appreciable effect upon trade in the EEA.

³³ [*].

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

5.2.1. Agreements and concerted practices

5.2.1.1. Principles

(46) Article 101(1) of the Treaty prohibits all 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.

(47) 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 practices*" 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.³⁴

(48) The concepts of *agreement* and *concerted practice* 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.³⁵

5.2.1.2. Application in this case

(49) Based on the submissions of the parties and the other evidence obtained in this case, the Commission considers that the conduct described in Section 4 constitutes a complex infringement of Article 101(1) of the Treaty and Article 53(1) of the EEA Agreement, consisting of various aspects of the conduct which can be assessed both

³⁴ Judgment of the General Court of 17 December 1991, *Hercules v Commission*, T-7/89, ECLI:EU:T:1991:75, paragraph 256; judgment of the Court of Justice of 14 July 1972, *Imperial Chemical Industries v Commission*, 48/69, ECLI:EU:C:1972:70, paragraph 64; and judgment of the Court of Justice of 16 December 1975, *Suiker Unie and others v Commission*, 40-48/73 etc., ECLI:EU:C:1975:174, paragraphs 173 and 174.

³⁵ Judgment of the Court of Justice of 8 July 1999, *Commission v Anic Partecipazioni*, C-49/92 P, ECLI:EU:C:1999:356, paragraph 81.

individually and cumulatively, as agreements and/or concerted practices, including the coordination of prices and certain other trading conditions, within which the parties knowingly substituted the risks of competition with their practical cooperation .

- (50) As described above in Section 4, MOL, “K” Line, NYK, CSAV and WWL and EUKOR were involved in horizontal anticompetitive arrangements which formed part of an overall scheme pursuing a single anti-competitive object and single anti-competitive aim of restricting price competition. Within that overall scheme, the parties aimed at coordinating their pricing behaviour through various forms of conduct.
- (51) Through a combination of multi-lateral and bi-lateral contacts, structured around the "rule of respect", MOL, “K” Line, NYK, CSAV and WWL and EUKOR engaged with varying intensity,³⁶ in market sharing, price fixing, customer allocation and capacity reduction, concerning deep sea car carrier services. The parties engaged in such practices with the aim of restricting competition on the market and maintaining the status quo, that is to say, ensuring that the car carriers would keep their respective businesses for certain customers and/or certain routes. They also aimed to preserve their position in the market and to maintain or increase prices, including by resisting requests for price reduction from certain customers³⁷.
- (52) Such different forms of conduct can be classified as an agreement and/or concerted practice. The parties knowingly substituted the risks of competition between them for practical co-operation. Their behaviour therefore had all the characteristics of an "agreement" and/or "concerted practice" within the meaning of Article 101(1) of the Treaty and Article 53(1) of the EEA Agreement.
- (53) The Commission has therefore reached the conclusion that the conduct described in Section 4 constitutes an agreement and/or concerted practice, within the meaning of Article 101(1) of the Treaty and Article 53(1) of the EEA Agreement.

5.2.2. *Single and continuous infringement*

5.2.2.1. Principles

- (54) An infringement of Article 101(1) of the Treaty and Article 53(1) of the EEA Agreement can result not only from an isolated act, but also from a series of acts or from continuous conduct, even if one or more aspects of that series of acts or continuous conduct could also, in themselves and taken in isolation, constitute an infringement of those provisions. 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.³⁸

³⁶ See recitals (34) to (40) for a description of the conduct constituting the infringement and the involvement therein of the different parties.

³⁷ See, for example, [*].

³⁸ 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.

5.2.2.2. Application in this case

- (55) In this case, the Commission considers that the conduct as described in Section 4 constitutes a single and continuous infringement of Article 101 of the Treaty and Article 53(1) of the EEA Agreement.
- (56) The evidence available shows that the conduct between MOL, “K” Line, NYK, CSAV and WWL and EUKOR was in pursuit of an identical object, namely to avoid price decline and to maintain the existing balance of business between carriers. To do this, the parties held various multi-lateral and bi-lateral contacts and used the “rule of respect”. The parties shared the common understanding not to undercut each other's prices in the responses to certain RFQs and other requests from vehicle manufacturers, either by refraining from quoting or by quoting higher than the incumbent carrier, and to respect each other's positions concerning specific vehicle manufacturers and/or routes.
- (57) The conduct was an on-going process and did not consist of isolated or sporadic occurrences. The contacts between MOL, “K” Line, NYK, CSAV and WWL and EUKOR were of a continuous nature, with numerous and regular contacts. The different elements of the infringement were in pursuit of a single anti-competitive object as described above, which remained the same throughout the entire period of infringement, although the contacts were route or customer specific and not all parties were involved in every exchange. The existence of a single and continuous infringement is further supported by the fact that the cartel followed the same pattern and there was a continuity in and similarity of the arrangements between the parties.
- (58) As set out in recital (39), CSAV did not participate in the FCMs, or the 3J meetings or in the actions concerning capacity reduction. With regard to the EEA, CSAV was only active in shipments inbound from and outbound to South America and Mexico. The evidence available does not, however, make it possible to conclude that CSAV was or should reasonably have been aware of the extent and functioning of the whole infringement.
- (59) As set out in recital (40), EUKOR did not participate, as a separate legal entity, in the FCMs or 3J meetings, in discussions in relation to CAF, or in the actions concerning capacity reduction, and it only applied the rule of respect to certain customers on certain routes where it was active. However, as EUKOR formed a single undertaking with WWL during the entire period of the infringement, the Commission imputes its actions to that single undertaking (the WWL and EUKOR undertaking).
- (60) On the basis of all these elements and of the parties' clear and unequivocal acknowledgement of the single and continuous nature of the infringement, the Commission concludes that the undertakings concerned participated in a single and continuous infringement of Article 101 of the Treaty and Article 53(1) of the EEA Agreement.

5.2.3. Restriction of competition

5.2.3.1. Principles

- (61) To come within the prohibition laid down in Article 101(1) of the Treaty and Article 53(1) of the EEA Agreement, an agreement between undertakings, a decision by an association of undertakings or a concerted practice must have as its object or effect the prevention, restriction or distortion of competition in the internal market.
- (62) In that regard, it is apparent from the case law of the Court of Justice of the European Union that certain types of coordination between undertakings reveal a sufficient degree of harm to competition that there is no need to examine their effects.³⁹ 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.⁴⁰
- (63) Consequently, it is established that certain collusive behaviour, such as that which leads to horizontal price-fixing by cartels, may be considered 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.⁴¹

5.2.3.2. Application in this case

- (64) MOL, “K” Line, NYK, CSAV and WWL and EUKOR engaged to varying degrees in the practices described in recitals (34) to (40) to ensure the *status quo*, and coordinate their behaviour with regard to their replies to specific RFQs and other requests from certain customers for deep sea car carriage services. In doing this, they relied upon the “rule of respect”.
- (65) The object of such behaviour, by its very nature, was to restrict competition within the meaning of Article 101(1) of the Treaty and Article 53(1) of the EEA Agreement.
- (66) Therefore, it is concluded that the object of the conduct of the parties was to restrict competition within the meaning of Article 101(1) of the Treaty and Article 53(1) of the EEA Agreement.

³⁹ 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.

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

⁴¹ 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.

5.2.4. *Effect on trade between Member States and between Contracting Parties to the EEA Agreement*

5.2.4.1. Principles

(67) Article 101(1) of the Treaty applies to agreements 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 that undermine the completion of a homogeneous EEA between the Contracting Parties to the EEA Agreement.⁴²

5.2.4.2. Application to this case

(68) During the relevant period, the parties were active on various deep sea routes. The parties served routes inbound and/or outbound to the EEA. On the basis of the sales data provided by the parties, there is ample evidence of sales made to customers in the EEA. The infringement was therefore capable by its very nature of having an appreciable effect on trade between Member States and between the Contracting Parties to the EEA Agreement within the meaning of Article 101(1) of the Treaty and Article 53(1) of the EEA Agreement.

(69) Therefore, the Commission has reached the conclusion that in the concerned period the conduct was capable of having an appreciable effect upon the trade between Member States and between Contracting Parties to the EEA Agreement.⁴³

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

(70) There is no indication that the conduct of MOL, “K” Line, NYK, CSAV and WWL and EUKOR entailed any efficiency benefits or otherwise promoted technical or economic progress.

(71) The Commission has, therefore, reached the conclusion that the conditions for exemption provided for in Article 101(3) TFEU and Article 53(3) of the EEA Agreement are not met in this case.

6. DURATION OF THE INFRINGEMENT

(72) As indicated in section 4.3, the cartel is deemed to have started on 18 October 2006 for MOL, “K” Line, NYK, CSAV and WWL and EUKOR. The cartel ended for MOL on 24 May 2012, the day on which MOL applied for immunity. The participation of “K” Line, NYK, CSAV and WWL and EUKOR in the cartel ended

⁴² 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.

⁴³ See Case C-125/07P *Erste Bank der österreichischen Sparkassen v Commission* ECLI:EU:C:2009:576, paragraph 39.

on 6 September 2012, the day on which the Commission started unannounced inspections in this case.

- (73) The Commission has, therefore, reached the conclusion that the duration of the infringement for MOL was from 18 October 2006 to 24 May 2012, and, for “K” Line, NYK, CSAV and the WWL and EUKOR undertaking, spanned from 18 October 2006 to 6 September 2012.

7. LIABILITY

7.1. Principles

- (74) EU/EEA competition law refers to the activities of undertakings, and the concept of an undertaking covers any entity engaged in an economic activity, irrespective of its legal status and the way in which it is financed.⁴⁴

- (75) When such an entity infringes competition law, according to the principle of personal responsibility, it falls 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, while also having particular regard to the economic, organisational and legal links between those two legal entities.⁴⁵

- (76) The Commission needs to prove that the parent undertaking (or parent undertakings in the case of joint ventures) was able to exercise decisive influence over the other, including on the basis of statutory provisions or contractual stipulations that give one of the undertakings management power over the other.⁴⁶

- (77) 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 law, there is a rebuttable presumption that that parent company does, in fact, exercise a decisive influence over its subsidiary. In such a situation, it is sufficient for the Commission to prove that all or almost all of the capital in the subsidiary is held by the parent company in order to take the view that that presumption applies.⁴⁷

7.2. Application in this case

- (78) Having regard to the body of evidence and the facts set out in Section 4, the parties' clear and unequivocal acknowledgement of those facts and the legal qualification thereof contained in their settlement submissions, as well as their replies to the Statement of Objections, the Commission takes the view that the liability for the

⁴⁴ Case C 511/11 P *Versalis v Commission*, EU:C:2013:386, paragraph 51.

⁴⁵ 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.

⁴⁶ 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.

⁴⁷ 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.

parties' respective participations in the infringement found in this decision should be imputed to the following legal entities for their respective participation in the infringement.

7.2.1. *MOL*

(79) For MOL's participation in the infringement, the following legal entities should be held liable:

- (a) Mitsui O.S.K. Lines, Ltd.;
- (b) MOL (Europe Africa) Ltd. (former name during the whole period of infringement: Mitsui O.S.K. Bulk Shipping (Europe) Ltd.)⁴⁸; and
- (c) Nissan Motor Car Carrier Co., Ltd.

(80) Mitsui O.S.K. Lines, Ltd., MOL (Europe Africa) Ltd. and Nissan Motor Car Carrier Co., Ltd. directly participated in cartel contacts. Those entities have acknowledged liability for their direct participation in the infringement.

(81) Mitsui O.S.K. Lines, Ltd. has further acknowledged that it is jointly and severally liable for the conduct of its wholly-owned subsidiary, MOL (Europe Africa) Ltd. Mitsui O.S.K. Lines, Ltd. has further acknowledged that it exercised decisive control over its subsidiary, Nissan Motor Car Carrier Co., Ltd., during the whole period of the infringement and, therefore, is jointly and severally liable for the conduct of Nissan Motor Car Carrier Co., Ltd.

(82) The Commission, therefore, imputes liability for the infringement jointly and severally to Mitsui O.S.K. Lines, Ltd., MOL (Europe Africa) Ltd. and Nissan Motor Car Carrier Co., Ltd, from 18 October 2006 to 24 May 2012.

7.2.2. *"K" Line*

(83) Kawasaki Kisen Kaisha, Ltd. directly participated in cartel contacts. That entity has acknowledged liability for its direct participation in the infringement.

(84) The Commission, therefore, imputes liability to Kawasaki Kisen Kaisha, Ltd. for its direct participation in the infringement, from 18 October 2006 to 6 September 2012.

7.2.3. *NYK*

(85) Nippon Yusen Kabushiki Kaisha directly participated in cartel contacts. That entity has acknowledged liability for its direct participation in the infringement.

(86) The Commission, therefore, imputes liability to Nippon Yusen Kabushiki Kaisha for its direct participation in the infringement, from 18 October 2006 to 6 September 2012.

⁴⁸ See footnote 8.

7.2.4. CSAV

- (87) CSAV directly participated in cartel contacts. This entity has acknowledged liability for its direct participation in the infringement.
- (88) The Commission holds CSAV liable for the single and continuous infringement only in so far as it applied the rule of respect and participated in contacts regarding certain shipments inbound and outbound between South America and the EEA as well as between Mexico and the EEA.⁴⁹
- (89) The Commission, therefore, imputes liability to CSAV for its direct participation in the infringement as specified in recital (88), from 18 October 2006 to 6 September 2012.

7.2.5. The WWL and EUKOR undertaking

- (90) Wallenius Wilhelmsen Logistics AS and EUKOR Car Carriers, Inc. (WWL and EUKOR) directly participated in cartel contacts. WWL and EUKOR have acknowledged liability for their direct participation in the infringement.
- (91) As set out in recital (59), EUKOR's actions are imputable to the WWL and EUKOR undertaking. Therefore, the Commission holds EUKOR liable for the whole single and continuous infringement, not only for the aspects in which it participated as a separate legal entity.
- (92) The parent companies of WWL and EUKOR have acknowledged liability on the basis of their parental liability. Wallenius Logistics AB and Wilhelmsen Ships Holding Malta Limited, being the immediate parent companies during the whole period of the infringement, have acknowledged that they are jointly and severally liable for the conduct of their joint ventures, Wallenius Wilhelmsen Logistics AS and EUKOR Car Carriers, Inc (WWL and EUKOR).
- (93) Wallenius Lines AB has acknowledged that it is jointly and severally liable for Wallenius Logistics AB, in which it held 100% of the shares during the whole period of the infringement.
- (94) Wallenius Wilhelmsen Logistics ASA (former name: Wilh. Wilhelmsen ASA) has acknowledged that it is jointly and severally liable for Wilhelmsen Ships Holding Malta Limited, in which it held 100% of the shares during the whole period of the infringement.
- (95) The Commission, therefore, imputes liability for the infringement jointly and severally to Wallenius Lines AB (Walleniusrederierna AB), Wallenius Logistics AB, Wallenius Wilhelmsen Logistics ASA (former name: Wilh. Wilhelmsen ASA), Wilhelmsen Ships Holding Malta Limited, Wallenius Wilhelmsen Logistics AS and EUKOR Car Carriers, Inc, from 18 October 2006 to 6 September 2012.

⁴⁹ See recital (58).

8. REMEDIES

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

- (96) 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.
- (97) 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 addressees of this Decision should therefore be required to bring the infringement to an end (if they have not already done so) and to refrain from any agreement, concerted practice or decision of an association which may have the same or a similar object or effect.

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

- (98) Pursuant to Article 23(2) of Regulation (EC) No 1/2003, 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 Agreement⁵⁰. For each undertaking participating in the infringement, the fine must not exceed 10% of its total turnover in the preceding business year.
- (99) In this case, the Commission has reached the conclusion that, based on the facts described in this Decision and the legal assessment in Section 5, the infringement was committed intentionally or at the very least negligently.
- (100) Fines should therefore be imposed on the addressees of this Decision.
- (101) Pursuant to Article 23(3) of Regulation (EC) No 1/2003, in fixing the amount of fine, the Commission must have regard both to 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 fines on the method of setting fines imposed pursuant to Article 23(2)(a) of Regulation (EC) No 1/2003⁵¹ ("Guidelines on fines").
- (102) Finally, the Commission applies as appropriate, the provisions of the Settlement Notice.

8.3. Calculation of the fines

- (103) In accordance with the Guidelines on fines, the Commission determines a basic amount 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

⁵⁰ 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*". (OJ L 305, 30.11. 1994, p. 6).

⁵¹ 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).

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 undertaking's participation in the infringement. The resulting basic amount may 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.

8.3.1. *The value of sales*

- (104) The basic amount of the fine to be imposed on the undertakings concerned is to be set by reference to the value of their sales⁵², that is to say the value of the undertakings' sales of goods or services to which the infringement directly or indirectly relates in the relevant geographic area in the EEA. In this case, the relevant value of sales is the value of the undertakings' sales of deep-sea car carriage of new motor vehicles: cars, trucks and high and heavy vehicles to and from the EEA.
- (105) The Commission normally takes the sales made by the undertakings during the last full business year of their participation in the infringement⁵³. If the last year is not sufficiently representative, the Commission may take into account another year or other years for the determination of the value of sales. Based on the foregoing and on the information provided by the parties, the Commission has noted that the value of sales of the concerned services fluctuated to a significant extent over the duration of the infringement. The Commission therefore determines the value of sales as an annual average of the value of deep sea carriage services of new motor vehicles (cars, trucks and high and heavy vehicles) made during the whole infringement period. In order to reflect that a part of the services were performed outside of the EEA and, thus, a certain part of the harm fell outside the EEA, the Commission applies a 50% reduction of the basic amount.
- (106) Accordingly, the values of sales for each of the concerned undertakings are as set out in Table 1:

Table 1 – Value of Sales

Undertaking	Value of Sales (EUR)
MOL	[290 000 000 – 410 000 000] [*]
"K" Line	[150 000 000 – 200 000 000] [*]

⁵² Point 12 of the Guidelines on fines.

⁵³ Point 13 of the Guidelines on fines.

Undertaking	Value of Sales (EUR)
CSAV	[17 000 000 – 24 000 000] [*]
NYK	[300 000 000 – 400 000 000] [*]
The WWL and EUKOR undertaking	[547 000 000 – 760 000 000] [*]

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

(107) The basic amount of the fine to be imposed consists of an amount of up to 30% of an undertaking's relevant 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 sales, irrespective of the duration of the infringement.⁵⁴

8.3.2.1. Gravity

(108) In order to determine the proportion of the value of sales to be taken into account in an infringement, the Commission takes a number of factors into account, such as the nature of the infringement, the combined market share of all the undertakings concerned, the geographic scope of the infringement and whether or not the infringement has been implemented.

(109) In its assessment, the Commission considers the facts described in this decision, and in particular the fact that price coordination and customer allocation arrangements are, by their very nature, among the most harmful restrictions of competition. Therefore, the proportion of the value of sales taken into account for such infringements will generally be set at the higher end of the scale of the value of sales.⁵⁵

(110) The Commission also takes into account the fact that the infringement (i) consisted of two different types of anti-competitive practices (price coordination and customer allocation) and (ii) concerned the entire EEA.

(111) Therefore, the proportion of the value of sales to be taken into account is 17%.

⁵⁴ Points 19 to 26 of the Guidelines on fines.

⁵⁵ Point 23 of the Guidelines on fines.

8.3.2.2. Duration

- (112) In calculating the fine to be imposed on each undertaking, the Commission also takes into consideration the duration of their respective participation in the infringement..
- (113) The time period to be taken into account for the purposes of calculating the fine and the multiplier corresponding to that period for each concerned undertaking is set out in Table 2.

Table 2 – Duration

Undertaking	Period of the single and continuous infringement	Duration in years (calculated on the basis of calendar days)
MOL	18 October 2006 – 24 May 2012	5.6 years
"K" Line	18 October 2006 – 6 September 2012	5.88 years
NYK	18 October 2006 – 6 September 2012	5.88 years
The WWL and EUKOR undertaking	18 October 2006 – 6 September 2012	5.88 years
CSAV	18 October 2006 – 6 September 2012	5.88 years

8.3.2.3. Determination of the additional amount

- (114) The infringement committed by the addressees concerns both price coordination and customer allocation. The basic amount should therefore include an amount corresponding to between 15% and 25% of the value of sales to deter parties from even entering into such illegal practices. That amount should be determined on the basis of the criteria listed above in recital (110) with respect to the variable amount.⁵⁶ The proportion of the value of sales to be taken into account for the purpose of calculating the additional amount should be 17%.

8.3.2.4. Calculation of the basic amount

- (115) Based on the criteria set out in Section 8.3.2, the basic amounts of the fine to be imposed on each party are set out in Table 3.

⁵⁶ Point 25 of the Guidelines on fines.

Table 3 –Basic Amounts of the fine

Undertaking	Basic Amount (EUR)	Basic Amount reduced by 50% (EUR)
<i>MOL</i>	[325 380 000 - 460 020 000] [*]	[162 690 000 - 230 010 000] [*]
"K" Line	[175 440 000 - 233 920 000] [*]	[87 720 000 - 116 960 000] [*]
NYK	[350 880 000 - 467 840 000] [*]	[175 440 000 - 233 920 000] [*]
The WWL and EUKOR undertaking	[639 771 000 - 888 896 000] [*]	[319 885 000 - 444 448 000] [*]
CSAV	[19 883 000 - 28 070 000] [*]	[9 941 000 - 14 035 000] [*]

8.4. Adjustments to the basic amount of the fine

8.4.1. Aggravating or mitigating circumstances

- (116) The Commission may increase the basic amount of the fine to be imposed where it finds that there are aggravating circumstances. Those circumstances are listed in a non-exhaustive way in point 28 of the Guidelines on fines.
- (117) In the light of the facts as described in Section 4, there is no need to adjust the basic amount of the fine in this case on account of any aggravating circumstances.
- (118) The basic amount may be reduced where the Commission finds that mitigating circumstances exist. Those circumstances are listed in a non-exhaustive way in point 29 of the Guidelines on fines.
- (119) As set out in recital (58), the Commission has reached the conclusion that CSAV is responsible for the single and continuous infringement only in so far it relates to the observance of the rule of respect on specific routes between South America or Mexico and the EEA. Taking into account CSAV's limited role and its lack of awareness of the whole extent of the infringement, the Commission grants it a reduction of 20% of its fine on the basis of mitigating circumstances.

8.5. Application of the 10% of turnover limit

- (120) Article 23(2) of Regulation (EC) No 1/2003 provides that for each undertaking participating in the infringement, the fine imposed must not exceed 10% of its total turnover in the preceding business year. That 10% ceiling is applied before any reduction is granted for leniency or for settlement, or both.⁵⁷
- (121) In this case, the fine of the WWL and EUKOR undertaking would exceed that limit. Therefore, the fine of the WWL and EUKOR undertaking will be reduced prior to the application of the leniency and settlement reductions in accordance with point 32 of the Settlement Notice.

8.6. Application of the Leniency Notice

8.6.1. Immunity from fines

- (122) MOL applied for a marker pursuant to points 14 and 15 of the Leniency Notice on 24 May 2012 and was granted conditional immunity from fines on 14 August 2012. MOL's cooperation fulfilled the requirements of the Leniency Notice throughout the procedure. Therefore, the Commission grants MOL immunity from fines.

8.6.2. Reduction of fines

8.6.2.1. "K" Line

- (123) "K" Line applied for immunity or, in the alternative, for a reduction of the fine on 8 September 2012; just two days after the Commission's inspection had started and "K" Line had received the first round of RFIs. 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. "K" Line, therefore, qualifies for a reduction of its fine under the Leniency Notice within the range of 30% to 50%.
- (124) "K" Line submitted [*] evidence to the Commission, which was useful for the Commission's case mostly in relation to the routes from [*] to and from the EEA. In particular, the new evidence provided by "K" Line strengthened the Commission's ability to prove [*].
- (125) In the light of the above, the Commission grants "K" Line a reduction of the fine that would otherwise have been imposed of 50%.

8.6.2.2. CSAV

- (126) CSAV applied for immunity or, in the alternative, for a reduction of the fine on 14 September 2012. CSAV also made its application at an early stage, just one week after the inspections at [*] had taken place. No RFI had been addressed to CSAV prior to its application; however, at that time, the Commission had already received

⁵⁷ Points 32 and 34 of the Guidelines on fines and points 32 and 33 of the Settlement Notice. See also judgment of the General Court of 29 November 2005, *SNCZ v Commission*, T-52/02, ECLI:EU:T:2005:429, paragraph 41.

information about CSAV's potential involvement in the cartel from [*]⁵⁸. CSAV 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. CSAV, therefore, qualifies for a reduction of its fine under the Leniency Notice within the range of 20% to 30%.

- (127) CSAV provided significant added value to the Commission's case by [*] the [*] on the specific routes between [*], and the EEA, [*] serviced by CSAV in the context of its participation in the infringement.
- (128) However, CSAV's [*] were supported by [*] evidence relating to the discussions in which it participated and, generally, it gave little details about the content of the discussions. Furthermore, CSAV's [*] were at times not very specific.
- (129) In the light of the above, the Commission grants CSAV a reduction of the fine that would otherwise have been imposed of 25%.

8.6.2.3. NYK

- (130) NYK applied for immunity or, in the alternative, for a reduction of the fine on 22 October 2012 at 15:10. NYK was the third 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. NYK, therefore, qualifies for a reduction of its fine under the Leniency Notice of up to 20%.
- (131) NYK submitted a [*] evidence to the Commission, among others, relating to the routes from [*] to and from the EEA. In this respect, NYK brought significant added value to the case, because the evidence it provided strengthened the Commission's ability to prove the existence of the [*] and other contacts. In addition, NYK provided corroboration [*] that provided significant added value, in particular [*], and provided [*] about the functioning of the cartel.
- (132) In light of the above, the Commission grants NYK a reduction of the fine that would otherwise have been imposed of 20%.

8.6.2.4. The WWL and EUKOR undertaking

- (133) WWL and EUKOR applied for immunity or, in the alternative, for a reduction of the fine on the same day as NYK (22 October 2012), but only a couple of hours later (at 22:26). In view of the fact that WWL and EUKOR formed part of the same undertaking, that is to say, the WWL and EUKOR undertaking (see recitals (15), (59)), the Commission grants a leniency reduction to that single undertaking should be granted a reduction of the fine that would otherwise have been imposed of up to 20% under the Leniency Notice.
- (134) WWL and EUKOR submitted a [*] evidence to the Commission, which strengthened the Commission's ability to prove the infringement. WWL and EUKOR reported

⁵⁸ [*].

about [*] on certain routes ([*]). Both WWL and EUKOR provided evidence that strengthened the Commission's ability to prove the cartel with regard to certain [*] contacts with other carriers. WWL and EUKOR also corroborated [*] and provided [*] about the functioning of the cartel.

- (135) In the light of the above, the Commission grants the WWL and EUKOR undertaking a reduction of the fine that would otherwise have been imposed of 20%.

8.7. Application of the Settlement Notice

- (136) According to 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% of turnover cap has been applied having regard to the Guidelines on fines. Pursuant to point 33 of the Settlement Notice, when settled cases also involve leniency applicants, the reduction of the fine granted to them for settlement will be added to their leniency reward.
- (137) Consequently, the amount of the fine to be imposed on each party should be further reduced by 10%.

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

- (138) 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 (EUR)
MOL	0
"K" Line	39 100 000
NYK	141 820 000
The WWL and EUKOR undertaking	207 335 000
CSAV	7 033 000

HAS ADOPTED THIS DECISION:

Article 1

The following undertakings infringed Article 101 of the Treaty and Article 53 of the EEA Agreement by participating, for the periods indicated, in a single and continuous infringement consisting of the coordination of prices and the allocation of customers with regard to the provision of deep sea car carriage of new motor vehicles (cars, trucks and high and heavy vehicles) on various routes to and from the European Economic Area:

- (a) Mitsui O.S.K. Lines, Ltd., MOL (Europe Africa) Ltd. and Nissan Motor Car Carrier Co., Ltd. , from 18 October 2006 to 24 May 2012;
- (b) Kawasaki Kisen Kaisha, Ltd. from 18 October 2006 to 6 September 2012;
- (c) Nippon Yusen Kabushiki Kaisha from 18 October 2006 to 6 September 2012;
- (d) Wallenius Lines AB (Walleniusrederierna AB), Wallenius Logistics AB, Wallenius Wilhelmsen Logistics ASA (former name: Wilh. Wilhelmsen ASA), Wilhelmsen Ships Holding Malta Limited, Wallenius Wilhelmsen Logistics AS and EUKOR Car Carriers, Inc., from 18 October 2006 to 6 September 2012;
- (e) Compañía Sudamericana de Vapores S.A., from 18 October 2006 to 6 September 2012, liable for its limited participation.

Article 2

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

- (a) Mitsui O.S.K. Lines, Ltd., MOL (Europe Africa) Ltd. and Nissan Motor Car Carrier Co., Ltd. jointly and severally liable: **EUR 0**;
- (b) Kawasaki Kisen Kaisha, Ltd.: **EUR 39 100 000**;
- (c) Nippon Yusen Kabushiki Kaisha: **EUR 141 820 000**;
- (d) Wallenius Lines AB (Walleniusrederierna AB), Wallenius Logistics AB, Wallenius Wilhelmsen Logistics ASA (former name: Wilh. Wilhelmsen ASA), Wilhelmsen Ships Holding Malta Limited, Wallenius Wilhelmsen Logistics AS and EUKOR Car Carriers, Inc. jointly and severally liable: **EUR 207 335 000**;
- (e) Compañía Sudamericana de Vapores S.A.: **EUR 7 033 000**.

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.40009

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

Where an undertaking referred to in Article 1 lodges an appeal, that undertaking shall cover the fine by the due date by either providing an acceptable financial guarantee or making a provisional payment of the fine in accordance with Article 90 of Commission Delegated Regulation (EU) No 1268/2012⁵⁹.

Article 3

The undertakings listed in Article 1 shall immediately bring to an end the infringement referred to in that Article in so far 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) Mitsui O.S.K. Lines, Ltd., with its registered offices in 1-1, Toranomom 2-chome, Minato-ku, Tokyo 105-8688, Japan.
- (b) MOL (Europe Africa) Ltd. with its registered offices in 3, Thomas More Square, London, E1W 1WY, United Kingdom.
- (c) Nissan Motor Car Carrier Co., Ltd. with its registered offices in Hibiya Daibiru Bldg., 1-2-2 Uchisaiwai-cho, Chiyoda-ku, Tokyo 100-0011, Japan.
- (d) Kawasaki Kisen Kaisha, Ltd. with its registered offices in Iino Building, 1-1, Uchisaiwaicho 2-Chome, Chiyoda-ku, Tokyo 100-8540, Japan.
- (e) Nippon Yusen Kabushiki Kaisha with its registered offices in 3-2, Marunouchi 2-chome, Chiyoda-Ku, Tokyo 100-0005, Japan.
- (f) Wallenius Wilhelmsen Logistics AS with its registered offices in Strandveien 20, PO Box 33, NO-1366 Lysaker, Norway.

⁵⁹ Commission Delegated Regulation (EU) No 1268/2012 of 29 October 2012 on the rules of application of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council on the financial rules applicable to the general budget of the Union (OJ L 362, 31.12.2012, p. 1).

- (g) EUKOR Car Carriers, Inc., with its registered offices in 24th floor, Gangnam Finance Center, 152 Teheran-ro Gangnam-gu, Seoul, 06236, Republic of Korea.
- (h) Wallenius Logistics AB, with its registered offices in Swedenborgsgatan 19, SE-118 27 Stockholm, Sweden.
- (i) Wilhelmsen Ships Holding Malta Limited, with its registered offices in Wilhelmsen House, Valletta Waterfront, Pinto Wharf, Floriana FRN1915, Malta.
- (j) Wallenius Lines AB (Walleniusrederierna AB), with its registered offices in Swedenborgsgatan 19, SE-118 27, Stockholm, Sweden.
- (k) Wallenius Wilhelmsen Logistics ASA (former name: Wilh. Wilhelmsen ASA⁶⁰) with its registered offices in Strandveien 20, PO Box 33, NO-1366, Lysaker, Norway.
- (l) Compañía Sudamericana de Vapores S.A. with its registered offices in Hundaya 60, 14th Floor, PC 7550188, Las Condes, Santiago, Chile.

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

⁶⁰ See footnote 10.