



EUROPEAN COMMISSION  
DG Competition

## ***CASE AT.39748 – Automotive Wire Harnesses***

(Only the English text is authentic)

### **CARTEL PROCEDURE**

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

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Article 7 Regulation (EC) 1/2003

Date: 10/07/2013

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EUROPEAN  
COMMISSION

Brussels, 10.7.2013  
C(2013) 4222 final

*COMP Operations*

**COMMISSION DECISION**

**of 10.7.2013**

**addressed to:**

- **Sumitomo Electric Wiring Systems (Europe) Ltd. and Sumitomo Electric Industries Ltd.**
  - **Yazaki Europe Ltd. and Yazaki Corporation**
  - **Furukawa Automotive Systems Inc. and Furukawa Electric Co. Ltd**
  - **S-Y Systems Technologies France SAS and S-Y Systems Technologies Europe GmbH**
  - **Leoni Wiring Systems France SAS and Leoni AG**
- 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.39748 – Automotive Wire Harnesses)**

(Only the English text is authentic)

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## COMMISSION DECISION

of 10.7.2013

addressed to:

- **Sumitomo Electric Wiring Systems (Europe) Ltd. and Sumitomo Electric Industries Ltd.**
  - **Yazaki Europe Ltd. and Yazaki Corporation**
  - **Furukawa Automotive Systems Inc. and Furukawa Electric Co. Ltd**
  - **S-Y Systems Technologies France SAS and S-Y Systems Technologies Europe GmbH**
  - **Leoni Wiring Systems France SAS and Leoni AG**
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(AT.39748 – Automotive Wire Harnesses)**

(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 Treaty,<sup>1</sup> and in particular Article 7 and Article 23(2) thereof,

Having regard to Commission Regulation (EC) No 773/2004 of 7 April 2004 relating to the conduct of proceedings by the Commission pursuant to Articles 81 and 82 of the EC Treaty,<sup>2</sup> and in particular Article 10a thereof,

Having regard to the Commission decision of 3 August 2012 to initiate proceedings in this case,

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

<sup>2</sup> OJ L 123, 27.4.2004, p. 18.

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

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

Having regard to the final report of the hearing officer in this case,<sup>3</sup>

Whereas:

## **1. INTRODUCTION**

- (1) The addressees of this Decision participated in one or more separate infringements of Article 101 of the Treaty and Article 53 of the Agreement creating the European Economic Area (“EEA Agreement”).
- (2) Each of the infringements consists of agreements and/or concerted practices covering the territories of the contracting parties to the EEA Agreement by which the participants in the infringement coordinated their pricing behaviour and allocated the supplies of wire harnesses (“WH”) to certain manufacturers of motor vehicles.
- (3) This Decision covers five separate infringements relating to the supply of WH to Toyota, Honda, Nissan, Renault I and Renault II.
- (4) This Decision is addressed to the following legal entities:
  - Sumitomo Electric Wiring Systems (Europe) Ltd and Sumitomo Electric Industries Ltd. (“Sumitomo”);
  - Yazaki Europe Ltd and Yazaki Corporation (“Yazaki”);
  - Furukawa Automotive Systems Inc and Furukawa Electric Co. Ltd (“Furukawa”);
  - S-Y Systems Technologies France SAS and S-Y Systems Technologies Europe GmbH (“SYS”); and
  - Leoni Wiring Systems France SAS and Leoni AG (“Leoni”).

## **2. BACKGROUND**

### **2.1. The product concerned**

- (5) WH represent an assembly of cables transmitting signals or electric power linking computers to various components built in a motor vehicle. WH are designed for

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<sup>3</sup> Final report of the Hearing Officer of 5 July 2013.

specific vehicles and platforms. They are often referred to as the central “nervous system” of the motor vehicle.

- (6) For the purposes of this Decision, in cases where they are included in a WH request for quotation (“RFQ”), the definition of WH might also involve surrounding components such as junction blocks, relay and fuse boxes, tapes, tubes etc.

## **2.2. The undertakings subject to the present proceedings**

### *2.2.1. Sumitomo*

- (7) The relevant legal entities are:
- Sumitomo Electric Wiring Systems (Europe) Ltd. with registered offices at Cemetery Road, Silverdale, Newcastle-under-Lyme, Staffordshire ST5 6PA, United Kingdom;
  - Sumitomo Electric Industries Ltd. with registered offices at 5-33 Kitahama 4-chome, Chuo-ku, Osaka 541-0041, Japan.
- (8) Sumitomo Electric Industries Ltd. indirectly owns 100% of Sumitomo Electric Wiring Systems (Europe) Ltd.
- (9) Sumitomo’s consolidated worldwide turnover was approximately EUR 18.9 billion for the business year ending March 2012. Sumitomo produces WH and is also active in a variety of other sectors.

### *2.2.2. Yazaki*

- (10) The relevant legal entities are:
- Yazaki Europe Ltd. with registered offices at 1-3 Zodiac, Boundary Way, Hemel Hempstead, Hertfordshire HP2 7SJ, United Kingdom;
  - Yazaki Corporation with registered offices at 17<sup>th</sup> Floor, Mita-Kokusai Bldg., 4-28 Mita 1-chome, Minato-ku, Tokyo 108-8333, Japan.
- (11) Yazaki Corporation directly owns 100% of Yazaki Europe Limited.
- (12) Yazaki’s consolidated worldwide turnover was approximately EUR 11.6 billion for the business year ending June 2012. Yazaki produces WH as well as other automotive components.

### *2.2.3. Furukawa*

- (13) The relevant legal entities are:
- Furukawa Automotive Systems Inc. with registered offices at 1000 Amago, Koura, Inukami, Shiga Pref. 522-0242, Japan;
  - Furukawa Electric Co. Ltd with registered offices at 2-3, Marunouchi 2-chome, Chiyoda-ku, Tokyo 100-8322, Japan.



- (14) Furukawa Electric Co. Ltd currently directly owns 100% of Furukawa Automotive Systems Inc. Prior to 15 September 2007, it owned 97.8%.
- (15) Furukawa's consolidated worldwide turnover was approximately EUR 8 billion for the business year ending March 2012. Furukawa produces WH and is also active in a variety of other sectors.

#### 2.2.4. *SYS*

- (16) The relevant legal entities are:
- S-Y Systems Technologies France SAS with registered offices at "Val St Quentin" – Bât. B, 2, rue René Caudron, 78960 Voisins Le Bretonneux, France;
  - S-Y Systems Technologies Europe GmbH with registered offices at Im Gewerbepark B32, 93059 Regensburg, Germany.
- (17) S-Y Systems Technologies Europe GmbH directly owns 100% of S-Y Systems Technologies France SAS.
- (18) SYS's consolidated worldwide turnover was approximately EUR [<500] million for the business year ending March 2012. SYS sells WH and is also active in the automotive components sector.

#### 2.2.5. *Leoni*

- (19) The relevant legal entities are:
- Leoni Wiring Systems France SAS with registered offices at 5 avenue Newton, 78180 Montigny Le Bretonneux, France;
  - Leoni AG with registered offices at Marienstrasse 7, 90402 Nürnberg, Germany.
- (20) Leoni AG indirectly owns 100% of Leoni Wiring Systems France SAS.
- (21) Leoni's consolidated worldwide turnover was approximately EUR 3.8 billion for the business year ending December 2012. Leoni produces WH and is also active in the cable systems industry.

### 3. **PROCEDURE**

- (22) On [...], Sumitomo applied for a marker under points 14 and 15 of the Notice on immunity from fines and reduction of fines in cartel cases ("the Leniency Notice").<sup>4</sup> The application was followed by a number of submissions consisting of oral statements and documentary evidence. The Commission, by decision of 5 February

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<sup>4</sup> OJ C 298, 8.12.2006, p. 17.

2010, granted Sumitomo conditional immunity pursuant to point 8(a) of the Leniency Notice.

- (23) On [...], Furukawa applied for marker and/or immunity from fines. On 12 February 2010, it was informed by the Commission that a marker was no longer available. On [...], Furukawa applied for leniency.
- (24) In February 2010, the Commission carried out inspections at the premises of Yazaki, Leoni, SYS and a number of other undertakings.
- (25) Following the inspections, Yazaki applied for leniency on [...] and SYS applied for leniency on [...].
- (26) Following the inspections and during the course of the investigation, the Commission sent out several rounds of requests for information to undertakings active in the WH sector.
- (27) On 3 August 2012, 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 the "parties" or individually the "party", with a view to engaging in settlement discussions.
- (28) On [...], Leoni applied for leniency.
- (29) Settlement meetings with the parties took place between 25 September 2012 and 14 May 2013. At these meetings, the Commission informed the parties about the objections it envisaged raising against them and disclosed the main pieces of evidence in the Commission file relied on to establish the potential objections.
- (30) The parties were also given access to the relevant parts of the oral statements at the Commission's premises and received a copy of the relevant pieces of documentary evidence and a list of all the documents in the file. The Commission further provided the parties with an estimation of the range of the likely fines to be imposed.
- (31) Each party expressed its view on the objections which the Commission envisaged raising against them. The parties' comments were carefully considered by the Commission and, where appropriate, taken into account.
- (32) At the end of the settlement discussions, each party considered that there was a sufficient common understanding between them and the Commission regarding the potential objections as well as the estimation of the range of likely fines in order to continue the settlement process.
- (33) Between [...] and [...], the parties submitted their formal requests to settle pursuant to Article 10a(2) of Regulation (EC) No 773/2004 (the "settlement submissions") to the Commission. The settlement submission of each party contained the following:
  - an acknowledgement in clear and unequivocal terms of its liability for the infringement(s) 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(s);

- an indication of the maximum amount of the fine(s) the party expects the Commission to impose and which it would accept in the framework of a settlement procedure;
  - the party's confirmation that it has been sufficiently informed of the objections the Commission envisages raising against it and that it has been given sufficient opportunity to make its views known to the Commission;
  - the party's confirmation that it does not envisage requesting access to the file or requesting to be heard 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.
- (34) On 31 May 2013 the Commission adopted a Statement of Objections addressed to Sumitomo, Yazaki, Furukawa, SYS and Leoni. All of the parties replied to the Statement of Objections, confirming that it reflected the contents of their settlement submissions and that therefore they remained committed to following the settlement procedure.

#### **4. DESCRIPTION OF THE INFRINGEMENTS**

##### **4.1. Toyota and Honda infringements**

- (35) The undertakings that participated in the Toyota and Honda infringements are Sumitomo, Yazaki and Furukawa.

##### *4.1.1. Nature and scope of each of the two infringements*

- (36) The overall aim of each of the two infringements was to coordinate the allocation and prices of supplies of WH to Toyota and Honda respectively.
- (37) The anti-competitive contacts took place in the framework of RFQs and annual price reduction (“APR”) requests issued by Toyota and Honda respectively. The contacts took place both in the EEA (with the involvement of Sumitomo and Yazaki) and in Japan (with the involvement of Sumitomo, Yazaki and Furukawa). The anti-competitive contacts covered the supply of WH in the EEA as well as the supply of WH outside the EEA, incorporated into motor vehicles manufactured outside of the EEA and which were subsequently exported to the EEA.
- (38) The guiding principle for the participants of the two infringements in entering discussions for the allocation of supply of WH for a particular RFQ issued by Toyota and Honda was the "incumbent supplier" principle whereby each supplier was

supposed to maintain the share of business it had for an old model with respect to the corresponding new generation.<sup>5</sup>

- (39) Collusive contacts usually started by discussions about allocating families of WH. These discussions took place either in the framework of face-to-face meetings or phone calls.<sup>6</sup> Once an agreement on allocation was reached, the participants of the two infringements discussed and agreed on prices.<sup>7</sup> Typically, for RFQs for which WH were to be supplied outside of the EEA and then incorporated in motor vehicles exported to the EEA, the collusive behaviour took place in Japan. Regarding RFQs for which the WH were to be supplied in the EEA, usually an agreement on allocating the families of WH was concluded in Japan and followed by subsequent anti-competitive contacts in the EEA. The collusion in the EEA predominantly concentrated on agreeing on the price level to be submitted to Toyota and Honda in line with the allocation agreed in Japan.<sup>8</sup>
- (40) In addition to the discussions regarding the RFQs, the participants of the two infringements discussed APR requests from Toyota and Honda where competitors exchanged information concerning these requests and discussed in general terms how to respond to them.<sup>9</sup>

#### *4.1.2. Geographical scope of each of the two infringements*

- (41) The geographic scope of each of the two infringements is at least EEA-wide. The anti-competitive conduct took place both within and outside the EEA and it concerned the supply of WH, inside and outside of the EEA.

#### *4.1.3. Duration of the participation in each of the two infringements*

- (42) The evidence demonstrates that, with respect to Toyota, a continuous set of anti-competitive contacts involving Sumitomo and Yazaki took place from 6 March 2000<sup>10</sup> and involved Furukawa from 24 September 2002.<sup>11</sup>
- (43) The Commission considers 20 October 2005 as the end date of Furukawa's participation in the Toyota infringement.<sup>12</sup> The Commission further considers 5 August 2009 as the end date of Sumitomo's and Yazaki's participation in the Toyota infringement.<sup>13</sup>
- (44) The evidence demonstrates that, with respect to Honda, a continuous set of anti-competitive contacts involving Sumitomo, Furukawa and Yazaki took place from 5 March 2001.<sup>14</sup>

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<sup>5</sup> [...]  
<sup>6</sup> [...]  
<sup>7</sup> [...]  
<sup>8</sup> [...]  
<sup>9</sup> [...]  
<sup>10</sup> [...]  
<sup>11</sup> [...]  
<sup>12</sup> [...]  
<sup>13</sup> [...]  
<sup>14</sup> [...]

- (45) The Commission considers 31 March 2009<sup>15</sup> as the end date for Furukawa's participation in the Honda infringement. The Commission considers 7 September 2009 as the end date of Sumitomo's and Yazaki's participation in the Honda infringement.<sup>16</sup>

#### **4.2. Nissan infringement**

- (46) The undertakings that participated in the Nissan infringement are Sumitomo and Yazaki.

##### *4.2.1. Nature and scope of the infringement*

- (47) The infringement conduct concerned a single RFQ issued by Nissan in 2006 covering the B Platform. Initially, the B Platform was sourced per geographic region and covered four different motor vehicle models, for which WH were supposed to be supplied in different locations, including the EEA. The WH for the future 'European' model covered by the B Platform were to be supplied in the EEA.
- (48) Employees from Sumitomo and Yazaki met in person and remained in contact for the purpose of coordinating their quotation prices and allocating the B Platform RFQ.<sup>17</sup>

##### *4.2.2. Geographical scope of the infringement*

- (49) The geographic scope of the infringement is at least EEA-wide. The anti-competitive conduct took place in Japan, and concerned supply of WH inside and outside of the EEA.

##### *4.2.3. Duration of the participation in the infringement*

- (50) The Commission considers 14 September 2006 as the starting date of Sumitomo's and Yazaki's participation in the infringement.<sup>18</sup>
- (51) The Commission considers 16 November 2006 as the end date of Sumitomo's and Yazaki's participation in the infringement.<sup>19</sup>

#### **4.3. Renault I infringement**

- (52) The undertakings that participated in the Renault I infringement are Sumitomo and SYS.

##### *4.3.1. Nature and scope of the infringement*

- (53) The cartel conduct concerned a single Platform of Renault, namely W95, covering two RFQs. The W95 Platform covers Renault Mégane and Renault Scenic models for which the WH are supplied and the motor vehicles manufactured in the EEA.

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<sup>15</sup> [...]  
<sup>16</sup> [...]  
<sup>17</sup> [...]  
<sup>18</sup> [...]  
<sup>19</sup> [...]

Employees of Sumitomo and SYS met in person and remained in contact throughout the quotation process with the purpose of coordinating quotation price factors and allocating WH for the W95 Platform.<sup>20</sup>

#### *4.3.2. Geographical scope of the infringement*

- (54) The geographic scope of the infringement is EEA-wide. The anti-competitive conduct concerned supply of WH in the EEA.

#### *4.3.3. Duration of the participation in the infringement*

- (55) The Commission considers 28 September 2004 as the starting date of Sumitomo's and SYS's participation in the infringement.<sup>21</sup> The Commission considers 13 March 2006 as the end date of Sumitomo's and SYS's participation in the infringement.<sup>22</sup>

### **4.4. Renault II infringement**

- (56) The undertakings that participated in the Renault II infringement are Sumitomo, SYS and Leoni.

#### *4.4.1. Nature and scope of the infringement*

- (57) The infringement concerned the W52/98 project. The W52/98 project covers the Renault Clio and Dacia Logan models. WH for the W52/98 project are supplied both outside and inside the EEA, with the W52 model being manufactured in the EEA and the W98 model being manufactured outside the EEA and imported in the EEA.

- (58) Employees of Sumitomo, SYS and Leoni met in person and had contacts via phone calls and text messages. During their meetings, which were held during a certain time of the quotation period and prior to the final phase, the participants of the infringement kept each other up to date on their respective quotes, agreed on allocating the project and on certain quotation price factors in order to avoid price battles.<sup>23</sup>

#### *4.4.2. Geographical scope of the infringement*

- (59) The geographic scope of the infringement is at least EEA-wide. The anticompetitive conduct took place in the EEA and concerned supply of WH inside and outside of the EEA.

#### *4.4.3. Duration of the participation in the infringement*

- (60) The Commission considers 5 May 2009 as the starting date of Sumitomo's and Leoni's participation in the infringement<sup>24</sup> and 26 May 2009 as the starting date of SYS's participation in the infringement.<sup>25</sup>

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<sup>20</sup> [...]  
<sup>21</sup> [...]  
<sup>22</sup> [...]  
<sup>23</sup> [...]  
<sup>24</sup> [...]

- (61) The Commission considers 20 October 2009 as the end date of Sumitomo's participation in the infringement and 22 December 2009 as the end date of Leoni's and SYS's participation in the infringement.<sup>26</sup>

## **5. LEGAL ASSESSMENT**

- (62) 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 their legal qualification thereof, the Commission makes the following legal assessment.

### **5.1. Application of Article 101 of the Treaty and Article 53 of the EEA Agreement**

#### *5.1.1. The nature of the infringements*

##### *5.1.1.1. Agreements and concerted practices*

##### ***Principles***

- (63) Article 101 of the Treaty and Article 53 of the EEA Agreement prohibit anti-competitive agreements between undertakings, decisions by associations of undertakings and concerted practices.
- (64) 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 of the Treaty and Article 53 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 co-ordination between undertakings by which, without having reached the stage where an agreement properly so-called has been concluded, they knowingly substitute practical co-operation between them for the risks of competition. Thus, conduct may fall under Article 101 of the Treaty and Article 53 of the EEA Agreement as a concerted practice even where the parties have not explicitly subscribed to a common plan defining their action in the market but knowingly adopt or adhere to collusive devices which facilitate the coordination of their commercial behaviour.<sup>27</sup>
- (65) In the case of a complex infringement of long duration, it is not necessary for the Commission to characterise the conduct as exclusively one or other of these forms of illegal behaviour. The concepts of agreement and concerted practice are fluid and may overlap. It would be analytically artificial to sub-divide a continuing common enterprise having one and the same overall objective into several different forms of infringement. An infringement may therefore be comprised of both agreements and concerted practices at the same time.<sup>28</sup>

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

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

<sup>27</sup> Case T-7/89 *Hercules v Commission* [1991] ECR II-1711, paragraph 256. See also Case 48/69 *Imperial Chemical Industries v Commission* [1972] ECR 619, paragraph 64, and Joined Cases 40 to 48, 50, 54 to 56, 111, 113 and 114/73 *Suiker Unie and others v Commission* [1975] ECR 1663, paragraphs 173-174.

<sup>28</sup> Case T-7/89 *Hercules v Commission* [1991] ECR II-1711, paragraph 264.

### *Application to this case*

- (66) It emerges from the facts described in Sections 4.1.1, 4.2.1, 4.3.1 and 4.4.1, that the addressees of this Decision took part in one or more infringements, each of which was aimed at allocating the supplies of WH to a particular motor vehicle manufacturer and subsequently at coordinating prices or certain quotation price factors by the above described collusive behaviour.
- (67) Each of the five infringements may be characterised as an infringement consisting of various actions which can be classified as an agreement and/or concerted practice, whereby competitors knowingly substituted the risks of competition between them for practical co-operation.
- (68) The behaviour with regard to each of the five infringements therefore presents all the characteristics of an agreement and/or concerted practice within the meaning of Article 101 of the Treaty and Article 53 of the EEA Agreement.

#### 5.1.1.2. Single and continuous infringement

### *Principles*

- (69) A complex cartel may properly be viewed as a single and continuous infringement for the timeframe in which it existed. The concept of “single agreement” or “single infringement” presupposes a complex of practices adopted by various parties in pursuit of a single anti-competitive economic aim.<sup>29</sup> The cartel may well be varied from time to time, or its mechanisms adapted or strengthened to take account of new developments. It would be artificial to split up such continuous conduct, characterised by a single purpose, by treating it as consisting of several separate infringements, when what was involved was a single infringement which progressively would manifest itself in both agreements and concerted practices.
- (70) The mere fact that each participant in an infringement may play the role which is appropriate to its own specific circumstances does not exclude its responsibility for the infringement as a whole, including acts committed by other participants but which share the same anti-competitive object or effect. An undertaking which takes part in the common unlawful enterprise by actions which contribute to the realisation of the shared objective is equally responsible, for the whole period of its adherence to the common scheme, for the acts of the other participants pursuant to the same infringement, where it is established that the undertaking in question was aware of the unlawful behaviour of the other participants or could reasonably have foreseen it and was prepared to take the risk.<sup>30</sup>

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<sup>29</sup> Joined Cases T-25/95 and others *Cement* [2000] ECR II-491, paragraph 369.

<sup>30</sup> Case 49/92 P *Commission v Anic Participazioni* [1999] ECR I-4125, paragraph 83: “an undertaking that had taken part in such an infringement through conduct of its own which formed an agreement or concerted practice having an anti-competitive object for the purposes of Article 85(1) of the Treaty and which was intended to help bring about the infringement as a whole was also responsible, throughout the entire period of its participation in that infringement, for conduct put into effect by other undertakings in the context of the same infringement. That is the case where it is established that the undertaking in question was aware of the offending conduct of the other participants or that it could reasonably have foreseen it and that it was prepared to take the risk.”



### *Application to this case*

- (71) The conduct described in Section 4.1 constitutes two separate single and continuous infringements of Article 101 of the Treaty and Article 53 of the EEA Agreement.
- (72) With regard to each of the two infringements, Sumitomo, Yazaki and Furukawa used bilateral and multilateral contacts as a means to pursue a single anti-competitive object and a single economic aim, namely that of co-ordinating the allocation and prices of WH supplied to Toyota and to Honda respectively in order to restrict price competition between the three undertakings.
- (73) All RFQs published by Toyota and Honda in the EEA as well as many of the RFQs published in Japan during the infringement period were subject to allocation between Sumitomo and Yazaki and in some instances also Furukawa. The contacts between Sumitomo, Yazaki and Furukawa followed the same pattern and continued throughout the infringement period. Following an agreement on which families of WH each undertaking would target (mostly based on the "incumbent supplier" principle), Sumitomo, Yazaki and Furukawa discussed prices of the individual WH in line with the agreed allocation.
- (74) Meetings took place in Japan (Sumitomo, Yazaki and Furukawa) and in Europe (only Sumitomo and Yazaki). In general, for RFQs for which WH were to be supplied in the EEA, the meetings that took place in Japan were intertwined with the European contacts and formed part of the common scheme which was then subsequently implemented in the EEA. The European subsidiaries of Sumitomo and Yazaki were also in frequent contacts with their Japanese parent companies and informed them about the progress of the discussions.
- (75) In conclusion, the available evidence shows that the conduct described in Section 4.1 was an on-going process and did not consist of isolated occurrences. The different elements of each of the two infringements were each in pursuit of a single anti-competitive object, which remained the same throughout the duration of each of the two infringements.

#### *5.1.2. Restriction of competition*

### *Principles*

- (76) Article 101(1) of the Treaty and Article 53(1) of the EEA Agreement prohibit agreements and concerted practices which have as their object or effect the restriction of competition by directly or indirectly fixing prices or any other trading conditions. It is settled case-law that, for the purpose of the application of Article 101(1) of the Treaty and Article 53(1) of the EEA Agreement, there is no need to take into account the actual effects of an agreement when it has as its object the prevention, restriction or distortion of competition within the common market.<sup>31</sup> The same applies to concerted practices.<sup>32</sup>

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<sup>31</sup> Case T-62/98 *Volkswagen AG v Commission* [2000] ECR II-2707, paragraph 178 and case-law cited therein.

<sup>32</sup> Case C-199/92 *P Hüls v Commission*, [1999] ECR I-4287, paragraphs 158-166.

### *Application to this case*

- (77) The participants in each of the five infringements described in this Decision coordinated their behaviour to remove uncertainty between themselves in relation to the allocation and pricing of supplies of WH to Toyota, Honda, Nissan and Renault respectively.
- (78) Therefore, the **object** of the behaviour of the participants in each of the five infringements was to restrict competition within the meaning of Article 101(1) of the Treaty and Article 53(1) of the EEA Agreement.

#### *5.1.3. Effect on trade between Member States and between contracting parties to the EEA Agreement*

### *Principles*

- (79) Article 101 of the Treaty is aimed at agreements and concerted practices which might harm the attainment of an internal market between the Member States, whether by partitioning national markets or by affecting the structure of competition within the internal market. Similarly, Article 53 of the EEA Agreement is directed at agreements that undermine the achievement of a homogenous EEA.
- (80) The application of Article 101 of the Treaty and Article 53 of the EEA Agreement is not, however, limited to that part of the participants' sales that actually involves the transfer of goods from one Member State to another. Nor is it necessary, in order for these provisions to apply, to show that the individual conduct of each participant, as opposed to the infringement as a whole, affected trade between the Member States<sup>33</sup> and between contracting parties to the EEA Agreement.
- (81) The Union Courts have consistently held that: "*in order that an agreement between undertakings may affect trade between Member States, it must be possible to foresee with a sufficient degree of probability on the basis of a set of objective factors of law or fact that it may have an influence, direct or indirect, actual or potential, on the pattern of trade between Member States. Article 101 TFEU does not require that agreements have actually affected trade between Member States, but it does require that it be established that the agreements are capable of having that effect.*"<sup>34</sup>

### *Application to this case*

#### *5.1.3.1. Toyota and Honda infringements*

- (82) During the relevant period, Sumitomo and Yazaki sold important quantities of WH to Toyota's and Honda's production sites in the EEA. Moreover, a significant volume of WH was sold to Toyota's and Honda's production facilities outside the EEA by Sumitomo, Yazaki and Furukawa. Certain motor vehicles produced outside the EEA were subsequently exported to the EEA and sold to EEA customers.

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<sup>33</sup> Case T-13/89 *Imperial Chemical Industries v. Commission* [1992] ECR II-1021, paragraph 304  
<sup>34</sup> Case 56/65 *Société Technique Minière* [1966] ECR 282, paragraph 7; Case 42/84 *Remia and Others* [1985] ECR 2545, paragraph 22; Joined Cases T-25/95 and others *Cement* [2002] ECR II-491; and Joined Cases C-215/96 and C-216/96 *Bagnasco and Others* [1999] ECR I-135, paragraph 48.

- (83) The sales of WH and motor vehicles involve a substantial volume of trade between Member States and between contracting parties to the EEA Agreement. Therefore, the pricing co-ordination and thus both the Toyota and Honda infringements were capable of having an appreciable effect upon trade between Member States and between contracting parties to the EEA Agreement within the meaning of Article 101 of the Treaty and Article 53 of the EEA Agreement.

#### 5.1.3.2. Nissan infringement

- (84) During the relevant period, Sumitomo and Yazaki co-ordinated their prices and allocated the supply of WH to Nissan for motor vehicles to be manufactured in the EEA and sold throughout the EEA, and for motor vehicles to be manufactured outside of the EEA but exported and sold to customers in the EEA.
- (85) The sales of WH and motor vehicles involve a substantial volume of trade between Member States and between the contracting parties to the EEA Agreement. Therefore, the infringement was such as to potentially influence a substantial volume of trade for WH and motor vehicles between the Member States and between the contracting parties to the EEA Agreement within the meaning of Article 101 of the Treaty and Article 53 of the EEA Agreement.

#### 5.1.3.3. Renault I infringement

- (86) During the relevant period, Sumitomo and SYS co-ordinated certain quotation price factors and allocated the supply of WH to Renault for motor vehicles to be manufactured in the EEA and sold throughout the EEA.
- (87) The sales of WH and motor vehicles involve a substantial volume of trade between Member States and between the contracting parties to the EEA Agreement. Therefore, the infringement was such as to potentially influence a substantial volume of trade for WH and motor vehicles between the Member States and between the contracting parties to the EEA Agreement within the meaning of Article 101 of the Treaty and Article 53 of the EEA Agreement.

#### 5.1.3.4. Renault II infringement

- (88) During the relevant period, Sumitomo, SYS and Leoni co-ordinated certain quotation price factors and allocated the supply of WH to Renault for motor vehicles to be manufactured in the EEA and sold throughout the EEA, and for motor vehicles to be manufactured outside of the EEA but exported and sold to customers in the EEA.
- (89) The sales of WH and motor vehicles involve a substantial volume of trade between Member States and between the contracting parties to the EEA Agreement. Therefore, the infringement was such as to potentially influence a substantial volume of trade for WH and motor vehicles between Member States and between the contracting parties to the EEA Agreement within the meaning of Article 101 of the Treaty and Article 53 of the EEA Agreement.

#### 5.1.4. *Non-applicability of Article 101(3) of the Treaty*

- (90) 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 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.

- (91) There **is no indication** that the behaviour by the undertakings that participated in each of the five infringements entailed any efficiency benefits or otherwise promoted technical or economic progress. Complex infringements amounting to secretly organised price coordination between manufacturers, like those which are the subject of this Decision, are, by definition, among the most detrimental restrictions of competition. They do not benefit consumers.
- (92) Accordingly, the conditions for exemption provided for in Article 101(3) and Article 53(3) are not met in this case with regard to any of the five infringements.

## **6. DURATION OF THE PARTICIPATION OF THE ADDRESSEES IN THE INFRINGEMENTS**

- (93) For the purposes of establishing the duration to be taken into account for each of the undertakings involved, the Commission has taken in this case, and without prejudice to a possible different approach in other cases, the date of the first known anti-competitive contact of the respective undertaking with its competitors as the starting date and the date of the last known anti-competitive contact of the respective undertaking with its competitors as the end date of its participation in the infringement.
- (94) The duration of the undertakings' involvement in each of the infringements is as follows:
- Toyota infringement: Sumitomo and Yazaki from 6 March 2000 to 5 August 2009 and Furukawa from 24 September 2002 to 20 October 2005;
  - Honda infringement: Sumitomo and Yazaki from 5 March 2001 to 7 September 2009 and Furukawa from 5 March 2001 to 31 March 2009
  - Nissan infringement: Sumitomo and Yazaki from 14 September 2006 to 16 November 2006;
  - Renault I infringement: Sumitomo and SYS from 28 September 2004 to 13 March 2006;
  - Renault II infringement: Sumitomo from 5 May 2009 to 20 October 2009, Leoni from 5 May 2009 to 22 December 2009 and SYS from 26 May 2009 to 22 December 2009.

## **7. LIABILITY**

### ***Principles***

- (95) According to settled case-law, where a parent company has a 100% shareholding in a subsidiary which has infringed Union competition rules, the parent company can exercise decisive influence over the conduct of the subsidiary and there is a rebuttable presumption that the parent company does in fact exercise decisive influence over the conduct of its subsidiary.<sup>35</sup>
- (96) Having regard to the body of evidence and the facts described in Section 4, the parties' clear and unequivocal acknowledgements of the facts and the legal qualification thereof, this Decision is addressed to the legal entities listed in Sections 7.1 to 7.4.

### **7.1. Toyota and Honda infringements**

#### ***7.1.1. Sumitomo***

- (97) Sumitomo Electric Wiring Systems (Europe) Ltd. and Sumitomo Electric Industries Ltd acknowledged that within the overall duration of the participation in the Toyota infringement (6 March 2000 to 5 August 2009) and in the Honda infringement (5 March 2001 to 7 September 2009), Sumitomo Electric Wiring Systems (Europe) Ltd. or Sumitomo Electric Industries Ltd. or both of them directly participated in each of the two infringements. In addition, Sumitomo Electric Industries Ltd. acknowledged its joint and several liability for the conduct of its subsidiary Sumitomo Electric Wiring Systems (Europe) Ltd. within the overall duration of both the Toyota and Honda infringements.
- (98) Liability for both the Toyota and Honda infringements is therefore imputed jointly and severally to Sumitomo Electric Wiring Systems (Europe) Ltd. and Sumitomo Electric Industries Ltd.

#### ***7.1.2. Yazaki***

- (99) Yazaki Europe Ltd. and Yazaki Corporation acknowledged that within the overall duration of the participation in the Toyota infringement (6 March 2000 to 5 August 2009) and in the Honda infringement (5 March 2001 to 7 September 2009), Yazaki Europe Ltd. or Yazaki Corporation or both of them directly participated in the two infringements. In addition, Yazaki Corporation acknowledged its joint and several liability for the conduct of its subsidiary Yazaki Europe Ltd. within the overall duration of both the Toyota and Honda infringements.
- (100) Liability for both the Toyota and Honda infringements is therefore imputed jointly and severally to Yazaki Europe Ltd. and Yazaki Corporation.

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<sup>35</sup> See Case C-97/08 P Akzo Nobel and others v Commission [2009] ECR I-08237, paragraph 60.

### 7.1.3. *Furukawa*

- (101) Furukawa Electric Co. Ltd acknowledged that within the overall duration of the participation in the Toyota infringement (24 September 2002 to 20 October 2005), it directly participated in the infringement.
- (102) Liability for the Toyota infringement is therefore imputed to Furukawa Electric Co. Ltd.
- (103) Furukawa Electric Co. Ltd. and Furukawa Automotive Systems Inc. acknowledged that within the overall duration of the participation in the Honda infringement (5 March 2001 to 31 March 2009), Furukawa Electric Co. Ltd. and Furukawa Automotive Systems Inc. directly participated in the infringement. In addition, Furukawa Electric Co. Ltd acknowledges its joint and several liability for the conduct of its subsidiary Furukawa Automotive Systems Inc. within the overall duration of the Honda infringement.
- (104) Liability for the Honda infringement is therefore imputed jointly and severally to Furukawa Electric Co. Ltd. and Furukawa Automotive Systems Inc.

## 7.2. **Nissan infringement**

### 7.2.1. *Sumitomo*

- (105) Sumitomo Electric Industries Ltd acknowledged that within the overall duration of the participation in the Nissan infringement (14 September 2006 to 16 November 2006), it directly participated in the infringement.
- (106) Liability for the Nissan infringement is therefore imputed to Sumitomo Electric Industries Ltd.

### 7.2.2. *Yazaki*

- (107) Yazaki Corporation acknowledged that within the overall duration of the participation in the Nissan infringement (14 September 2006 to 16 November 2006), it directly participated in the infringement.
- (108) Liability for the Nissan infringement is therefore imputed to Yazaki Corporation.

## 7.3. **Renault I infringement**

### 7.3.1. *Sumitomo*

- (109) Sumitomo Electric Wiring Systems (Europe) Ltd. and Sumitomo Electric Industries Ltd acknowledged that within the duration of the participation in the Renault I infringement (28 September 2004 to 13 March 2006), Sumitomo Electric Wiring Systems (Europe) Ltd. directly participated in the infringement. In addition, Sumitomo Electric Industries Ltd. acknowledged its joint and several liability for the conduct of its subsidiary Sumitomo Electric Wiring Systems (Europe) Ltd. within the overall duration of the Renault I infringement.

- (110) Liability for the Renault I infringement is therefore imputed jointly and severally to Sumitomo Electric Wiring Systems (Europe) Ltd. and Sumitomo Electric Industries Ltd.

7.3.2. *SYS*

- (111) S-Y Systems Technologies France SAS and S-Y Systems Technologies Europe GmbH acknowledged that within the overall duration of the participation in the Renault I infringement (28 September 2004 to 13 March 2006), S-Y Systems Technologies France SAS or S-Y Systems Technologies Europe GmbH or both of them directly participated in the infringement. In addition, S-Y Systems Technologies Europe GmbH acknowledged its joint and several liability for the conduct of its subsidiary S-Y Systems Technologies France SAS within the overall duration of the Renault I infringement.

- (112) Liability for the Renault I infringement is therefore imputed jointly and severally to S-Y Systems Technologies France SAS and S-Y Systems Technologies Europe GmbH.

**7.4. Renault II infringement**

7.4.1. *Sumitomo*

- (113) Sumitomo Electric Wiring Systems (Europe) Ltd. and Sumitomo Electric Industries Ltd acknowledged that within the overall duration of the participation in the Renault II infringement (5 May 2009 to 20 October 2009), Sumitomo Electric Wiring Systems (Europe) Ltd. directly participated in the infringement. In addition, Sumitomo Electric Industries Ltd. acknowledged its joint and several liability for the conduct of its subsidiary Sumitomo Electric Wiring Systems (Europe) Ltd. within the overall duration of the Renault II infringement.

- (114) Liability for the Renault II infringement is therefore imputed jointly and severally to Sumitomo Electric Wiring Systems (Europe) Ltd. and Sumitomo Electric Industries Ltd.

7.4.2. *SYS*

- (115) S-Y Systems Technologies France SAS and S-Y Systems Technologies Europe GmbH acknowledged that within the overall duration of the participation in the Renault II infringement (26 May 2009 to 22 December 2009), S-Y Systems Technologies France SAS or S-Y Systems Technologies Europe GmbH or both of them directly participated in the infringement. In addition, S-Y Systems Technologies Europe GmbH acknowledged its joint and several liability for the conduct of its subsidiary S-Y Systems Technologies France SAS within the overall duration of the Renault II infringement.

- (116) Liability for the Renault II infringement is therefore imputed jointly and severally to S-Y Systems Technologies France SAS and S-Y Systems Technologies Europe GmbH.

#### 7.4.3. *Leoni*

- (117) Leoni Wiring Systems France SAS and Leoni AG acknowledged that within the overall duration of the participation in the Renault II infringement (5 May 2009 to 22 December 2009), Leoni Wiring Systems France SAS directly participated in the infringement. In addition, Leoni AG acknowledged its joint and several liability for the conduct of its subsidiary Leoni Wiring Systems France SAS within the overall duration of the Renault II infringement.
- (118) Liability for the Renault II infringement is therefore imputed jointly and severally to Leoni Wiring Systems France SAS and Leoni AG.

## 8. REMEDIES

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

- (119) 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.
- (120) Given the secrecy in which each of the five infringements were carried out, it is not possible to declare with absolute certainty that each of them has ceased.
- (121) It is therefore necessary for the Commission to require the undertakings to which this Decision is addressed to bring the infringement/infringements 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

- (122) Under Article 23(2) of Regulation (EC) No 1/2003,<sup>36</sup> the Commission may by decision impose on undertakings fines where, either intentionally or negligently, they infringe Article 101 of the Treaty and Article 53 of the EEA Agreement. For each undertaking participating in the infringement, the fine shall not exceed 10% of its total turnover in the preceding business year.
- (123) The Commission considers that, in this case, based on the facts described in this Decision, each of the five infringements has been committed intentionally.
- (124) Therefore the Commission imposes fines on the undertakings to which this Decision is addressed.
- (125) Pursuant to Article 23(3) of Regulation (EC) No 1/2003, the Commission must, in fixing the amount of fine, have regard to all relevant circumstances and in particular

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<sup>36</sup> Under Article 5 of Council Regulation (EC) No 2894/94 of 28 November 1994 concerning arrangements of implementing the Agreement on the European Economic Area “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 305/6 of 30 November 1994)



the gravity and duration of the infringement, which are the two criteria explicitly referred to in that Regulation. In doing so, the Commission sets the fines at a level sufficient to ensure deterrence. Moreover, the role played by each undertaking party to an infringement is assessed on an individual basis. The fine imposed must reflect any aggravating and attenuating circumstances pertaining to each undertaking.

- (126) In setting the fines to be imposed, the Commission refers to the principles laid down in its Guidelines on the method of setting fines imposed pursuant to Article 23(2)(a) of Regulation (EC) No 1/2003<sup>37</sup> (“the Guidelines on fines”). Finally, the Commission applies, as appropriate, the provisions of the Leniency Notice and the Commission Notice on the conduct of settlement procedures in view of the adoption of Decisions pursuant to Article 7 and Article 23 of Regulation (EC) No 1/2003 in cartel cases (“the Settlement Notice”).<sup>38</sup>

### 8.3. Calculation of the fines

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

#### 8.3.1. *The value of sales*

- (128) The basic amount of the fine to be imposed on the undertakings concerned is to be set by reference to the value of sales,<sup>39</sup> that is to say, the value of the undertakings’ sales of goods or services to which the infringement directly or indirectly related in the relevant geographic area in the EEA. The Commission normally takes the sales made by the undertakings during the last full business year of their participation in the infringement.<sup>40</sup> It may, however, depart from this practice, should another reference period be more appropriate in view of the characteristics of the case.<sup>41</sup>

##### 8.3.1.1. Toyota infringement

- (129) As regards Sumitomo and Yazaki, the Commission calculates the annual value of sales on the basis of their average sales of WH to Toyota in the EEA in the last three business years of the infringement.
- (130) As Furukawa does not have any registered sales of WH to Toyota in the EEA, the Commission calculates the annual value of sales on the basis of Furukawa’s

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<sup>37</sup> OJ C 210, 1.9.2006, p. 2

<sup>38</sup> OJ C 167, 2.7.2008, p. 1–6

<sup>39</sup> Point 12 of the Guidelines on fines.

<sup>40</sup> Point 13 of the Guidelines on fines.

<sup>41</sup> Case T-76/06 *Plásticos Españoles (ASPLA) v Commission*, judgment of 16 November 2011, paragraphs 111-113.

percentage share on the equivalent model in Japan, for which Furukawa participated in the infringement in the EEA, applied on the average yearly value of sales by Sumitomo and Yazaki of the equivalent model produced in the EEA.

- (131) Accordingly, the Commission takes into account the following value of sales for each undertaking that participated in the Toyota infringement:

Table 1: Value of sales for Toyota infringement

[...]

#### 8.3.1.2. Honda infringement

- (132) As regards Sumitomo and Yazaki, the Commission calculates the annual value of sales on the basis of their average sales of WH to Honda in the EEA in the last three business years of the infringement.
- (133) As Furukawa does not have any registered sales of WH to Honda in the EEA, the Commission calculates the annual value of sales on the basis of Furukawa's percentage share on the equivalent model in Japan, for which Furukawa participated in the infringement in the EEA, applied on the average yearly value of sales by Sumitomo and Yazaki of the equivalent model produced in the EEA.
- (134) Accordingly, the Commission takes into account the following value of sales for each undertaking that participated in the Honda infringement:

Table 2: Value of sales for Honda infringement

[...]

#### 8.3.1.3. Nissan infringement

- (135) The Commission calculates the annual value of sales for Sumitomo and Yazaki on the basis of the volume of WH for the future 'European' model covered by the B Platform estimated by Nissan at the time of the 2006 B Platform infringement multiplied by the price of the winning bids.
- (136) Accordingly, the Commission takes into account the following value of sales for each undertaking that participated in the Nissan infringement:

Table 3: Value of sales for Nissan infringement

[...]

#### 8.3.1.4. Renault I infringement

- (137) The Commission calculates the annual value of sales for Sumitomo and SYS on the basis of the volume of WH sales to Renault in the EEA for the W95 platform estimated by Renault at the time of the infringement multiplied by the price of the winning bids.
- (138) Accordingly, the Commission takes into account the following value of sales for each undertaking that participated in the Renault I infringement:

Table 4: Value of sales for Renault I infringement

[...]

#### 8.3.1.5. Renault II infringement

(139) The Commission calculates the annual value of sales for Sumitomo, Leoni and SYS by equally apportioning between the three undertakings the total value of WH sales to Renault in the EEA for the W52 model, calculated on the basis of Leoni's winning quotation price multiplied by the volume of WH estimated by Renault at the time of the infringement.

(140) Accordingly, the Commission takes into account the following value of sales for each undertaking that participated in the Renault II infringement:

Table 5: Value of sales for Renault II infringement

[...]

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

##### 8.3.2.1. Gravity

(141) In assessing the gravity of an infringement, the Commission has regard to a number of factors, such as the nature of that infringement, the combined market share of all the undertakings concerned, the geographic scope of the infringement and whether or not that infringement has been implemented.<sup>42</sup>

(142) In this case, the Commission takes into account the fact that each of the five infringements is, by its very nature, among the most harmful restrictions of competition. Therefore, the proportion of the value of sales taken into account for each of the five infringements is set at the higher end of the scale of the value of sales.<sup>43</sup>

(143) The Commission also takes into account the fact that each of the five infringements covered the entire EEA.

(144) Given the specific circumstances of this case and taking into account 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

(145) In calculating the fine(s) to be imposed on each undertaking, the Commission also takes into consideration<sup>44</sup> the respective duration of each of the five infringements, as described in Sections 4.1.3, 4.2.3, 4.3.3 and 4.4.3. The increase for duration is calculated on the basis of full months.

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<sup>42</sup> Points 21-22 of the Guidelines on fines.

<sup>43</sup> Point 23 of the Guidelines on fines.

<sup>44</sup> Point 24 of the Guidelines on fines.

Table 6: Duration Toyota infringement

<b>Undertaking</b>	<b>Duration</b>	<b>Multiplier</b>
Sumitomo	6 March 2000 to 5 August 2009	9.41
Yazaki	6 March 2000 to 5 August 2009	9.41
Furukawa	24 September 2002 to 20 October 2005	3

Table 7: Duration Honda infringement

<b>Undertaking</b>	<b>Duration</b>	<b>Multiplier</b>
Sumitomo	5 March 2001 to 7 September 2009	8.5
Yazaki	5 March 2001 to 7 September 2009	8.5
Furukawa	5 March 2001 to 31 March 2009	8

Table 8: Duration Nissan infringement

<b>Undertaking</b>	<b>Duration</b>	<b>Multiplier</b>
Sumitomo	14 September 2006 to 16 November 2006	0.16
Yazaki	14 September 2006 to 16 November 2006	0.16

Table 9: Duration Renault I infringement

<b>Undertaking</b>	<b>Duration</b>	<b>Multiplier</b>
Sumitomo	28 September 2004 to 13 March 2006	1.41
SYS	28 September 2004 to 13 March 2006	1.41

Table 10: Duration Renault II infringement

<b>Undertaking</b>	<b>Duration</b>	<b>Multiplier</b>
Sumitomo	5 May 2009 to 20 October 2009	0.41
SYS	26 May 2009 to 22 December 2009	0.5

Leoni	5 May 2009 to 22 December 2009	0.58
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#### 8.3.2.3. Additional amount

- (146) Each of the five infringements concerns a price coordination cartel. Therefore, the Commission includes in the basic amount of each fine a sum of between 15% and 25% of the value of sales to deter the undertakings from entering into such illegal practices on the basis of the criteria listed above with respect to the variable amount.<sup>45</sup>
- (147) Taking into account the factors listed 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 %.

#### 8.3.2.4. Calculations and conclusions on basic amounts

- (148) Based on the criteria explained in recitals (127)-(147), the basic amount per undertaking per infringement is presented in the below tables.

Table 11: Basic amount for Toyota infringement

[...]

Table 12: Basic amount for Honda infringement

[...]

Table 13: Basic amount for Nissan infringement

[...]

Table 14: Basic amount for Renault I infringement

[...]

Table 15: Basic amount for Renault II infringement

[...]

#### 8.3.3. *Adjustment to the basic amount: aggravating or mitigating circumstances*

- (149) The Commission may consider aggravating or mitigating circumstances resulting in an increase or decrease of the basic amount.<sup>46</sup> Those circumstances are listed in a non-exhaustive way in points 28 and 29 of the Guidelines on fines.

<sup>45</sup> Point 25 of the Guidelines on fines.

<sup>46</sup> Points 28-29 of the Guidelines on fines.

- (150) In this case, the Commission does not apply any aggravating or mitigating circumstances.

#### 8.3.4. *Deterrence*

- (151) The Commission pays particular attention to the need to ensure that fines have a sufficiently deterrent effect. To that end, the Commission may increase the fines to be imposed on undertakings which have a particularly large turnover beyond the sales of goods or services to which the infringement relates.<sup>47</sup>
- (152) In this case, the Commission does not apply any increase for deterrence.

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

- (153) Article 23(2) of Regulation (EC) No 1/2003 provides that the fine imposed on each undertaking for each infringement shall not exceed 10% of its total turnover relating to the business year preceding the date of the Commission decision.
- (154) In this case, none of the fines exceed 10% of an undertaking's total turnover relating to the business year preceding the date of this Decision.

### 8.5. **Application of the Leniency Notice**

- (155) Sumitomo submitted an application for marker on [...]. Sumitomo was granted conditional immunity from fines on 5 February 2010 in relation to each of the five infringements. Sumitomo's co-operation fulfilled the requirements of the Leniency Notice. Sumitomo is therefore granted immunity from fines for each of the five infringements.
- (156) The Commission also received applications for leniency from Furukawa, Yazaki, SYS and Leoni. Since each of the five infringements constitutes a separate infringement, the Commission has examined the applications on an infringement by infringement basis. The assessment of eligibility and qualification for reduction of fines was limited to the infringement(s) in which the undertaking took part and to which the leniency application related.

#### 8.5.1. *Reductions of fines in relation to the Toyota and Honda infringements*

##### 8.5.1.1. *Furukawa*

- (157) In relation to each of the two infringements, Furukawa was the first undertaking to submit an application for reduction of fines and did so prior to the inspections. Furukawa provided the Commission with evidence of each of the two infringements which represented significant added value with respect to the evidence already in the Commission's possession at the time it was provided. In particular, in its [...] submission of [...], Furukawa provided information strengthening the Commission's ability to prove each of the two infringements by corroborating the evidence regarding their existence.

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<sup>47</sup> Point 30 of the Guidelines on Fines.

- (158) However, following its [...] submission of [...], Furukawa provided further evidence and explanatory statements proving or corroborating the main elements of each of the two infringements only more than one year later and after having received a request for information from the Commission.
- (159) In view of the assessment set out in recitals (157)-(158), Furukawa is granted a 40% reduction of the fine that would otherwise have been imposed on it in relation to each of the two infringements.

#### 8.5.1.2. Yazaki

- (160) In relation to each of the two infringements, Yazaki was the second undertaking to submit an application for reduction of fines and did so at an early stage of the investigation.
- (161) Yazaki provided the Commission with evidence of each of the two infringements which represented significant added value with respect to the evidence already in the Commission's possession at the time it was provided. The evidence provided by Yazaki corroborated the evidence provided by Sumitomo and allowed the Commission both to accelerate its investigation into each of the two infringements and to clarify and complete its understanding of the framework within which each of the two infringements operated. Moreover, Yazaki provided the Commission with evidence strengthening the Commission's ability to establish the duration of each of the two infringements.
- (162) In view of the assessment set out in recitals (160)-(161), Yazaki is granted a 30% reduction of the fine that would otherwise have been imposed on it in relation to each of the two infringements.

#### 8.5.2. *Reduction of fines in relation to the Nissan infringement*

##### 8.5.2.1. Yazaki

- (163) Yazaki was the first undertaking to submit an application for reduction of fines and did so at an early stage of the investigation.
- (164) Yazaki provided 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. That evidence both corroborated the evidence provided by Sumitomo and explained evidence gathered during the inspections, thereby strengthening the Commission's ability to prove the infringement.
- (165) In view of the assessment set out in recitals (163)-(164), Yazaki is granted a 50% reduction of the fine that would otherwise have been imposed on it in relation to the Nissan infringement.

### 8.5.3. *Reduction of fines in relation to the Renault I infringement*

#### 8.5.3.1. SYS

- (166) SYS was the first undertaking to submit an application for reduction of fines and did so at an early stage of the investigation.
- (167) SYS provided 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. SYS provided several oral statements supported by contemporaneous documents corroborating the information already submitted by Sumitomo and explaining the evidence gathered during the inspections. Moreover, the information provided by SYS facilitated the Commission's task of proving the organisation and functioning of the infringement. Finally, SYS provided the Commission with evidence strengthening the Commission's ability to establish the duration of the infringement. However, at the time of SYS's relevant submissions, the Commission already had a certain amount of evidence in its possession. That evidence had been provided by Sumitomo and gathered during the inspections.
- (168) In view of the assessment set out in recitals (166)-(167), SYS is granted a 45% reduction of the fine that would otherwise have been imposed on it in relation to the Renault I infringement.

### 8.5.4. *Reductions of fines in relation to the Renault II infringement*

#### 8.5.4.1. SYS

- (169) SYS was the first undertaking to submit an application for reduction of fines and did so at an early stage of the investigation.
- (170) SYS provided 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. SYS provided several oral statements supported by contemporaneous documents regarding the information already submitted by Sumitomo and gathered during the inspections. The information provided by SYS further explained the background and facilitated the Commission's task of proving the organisation and functioning of the infringement. However, at the time of SYS's relevant submissions, the Commission already had a significant amount of evidence in its possession. That evidence had been provided by Sumitomo and gathered during the inspections.
- (171) In view of the assessment set out in recitals (169)-(170), SYS is granted a 40% reduction of the fine that would otherwise have been imposed on it in relation to the Renault II infringement.

#### 8.5.4.2. Leoni

- (172) Leoni was the second undertaking to submit an application for reduction of fines and did so at a very late stage of the investigation.
- (173) Leoni provided 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. Leoni provided the Commission with a written statement supported by contemporaneous documents which strengthened the Commission's ability to establish the end date of the infringement. The significant added value of Leoni's submissions was otherwise limited.

- (174) In view of the assessment set out in recitals (172)-(173), Leoni is granted a 20% reduction of the fine that would otherwise have been imposed on it in relation to the Renault II infringement.

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

- (175) In accordance with point 32 of the Settlement Notice, the reward for settlement is a reduction of 10% of the amount of the fine to be imposed on an undertaking after the 10% turnover cap has been applied having regard to the Guidelines on fines. Pursuant to point 33 of the Settlement Notice, when settled cases involve leniency applicants, the reduction of the fine granted to them for settlement is added to their leniency reward.
- (176) As a result of the application of the Settlement Notice, the amount of the fine to be imposed on Yazaki, Furukawa, SYS and Leoni is reduced by 10% and this reduction is added to their leniency reward.

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

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

Table 14: Toyota infringement

<b>Undertaking</b>	<b>Fines (EUR)</b>
Sumitomo	0
Yazaki	95 149 000
Furukawa	2 483 000

Table 15: Honda infringement

<b>Undertaking</b>	<b>Fines (EUR)</b>
Sumitomo	0
Yazaki	29 812 000
Furukawa	1 532 000

Table 16: Nissan infringement

<b>Undertaking</b>	<b>Fines (EUR)</b>
Sumitomo	0
Yazaki	380 000

Table 17: Renault I infringement

<b>Undertaking</b>	<b>Fines (EUR)</b>
Sumitomo	0
SYS	10 123 000

Table 18: Renault II infringement

<b>Undertaking</b>	<b>Fines (EUR)</b>
Sumitomo	0
SYS	934 000
Leoni	1 378 000

HAS ADOPTED THIS DECISION:

*Article 1*

- (1) The following undertakings have infringed Article 101 of the Treaty and Article 53 of the EEA Agreement by participating, during the periods indicated below, in agreements and/or concerted practices covering the territories of the contracting parties to the EEA Agreement, consisting in the co-ordination of their pricing behaviour and the allocation of the supplies of wire harnesses to Toyota:
  - (a) Sumitomo Electric Wiring Systems (Europe) Ltd and Sumitomo Electric Industries Ltd. from 6 March 2000 until 5 August 2009;
  - (b) Yazaki Europe Ltd and Yazaki Corporation from 6 March 2000 until 5 August 2009;
  - (c) Furukawa Electric Co. Ltd from 24 September 2002 until 20 October 2005.
- (2) The following undertakings have infringed Article 101 of the Treaty and Article 53 of the EEA Agreement by participating, during the periods indicated below, in agreements and/or concerted practices covering the territories of the contracting

parties to the EEA Agreement, consisting in the co-ordination of their pricing behaviour and the allocation of the supplies of wire harnesses to Honda:

- (a) Sumitomo Electric Wiring Systems (Europe) Ltd and Sumitomo Electric Industries Ltd. from 5 March 2001 until 7 September 2009;
  - (b) Yazaki Europe Ltd and Yazaki Corporation from 5 March 2001 until 7 September 2009;
  - (c) Furukawa Automotive Systems Inc. and Furukawa Electric Co. Ltd from 5 March 2001 until 31 March 2009.
- (3) The following undertakings have infringed Article 101 of the Treaty and Article 53 of the EEA Agreement by participating, during the periods indicated below, in agreements and/or concerted practices covering the territories of the contracting parties to the EEA Agreement, consisting in the co-ordination of their pricing behaviour and the allocation of the supplies of wire harnesses to Nissan:
  - (a) Sumitomo Electric Industries Ltd. from 14 September 2006 until 16 November 2006;
  - (b) Yazaki Corporation from 14 September 2006 until 16 November 2006.
- (4) The following undertakings have infringed Article 101 of the Treaty and Article 53 of the EEA Agreement by participating, during the periods indicated below, in agreements and/or concerted practices covering the territories of the contracting parties to the EEA Agreement, consisting in the co-ordination of their pricing behaviour and the allocation of the supplies of wire harnesses to Renault:
  - (a) Sumitomo Electric Wiring Systems (Europe) Ltd and Sumitomo Electric Industries Ltd. from 28 September 2004 until 13 March 2006;
  - (b) S-Y Systems Technologies France SAS and S-Y Systems Technologies Europe GmbH from 28 September 2004 until 13 March 2006.
- (5) The following undertakings have infringed Article 101 of the Treaty and Article 53 of the EEA Agreement by participating, during the periods indicated below, in agreements and/or concerted practices covering the territories of the contracting parties to the EEA Agreement, consisting in the co-ordination of their pricing behaviour and the allocation of the supplies of wire harnesses to Renault:
  - (a) Sumitomo Electric Wiring Systems (Europe) Ltd and Sumitomo Electric Industries Ltd. from 5 May 2009 until 20 October 2009;
  - (b) S-Y Systems Technologies France SAS and S-Y Systems Technologies Europe GmbH from 26 May 2009 until 22 December 2009;
  - (c) Leoni Wiring Systems France SAS and Leoni AG from 5 May 2009 until 22 December 2009.

## *Article 2*

- (1) For the infringement referred to in Article 1(1), the following fines are imposed:
  - (a) Sumitomo Electric Wiring Systems (Europe) Ltd and Sumitomo Electric Industries Ltd. jointly and severally liable: EUR 0
  - (b) Yazaki Europe Ltd and Yazaki Corporation jointly and severally liable: EUR 95 149 000
  - (c) Furukawa Electric Co. Ltd: EUR 2 483 000.
- (2) For the infringement referred to in Article 1(2), the following fines are imposed:
  - (a) Sumitomo Electric Wiring Systems (Europe) Ltd and Sumitomo Electric Industries Ltd. jointly and severally liable: EUR 0
  - (b) Yazaki Europe Ltd and Yazaki Corporation jointly and severally liable: EUR 29 812 000
  - (c) Furukawa Automotive Systems Inc. and Furukawa Electric Co. Ltd jointly and severally liable: EUR 1 532 000
- (3) For the infringement referred to in Article 1(3), the following fines are imposed:
  - (a) Sumitomo Electric Industries Ltd.: EUR 0
  - (b) Yazaki Corporation: EUR 380 000.
- (4) For the infringement referred to in Article 1(4), the following fines are imposed:
  - (a) Sumitomo Electric Wiring Systems (Europe) Ltd and Sumitomo Electric Industries Ltd. jointly and severally liable: EUR 0
  - (b) S-Y Systems Technologies France SAS and S-Y Systems Technologies Europe GmbH jointly and severally liable: EUR 10 123 000.
- (5) For the infringement referred to in Article 1(5), the following fines are imposed:
  - (a) Sumitomo Electric Wiring Systems (Europe) Ltd and Sumitomo Electric Industries Ltd. jointly and severally liable: EUR 0
  - (b) S-Y Systems Technologies France SAS and S-Y Systems Technologies Europe GmbH jointly and severally liable: EUR 934 000
  - (c) Leoni Wiring Systems France SAS and Leoni AG jointly and severally liable: EUR 1 378 000.

The fines shall be paid in euro within three months of the date of notification of this Decision to the following 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 / COMP/39.748

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 bank guarantee or making a provisional payment of the fine in accordance with Article 90 of Commission Delegated Regulation (EU) No 1268/2012.<sup>48</sup>

### *Article 3*

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

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

### *Article 4*

This Decision is addressed to

- (a) Sumitomo Electric Wiring Systems (Europe) Ltd., Cemetery Road, Silverdale, Newcastle-under-Lyme, Staffordshire ST5 6PA, United Kingdom;
- (b) Sumitomo Electric Industries Ltd., Akasaka Center Building, 1-3-13 Motoakasaka, Minato-ku, Tokyo 107-8468, Japan;
- (c) Yazaki Europe Ltd., 1-3 Zodiac, Boundary Way, Hemel Hempstead, Hertfordshire HP2 7SJ, United Kingdom;
- (d) Yazaki Corporation, 1500 Mishuku, Susono, Shizuoka 410-1194, Japan;
- (e) Furukawa Automotive Systems Inc., 1000 Amago, Koura, Inukami, Shiga Pref. 522-0242, Japan;

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<sup>48</sup> OJ L 362, 31.12.2012, p. 1.

- (f) Furukawa Electric Co. Ltd, 2-3, Marunouchi 2-chome, Chiyoda-ku, Tokyo 100-8322, Japan;
- (g) S-Y Systems Technologies France SAS, "Val St Quentin" – Bât. B, 2, rue René Caudron, 78960 Voisins Le Bretonneux, France;
- (h) S-Y Systems Technologies Europe GmbH, Im Gewerbepark B32, 93059 Regensburg, Germany;
- (i) Leoni Wiring Systems France SAS, 5, avenue Newton, 78180 Montigny Le Bretonneux, France;
- (j) Leoni AG, Marienstrasse 7, 90402 Nürnberg, Germany.

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

Done at Brussels, 10.7.2013

*For the Commission*  
*Joaquín ALMUNIA*  
*Vice-President*