EUROPEAN COMMISSION
Competition DG

CASE AT.39904 – Rechargeable Batteries

(Only the English text is authentic)

CARTEL PROCEDURE

Council Regulation (EC) 1/2003

Article 7 Regulation (EC) 1/2003

Date: 12/12/2016

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EUROPEAN
COMMISSION

Brussels, 12.12.2016
C(2016) 8456 final

COMMISSION DECISION

of 12.12.2016

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

AT.39904 – Rechargeable batteries

(Only the English text is authentic)

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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.39904 – Rechargeable batteries

(Only the English text is authentic)

THE EUROPEAN COMMISSION,

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

Having regard to the Agreement on the European Economic Area,

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

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

Having regard to the Commission decision of 4 March 2015 to initiate proceedings in this case,

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

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1 OJ C 115, 9.5.2008, p.47.

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

3 OJ L 123, 27.4.2004, p. 18.

4 OJ L 171, 1.7.2008, p. 3.

5 OJ L 208, 5.8.2015, p. 3.

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

Having regard to the final report of the hearing officer in this case,[6]

Whereas:

1. INTRODUCTION

(1) The addressees of this Decision participated in a single and continuous infringement of Article 101 of the Treaty and Article 53 of the EEA Agreement. The infringement consisted of exchanges of commercially sensitive market information and/or price coordination relating to the supply of rechargeable lithium-ion batteries ("LiBs") in the European Economic Area ("EEA") from 24 February 2004 to 10 November 2007, with varying start and end dates for the undertakings involved.

(2) This Decision is addressed to the following legal entities:

(a) Samsung SDI Co., Ltd ("Samsung SDI");

(b) Sony Corporation, Sony Energy Devices Corporation, Sony Electronics Inc. and Sony Taiwan Limited (together "Sony");

(c) Panasonic Corporation and Panasonic Automotive & Industrial Systems Europe GmbH (together "Panasonic");

(d) Sanyo Electric Co., Ltd., Panasonic Industrial Devices Sales Taiwan Co., Ltd. and Panasonic Automotive & Industrial Systems Europe GmbH (together "Sanyo").

2. THE INDUSTRY SUBJECT TO THE PROCEEDINGS

2.1. The products

(3) There are three different types of LiBs depending on their usage and demand namely cylindrical, prismatic and polymer. For example, larger devices such as laptops and camcorders often use cylindrical LiBs, whereas smaller devices like smartphones and tablets often use prismatic or polymer LiBs. Prismatic LiBs are small and rectangular in shape which cannot be easily altered. On the other hand polymer LiBs have an advantage in that the LiBs can be shaped in a variety of forms to optimise their installation within the device.

(4) The customers of LiBs manufacturers are producers of consumer electronic products, original equipment manufacturers, original design manufacturers and battery packers.

(5) The products subject to the anticompetitive conduct in this case are LiBs.

[6] Final report of the Hearing Officer of 5 December 2016.

2.2. Undertakings subject to the present proceedings

2.2.1. Samsung SDI

(6) The relevant legal entities that the Commission regards for the purposes of the present Decision to constitute Samsung SDI as a single undertaking at the time of the infringement are:

(a) Samsung SDI Co., Ltd which has its registered offices in 150-20 Gonse-ro, Giheung-gu, Yongin-si, Gyeonggi-do, 446-577 Korea; and

(b) Samsung SDI Germany GmbH[7] which had its former registered offices in Ostendstrabe 1-14, 12459 Berlin, Germany.

(7) Samsung SDI is active in the development and production of LiBs as well as electronic displays and automotive batteries. The worldwide turnover of Samsung SDI in 2015 was EUR 3.915 billion.

2.2.2. Sony

(8) The relevant legal entities that the Commission regards for the purposes of the present Decision to constitute Sony as a single undertaking at the time of the infringement are:

(a) Sony Corporation which has its registered offices in 7-1 Konan 1-Chome, Minato-ku, Tokyo, 108-0075 Japan;

(b) Sony Energy Devices Corporation which has its registered offices in 1-1 Shimosugishita, Takakura, Hiwada-machi, Koriyama-shi, Fukushima 963-0531 Japan;

(c) Sony Electronics Inc. which has its registered offices in 16535 Via Esprillo Bldg 1 San Diego, CA, 92127 United States; and

(d) Sony Taiwan Limited which has its registered offices in 5F, 145 Changchun Road, Zhongshan Dist., Taipei 104, Taiwan.

(9) Sony is active in the development and production of audio, video, communications and information technology products for the consumer and professional markets and is a provider of entertainment content, products and services. The worldwide turnover of Sony in 2015 was EUR 61.177 billion.

2.2.3. Panasonic

(10) The relevant legal entities that the Commission regards for the purposes of the present Decision to constitute Panasonic as a single undertaking at the time of the infringement are:

(a) Panasonic Corporation which has its registered offices in 1006, Kadoma, Kadoma City, Osaka 571-8501, Japan; and

[7] Samsung SDI Germany GmbH was liquidated on 1 August 2014 without a legal or economic successor.

(b) Panasonic Automotive & Industrial Systems Europe GmbH[8] which has its registered offices in Robert-Bosch-Strasse, 27-29, 63225 Langen, Germany.

(11) Panasonic is active in the development and production of consumer products, including audio visual and communication products, home appliances, such as air conditioning, refrigerating, cooking and washing equipment, and industrial and automotive devices, such as electronic components, batteries and automotive systems. The worldwide turnover of Panasonic in 2015 was EUR 57 billion.

2.2.4. Sanyo

(12) The relevant legal entities that the Commission regards for the purposes of the present Decision to constitute Sanyo as a single undertaking at the time of the infringement are:

(a) Sanyo Electric Co., Ltd. which has its registered offices in 1-1 Sanyo-cho, Daito city, Osaka, 574-8534, Japan;

(b) Panasonic Industrial Devices Sales Taiwan Co., Ltd.[9] which has its registered offices in 12th Floor, No.9, SongGao Rd., Taipei 110, Taiwan; and

(c) Panasonic Automotive & Industrial Systems Europe GmbH[10] which has its registered offices in Robert-Bosch-Strasse, 27-29, 63225 Langen, Germany.

(13) Sanyo is now part of the Panasonic group. In the second half of 2009, Panasonic acquired a 50.2% stake in Sanyo[11], so that Panasonic and Sanyo became the one undertaking for the purposes of the application of Article 101. On 1 April 2011 Panasonic acquired the remaining shares of Sanyo.

3. PROCEDURE

(14) On 2 May 2011, Samsung SDI applied for marker/immunity pursuant to points 14 and 15 of the "Leniency Notice"[12]. The application was followed by a number of submissions consisting of oral statements and documentary evidence. On 22 March 2012, the Commission granted Samsung SDI conditional immunity from fines pursuant to point 8(a) of the Leniency Notice.

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8 On 1 October 2014, Panasonic Automotive & Industrial Systems Europe GmbH absorbed the assets of the directly participating Panasonic Industrial Device Sales Europe GmbH by way of merger and it is thus held liable as the legal successor of Panasonic Industrial Device Sales Europe GmbH.

9 On 1 October 2015, Panasonic Industrial Devices Sales Taiwan Co., Ltd. absorbed the assets of the directly participating Sanyo Energy Taiwan Co., Ltd. by way of merger and it is thus held liable as the legal successor of Sanyo Energy Taiwan Co., Ltd.

10 On 1 October 2014, Panasonic Automotive & Industrial Systems Europe GmbH absorbed the assets of the directly participating Sanyo Component Europe GmbH by way of merger and it is thus held liable as the legal successor of Sanyo Component Europe GmbH.

11 COMP/M.5421 Panasonic/Sanyo of 29 September 2009.

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

(15) Between 1 June 2012 and 9 November 2015, the Commission sent out several rounds of requests for information pursuant to Article 18(2) of Regulation (EC) No 1/2003[13].

(16) On 17 August 2012, Sony applied for immunity and, in the alternative, for a reduction of a fine, under the Leniency Notice.

(17) On 25 March 2015, Panasonic (together with Sanyo) applied for a reduction of a fine under the Leniency Notice.

(18) On 4 March 2015 the Commission initiated proceedings pursuant to Article 11(6) of Regulation (EC) No 1/2003 against the addressees of the present Decision (also to be referred to as "the Parties" or individually as "the Party") with a view to engaging in settlement discussions with them under the Settlement Notice[14].

(19) Settlement meetings with the Parties took place between July 2015 and July 2016. 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.

(20) The Parties were also given access to the relevant parts of the oral statements submitted by the Parties at the Commission premises and they received a copy of the relevant pieces of documentary evidence and a list of all the documents in the Commission's 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.

(21) Each Party expressed its view on the objections which the Commission envisaged raising against them. The Parties' comments were carefully considered by the Commission and, where appropriate, taken into account.

(22) At the end of the settlement discussions, each Party considered that there was a sufficient common understanding between them 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 pursuant to Article 10a(2) of Regulation (EC) No 773/2004[15] (the "settlement submissions") to the Commission. The settlement submission presented by each Party contained:

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13 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 of 4.1.2003, p. 1.

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

15 Commission Regulation (EC) No 773/2004 of 7 April 2004 relating to the conduct of proceedings by the Commission pursuant to Articles 81 and 82 of the EC Treaty, OJ L 123, 27.4.2004, p. 18, as amended by Commission Regulation 1792/2006/EC of 23 October 2006 adapting certain regulations and decisions in the fields of free movement of goods, freedom of movement of persons, competition policy, agriculture (veterinary and phytosanitary legislation), fisheries, transport policy, taxation, statistics, social policy and employment, environment, customs union, and external relations by reason of the accession of Bulgaria and Romania (OJ L 362/1, 20.12.2006) and by Commission Regulation

(a) 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;

(b) an indication of the maximum amount of the fine the Party expected to be imposed by the Commission and which it would accept in the framework of a settlement procedure;

(c) the Party's confirmation that it had 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;

(d) the Party's confirmation that it did not envisage requesting access to the file or requesting to be heard again in an oral hearing, unless the Commission did not reflect its settlement submission in the statement of objections and the decision;

(e) 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 their settlement submission on the condition that any fine imposed by the Commission in this case would not exceed the amount specified in their submission.

(25) On 28 September 2016, 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 the Parties to these 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 described in this Decision.

4. DESCRIPTION OF THE CONDUCT

4.1. Nature and scope of the cartel

(27) The cartel consisted of a series of anti-competitive contacts between the Parties regarding LiBs[16] in the period from 24 February 2004 to 10 November 2007, including occasional price related contacts[17] and/or regular exchanges of commercially sensitive market information, such as, for instance, information on

622/2008/EC of 30 June 2008 as regards the conduct of settlement procedures in cartel cases (OJ L 171/3, 1.7.2008).

16 […].

17 […].

usage of production capacity[18], supply and demand forecasts[19], planned investments in new production lines[20], market trends[21], price forecasts[22] and sales results[23].

(28) Moreover, the Parties discussed their intentions to participate in particular competitive bidding events organised by specific customers. In the context of these discussions, they occasionally disclosed prices they submitted or intended to submit[24] as well as coordinated the appropriate timing to launch the agreed price increases[25].

(29) The cartel has mainly operated on the basis of bilateral contacts, however multilateral contacts were also occasionally organised[26]. The Parties contacted each other by telephone[27], by email[28] and they also held face-to-face meetings[29]. Geographically, the cartel discussions mainly have taken place in Asia, however contacts occasionally also took place in Europe[30].

(30) The cartel contacts took place with varying degrees of intensity and frequency. The contacts reached their peak in the context of price increases of cobalt[31] in 2004[32] and 2007[33], which resulted in the Parties' agreement on temporary price increases of LiBs for that period.

4.2. Geographic scope of the cartel

(31) The geographic scope of the infringement covered the entire EEA.

4.3. Duration of the cartel

(32) The evidence in the file demonstrates that a continuous set of anti-competitive contacts involving Sony, Sanyo and Panasonic started from 24 February 2004[34] and involved Samsung SDI from 1 April 2004[35].

(33) Based on the available evidence the Commission considers that 1 October 2007 was the end date for Samsung SDI's and Sony's participation in the cartel.[36] The Commission considers that 10 November 2007 was the end date of the infringement for Panasonic and Sanyo.[37]

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25 […].
26 […].
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29 […].
30 […].
31 Cobalt is an essential raw material used for the production of LiBs.
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5. LEGAL ASSESSMENT

(34) 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.

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

(35) Article 101(1) of the Treaty prohibits agreements between undertakings, decisions by associations of undertakings and concerted practices which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the internal market. Similarly, Article 53(1) of the EEA Agreement prohibits agreements and concerted practices between undertakings which may affect trade between Contracting Parties to the EEA Agreement and which have as their object or effect the prevention, restriction or distortion of competition within the territory covered by the EEA Agreement.

(36) An agreement may be said to exist when the parties adhere to a common plan which limits or is likely to limit their individual commercial conduct by determining the lines of their mutual action or abstention from action in the market. Although Article 101(1) of the Treaty and Article 53(1) of the EEA Agreement draw a distinction between the concept of concerted practice and that of agreements between undertakings, the object is to bring within the prohibition of those Articles a form of coordination between undertakings by which, without having reached the stage where an agreement properly so-called has been concluded, they knowingly substitute practical cooperation between them for the risks of competition. Thus, conduct may fall under Article 101(1) of the Treaty and Article 53(1) of the EEA Agreement as a concerted practice even where the parties have not explicitly subscribed to a common plan defining their action in the market but knowingly adopt or adhere to collusive devices which facilitate the coordination of their commercial behaviour.[38]

(37) The concepts of agreement and concerted practice are fluid and may overlap. Indeed, it may not even be possible to make such a distinction, as an infringement may present simultaneously the characteristics of each form of prohibited conduct, while

[38] 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.

when considered in isolation some of its manifestations could accurately be described as one rather than the other.[39]

5.1.1.2. Application to this case

(38) Based on the submissions of the Parties and the other evidence obtained in this case, the Commission considers that the conduct described in Section 4 constitutes a complex infringement of Article 101(1) of the TFEU and Article 53(1) of the EEA Agreement, consisting of various aspects of the conduct which, if assessed both individually and cumulatively, can be classified as agreements or concerted practices within the meaning of Article 101(1) TFEU and Article 53(1) of the EEA Agreement.

(39) In particular, the conduct described in Section 4, presenting all the characteristics of a complex infringement, consisted in the exchange of sensitive information and/or price coordination, within which the competitors knowingly substituted practical cooperation between them for limiting the risks of competition.

(40) The Commission has therefore reached the conclusion that the conduct described in Section 4 is to be qualified as a complex infringement constituting an agreement or concerted practice within the meaning of Article 101(1) of the TFEU and Article 53(1) of the EEA Agreement.

5.1.2. Single and continuous infringement

5.1.2.1. Principles

(41) An infringement of Article 101(1) of the Treaty and of Article 53(1) of the EEA Agreement can result not only from an isolated act, but also from a series of acts or from continuous conduct, even if one or more aspects of that series of acts or continuous conduct could also, in themselves and taken in isolation, constitute an infringement of those provisions. Accordingly, if the different actions form part of an 'overall plan', because their identical object distorts competition within the internal market, the Commission is entitled to impute responsibility for those actions on the basis of participation in the infringement considered as a whole.[40]

5.1.2.2. Application to this case

(42) Based on the submissions of the Parties and the other evidence obtained in this case, the Commission considers that the conduct described in Section 4 can be qualified as constituting a single and continuous infringement of Article 101(1) TFEU and Article 53(1) of the EEA Agreement. The evidence on file indicates that the Parties to the cartel have engaged in anticompetitive practices which formed part of an overall plan pursuing the common objective of the prevention, restriction and/or distortion of competition in the LiBs sector in the EEA between 24 February 2004 and 10 November 2007.

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[39] 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.

[40] 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.

(43) The Commission further concludes that the evidence on file demonstrates that the conduct was an ongoing process and did not consist of isolated or sporadic occurrences. The contacts between the Parties were of a continuous nature, consisting of numerous phone calls, emails and personal contacts. The different elements of the infringement were in pursuit of a single anti-competitive object, which remained the same throughout the entire period of the infringement, namely to prevent, restrict and/or distort competition in the LiBs sector.

(44) The Commission has therefore reached the conclusion that the Parties participated in a single and continuous infringement of Article 101(1) of the TFEU and Article 53(1) of the EEA Agreement.

5.1.3. Restriction of competition

5.1.3.1. Principles

(45) To come within the prohibition laid down in Article 101(1) of the Treaty and Article 53(1) of the EEA Agreement, an agreement, a decision by an association of undertakings or a concerted practice must have as its object or effect the prevention, restriction or distortion of competition in the internal market.

(46) 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.[41] 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.[42]

(47) Consequently, it is established that certain collusive behaviour, such as that leading to horizontal price-fixing by cartels, may be considered so likely to have negative effects, in particular on the price, quantity or quality of the goods and services, that it may be considered redundant, for the purposes of applying Article 101(1) of the Treaty and Article 53(1) of the EEA Agreement, to prove that they have actual effects on the market.[43]

5.1.3.2. Application to this case

(48) Based on the submissions of the Parties and the other evidence obtained in this case, the Commission considers that the anti-competitive behaviour described in Section 4 had the object of preventing, restricting and/or distorting competition in the LiBs

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41 Judgment of the Court of Justice of 11 September 2014, *Groupement des Cartes Bancaires v Commission*, C-67/13 P, ECLI:EU:C:2014:2204, paragraph 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.

42 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.

43 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.

sector in the EEA within the meaning of Article 101(1) of the Treaty and Article 53(1) of the EEA Agreement.

(49) The Commission has therefore reached the conclusion that the object of the conduct of the Parties was to restrict competition within the meaning of Article 101(1) TFEU 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

(50) 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.[44]

5.1.4.2. Application to this case

(51) The evidence shows that during the relevant period, the Parties sold significant quantities of LiBs to customers in the EEA. These sales involved a substantial volume of trade between Member States and between Contracting Parties to the EEA Agreement.

(52) The Commission has therefore reached the conclusion that the cartel was capable of having an appreciable effect upon trade between Member States and between the Contracting Parties to the EEA Agreement.[45]

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

5.2.1. Principles

(53) 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.

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[44] 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.

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

5.2.2. Application to this case

(54) On the basis of the facts before the Commission, there is no indication that the behaviour of the Parties resulted in any efficiency benefits or otherwise promoted technical or economic progress. Complex infringements amounting to secretly organised price coordination and/or the exchange of sensitive information between competitors, such as the present infringement, are by definition among the most detrimental restrictions of competition. There was also no benefit to consumers.

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

6. DURATION OF THE INFRINGEMENT

(56) As set out in Section 4.3, the Commission has concluded that the duration of the infringement was from 24 February 2004 to 10 November 2007.

(57) The Commission has reached the conclusion that the duration of the participation of each Party in the infringement was as follows:

(a) Samsung SDI from 1 April 2004[46] to 1 October 2007[47];

(b) Sony from 24 February 2004[48] to 1 October 2007[49];

(c) Panasonic from 24 February 2004[50] to 10 November 2007[51]; and

(d) Sanyo from 24 February 2004[52] to 10 November 2007[53].

7. LIABILITY

(a) Principles

(58) 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.[54]

(59) When such an entity infringes the competition rules, it falls, according to the principle of personal responsibility, to that entity to answer for that infringement. Thus the conduct of a subsidiary may be imputed to the parent company in particular where that subsidiary, despite having a separate legal personality, does not decide

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47 […].
48 […].
49 […].
50 […].
51 […].
52 […].
53 […].
54 Case C-511/11 P *Versalis v Commission*, EU:C:2013:386, paragraph 51.

independently upon its own conduct on the market, but carries out, in all material respects, the instructions given to it by the parent company, regard being had in particular to the economic, organisational and legal links between those two legal entities.[55]

(60) The Commission cannot merely find that an undertaking is able to exert decisive influence over another undertaking, without checking whether that influence was actually exerted. On the contrary, it is 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.[56]

(61) In the particular case, however, in which a parent holds all or almost all of the capital in a subsidiary that has committed an infringement of the Union competition rules, there is a rebuttable presumption that that parent company in fact exercises a decisive influence over its subsidiary. In such a situation, it is sufficient for the Commission to prove that all or almost all of the capital in the subsidiary is held by the parent company in order to take the view that that presumption applies.[57]

(b) Application to this case

(62) Having regard to the body of evidence and the facts described 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, Commission takes the view that the liability for the Parties' respective participations in the infringement found in this Decision should be imputed to the concerned legal entities as set out in recitals Sections 7.1 to 7.4.

7.1. Samsung SDI

(63) Samsung SDI Co., Ltd has acknowledged liability for its direct participation in the infringement.

(64) Samsung SDI Co., Ltd has further acknowledged that it is jointly and severally liable for the conduct of its former wholly-owned subsidiary Samsung SDI Germany GmbH.

(65) The Commission therefore imputes liability for the infringement to Samsung SDI Co., Ltd.

7.2. Sony

(66) Sony Corporation, Sony Energy Devices Corporation, Sony Electronics Inc. and Sony Taiwan Limited have acknowledged liability for their direct participation in the infringement.

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55 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.

56 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.

57 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.

(67) Sony Corporation has further acknowledged that it is jointly and severally liable for the conduct of its wholly-owned subsidiaries Sony Energy Devices Corporation, Sony Electronics Inc. and Sony Taiwan Limited.

(68) The Commission therefore imputes liability for the infringement jointly and severally to Sony Corporation, Sony Energy Devices Corporation, Sony Electronics Inc. and Sony Taiwan Limited.

7.3. Panasonic

(69) Panasonic Corporation and Panasonic Automotive & Industrial Systems Europe GmbH (formerly Panasonic Industrial Device Sales Europe GmbH)[58] have acknowledged liability for their direct participation in the infringement.

(70) Panasonic Corporation has further acknowledged that it is jointly and severally liable for the conduct of its wholly-owned subsidiary Panasonic Automotive & Industrial Systems Europe GmbH, formerly Panasonic Industrial Device Sales Europe GmbH.

(71) The Commission therefore imputes liability for the infringement jointly and severally to Panasonic Corporation and Panasonic Automotive & Industrial Systems Europe GmbH (insofar as it is legal successor of Panasonic Industrial Device Sales Europe GmbH).

7.4. Sanyo

(72) Sanyo Electric Co., Ltd., Panasonic Industrial Devices Sales Taiwan Co., Ltd. (formerly Sanyo Energy Taiwan Co., Ltd.)[59] and Panasonic Automotive & Industrial Systems Europe GmbH (formerly Sanyo Component Europe GmbH)[60] have acknowledged liability for their direct participation in the infringement.

(73) Sanyo Electric Co., Ltd. has further acknowledged that it is jointly and severally liable for the conduct of its former wholly-owned subsidiaries Sanyo Energy Taiwan Co., Ltd. (now Panasonic Industrial Devices Sales Taiwan Co., Ltd.) and Sanyo Component Europe GmbH (now Panasonic Automotive & Industrial Systems Europe GmbH).

(74) The Commission therefore imputes liability for the infringement jointly and severally to Sanyo Electric Co., Ltd., Panasonic Industrial Devices Sales Taiwan Co., Ltd. (insofar as it is legal successor of Sanyo Energy Taiwan Co., Ltd.) and Panasonic Automotive & Industrial Systems Europe GmbH (insofar as it is legal successor of Sanyo Component Europe GmbH).

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58 On 1 October 2014, Panasonic Automotive & Industrial Systems Europe GmbH absorbed the assets of the directly participating Panasonic Industrial Device Sales Europe GmbH by way of merger and it is thus held liable as the legal successor of Panasonic Industrial Device Sales Europe GmbH.

59 On 1 October 2015, Panasonic Industrial Devices Sales Taiwan Co., Ltd. absorbed the assets of the directly participating Sanyo Energy Taiwan Co., Ltd. by way of merger and it is thus held liable as the legal successor of Sanyo Energy Taiwan Co., Ltd.

60 On 1 October 2014, Panasonic Automotive & Industrial Systems Europe GmbH absorbed the assets of the directly participating Sanyo Component Europe GmbH by way of merger and it is thus held liable as the legal successor of Sanyo Component Europe GmbH.

8. REMEDIES

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

(75) 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.

(76) 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 undertakings to which this Decision is addressed 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

(77) Under 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 Agreement[61]. For each undertaking participating in the infringement, the fine must not exceed 10% of its total turnover in the preceding business year.

(78) In this case, the Commission has reached the conclusion that, based on the facts described in this Decision and the assessment contained in Section 5 the infringement was committed intentionally.

(79) Fines should therefore be imposed on undertakings to which this Decision is addressed.

(80) 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[62].

(81) Finally, the Commission will apply, as appropriate, the provisions of the Leniency Notice and the Settlement Notice.

8.3. Calculation of the fines

(82) In accordance with the Guidelines on fines, a basic amount is to be determined for the fine to be imposed on each undertaking, which results from the addition of a variable amount and an additional amount. The variable amount results from a percentage of up to 30% of the value of sales of goods or services to which the

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61 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, 30.11. 1994, p.6).

62 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).

infringement directly or indirectly relates in a given year (normally, the last full business year of the infringement) multiplied by the number of years of the undertaking's participation in the infringement. The additional amount ("entry fee") is calculated as a percentage between 15% and 25% of the value of sales, irrespective of the duration of the infringement. The resulting basic amount can then be increased or reduced if there are any aggravating or mitigating circumstances. That amount may also be increased for undertakings which have a particularly large turnover beyond the sales of goods or services to which the infringement relates.

8.3.1. The value of sales

(83) The basic amount of the fine to be imposed on the undertakings concerned is to be set by reference to the value of their sales[63], that is the value of the undertakings' sales of goods or services to which the infringement directly or indirectly related in the relevant geographic area in the EEA. In this case the relevant value of sales is the sales of LiBs as defined in Section 2.1 in the EEA (see section 4.2).

(84) The Commission normally takes the sales made by the undertakings during the last full business year of their participation in the infringement.[64] If the last year is not sufficiently representative, the Commission may take into account another year and/or other years for the determination of the value of sales. Based on the foregoing and on the information provided by the undertakings, the Commission uses the sales in 2006, which is the last full business year of the participation of the undertakings in the infringement.

(85) 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.

(86) Accordingly, the Commission takes into account the following values of sales for each undertaking:

TABLE 1: Value of Sales

Undertaking	**Value of sales (EUR)**
Samsung SDI	*[…]*
Sony	*[…]*
Panasonic	*[…]*
Sanyo	*[…]*

8.3.2. Determination of the basic amount of the fine

(87) 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,

63 Point 12 of the Guidelines on fines.
64 Point 13 of the Guidelines on fines.

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.[65]

8.3.2.1. Gravity

(88) The gravity of the infringement determines the percentage of the value of sales taken into account in setting the fine. In assessing the gravity of the infringement, the Commission has regard to a number of factors, such as the nature of the infringement, the combined market share of all the undertakings concerned, the geographic scope of the infringement and whether or not the infringement has been implemented.

(89) 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.[66] The Commission takes also into account that the infringement covered the entire EEA.

(90) Given the specific circumstances of this case, in particular 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

(91) 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 increase for duration should be calculated on the basis of the full years, months and days.

[65] Points 19-26 of the Guidelines on fines.

[66] Point 23 of the Guidelines on fines.

TABLE 2: Duration multipliers

Undertaking	Duration	Multipliers
Samsung SDI	1 April 2004 to 1 October 2007	3.5
Sony	24 February 2004 to 1 October 2007	3.6
Panasonic	24 February 2004 to 10 November 2007	3.71
Sanyo	24 February 2004 to 10 November 2007	3.71

8.3.3. Determination of the additional amount

(92) The infringement committed by the Parties involves horizontal price-fixing within the meaning of point 25 of the Guidelines on fines. The basic amount of the fine to be imposed should therefore include a sum of between 15% and 25% of the value of sales to deter the undertakings from even entering into such illegal practices on the basis of the criteria listed in recital (88) with respect to the variable amount.

(93) 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

(94) Based on the criteria explained in recitals (83)-(93), the basic amount of the fine to be imposed on each undertaking is as set out in Table 3.

TABLE 3: Basic amounts of the fine

Undertaking	Basic amount (EUR)
Samsung SDI	*[…]*
Sony	*[…]*
Panasonic	*[…]*
Sanyo	*[…]*

8.4. Adjustments to the basic amount of the fine

8.4.1. Aggravating or mitigating circumstances

(95) The Commission may increase the basic amount if it considers that there are aggravating circumstances. Those circumstances are listed in a non-exhaustive way 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 in a non-exhaustive way in point 29 of the Guidelines on fines.

(96) There are no aggravating or mitigating circumstances in this case.

8.4.2. Specific increase for deterrence

(97) 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.[67]

(98) In this particular case, the total worldwide turnover of Sony and Panasonic for the business year 2015 was particularly large compared to their respective sales of LiBs. The basic amount of the fines to be imposed on Sony and Panasonic should, therefore, be adjusted as set out in Table 4.

TABLE 4: Basic amounts after the adjustment

Undertaking	**Deterrence multiplier**	**Adjusted basic amount (EUR)**
Sony	1.2	*[…]*
Panasonic	1.2	*[…]*

8.5. Application of the 10% of turnover limit

(99) 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.[68]

(100) In this case, none of the fines calculated exceeds 10% of the respective undertaking's total turnover in 2015.

8.6. Application of the Leniency Notice

8.6.1. Immunity from fines

(101) Samsung SDI submitted a marker/immunity application under the Leniency Notice on 2 May 2011 and was granted conditional immunity from fines on 22 March 2012.

(102) Samsung SDI's cooperation fulfilled the requirements under the Leniency Notice. Samsung SDI should, therefore, be granted immunity from fines in this case.

8.6.2. Reduction of fines

8.6.2.1. Sony

(103) On 17 August 2012 Sony applied for a reduction of the fine. It was the first undertaking to provide the Commission with evidence of the infringement which

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67 Point 30 of the Guidelines on fines.

68 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.

represented significant added value with respect to the evidence already in the Commission's possession at the time it was provided.

(104) Sony has cooperated genuinely, fully, on a continuous basis and expeditiously from the time it has submitted its application. Sony provided several oral statements supported by contemporaneous documents corroborating information already submitted by Samsung SDI. Its cooperation proved to be of essential importance when establishing the case. Sony in particular provided evidence strengthening the Commission's ability to establish the duration of the cartel as well as the existence of the single and continuous infringement.

(105) In view of the assessment in recitals (103)-(104), the fine imposed on Sony should be reduced by 50%.

8.6.2.2. Panasonic/Sanyo

(106) On 25 March 2015 Panasonic/Sanyo 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.

(107) Panasonic/Sanyo provided the Commission with an oral statement supported by contemporaneous documents. The evidence provided by Panasonic/Sanyo corroborated information already submitted by the other applicants. Moreover, the evidence strengthened the Commission's ability to establish the end date of the infringement. The significant added value of Panasonic/Sanyo’s submissions was otherwise limited.

(108) Moreover, Panasonic/Sanyo submitted its application for a reduction of a fine at the very late stage of the procedure (more than 2 years after it received a first request for information pursuant to Article 18(2) of Regulation (EC) No 1/2003).

(109) In view of the assessment in recitals (106)-(108), a reduction of the fine of 20% should be granted to Panasonic/Sanyo.

8.7. Application of the Settlement Notice

(110) According to point 32 of the Settlement Notice, the reward for settlement results in a reduction of 10% of the amount of the fine to be imposed after the 10% of turnover cap has been applied having regard to the Guidelines on fines. Pursuant to point 33 of the Settlement Notice, when settled cases involve leniency applicants, the reduction of the fine granted to them for settlement will be added to their leniency reward.

(111) As a result of the application of the Settlement Notice, the amount of the fine to be imposed on Sony, Panasonic and Sanyo 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

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

TABLE 5: Fines

Undertaking	**Fines (EUR)**
Samsung SDI	0
Sony	29 802 000
Panasonic	38 890 000
Sanyo	97 149 000

HAS ADOPTED THIS DECISION:

Article 1

The following undertakings infringed Article 101 of the Treaty and Article 53 of the EEA Agreement by participating in a single and continuous infringement covering the whole EEA consisting of price coordination and/or exchanges of commercially sensitive market information concerning rechargeable lithium-ion batteries:

(a) Samsung SDI Co., Ltd from 1 April 2004 until 1 October 2007

(b) Sony Corporation, Sony Energy Devices Corporation, Sony Electronics Inc. and Sony Taiwan Limited from 24 February 2004 until 1 October 2007

(c) Panasonic Corporation and Panasonic Automotive & Industrial Systems Europe GmbH from 24 February 2004 until 10 November 2007

(d) Sanyo Electric Co., Ltd., Panasonic Industrial Devices Sales Taiwan Co., Ltd. and Panasonic Automotive & Industrial Systems Europe GmbH from 24 February 2004 until 10 November 2007

Article 2

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

(a) Samsung SDI Co., Ltd: EUR 0

(b) Sony Corporation, Sony Energy Devices Corporation, Sony Electronics Inc. and Sony Taiwan Limited jointly and severally liable: EUR 29 802 000

(c) Panasonic Corporation and Panasonic Automotive & Industrial Systems Europe GmbH jointly and severally liable: EUR 38 890 000

(d) Sanyo Electric Co., Ltd., Panasonic Industrial Devices Sales Taiwan Co., Ltd. and Panasonic Automotive & Industrial Systems Europe GmbH jointly and severally liable: EUR 97 149 000

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.39904

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

Where an undertaking referred to in Article 1 lodges an appeal, that undertaking must cover the fine by the due date, either by providing an acceptable financial guarantee, or by making a provisional payment of the fine in accordance with Article 90 of Delegated Regulation (EU) No 1268/2012.[69]

Article 3

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

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

Article 4

This Decision is addressed to

Samsung SDI Co., Ltd, 150-20 Gongse-ro, Giheung-gu, Yongin-si, Gyeonggi-do, 446-577 Korea

Sony Corporation, 7-1 Konan 1-Chome, Minato-ku, Tokyo, 108-0075 Japan

Sony Energy Devices Corporation, 1-1 Shimosugishita, Takakura, Hiwada-machi, Koriyama-shi, Fukushima 963-0531 Japan

Sony Electronics Inc., 16535 Via Esprillo Bldg 1 San Diego, CA, 92127 United States

[69] 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).

Sony Taiwan Limited, 5F, 145 Changchun Road, Zhongshan Dist., Taipei 104, Taiwan

Panasonic Corporation, 1006, Kadoma, Kadoma City, Osaka 571-8501, Japan

Panasonic Automotive & Industrial Systems Europe GmbH, Robert-Bosch-Strasse, 27-29, 63225 Langen, Germany

Sanyo Electric Co., Ltd., 1-1 Sanyo-cho, Daito city, Osaka, 574-8534, Japan

Panasonic Industrial Devices Sales Taiwan Co., Ltd., 12th Floor, No.9, SongGao Rd., Taipei 110, Taiwan

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

Done at Brussels, 12.12.2016

For the Commission
Margrethe VESTAGER
Member of the Commission