



EUROPEAN COMMISSION
Competition DG

CASE AT.40013 – Lighting Systems

(Only the English text is authentic)

CARTEL PROCEDURE

Council Regulation (EC) 1/2003

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

Date: 21/06/2017

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Brussels, 21.6.2017
C(2017) 4100 final

COMMISSION DECISION

of 21.6.2017

**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.40013 – Lighting systems)

(Only the English text is authentic)

TABLE OF CONTENTS

1.	INTRODUCTION	5
2.	THE INDUSTRY SUBJECT TO THE PROCEEDINGS	5
2.1.	The products	5
2.2.	The undertakings subject to the present proceedings	6
2.2.1.	Valeo	6
2.2.2.	Automotive Lighting	6
2.2.3.	Hella	6
3.	PROCEDURE	7
4.	DESCRIPTION OF THE CONDUCT	9
4.1.	Nature and scope of the cartel	9
4.2.	Geographic scope of the infringement	10
4.3.	Duration of the infringement	10
5.	LEGAL ASSESSMENT	10
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
5.1.1.1.	Principles	11
5.1.1.2.	Application in this case	11
5.1.2.	Single and continuous infringement	12
5.1.2.1.	Principles	12
5.1.2.2.	Application in this case	12
5.1.3.	Restriction of competition	13
5.1.3.1.	Principles	13
5.1.3.2.	Application in this case	13
5.1.4.	Effect upon trade between Member States and between Contracting Parties to the EEA Agreement	14
5.1.4.1.	Principles	14
5.1.4.2.	Application to this case	14
5.2.	Non-applicability of Article 101(3) of the Treaty and Article 53(3) of the EEA Agreement	14

5.2.1.	Principles.....	14
5.2.2.	Application in this case	15
6.	DURATION OF THE INFRINGEMENT	15
7.	LIABILITY	16
7.1.	Principles.....	16
7.2.	Application in this case	16
7.2.1.	Valeo	17
7.2.2.	Automotive Lighting	17
7.2.3.	Hella	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.....	18
8.3.	Calculation of the fines	18
8.3.1.	The value of sales.....	19
8.3.2.	Determination of the basic amount of the fine	21
8.3.2.1.	Gravity.....	21
8.3.2.2.	Duration.....	21
8.3.3.	Determination of the additional amount	22
8.3.4.	Calculations and conclusions on basic amounts.....	22
8.4.	Adjustments to the basic amount of the fine	22
8.4.1.	Aggravating or mitigating circumstances	22
8.4.2.	Specific increase for deterrence.....	23
8.5.	Application of the 10% of turnover limit	23
8.6.	Application of the Leniency Notice	23
8.6.1.	Immunity from fines	23
8.6.2.	Reduction of fines	23
8.6.2.1.	Automotive Lighting	23
8.6.2.2.	Hella	24
8.7.	Application of the Settlement Notice	24
8.8.	Conclusion: final amount of individual fines to be imposed in this Decision	25

COMMISSION DECISION

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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.40013 – Lighting systems)

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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 18 May 2016 to initiate proceedings in this case,

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

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

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

¹ OJ L 1, 4.1.2003, p.1. With effect from 1 December 2009, Articles 81 and 82 of the EC Treaty have become Articles 101 and 102, respectively, of the Treaty on the Functioning of the European Union ("TFEU"). 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 TFEU 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.

Whereas:

1. INTRODUCTION

- (1) This Decision relates to a single and continuous infringement of Article 101 of the Treaty and Article 53 of the EEA Agreement. The single and continuous infringement, in which the addressees of this Decision participated, consisted of anti-competitive contacts in the European Economic Area ("EEA") regarding the pricing of automotive lighting systems and certain other trading conditions from 7 July 2004 to 25 October 2007, with varying start and end dates for the undertakings involved.
- (2) This Decision is addressed to the following legal entities:
 - (a) Valeo S.A., Valeo Service SAS and Valeo Vision SAS (together referred to as "**Valeo**");
 - (b) Magneti Marelli S.p.A. and Automotive Lighting Reutlingen GmbH (together referred to as "**Automotive Lighting**"); and
 - (c) Hella KGaA Hueck & Co. ("**Hella**").

2. THE INDUSTRY SUBJECT TO THE PROCEEDINGS

2.1. The products

- (3) The products concerned by the infringement are automotive lighting systems ("**Lighting Systems**").
- (4) Lighting Systems include headlamps (with LED, xenon or halogen technology), daytime running lights (with LEDs or traditional bulbs), rear lights and high-mounted stop lamps (with LEDs or traditional bulbs), fog lights and auxiliary lights but exclude electronic components such as lighting and signalling controllers and ballasts.
- (5) Lighting Systems are sold by suppliers either to equip new vehicles with lighting systems or as spare or replacement parts in the aftermarket. Customers purchasing Lighting Systems are manufacturers of passenger and commercial vehicles (often referred to as original equipment manufacturers ("**OEMs**")), OEMs' authorised service networks, independent repair shops, wholesalers, fast-fitters, centralised purchasing groups and supermarket chains.
- (6) The infringement only concerned the part of the aftermarket involving the supply of spare parts to the OEMs or their authorised service networks for passenger and commercial vehicles, namely the original equipment spare parts ("**OES**") market segment and within this segment, only supplies after the series production of a car model has terminated ("**OES after the EoP**").

³ Final report of the Hearing Officer of 20 June 2017.

2.2. The undertakings subject to the present proceedings

2.2.1. Valeo

- (7) The relevant legal entities of Valeo that, for the purposes of this Decision, the Commission regards to constitute a single undertaking at the time of the infringement are the following:
- Valeo S.A. with registered offices in 43, rue Bayen, 75017 Paris, France;
 - Valeo Service SAS with registered offices in 70, rue Pleyel, 93200 Saint Denis, France; and
 - Valeo Vision SAS with registered offices in 34, rue Saint-André, 93012 Bobigny Cedex, France.
- (8) Valeo and its subsidiaries are active in the automotive sector, supplying a wide range of products to OEMs and aftermarkets. The worldwide consolidated turnover of Valeo in 2016 (business year 1 January 2016 – 31 December 2016) was EUR 16,5 billion.

2.2.2. Automotive Lighting

- (9) The relevant legal entities of Automotive Lighting that, for the purposes of this Decision, the Commission regards to constitute a single undertaking at the time of the infringement are the following:
- Magneti Marelli S.p.A. with registered offices in Viale Aldo Borletti 61/63, 20011 Corbetta (MI), Italy; and
 - Automotive Lighting Reutlingen GmbH with registered offices in Tübinger Strasse 123, 72762 Reutlingen, Germany.
- (10) Automotive Lighting develops and manufactures automotive lighting systems, modules and high-technology lighting components. It is part of the Magneti Marelli group. For 2016 (business year 1 January 2016 – 31 December 2016), the worldwide consolidated turnover of the Magneti Marelli group was EUR 7,9 billion.

2.2.3. Hella

- (11) The relevant legal entity of the Hella group for the purposes of this Decision is the following:
- Hella KGaA Hueck & Co. with registered offices in Rixbecker Straße 75, 59552 Lippstadt, Germany.

- (12) Hella is active in the development and production of lighting and electronic components and systems for the automotive industry, and also has one of the largest trade organisations for automotive parts, accessories, diagnosis and services within Europe. The worldwide consolidated turnover of Hella in 2015 (business year 1 June 2015 – 31 May 2016) was EUR 5,8 billion.

3. PROCEDURE

- (13) On 25 January 2012, Valeo applied for immunity under point 14 of the Commission Notice on Immunity from fines and reduction of fines in cartel cases⁴ ("the **Leniency Notice**"). The application was followed by a number of submissions consisting of oral statements and documentary evidence. On 18 May 2016, the Commission granted Valeo conditional immunity from fines pursuant to point 8(a) of the Leniency Notice.
- (14) On 31 July 2012, the Commission carried out unannounced inspections at the premises of Automotive Lighting and Hella pursuant to Article 20(4) of Council Regulation (EC) No 1/2003⁵.
- (15) On 10 August 2012, Automotive Lighting applied for a reduction of a fine under the Leniency Notice.
- (16) On 18 September 2012, Hella applied for a reduction of a fine under the Leniency Notice.
- (17) Between 7 August 2012 and 6 July 2016, the Commission sent out several requests for information to the addressees of this Decision pursuant to Article 18(2) of Regulation (EC) No 1/2003 and point 12 of the Leniency Notice.
- (18) On 18 May 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. On 18 May 2016, the Commission also adopted decisions indicating the intended bands for the level of leniency reductions for Automotive Lighting and Hella.
- (19) Settlement meetings with the parties took place between June 2016 and April 2017. During those meetings, the Commission informed the parties of the potential objections it envisaged raising against them and disclosed the main pieces of evidence to establish those objections.

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

⁵ 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).

- (20) The parties were also given access to the relevant oral 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 file. The parties were offered the opportunity to access all the documents listed. The Commission also provided the parties with an estimate of the range of fines likely to be imposed on them.
- (21) Each party set out in writing 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.
- (22) At the end of the settlement discussions, all parties considered that there was a sufficient common understanding between themselves and the Commission as regards their alleged participation in the infringement and the potential objections that the Commission intended to raise in that respect, as well as the estimate of the range of likely applicable fines in order to continue the settlement process.
- (23) Between [...] and [...], the parties submitted their formal requests to settle to the Commission pursuant to Article 10a(2) of Regulation (EC) No 773/2004⁶ (the "settlement submissions"). The settlement submission of each party contained:
- an acknowledgement in clear and unequivocal terms of the party's liability for the infringement summarily described 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 the Commission to impose on it 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 a sufficient opportunity to make its views known to the Commission;
 - the party's confirmation that it does not envisage requesting access to the file or requesting to be heard again in an oral hearing, unless the Commission does not reflect 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.
- (24) Each party made the settlement submission referred to in recital (23) conditional upon the imposition of a fine by the Commission which will not exceed the amount specified in its settlement submission.

⁶ Commission Regulation (EC) No 773/2004 of 7 April 2004 relating to the conduct of proceedings by the Commission pursuant to Articles 81 and 82 of the EC Treaty (OJ L 123, 27.4.2004, p. 18).

- (25) On 10 May 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.
- (26) 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, it is concluded 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 cartel

- (27) The infringement consisted of anti-competitive contacts regarding the OES after the end of series production, including contacts relating to price and certain other trading conditions. The collusive contacts concerned discussions on quoting and negotiation strategies with certain customers⁷, discussions on the status of negotiations on price increases after the end of production with certain individual customers⁸, discussions on the position of the parties with certain individual customers regarding the OES pricing⁹, and discussions on certain customer pricing requests¹⁰, as well as information exchange on the future outlook and trends in the OES industry¹¹.
- (28) Moreover, the parties agreed that they should aim for a price increase of the OES after the end of series production in order not to sell at loss and cover at least additional costs¹² arising from significantly lower production volumes after the end of series production. Finally, the parties coordinated on a target end of the contractual availability of spare parts of at most 15 years after the end of production¹³. As part of this coordination, the parties also aimed to shorten the contractual supply periods, in particular by requesting an all-time demand (namely a demand for all replacement products to be supplied within the remaining term) from the OEM after some time following the end of production¹⁴.
- (29) The infringement operated mainly on the basis of bilateral contacts, but at least one multilateral contact was also organised¹⁵. The parties would meet either on the margins of supplier days organised by customers¹⁶, trade fairs¹⁷ or on the occasion of or independently of customer visits¹⁸. Geographically, the anti-competitive

⁷ See for example [...]
⁸ See for example [...]
⁹ See for example [...]
¹⁰ See for example [...]
¹¹ See for example [...]
¹² See for example [...]
¹³ See for example [...]
¹⁴ See for example [...]
¹⁵ See for example [...]
¹⁶ See for example [...]
¹⁷ See for example [...]
¹⁸ See for example [...]

discussions took place in the EEA, mainly in France or Germany¹⁹. The conduct took place with varying degrees of intensity. Between 2004 and 2006, the parties progressively developed their anti-competitive contacts towards sales to all OEMs which were customers of the parties in the EEA in 2007. The anti-competitive discussions prior to 2007 concerned sales to the following OEMs:

- (a) 2004-2005 – Automotive Lighting and Valeo sales to Fiat, Iveco, VW, BMW, General Motors, Renault and PSA;
- (b) 2006 – Valeo sales to Fiat, Iveco, VW, BMW, General Motors, Renault and PSA;
- (c) 2006 – Automotive Lighting sales to Fiat, Iveco, VW, BMW, General Motors, Renault, PSA and Daimler Chrysler; and
- (d) 2006 – Hella sales to Daimler Chrysler.

4.2. Geographic scope of the infringement

- (30) The geographic scope of the infringement was EEA-wide throughout the relevant periods.

4.3. Duration of the infringement

- (31) Based on the available evidence, a continuous set of anti-competitive contacts involving Valeo and Automotive Lighting started on 7 July 2004²⁰ and anti-competitive contacts involving Hella started on 1 January 2006²¹.
- (32) Based on the available evidence, 25 October 2007 was the end date for the participation of Valeo Automotive Lighting and Hella in the infringement.²²

5. LEGAL ASSESSMENT

- (33) Having regard to the body of evidence, the facts as described in Section 4 and the Parties' clear and unequivocal acknowledgement of the facts and the legal qualification thereof contained in their settlement submissions and their replies to the Statement of Objections, the Commission's legal assessment is set out in Sections 5.1 and 5.2.

¹⁹ See for example [...]

²⁰ [...]

²¹ [...] in combination with [...]

²² [...]

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

5.1.1. Agreements and concerted practices

5.1.1.1. Principles

- (34) 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.
- (35) 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.²³
- (36) 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.²⁴

5.1.1.2. Application in this case

- (37) Based on the submissions of the parties and the other evidence obtained in this case, 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 individually and cumulatively,

²³ 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 173-174.

²⁴ 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.

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

- (38) The conduct described in Section 4 therefore presents all the characteristics of an agreement and/or concerted practice within the meaning of Article 101(1) of the Treaty as well as Article 53(1) of the EEA Agreement, which had as its object the prevention, restriction and/or distortion of competition in respect of the supply of original equipment spare parts to the OEM or their authorised service networks within the EEA, after the series production of a car model has terminated.
- (39) 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.

5.1.2. *Single and continuous infringement*

5.1.2.1. Principles

- (40) 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.²⁵

5.1.2.2. Application in this case

- (41) Based on the submissions of the parties and the other evidence obtained in this case, the Commission concludes that the conduct described in Section 4 constitutes a single and continuous infringement of Article 101(1) of the Treaty and Article 53(1) of the EEA Agreement. The evidence in the Commission file shows that the parties engaged in anti-competitive practices which formed part of an overall plan to pursue the common objective of the prevention, restriction and/or distortion of competition in the OES Lighting Systems sector after the end of production in the EEA between 7 July 2004 and 25 October 2007.
- (42) The evidence shows that the conduct was an ongoing process and did not consist of isolated or sporadic occurrences. The contacts between the parties were of continuous nature, taking place in the same or a similar manner, involving the same individuals (or their successors, as the case may be) and covering identical, or largely similar, topics. The individual elements of the infringement were in pursuit of a single anti-competitive object which remained the same throughout the whole period of the infringement, namely to prevent, restrict and/or distort competition in the OES Lighting Systems sector after the end of production. Each of the parties knowingly

²⁵ 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.

contributed to achieving this common objective in the manner appropriate to their own specific circumstances and was aware of the actual conduct planned or put into effect by the other participants in pursuit of the same objective or, at the very least, could reasonably have foreseen it and was prepared to take the risk.

- (43) The Commission has therefore reached the conclusion that the parties participated in a single and continuous infringement of Article 101(1) of the Treaty and Article 53(1) of the EEA Agreement.

5.1.3. *Restriction of competition*

5.1.3.1. Principles

- (44) 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.
- (45) 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.²⁶ 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.²⁷
- (46) 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 they have actual effects on the market.²⁸

5.1.3.2. Application in this case

- (47) Based on the submissions of the parties and the other evidence obtained in this case, the participants coordinated their behaviour to reduce uncertainty between themselves in relation to the supply of original equipment spare parts to the OEM or their authorised service networks in the EEA, after the series production of a car model has terminated, with a view to avoiding the erosion of their margins.

²⁶ 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.

²⁷ 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.

²⁸ 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.

(48) The Commission has therefore reached the conclusion that the **object** of the behaviour of the participants was to restrict competition within the meaning of Article 101(1) of the Treaty and Article 53(1) of the EEA Agreement.

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

5.1.4.1. Principles

(49) Article 101(1) of the Treaty is aimed at 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.²⁹

5.1.4.2. Application to this case

(50) The evidence shows that during the relevant period, the parties sold large quantities of Lighting Systems to customers in the EEA. Those sales involved a substantial volume of trade between several Member States and between several Contracting Parties to the EEA Agreement.

(51) The Commission therefore concludes that the conduct described in Section 4 was capable of having an appreciable effect upon the 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.

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

5.2.1. Principles

(52) 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.

²⁹ 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.

5.2.2. Application in this case

- (53) On the basis of the facts before the Commission, there **are no indications** that the conduct of Valeo, Automotive Lighting and Hella entailed any benefits for the customers. Accordingly, the Commission concludes 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.

6. DURATION OF THE INFRINGEMENT

- (54) As described in Section 4.3, the Commission concludes that the duration of the infringement was from 7 July 2004 to 25 October 2007.
- (55) The Commission concludes that the overall duration of the participation of each party in the infringement is as follows:
- Valeo from 7 July 2004³⁰ to 25 October 2007³¹;
 - Automotive Lighting from 7 July 2004³² to 25 October 2007³³; and
 - Hella from 1 January 2006³⁴ to 25 October 2007³⁵.

In particular, the evolution of each party's participation in the infringement with regard to its customers is illustrated in Table 1:

TABLE 1.

Undertaking	Customers	Duration
Valeo	VW, General Motors, BMW, Fiat, PSA, Renault and Iveco	7 July 2004 to 25 October 2007
	All other customers of Valeo	1 January 2007 to 25 October 2007
Automotive Lighting	VW, General Motors, BMW, Fiat, PSA, Renault and Iveco	7 July 2004 to 25 October 2007
	Daimler Chrysler	1 January 2006 to 25 October 2007
	All other customers of Automotive Lighting	1 January 2007 to 25 October 2007

³⁰ [...]
³¹ [...]
³² [...]
³³ [...]
³⁴ [...] in combination with [...]
³⁵ [...]

Undertaking	Customers	Duration
Hella	Daimler Chrysler	1 January 2006 to 25 October 2007
	All other customers of Hella	1 January 2007 to 25 October 2007

7. LIABILITY

7.1. Principles

- (56) 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.³⁶
- (57) 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.³⁷
- (58) The Commission cannot merely find that an undertaking is able to exert decisive influence over another undertaking, without checking whether such influence was actually exerted. On the contrary, it is for the Commission to demonstrate such decisive influence on the basis of factual evidence, including, in particular, any management power one of the undertakings may have over the other.³⁸
- (59) In this particular case, however, 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.³⁹

7.2. Application in this case

- (60) Having regard to the body of evidence and the facts set out in Section 4, the parties' clear and unequivocal acknowledgements 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

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

³⁷ 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.

³⁸ 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.

³⁹ 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 concerned legal entities as set out in Sections 7.2.1 to 7.2.3.

7.2.1. *Valeo*

- (61) Valeo Service SAS has acknowledged liability for its direct participation in the infringement during the period 7 July 2004 - 25 October 2007.
- (62) Valeo Vision SAS has acknowledged liability for its direct participation in the infringement during the period 20 May 2005 - 25 October 2007.
- (63) Valeo S.A. has further acknowledged that it is jointly and severally liable for the conduct of its wholly-owned subsidiaries Valeo Service SAS and Valeo Vision SAS⁴⁰.
- (64) The Commission therefore imputes liability for the infringement jointly and severally to Valeo Service SAS, Valeo Vision SAS and Valeo S.A.

7.2.2. *Automotive Lighting*

- (65) Automotive Lighting Reutlingen GmbH has acknowledged liability for its direct participation in the infringement during the period 7 July 2004 - 25 October 2007.
- (66) Magneti Marelli S.p.A. has further acknowledged that it is jointly and severally liable for the conduct of its wholly-owned subsidiary Automotive Lighting Reutlingen GmbH⁴¹.
- (67) The Commission therefore imputes liability for the infringement jointly and severally to Automotive Lighting Reutlingen GmbH and Magneti Marelli S.p.A.

7.2.3. *Hella*

- (68) Hella KGaA Hueck & Co. has acknowledged liability for its direct participation in the infringement during the period 1 January 2006 - 25 October 2007.
- (69) The Commission therefore imputes liability for the infringement to Hella KGaA Hueck & Co.

8. REMEDIES

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

- (70) 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

⁴⁰ Valeo S.A. held 100% shares in both Valeo Service SAS (95,3% directly and 4,7% indirectly via wholly owned subsidiary Equipment 7 SAS) and Valeo Vision SAS (90% directly and 10% indirectly via wholly owned subsidiary Valeo Finance SAS) throughout the period of the infringement.

⁴¹ The company was formerly named Magneti Marelli Holding S.p.A. and held directly 100% shares in Automotive Lighting Reutlingen GmbH throughout the period of the infringement.

undertakings concerned to bring such infringement to an end in accordance with Article 7 of Regulation (EC) No 1/2003.

- (71) 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

- (72) 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 Agreement⁴². For each undertaking participating in the infringement, the fine must not exceed 10% of its total turnover in the preceding business year.
- (73) 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.
- (74) Fines should therefore be imposed on the addressees of Decision.
- (75) Pursuant to Article 23(3) of Regulation (EC) No 1/2003, the Commission must, in fixing the amount of fine, have regard both to the gravity and 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 1/2003⁴³ ("Guidelines on fines").
- (76) Finally, the Commission will apply, as appropriate, the provisions of the Leniency Notice and the Commission Notice on the conduct of settlement procedures⁴⁴ ("Settlement Notice").

8.3. Calculation of the fines

- (77) 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 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

⁴² 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).

⁴³ 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).

⁴⁴ 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).

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*

- (78) The basic amount of the fine to be imposed on the undertakings concerned is to be set by reference to the value of their sales⁴⁵, 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 OES Lighting Systems sales after the end of series production in the EEA.
- (79) The Commission normally takes the sales made by the undertakings during the last full business year of their participation in the infringement.⁴⁶ 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. In this case, in light of the evolving scope of the conduct (see recital (80)) and in order to better reflect the actual impact of the infringement, it is appropriate to use as a proxy the annual value of sales (an annual average calculated on the basis of the actual value of sales made by the undertakings during the full calendar months of their respective participation in the infringement) as the basis for the calculation of the basic amount of the fines.
- (80) Furthermore, in this case, the scope of conduct in terms of the OEM customers affected gradually expanded from a number of OEMs to all OEMs which were customers of the parties in the EEA in 2007. As a result, three distinct groups of customers to whom the parties sold their products for various periods of time throughout the infringement were identified:
- Group 1 customers consisting of VW, General Motors, BMW, Fiat, PSA, Renault and Iveco, which were concerned by the infringement for its entire duration ("**Group 1**") in relation to sales of Valeo and Automotive Lighting;
 - Group 2 customers consisting of:
 - (a) For Valeo, all its customers other than Group 1 customers;
 - (b) For Automotive Lighting all its customers other than Group 1 and Group 3 customers;
 - (c) For Hella all its customers other than Group 3 customer;

⁴⁵ Point 12 of the Guidelines on fines.

⁴⁶ Point 13 of the Guidelines on fines.

and which were concerned by the infringement for the period 1 January 2007 - 25 October 2007 ("**Group 2**"); and

- Group 3 customer consisting solely of Daimler Chrysler, which was concerned by the infringement for the period 1 January 2006 – 25 October 2007 ("**Group 3**") in relation to sales of Automotive Lighting and Hella.

(81) The value of sales is calculated separately for the sales to each of the three groups of customers covered by the conduct over the different periods of the infringement. Valeo is concerned by sales to Group 1 and Group 2 customers, Hella by sales to Group 2 and Group 3 customers and Automotive Lighting is concerned by sales to all three customer Groups. Accordingly, the Commission takes into account the values of sales for each undertaking in Table 2:

TABLE 2.

Undertaking	Value of sales (EUR)	Duration
Valeo	Group 1: [...] Group 2: [...] [...]	Group 1: 7 July 2004 to 25 October 2007 Group 2: 1 January 2007 to 25 October 2007
Automotive Lighting	Group 1: [...] Group 2: [...] Group 3: [...] [...]	Group 1: 7 July 2004 to 25 October 2007 Group 2: 1 January 2007 to 25 October 2007 Group 3: 1 January 2006 to 25 October 2007
Hella	Group 2: [...] Group 3: [...] [...]	Group 2: 1 January 2007 to 25 October 2007 Group 3: 1 January 2006 to 25 October 2007

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

- (82) 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 duration.⁴⁷

8.3.2.1. Gravity

- (83) 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 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.
- (84) In its assessment, the Commission considers the facts described in this Decision, and in particular the fact that horizontal price-fixing agreements are, by their very nature, among the most harmful restrictions of competition. Therefore, the proportion of the value of sales to be taken into account for such infringements is to be set at the higher end of the scale of the value of sales.⁴⁸ The Commission takes also into account that the infringement covered the entire EEA.
- (85) Given the specific circumstances of this case, in particular the nature and the geographic scope of the infringement, the proportion of the value of sales to be taken into account is 16 %.

8.3.2.2. Duration

- (86) In calculating the fine to be imposed on each undertaking, the Commission also takes into consideration the duration of the infringement, as described in Section 4.3. The time period to be taken into account should be calculated on the basis of the full years, months and days. Furthermore, in this case, distinct duration multipliers are applied to each group of customers as specified in recital (80).
- (87) Each party has, in its settlement submission and in its reply to the Statement of objections, confirmed the relevant value of sales for the calculation of its fine.
- (88) Accordingly, the Commission takes into account the duration multipliers for each undertaking and each group of customers respectively in Table 3:

⁴⁷ Points 19-26 of the Guidelines on fines.

⁴⁸ Point 23 of the Guidelines on fines.

TABLE 3.

Undertaking	Duration	Multipliers
Valeo	Group 1: 7 July 2004 to 25 October 2007	3.30
	Group 2: 1 January 2007 to 25 October 2007	0.81
Automotive Lighting	Group 1: 7 July 2004 to 25 October 2007	3.30
	Group 2: 1 January 2007 to 25 October 2007	0.81
	Group 3: 1 January 2006 to 25 October 2007	1.81
Hella	Group 2: 1 January 2007 to 25 October 2007	0.81
	Group 3: 1 January 2006 to 25 October 2007	1.81

8.3.3. *Determination of the additional amount*

- (89) The infringement committed by the Parties involves horizontal price-fixing within the meaning of point 25 of the Guidelines on fines. To deter the undertakings from even entering into such illegal practices, the basic amount of the fine to be imposed should include a sum of between 15% and 25% of the value of sales on the basis of the criteria listed in recital (82) with respect to the variable amount.
- (90) 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 the additional amount is 16 %.

8.3.4. *Calculations and conclusions on basic amounts*

- (91) Based on the criteria explained in recitals (78) to (90), the basic amount of the fine to be imposed on each undertaking is set out in Table 4.

TABLE 4. Basic amount of the fine

Undertaking	Basic amount (EUR)
Valeo	[...]
Automotive Lighting	[...]
Hella	[...]

8.4. **Adjustments to the basic amount of the fine**

8.4.1. *Aggravating or mitigating circumstances*

- (92) The Commission may increase the basic amount if it finds that there are aggravating circumstances. Those circumstances are listed non-exhaustively in point 28 of the Guidelines on fines. The Commission may reduce the basic amount if there are any

mitigating circumstances. Those circumstances are listed non-exhaustively in point 29 of the Guidelines on fines.

- (93) There are **no aggravating or mitigating circumstances in this case.**

8.4.2. *Specific increase for deterrence*

- (94) 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.⁴⁹
- (95) In this case, the Commission will not increase the fines to be imposed on any of the parties on account of deterrence.

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

- (96) 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.⁵⁰
- (97) In this case, none of the fines calculated exceed 10% of the respective undertaking's total turnover in the business year preceding the date of this Decision⁵¹.

8.6. **Application of the Leniency Notice**

8.6.1. *Immunity from fines*

- (98) Valeo submitted an immunity application under the Leniency Notice on 25 January 2012 and was granted conditional immunity from fines on 18 May 2016.
- (99) Valeo's cooperation fulfilled the conditions of the Leniency Notice. Valeo should, therefore, be granted immunity from fines in this case

8.6.2. *Reduction of fines*

8.6.2.1. Automotive Lighting

- (100) On 10 August 2012, Automotive Lighting applied for a reduction of fines. It was also 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.

⁴⁹ Point 30 of the Guidelines on fines.

⁵⁰ 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.

⁵¹ Year 2016 for Valeo and AL and year 2015 for Hella.

- (101) Automotive Lighting submitted new evidence to the Commission [...] as well as evidence of a corroboratory nature providing further background information on the infringement and confirming the existence of the cartel within the timeframe identified by the Commission. However, a significant amount of evidence used in establishing this infringement was already provided by the immunity applicant or gathered at the unannounced inspections and documented in the Commission's file by the time of Automotive Lighting's relevant submissions.
- (102) In light of the assessment in recitals (100)-(101), the fine imposed on Automotive Lighting should be reduced by 35%.

8.6.2.2. Hella

- (103) On 18 September 2012, Hella applied for a reduction of fines. It 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.
- (104) Although Hella applied for leniency shortly after the unannounced inspections, the undertaking first submitted evidence of the infringement, which represents a significant added value, at a very late stage of the investigation, more than two and a half years after the unannounced inspections. By that time, the vast majority of evidence used in establishing this infringement was already in the Commission's file. Nevertheless, Hella provided, [...], valuable [...] information and previously unknown details relating to the content of collusive arrangements, thus enabling the Commission to complete its understanding of the infringement and its objectives.
- (105) In light of the assessment in recitals (103)-(104), a reduction of the fine of 20% should be granted to Hella.

8.7. Application of the Settlement Notice

- (106) 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% 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.
- (107) As a result of the application of the Settlement Notice, the amount of the fine to be imposed on Automotive Lighting and Hella should be reduced by 10% and that reduction should be added to their leniency reward.

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

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

TABLE 5. Fines

Undertaking	Fines (EUR)
Valeo	0
Automotive Lighting	16 347 000
Hella	10 397 000

HAS ADOPTED THIS DECISION:

Article 1

The following undertakings infringed Article 101 of the Treaty and Article 53 of the EEA Agreement by participating in a single and continuous infringement covering the whole European Economic Area consisting of the coordination of prices and certain other trading conditions concerning the supply of automotive lighting systems on the original equipment spare parts market after the series production of a car model has terminated:

- (a) Valeo S.A. and Valeo Service SAS from 7 July 2004 until 25 October 2007; Valeo Vision SAS from 20 May 2005 until 25 October 2007;
- (b) Automotive Lighting Reutlingen GmbH and Magneti Marelli S.p.A. from 7 July 2004 until 25 October 2007;
- (c) Hella KGaA Hueck & Co. from 1 January 2006 until 25 October 2007.

Article 2

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

- (a) On Valeo S.A., Valeo Service SAS and Valeo Vision SAS: EUR 0;
- (b) On Automotive Lighting Reutlingen GmbH and Magneti Marelli S.p.A. jointly and severally liable: EUR 16 347 000;
- (c) On Hella KGaA Hueck & Co.: EUR 10 397 000.

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.40013

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 Delegated Regulation (EU) No 1268/2012⁵².

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) Valeo S.A., 43, rue Bayen, 75017 Paris, France
- (b) Valeo Service SAS, 70, rue Pleyel, 93200 Saint Denis, France
- (c) Valeo Vision SAS, 34, rue Saint-André, 93012 Bobigny Cedex, France
- (d) Automotive Lighting Reutlingen GmbH, Tübinger Strasse 123, 72762 Reutlingen, Germany
- (e) Magneti Marelli S.p.A., Viale Aldo Borletti 61/63, 20011 Corbetta (MI), Italy
- (f) Hella KGaA Hueck & Co., Rixbecker Straße 75, 59552 Lippstadt, Germany

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

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

Done at Brussels, 21.6.2017

For the Commission
Margrethe VESTAGER
Member of the Commission