EUROPEAN COMMISSION
Competition DG

CASE AT.40299-CLOSURE SYSTEMS

(Only the English text is authentic)

CARTEL PROCEDURE

Council Regulation (EC) 1/2003

Article 7 Regulation (EC) 1/2003

Date: 29/09/2020

EUROPEAN
COMMISSION

Brussels, 29.9.2020
C(2020) 6486 final

COMMISSION DECISION

of 29.9.2020

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.40299 – CLOSURE SYSTEMS)

(Text with EEA relevance)

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(Text with EEA relevance)

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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], and in particular Article 10a thereof,

Having regard to the Commission Decision of 9 July 2019 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 12 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,

Whereas:

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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 ('TFEU'). The two sets of provisions are, in substance, identical. For the purposes of this Decision, references to Articles 101 and 102 of the TFEU should be understood as references to Articles 81 and 82, respectively, of the EC Treaty where appropriate. The TFEU 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.

1. INTRODUCTION

(1) This Commission Decision concerns the participation of the addressees of this Decision in one or both of two single and continuous infringements of Article 101 of the Treaty on the Functioning of the European Union ('TFEU') and of Article 53 of the EEA Agreement.

(2) The first infringement consisted of price coordination and exchange of commercially sensitive information with a view to reducing competitive uncertainty for sales of door modules and window regulators to certain manufacturers of passenger cars in the European Economic Area ('EEA'). This first infringement took place from 12 August 2010 to 21 February 2011.

(3) The second infringement consisted of price coordination and exchange of commercially sensitive information with a view to reducing competitive uncertainty for sales of latches and strikers in relation to certain manufacturers of passenger cars in the EEA. This second infringement took place from 15 June 2009 to 7 May 2012.

(4) This Decision is addressed to the following legal entities being part of the following undertakings :

- ***MAGNA***: Magna International Inc., Magna Closures S.p.A., Magna Mirrors Holding GmbH and MAGNA International Europe GmbH
- ***BROSE***: Brose Beteiligungs-Kommanditgesellschaft, Coburg, Brose Beteiligungs-Kommanditgesellschaft II, Coburg, Brose Fahrzeugteile SE & Co. Kommanditgesellschaft, Bamberg[4], Brose Fahrzeugteile SE & Co. Kommanditgesellschaft, Coburg[5] and Brose Verwaltung SE, Coburg[6]
- ***KIEKERT***: Kiekert AG

2. THE INDUSTRY SUBJECT TO THE PROCEEDINGS

2.1. The product scope

(5) This Decision concerns the supply of closure systems for passenger cars. Closure systems serve to maintain and control access to a vehicle and to reliably open and close a vehicle's doors, lift-gates, trunks, hoods and door windows in order to protect the vehicle and its occupants. Closure systems encompass various components such as latches, strikers, window systems and door modules.

(6) Latches and strikers are used to secure automotive side and sliding doors, tailgates and trunks. Latches are technologically advanced complex products, whereas strikers are simpler commodity products.

(7) Window regulators are manual or electronic window lift assemblies for front and rear door applications in vehicles to automatically raise or lower windows. Depending on the customer's preferences, window regulators may be integrated into door modules or procured on a stand-alone basis.

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4 Formerly, the legal entity was named Brose Fahrzeugteile GmbH & Co. Kommanditgesellschaft, Bamberg.

5 Formerly, the legal entity was named Brose Fahrzeugteile GmbH & Co. Kommanditgesellschaft, Coburg.

6 Formerly, the legal entity was named Brose Verwaltungsgesellschaft mbH, Coburg.

(8) A door module is an assembly of components that operate the door's electronic and mechanical functionalities. It consists of a rubber-sealed carrier, onto which a variety of door components such as the window lift mechanism, the wing mirror electric motor, the wiring, the loud speaker, the door latch inner release cable, a latch and various switches are fitted, forming a "cassette".

2.2. Undertakings subject to the proceedings

(9) The following undertakings, comprising the legal entities mentioned in recitals (10) to (18) were involved in the infringements described in recitals (59) to (62). They are also referred to collectively as **'parties'** or individually as **'party'**.

2.2.1. MAGNA

(10) MAGNA is a global automotive supplier with 346 manufacturing operations and 92 product development, engineering and sales centres in 28 countries worldwide. MAGNA's product portfolio includes producing body, chassis (exterior and interior), seating, powertrain, electronic, vision, closure and roof systems and modules, as well as complete vehicle engineering and contract manufacturing.

(11) For the reasons set out in recitals (84) to (89), the following legal entities are relevant for the purpose of this Decision:

- **Magna International Inc.**, with registered offices at 337 Magna Drive, Aurora, Ontario L4G 7K1, Canada;
- **Magna Closures S.p.A.** with registered offices at Via Francia 101, 57017 Collesalvetti LI Guasticce, Italy;
- **Magna Mirrors Holding GmbH** with registered offices at Kurfürst-Eppstein-Ring 5, 63877 Sailauf, Germany; and
- **MAGNA International Europe GmbH** with registered offices at Technologiestrasse 8, 1120 Vienna, Austria

(12) MAGNA's worldwide consolidated turnover was USD 39 431 million (approx. EUR 35 220 million) in 2019[7].

2.2.2. BROSE

(13) BROSE is a family-owned producer of door systems, seat adjusters and window regulators. BROSE operates in 63 locations in 23 countries in Europe, the Americas, Asia and South Africa. BROSE's product portfolio includes cooling fan modules, door latches, door modules, electric motor and drives, electronic control units, front and rear seat structures, power lift-gate and tailgate systems, seat adjusters, seat components, steering motors, and window regulators.

(14) For the reasons set out in recitals (90) to (93), the following legal entities are relevant for the purpose of this Decision:

- **Brose Beteiligungs-Kommanditgesellschaft, Coburg**, with registered offices at Max-Brose-Straße 1, 96450 Coburg, Germany;
- **Brose Beteiligungs-Kommanditgesellschaft II, Coburg**, with registered offices at Max-Brose-Straße 1, 96450 Coburg, Germany;

[7] The USD/EUR exchange rate applied is the European Central Bank average exchange rate for 2019.

– **Brose Fahrzeugteile SE & Co. Kommanditgesellschaft, Bamberg**, with registered offices at Berliner Ring 1, 96052 Bamberg, Germany;

– **Brose Fahrzeugteile SE & Co. Kommanditgesellschaft, Coburg**, with registered offices at Max-Brose-Straße 1, 96450 Coburg, Germany; and

– **Brose Verwaltung SE, Coburg** with registered offices at Max-Brose-Straße 1, 96450 Coburg, Germany

(15) BROSE's worldwide consolidated turnover was EUR 6 170 million in 2019.

2.2.3. KIEKERT

(16) KIEKERT is a manufacturer of automotive locks and latches, with expertise in mechanical, electric and electronic systems. KIEKERT operates in 11 locations in Europe, America, Asia and South Africa. The undertaking also develops complete latch modules that integrate locks and latches with other components.

(17) For the reasons set out in recitals (94) and (95), the relevant legal entity for the purpose of this Decision is **Kiekert AG** with registered offices at Höseler Platz 2, 42579 Heiligenhaus, Germany.

(18) KIEKERT's worldwide consolidated turnover was EUR 850,7 million in 2019.

3. PROCEDURE

(19) MAGNA applied for a marker on 21 April 2015 under points 14 and 15 of the Commission notice on immunity from fines and reduction of fines in cartel cases[8] ('the Leniency Notice')[9]. The Commission rejected the marker application by letter dated 27 April 2015[10]. On 5 May 2015, MAGNA applied for immunity in relation to collusive contacts with other suppliers related to supplies of certain car parts to car manufacturers in the EEA. The immunity application was followed by a number of submissions and accompanying documents. On 14 December 2015, the Commission granted MAGNA conditional immunity from fines pursuant to point 8(a) of the Leniency Notice.

(20) Between 12 and 15 January 2016, the Commission carried out unannounced inspections under Article 20(4) of Regulation (EC) 1/2003 at the premises of BROSE and KIEKERT in Germany.

(21) On 29 March 2016, KIEKERT applied for immunity from fines or, in the alternative, for a reduction of fines under the Leniency Notice in relation to collusive contacts with other suppliers concerning supplies of latches and strikers to car manufactures in the EEA. It supplemented its application several times and provided additional documents and information.

(22) On 11 April 2016, BROSE applied for immunity from fines or, in the alternative, for a reduction of fines under the Leniency Notice in relation to collusive contacts with other suppliers concerning supplies of door modules and window regulators to car manufacturers in the EEA. It supplemented its application several times and provided additional documents and information.

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

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(23) The Commission sent several requests for information to the parties in March 2017, May 2018 and August 2019.

(24) On 9 July 2019, the Commission initiated proceedings pursuant to Article 2(1) of Regulation (EC) No 1/2003 against parties with a view to engaging in settlement discussions with them under 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[11] (the 'Settlement Notice').

(25) On 9 July 2019, the Commission adopted decisions preliminarily concluding that BROSE and KIEKERT had met the conditions of point 27 of the Leniency Notice and established the applicable ranges of the reductions in the level of fines that BROSE would receive in respect of the first alleged infringement and KIEKERT in respect of the second alleged infringement, provided that they continued to meet the conditions of point 12 of the Leniency Notice.

(26) After each party had confirmed its willingness to engage in settlement discussions, settlement meetings and contacts between each party and the Commission took place between […] September 2019 and […] March 2020. In the course of the settlement procedure, the Commission informed the parties of the objections it envisaged raising against them and disclosed to them the evidence on the Commission's file that it relied upon to establish those objections.

(27) Between 11 and 23 September 2019, the parties had access to the relevant documentary evidence on the file as well as to a list of all the documents therein, and - at the Commission premises - to all oral statements and replies to the Commission´s requests for information submitted under the Leniency Notice.

(28) The Commission also provided the parties with an estimation of the range of fines likely to be imposed by the Commission.

(29) Each party expressed its own respective view on the objections which the Commission envisaged raising against them. The Commission carefully considered the parties' comments and took them into account where justified.

(30) At the end of the settlement discussions, all parties considered that there was a sufficient common understanding between them and the Commission as regards the potential objections and the range of likely fines to continue the settlement process.

(31) Between […], the parties submitted to the Commission their formal requests to settle pursuant to Article 10a(2) of Regulation (EC) No 773/2004 (the 'settlement submissions'). The settlement submission of each party contained the following:

- an acknowledgement in clear and unequivocal terms of the party's liability for the respective infringement summarily described as regards its objective, the main facts, their legal qualification, including the party's role and the duration of its participation in the respective infringement;
- an indication of the maximum amount of the fine the party expects to be imposed by the Commission and which it would accept in the framework of a settlement procedure;
- the party's confirmation that it has been sufficiently informed of the objections the Commission envisages raising against it and that it has

[11] OJ C 167, 2.7.2008, p. 1.

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 again in an oral hearing, unless the Commission does not reflect its settlement submission in the Statement of Objections and the Decision;

– the party's agreement to receive the Statement of Objections and the final decision pursuant to Articles 7 and 23 of Regulation (EC) No 1/2003 in English.

(32) Each party made its settlement submission conditional upon the imposition of a fine, by the Commission, which does not exceed the amount specified in its settlement submission.

(33) On 30 June 2020, the Commission adopted a Statement of Objections addressed to the parties. All of the parties replied to the Statement of Objections by confirming that it reflected the contents of their settlement submissions and that they remained committed to following the settlement procedure.

4. DESCRIPTION OF THE EVENTS

4.1. Nature and scope of the conduct

(34) This Decision concerns two separate sets of conduct:

(a) The first set of conduct concerns price coordination and exchange of commercially sensitive information between MAGNA and BROSE related to the supply of door modules and window regulators for passenger C-class car models A205, C205, S205 and W205, (hereinafter 'BR205') to Daimler;

(b) The second set of conduct concerns price coordination and exchange of commercially sensitive information between MAGNA and KIEKERT related to the supply of latches and strikers for passenger cars to BMW and Daimler; for Daimler only in relation to supplies of G/GN/GL2-latches and strikers through the joint purchasing initiative "Industriebaukasten" ('IBK') between Daimler and BMW ('IBK sales')[12].

4.2. The first set of conduct: MAGNA-BROSE

(35) In July 2010, Daimler launched a bid for supplies of door modules and window regulators for the new C-class BR205 passenger car models[13].

4.2.1. Objective of the conduct

(36) The objective of the conduct was to preserve each party's existing door modules and window regulators business, to avoid a price war leading to the deterioration of the prevailing pricing levels of the supplies of door modules and window regulators and to allocate new supplies of those products between the parties under the bid launched in July 2010[14].

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4.2.2. Description of the conduct

(37) Following Daimler's request for quotations for the BR205 door modules and window regulators award in July 2010, both parties:

– regularly signalled to each other their main commercial interests and preference concerning the supplies to Daimler[15]. They reached an agreement on the allocation of supplies for this award for Daimler's BR205 production in the EEA[16].

– exchanged information related to the price levels of their respective bids, in order to coordinate their bidding prices[17].

(38) The conduct mainly took place in the form of meetings and phone conversations (with summaries of the exchanges in internal emails)[18].

(39) In the course of the tender procedure, BROSE decided to disregard the alignment on prices and the award split and instead to bid to win the entire award. However, it kept pretending towards MAGNA that it still complied with the alignment on prices and on the award split as agreed with MAGNA. BROSE won the entire award[19].

4.2.3. Duration

(40) The conduct started on 12 August 2010 with the first collusive contact (a bilateral meeting[20]) and ended on 21 February 2011 with the last known collusive contact (a bilateral phone contact[21]).

4.3. The second set of conduct: MAGNA-KIEKERT

4.3.1. Objective of the conduct

(41) The objective of the conduct was to protect and preserve each party's existing latches and strikers business at BMW and to avoid a price war leading to the deterioration of the prevailing pricing levels of those supplies. In this context, the parties pursued the objective of allocating the supply of latches and strikers for passenger cars to BMW and to Daimler for IBK sales[22].

4.3.2. Description of the conduct

(42) KIEKERT and MAGNA had collusive contacts concerning the supply of latches and strikers for passenger cars to BMW and to Daimler for IBK sales in(to) the EEA:

– MAGNA and KIEKERT coordinated their market behaviour and exchanged commercially sensitive information regarding the bidding procedure launched by BMW and Daimler in mid-2009 for the G/GN/GL2-latch development[23] as well as regarding the 2010 BMW/Daimler G/GN/GL2-latch award[24]. Parties

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16 See for example, […]
17 See for example, […]
18 See for example, […]
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also discussed the respective territories to which each of them should supply the G/GN/GL2-latches[25].

– The collusive contacts continued in relation to the 2011 BMW/Daimler N/L-latch and G/GN/GL2-latch strikers' award. KIEKERT and MAGNA disclosed their commercial preferences to each other regarding the outcome of the bidding process[26]. They reached an agreement on a common geographic allocation strategy inducing BMW to allocate the striker business corresponding to the location of BMW's production facilities supplied with latches by MAGNA and KIEKERT[27]. They also exchanged information, updated and aligned each other on their respective price offers sent to BMW/Daimler[28]. The strikers' award was ultimately won by a third party.

– In 2011, MAGNA and KIEKERT also colluded on the supply of N/L-latches to BMW. The background of this conduct was that BMW had requested certain price reductions per N/L-latch unit and investments to be made by MAGNA and KIEKERT in the sub-supplier ZF Friedrichshafen ('ZF')[29] in 2011 to increase ZF's production capacities. In exchange, the party which would ultimately invest in ZF, would secure larger supply volumes of latches to BMW. KIEKERT and BMW reached an agreement regarding the investment in ZF on 1 July 2011[30]. Thereafter, MAGNA and KIEKERT exchanged commercially sensitive information on the price reductions requested by BMW[31]. They also reached the agreement that KIEKERT would not supply latches to BMW plants for which MAGNA had been nominated by BMW, and the parties would avoid a price war and "cannibalism" between their respective supply programmes to BMW. The aim of the agreement was to avoid endangering the potential increase of volumes for MAGNA's nominated BMW plants and to ensure that MAGNA would obtain such potential volume increases for its supplies of latches without a need to invest into ZF[32].

– In 2012, KIEKERT exchanged with MAGNA information and updates on negotiations with BMW regarding BMW's requests for price reductions of supplies of latches[33]. The purpose of this exchange of information was to align the cost quotes submitted by MAGNA and KIEKERT to BMW and to minimize price reductions for future supplies of latches requested by BMW[34].

(43) The conduct mainly took place in the form of meetings and phone conversations (with summaries of the exchanges in internal emails)[35] but also through direct emails between the parties.[36]

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29 […] Kiekert and Magna sourced at that time the EKT (Elektrokomponententräger, i.e. the carrier for the electronic components of the latch) from the same sub-supplier ZF Friedrichshafen AG.
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32 […]
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34 […]
35 See for example, […]
36 See for example, […]

4.3.3. Duration

(44) The conduct started on 15 June 2009[37] with the first collusive contact and ended on 7 May 2012[38] with the last known collusive contact.

4.4. Geographic scope of the conduct

(45) The geographic scope of the two sets of conduct was at least EEA-wide throughout the respective periods.

(46) Regarding the first set of conduct, Daimler's bidding process covered the supplies of door modules and window regulators for the production of the C-Class car models BR205 in the EEA[39].

(47) Regarding the second set of conduct, the collusive contacts covered supplies of latches and strikers to BMW and Daimler within the EEA[40].

5. LEGAL ASSESSMENT

(48) The Commission's legal assessment in recitals (49) to (75) takes into account the facts as described in recitals (35) to (47), the parties' clear and unequivocal acknowledgement of the facts and the legal qualification thereof contained in their settlement submissions, as well as their replies to the Statement of Objections.

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

5.1.1. Agreements and concerted practices

5.1.1.1. Principles

(49) Article 101(1) of the TFEU 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.

(50) An agreement under Article 101(1) of the TFEU and Article 53(1) of the EEA 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 TFEU and Article 53(1) of the EEA Agreement draw a distinction between the concepts of concerted practice on the one hand and that of agreements between undertakings on the other, both provisions prohibit forms of coordination between undertakings by which, without having reached the stage where an agreement properly so-called has been concluded, undertakings knowingly substitute practical cooperation between them for the risks of competition. Therefore, conduct may be classified under Article 101(1) of the TFEU and Article 53(1) of the EEA

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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 practices which facilitate the coordination of their commercial behaviour[41].

(51) It is not necessary to define exactly whether certain conduct constitutes an agreement or a concerted practice as long as it is established that the infringement involved anti-competitive agreements and/or concerted practices and that the participating undertakings by their own conduct intended to contribute to the common objectives pursued by all the participants and were aware of the actual conduct planned or put into effect by the other undertakings in pursuit of those common objectives (or could reasonably have foreseen it and were prepared to take the risk)[42].

5.1.1.2. Application in this case

(52) For each of the two sets of conduct, it emerges from the facts as described in recitals (35) to (47), the parties' clear and unequivocal acknowledgement of the facts and the legal qualification thereof contained in their settlement submissions, that the parties took part in various actions of price coordination and exchange of commercially sensitive information that can be qualified as agreements and/or concerted practices within the meaning of Article 101(1) of the TFEU, whereby the parties knowingly substituted practical cooperation between them for the risks of competition.

(53) The two sets of conduct described in recitals (35) to (47) therefore each present all the characteristics of agreements and/or concerted practices within the meaning of Article 101(1) of the TFEU and Article 53(1) of the EEA Agreement.

(54) Based on the facts as described in recitals (35) to (47) regarding the two sets of conduct, the parties' clear and unequivocal acknowledgement of the facts and the legal qualification thereof contained in their settlement submissions, it is therefore concluded that each of the two sets of conduct constitutes agreements and/or concerted practices within the meaning of Article 101(1) of the TFEU and Article 53(1) of the EEA Agreement.

5.1.2. Two single and continuous infringements

5.1.2.1. Principles

(55) An infringement of Article 101(1) of the TFEU and of Article 53(1) of the EEA Agreement can result not only from an isolated act, but also from a series of acts or from continuous conduct, even if one or more aspects of that series of acts or continuous conduct could also, in themselves and taken in isolation, constitute an infringement of that provision. Accordingly, if the different actions form part of an "overall plan", because their identical object distorts competition within the common market, the Commission is entitled to impute responsibility for those actions on the basis of participation in the infringement considered as a whole[43].

(56) An undertaking that has participated in such a single and complex infringement through its own conduct, which fell within the definition of an agreement or a concerted practice having an anti-competitive object for the purposes of Article

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

42 Case C-49/92 P, *Commission v Anic Partecipazioni*, ECLI:EU:C:1999:356, paragraphs 81-87.

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

101(1) of the TFEU and of Article 53(1) of the EEA Agreement and was intended to help bring about the infringement as a whole, may accordingly be liable also in respect of the conduct of other undertakings in the context of the same infringement throughout the period of its participation in the infringement[44].

(57) An undertaking may thus have participated directly in all the aspects of anti-competitive conduct comprising a single infringement, in which case the Commission is entitled to attribute liability to it in relation to that conduct as a whole and, therefore, in relation to the infringement as a whole. Equally, the undertaking may have participated directly in only some of the anti-competitive conduct comprising a single infringement, but have been aware of all the other unlawful conduct planned or put into effect by the other participants in the cartel in pursuit of the same objectives, or could reasonably have foreseen that conduct and have been prepared to take the risk. In such a case, the Commission is also entitled to attribute liability to that undertaking in relation to all the anti-competitive conduct comprising such an infringement and, accordingly, in relation to the infringement as a whole[45].

(58) On the other hand, if an undertaking has directly taken part in one or more of the aspects of anti-competitive conduct comprising a single infringement, but it has not been shown that that undertaking intended, through its own conduct, to contribute to all the common objectives pursued by the other participants in the cartel and that it was aware of all the other unlawful conduct planned or put into effect by those other participants in pursuit of the same objectives or that it could reasonably have foreseen all that conduct and was prepared to take the risk, the Commission is entitled to attribute to that undertaking liability only for the conduct in which it participated directly and the conduct planned or put into effect by the other participants in pursuit of the same objectives as those pursued by that undertaking where it has been shown that the undertaking was aware of that conduct or could reasonably have foreseen it and was prepared to take the risk[46].

5.1.2.2. Application in this case

(59) Each of the two sets of conduct constitutes a separate single and continuous infringement of Article 101 of the TFEU and Article 53 of the EEA Agreement because it involves a coherent set of collusive price coordination and exchange of commercially sensitive information which took the form of a series of bilateral meetings and contacts by email or phone between competitors and continued without interruption in the respective periods. Each of the incidents of collusive conduct were inter-linked and served the same purpose and economic aim, namely to coordinate the future market conduct of the participants. The undertakings as well as the employees involved remained identical throughout the relevant periods and there was a commonality in the *modus operandi*.

(60) The first set of conduct concerned price coordination and exchange of commercially sensitive information between MAGNA and BROSE of price issues related to the award procedure by Daimler for supplies of door modules and window regulators for the C-Class car models BR205 in the EEA. The collusive contacts related to the alignment of future bidding prices and to the allocation of supplies for the award in

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44 Case C-441/11 P, *Commission v Verhuizingen Coppens*, ECLI:EU:C:2012:778, paragraph 42. In Case 49/92 P *Commission v Anic Partecipazioni*, ECLI:EU:C:1999:356, paragraph 83.

45 Case C-441/11 P *Commission v Verhuizingen Coppens*, ECLI:EU:C:2012:778, paragraph 43.

46 Case C-441/11 P *Commission v Verhuizingen Coppens*, ECLI:EU:C:2012:778, paragraph 44.

question[47]. All those contacts were inter-linked, showed the same pattern (see also recital (59)) and shared the same common objective of preserving each party's existing door modules and window regulators business; of avoiding a price war leading to the deterioration of the prevailing pricing levels of these supplies; and of allocating the new door modules and window regulators supplies between the parties[48]. Therefore, they form a single infringement covering door modules and window regulators supplies to Daimler for the C-Class car models (BR205) in the EEA. MAGNA and BROSE had the intention to contribute to the same overall plan and participated directly in all forms of the anti-competitive bilateral conduct. The Commission therefore attributes liability to MAGNA and BROSE for the first set of conduct as a whole.

(61) The second set of conduct concerned price coordination and exchange of commercially sensitive information between MAGNA and KIEKERT of prices related to the supplies of strikers and latches to BMW and Daimler (for Daimler only in relation to the supplies of G/GN/GL2-latches and strikers through the joint purchasing initiative IBK). The collusive contacts concerned agreements and/or concerted practices on bidding prices of latches and strikers and on allocation of supplies. MAGNA and KIEKERT exchanged commercially sensitive information related to the award procedures for latches and strikers, such as updates on their individual negotiations with BMW[49]. Moreover, KIEKERT exchanged with MAGNA information on price reductions that BMW had demanded KIEKERT for supplies of latches[50]. All these contacts were inter-linked, showed the same pattern (see also recital (59)) and shared the common objective of protecting and preserving each party's existing latches and strikers business at BMW and of avoiding a price war leading to the deterioration of the prevailing pricing levels of the supplies[51]. In this context, the parties pursued the objective of allocating the supply of latches and strikers for passenger cars to BMW and to Daimler for IBK sales. MAGNA and KIEKERT had the intention to contribute to the same overall plan and participated directly in all forms of the anti-competitive bilateral conduct. The Commission therefore attributes liability to MAGNA and KIEKERT for the second set of conduct as a whole.

(62) On the basis of the considerations in recitals (59) to (61), the facts as described in recitals (35) to (47), the parties' clear and unequivocal acknowledgement of the facts and the legal qualification thereof contained in their settlement submissions, it is concluded that each of the two sets of conduct constitutes a separate single and continuous infringement of Article 101 of the TFEU and Article 53 of the EEA Agreement.

5.1.3. Restriction of competition

5.1.3.1. Principles

(63) To come within the prohibition laid down in Article 101(1) of the TFEU and Article 53(1) of the EEA Agreement, an agreement, a decision by an association of

47 See for example, […]

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49 See for example, […]

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51 […]

undertakings or a concerted practice must have as its object or effect the prevention, restriction or distortion of competition in the internal market.

(64) Certain types of coordination between undertakings reveal a sufficient degree of harm to competition that it may be found that there is no need to examine their effects[52]. Such types of coordination between undertakings can be regarded, by their very nature, as being harmful to the proper functioning of normal competition[53]. Article 101 of the TFEU is intended to protect not only the interests of competitors or consumers, but also the structure of the market and thus competition[54].

(65) Consequently, certain collusive behaviour, such as that leading to horizontal price-fixing by cartels, is 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 TFEU, to prove that it has actual effects on the market[55].

5.1.3.2. Application in the present case

(66) In respect of both sets of conduct (see recitals (35) to (47)), the participants coordinated their behaviour to reduce uncertainty between themselves in relation to the supplies of door modules and window regulators and strikers and latches, respectively, in the EEA.

(67) Both sets of conduct thus had by their very nature the object of creating conditions of competition that did not correspond to the normal conditions on the given market[56]. It can be presumed that undertakings taking part in such conduct and remaining active on the market will take account of the information exchanged with competing automotive parts suppliers when determining their own conduct on the market[57].

(68) Based on the facts as described in recitals (35) and (47) and the parties' clear and unequivocal acknowledgement of the facts and the legal qualification thereof contained in their settlement submissions, the Commission concludes that both sets of conduct had as their object the restriction of competition within the meaning of Article 101(1) of the TFEU and Article 53(1) of the EEA Agreement[58]. There is no

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

53 Joined Cases 56/64 and 58/64, *Consten and Grundig v Commission*, ECLI:EU:C:1966:41; Joined Cases C 238/99 P, C 244/99 P, C 245/99 P, C 247/99 P, C 250/99 P to C 252/99 P and C 254/99 P, *Limburgse Vinyl Maatschappij and Others v Commission*, ECLI:EU:C:2002:582, paragraph 508, Case C 389/10 P, *KME Germany and Others v Commission*, ECLI:EU:C:2011:816, paragraph 75; Case C-67/13 P, *Groupement des Cartes Bancaires v Commission*, ECLI:EU:C:2014:2204, paragraph 50; Case C-286/13 P, *Dole Food and Dole Fresh Fruit Europe v Commission*, ECLI:EU:C:2015:184, paragraph 114.

54 Joined Cases C 501/06 P, C 513/06 P, C 515/06 P and C 519/06 P, *GlaxoSmithKline Services and Others v Commission and Others*, ECLI:EU:C:2009:610, paragraph 63.

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

56 See Case C-286/13 P, *Dole Food and Dole Fresh Fruit Europe v Commission*, ECLI:EU:C:2015:184, paragraphs 123, 134.

57 See Case C-49/92 P, *Commission v Anic Partecipazioni*, ECLI:EU:C:1999:356, paragraph 121; Case C-286/13 P, *Dole Food and Dole Fresh Fruit Europe v Commission*, ECLI:EU:C:2015:184, paragraph 127.

58 See Case C-8/08, *T-Mobile Netherlands and Others*, ECLI:EU:C:2009:343, paragraphs 33, 35, 41; C-286/13 P, *Dole Food and Dole Fresh Fruit Europe v Commission*, paragraph 134, T-270/12, *Panalpina*

need to take into account the effects of the conduct and to consider whether or not the parties ultimately succeeded in reaching the desired price level or supply allocation[59].

5.1.4. Capability to affect trade between EU Member States and Contracting States to the EEA Agreement

5.1.4.1. Principles

(69) Article 101(1) of the TFEU is aimed at agreements and concerted practices which might harm unfettered competition in the Union or the attainment of a single market between the Member States, whether by partitioning national markets or by affecting the structure of competition within the internal market. Similarly, Article 53(1) of the EEA Agreement is directed at agreements that undermine the achievement of a homogeneous EEA between the Contracting Parties to the EEA Agreement[60].

5.1.4.2. Application in this case

(70) For each of the two sets of conduct (see recitals (35) to (47)), the relevant automotive parts were supplied to production facilities of the relevant car manufacturers in the EEA[61]. Significant cross-border trade within the EEA took place or could have taken place. These supplies involved a substantial volume of trade between Member States.

(71) The Commission therefore concludes that the parties' conduct was capable of having an appreciable effect upon trade between Member States and between the Contracting Parties to the EEA Agreement within the meaning of Article 101(1) of the TFEU and Article 53(1) of the EEA Agreement.

5.2. Non-applicability of Article 101(3) of the TFEU

5.2.1. Principles

(72) The provisions of Article 101(1) of the TFEU and Article 53(1) of the EEA Agreement may be declared inapplicable pursuant to Article 101(3) of the TFEU and Article 53(3) of the EEA Agreement, respectively, 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. The undertaking bears the burden of proving that those above conditions are fulfilled.

5.2.2. Application in this case

(73) The parties have not made any submissions that Article 101(3) of the TFEU and Article 53(3) of the EEA Agreement would be applicable to the conduct of MAGNA, BROSE and KIEKERT. The Commission therefore concludes that the conditions for

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World Transport (Holding) and Others v Commission, ECLI:EU:T:2016:109, paragraph 200, T-180/15, *Icap plc v European Commission*, ECLI:EU:T:2017:795, paragraph 63 and 75.

59 See Case-T-62/98, *Volkswagen v Commission*, ECLI:EU:T:200:180, paragraph 178; Case T-264/12, *UTi Worldwide and Others v Commission*, ECLI:EU:T:2016:112, paragraph 118.

60 Joined Cases T-25/95 a.o., *Cement*, ECLI:EU:T:2000:77, paragraph 3930; Case C-306/96, *Javico International and Javico v Yves Saint Laurent Parfums*, ECLI:EU:C:1998:173, paragraphs 16-17, Case T-265/12, *Schenker Ltd v Commission*, ECLI:EU:T:2016:111, paragraph 151.

61 See […]

exemption provided for in Article 101(3) of the TFEU and Article 53(3) of the EEA Agreement are not met in this case.

5.3. Conclusion

(74) The Commission concludes that the first set of conduct constitutes a single and continuous infringement of Article 101 of the TFEU and Article 53 of the EEA Agreement involving price coordination and exchange of commercially sensitive information between MAGNA and BROSE related to the supply of door modules and window regulators for C-class car models BR205 to Daimler. That first infringement lasted from 12 August 2010 until 21 February 2011.

(75) The Commission concludes that the second set of conduct constitutes a single and continuous infringement of Article 101 of the TFEU and Article 53 of the EEA Agreement involving price coordination and exchange of commercially sensitive information between MAGNA and KIEKERT related to the supply of latches and strikers for passenger cars to BMW and Daimler (for Daimler only in relation to the supplies through the IBK). That second infringement lasted from 15 June 2009 until 7 May 2012.

6. DURATION OF ADDRESSEES' PARTICIPATION IN THE INFRINGEMENTS

(76) In view of the facts and the evidence set out in recitals (35) to (47), the Commission concludes that the duration of each party's participation in the infringements is as follows:

TABLE 1

	Undertaking	Start date	End date	Duration (days)
First infringement	MAGNA	12 August 2010	21 February 2011	194 days
	BROSE	12 August 2010	21 February 2011	194 days
Second infringement	MAGNA	15 June 2009	7 May 2012	1058 days
	KIEKERT	15 June 2009	7 May 2012	1058 days

7. LIABILITY

7.1. Principles

(77) Union/EEA competition law applies to undertakings and the concept of an undertaking encompasses any entity engaged in an economic activity, irrespective of its legal status and the way in which it is financed[62].

(78) When such an entity infringes the competition rules, it falls upon that entity, according to the principle of personal responsibility, to answer for that infringement. The conduct of a subsidiary can be imputed to its parent entity where it exercises a decisive influence over that subsidiary, namely where the subsidiary does not decide independently upon its own conduct on the market but carries out, in all material respects, the instructions given to it by the parent company. In effect, as the

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

controlling company in the undertaking, the parent is deemed to have itself committed the infringement of Article 101 of the TFEU and of Article 53 of the EEA Agreement[63].

(79) The Commission cannot merely find that a legal entity is able to exert decisive influence over another legal entity, without checking whether that influence was actually exerted. On the contrary, it is, as a rule, for the Commission to demonstrate such decisive influence on the basis of factual evidence, including, in particular, any management power one of the legal entities may have over the other[64].

(80) However, in particular in those cases where one parent holds all or almost all of the capital in a subsidiary which has committed an infringement of the Union/EEA competition rules, there is a rebuttable presumption that that parent company in fact does exercise a decisive influence over its subsidiary. In such a situation, it is sufficient for the Commission to prove that all or almost all of the capital in the subsidiary is held by the parent company in order to take the view that that presumption applies[65].

(81) In addition, when an entity which has committed an infringement of the competition rules is subject to a legal or organisational change, this change does not necessarily create a new undertaking free of liability for the conduct of its predecessor which infringed the competition rules, when, from an economic point of view, the two entities are identical. Where two entities constitute one economic entity, the fact that the entity that committed the infringement still exists does not as such preclude imposing a penalty on the entity to which its economic activities were transferred. In particular, applying penalties in this way is permissible where those entities have been under the control of the same person and have, therefore, given the close economic and organisational links between them, carried out, in all material respects, the same commercial instructions[66].

(82) Where several legal entities of one and the same undertaking may be held liable for the participation in an infringement, they must be regarded as jointly and severally liable for that infringement.

7.2. Application in this case

(83) Having regard to the body of evidence and the facts described in recitals (35) to (47), the clear and unequivocal acknowledgements by the parties in their settlement submissions of the facts and the legal qualification thereof, as well as the parties' replies to the Statement of Objections, the Commission imputes liability for the

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63 Case C-97/08 P, *Akzo Nobel and others v Commission*, ECLI:EU:C:2009:536, paragraph 61; Case C 521/09 P, *Elf Aquitaine v Commission*, ECLI:EU:C:2011:620, paragraphs 57 and 63; Joined cases C-628/10 P and C-14/11 P, *Alliance One International and Standard Commercial Tobacco v Commission and Commission v Alliance One International and Others*, ECLI:EU:C:2012:479, paragraphs 43 and 46; Case C-508/11 P, *ENI v Commission*, ECLI:EU:C:2013:289, paragraph 47; Case C-286/98 P, *Stora Kopparbergs Bergslags v Commission*, ECLI:EU:C:2000:630, paragraph 29; Case T-391/09, *Evonik Degussa et AlzChem v Commission*, ECLI:EU:T:2014:22, paragraph 77; Case C-440/11 P, *Commission v Stichting Administratiekantoor Portielje*, ECLI:EU:C:2013:514, paragraph 41.

64 Joined Cases T-56/09 and T-73/09, *Saint-Gobain Glass France and others v Commission*, ECLI:EU:T:2014:160, paragraph 311.

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

66 Case C-434/13 P, *Commission v Parker Hannifin Manufacturing and Parker-Hannifin*, ECLI:EU:C:2014:2456, paragraphs 40-41.

infringements resulting from the sets of conduct referred to in recitals (35) to (47) to the legal entities as described in recitals (84) to (95):

7.2.1. MAGNA

(84) The Commission holds the following legal entities jointly and severally liable for their participation in the first infringement:

(a) **Magna Closures S.p.A.;**

(b) **Magna Mirrors Holding GmbH**;

(c) **MAGNA International Europe GmbH**;

(d) **Magna International Inc.**

(85) The Commission holds the following legal entities jointly and severally liable for their participation in the second infringement:

(a) **Magna Closures S.p.A.**;

(b) **Magna Mirrors Holding GmbH**;

(c) **Magna International Inc.**

(86) MAGNA International Europe GmbH participated directly in collusive contacts and clearly and it unequivocally acknowledged liability for its respective direct participation in the first infringement from 12 August 2010 to 21 February 2011.

(87) Magna Closures S.p.A. and Magna Mirrors Holding GmbH participated directly in collusive contacts and have clearly and unequivocally acknowledged liability for their respective direct participation in the first infringement from 12 August 2010 to 21 February 2011 and in the second infringement from 15 June 2009 to 7 May 2012.

(88) During those infringement periods, Magna Closures S.p.A., Magna Mirrors Holding GmbH and MAGNA International Europe GmbH were wholly owned by the ultimate parent company of the group, Magna International Inc., which may therefore be presumed to have exercised decisive influence over Magna Closures S.p.A., Magna Mirrors Holding GmbH and MAGNA International Europe GmbH. Magna International Inc. also clearly and unequivocally acknowledged liability for the conduct of these subsidiaries.

(89) The Commission, therefore, imputes liability for both infringements to Magna Closures S.p.A., Magna Mirrors Holding GmbH, MAGNA International Europe GmbH and Magna International Inc., as follows:

– for the first infringement jointly and severally to **Magna Closures S.p.A., Magna Mirrors Holding GmbH** and **MAGNA International Europe GmbH** (for their direct participation) and **Magna International Inc.** (in its capacity as parent of Magna Closures S.p.A., Magna Mirrors Holding GmbH and MAGNA International Europe GmbH) from 12 August 2010 to 21 February 2011;

– for the second infringement jointly and severally to **Magna Closures S.p.A.** and **Magna Mirrors Holding GmbH** (for their direct participation) and **Magna International Inc.** (in its capacity as parent company of Magna Closures S.p.A. and Magna Mirrors Holding GmbH) from 15 June 2009 to 7 May 2012.

7.2.2. BROSE

(90) The Commission holds the following legal entities jointly and severally liable for their participation in the first infringement:

(a) **Brose Fahrzeugteile SE & Co. Kommanditgesellschaft, Bamberg**;

(b) **Brose Fahrzeugteile SE & Co. Kommanditgesellschaft, Coburg**;

(c) **Brose Verwaltung SE, Coburg**;

(d) **Brose Beteiligungs-Kommanditgesellschaft, Coburg**;

(e) **Brose Beteiligungs-Kommanditgesellschaft II, Coburg.**

(91) Brose Fahrzeugteile SE & Co. Kommanditgesellschaft, Bamberg, Brose Fahrzeugteile SE & Co. Kommanditgesellschaft, Coburg and Brose Verwaltung SE, Coburg participated directly in collusive contacts and they clearly and unequivocally acknowledged liability for their direct participation in the first infringement from 12 August 2010 to 21 February 2011.

(92) During the period of the first alleged infringement, Brose Fahrzeugteile SE & Co. Kommanditgesellschaft, Bamberg, Brose Fahrzeugteile SE & Co. Kommanditgesellschaft, Coburg and Brose Verwaltung SE, Coburg were wholly owned by the ultimate parent companies of the group, Brose Beteiligungs-Kommanditgesellschaft, Coburg and Brose Beteiligungs-Kommanditgesellschaft II, Coburg, which may therefore be presumed to have exercised decisive influence over Brose Fahrzeugteile SE & Co. Kommanditgesellschaft, Bamberg, Brose Fahrzeugteile SE & Co. Kommanditgesellschaft, Coburg and Brose Verwaltung SE, Coburg. Brose Beteiligungs-Kommanditgesellschaft, Coburg and Brose Beteiligungs-Kommanditgesellschaft II, Coburg also clearly and unequivocally acknowledged liability for the conduct of those subsidiaries.

(93) The Commission, therefore, imputes liability for the first infringement jointly and severally to **Brose Fahrzeugteile SE & Co. Kommanditgesellschaft, Bamberg, Brose Fahrzeugteile SE & Co. Kommanditgesellschaft, Coburg** and **Brose Verwaltung SE, Coburg** (for their direct participation) and **Brose Beteiligungs-Kommanditgesellschaft, Coburg** and **Brose Beteiligungs-Kommanditgesellschaft II, Coburg** (in their capacity as parent companies of Brose Fahrzeugteile SE & Co. Kommanditgesellschaft, Bamberg, Brose Fahrzeugteile SE & Co. Kommanditgesellschaft, Coburg, Brose Verwaltung SE, Coburg) from 12 August 2010 to 21 February 2011.

7.2.3. KIEKERT

(94) Regarding the second infringement, Kiekert AG participated directly in collusive contacts and clearly and unequivocally acknowledged liability for its direct participation in that infringement from 15 June 2009 to 7 May 2012.

(95) The Commission, therefore, imputes liability for the second infringement to **Kiekert AG**, for its direct participation, from 15 June 2009 to 7 May 2012.

8. REMEDIES

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

(96) Where the Commission finds that there is an infringement of Article 101 of the TFEU it may by decision require the undertakings concerned to bring such infringement to an end in accordance with Article 7 of Regulation (EC) No 1/2003.

(97) Given the secrecy in which the cartel arrangements are usually carried out and the gravity of such infringements, it is appropriate for the Commission to require the undertakings to which this Decision is addressed to bring the infringement to an end - if they have not already done so - and to refrain from any agreement or concerted practice which may have the same or a similar object or effect.

8.2. Article 23(2) and (3) of Regulation (EC) No 1/2003

(98) Under Article 23(2) of Regulation (EC) No 1/2003, the Commission may by decision impose fines on undertakings where, either intentionally or negligently, they infringe Article 101 of the TFEU. For each undertaking participating in the infringement, the fine shall not exceed 10% of its total turnover in the preceding business year.

(99) In the present case, the Commission considers that, based on the facts described in this Decision in recitals (34) to (47) and the assessment contained in recitals (48) to (75), the infringements were committed intentionally. The Commission therefore imposes fines on the undertakings to which this Decision is addressed.

(100) In fixing the amount of any fine, pursuant to Article 23(3) of Regulation (EC) No 1/2003, regard is to be given both to the gravity and to the duration of the respective infringement. In setting the fines to be imposed, the Commission will refer to the principles laid down in its Guidelines on the method of setting fines imposed pursuant to Article 23(2)(a) of Regulation (EC) No 1/2003[67] ('the Guidelines on fines').

(101) In assessing the fines to be imposed on each undertaking, the Commission also takes account of the respective duration of its participation in the respective infringement as described in point 24 of the Guidelines on fines.

(102) In line with Article 23(2) of Regulation (EC) No 1/2003 for each undertaking participating in the respective infringement, the fine is not to exceed 10% of its total turnover in the preceding business year.

(103) Finally, the Commission applies, as appropriate, the provisions of the Leniency Notice and the Settlement Notice.

8.3. Calculation of the fines

(104) In accordance with the Guidelines on fines, the basic amounts for each party result from the addition of a variable amount and an additional amount. The variable amount results from a percentage of up to 30% of the value of sales of goods or services to which the infringement relates in a given year (normally, the last full business year of the infringement) multiplied with the number of years of the undertaking's participation in the infringement. The additional amount ('entry fee') is calculated as a percentage between 15% and 25% of the value of sales, irrespective of the duration of the infringement. The resulting basic amount can then be increased

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[67] Guidelines on the method of setting fines imposed pursuant to Article 23(2)(a) of Regulation No 1/2003, OJ C 210, 1.9.2006, p. 2.

or reduced for each undertaking if either aggravating or mitigating circumstances are found to be applicable.

(105) The Commission may depart from the methodology set out in the Guidelines on fines where this is justified by the particularities of a given case or the need to achieve deterrence in a particular case[68].

8.3.1. The value of sales

(106) 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[69], that is the annual 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.

(107) The Commission normally takes the sales made by the undertakings during the last full business year of their participation in the infringement[70]. If it considers that 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[71].

8.3.1.1. First infringement (MAGNA-BROSE)

(108) For the first infringement, the relevant value of sales within the meaning of point 13 of the Guidelines on fines is the value of sales of door modules and window regulators related to the award for Daimler's BR205 production in the EEA.

(109) As the envisaged delivery period for that award lasts from […], there were no sales of door modules and window regulators related to that award for Daimler's BR205 production during the period of the first infringement. To capture the economic relevance of the first infringement, the Commission uses the sales covering the period from […] to 31 December 2019, that is to say, sales until the last full year preceding the anticipated adoption of a decision pursuant to Articles 7 and 23(2)(a) of Regulation (EC) No 1/2003.

(110) In view of the significant fluctuations of sales during the relevant period from […] to 31 December 2019, the Commission uses for BROSE average yearly sales of the relevant door modules and window regulators for passenger cars to Daimler in the EEA, so that the sales are more representative in view of the overall volume of supplies generated by the BR205 award[72].

(111) Despite the collusive agreement on the award allocation, BROSE won the entire award and therefore MAGNA had no sales. To achieve a sufficient deterrent effect, the Commission calculates a fictional value of sales for MAGNA[73], as a proxy of the economic importance of the infringement and MAGNA's relative weight in it.

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68 Point 37 of the Guidelines on fines.

69 Point 12 of the Guidelines on fines.

70 Point 13 of the Guidelines on fines.

71 Such as in case of significant fluctuation of sales during the relevant period, see e.g. Commission cases AT.39881 - *Occupants Safety Systems I*, AT.40481 - *Occupants Safety Systems II*, AT.39639 - *Optical Disc Drives*, AT.39462 - *Freight Forwarding*, AT.39960 - *Thermal Systems*.

72 See for example, Commission cases AT.39920 – *Braking Systems*, AT.39920 – *Thermal Systems*, AT.39462 - *Freight Forwarding*.

73 A similar method has been applied in previous cases in the automotive sector, see e.g. case AT.39960 – *Thermal Systems*.

(112) Considering the above, and as MAGNA acted as co-infringer, but did not achieve any sales contrary to the intended collusive split, its fictional value of sales is set at 50% of the actual average sales of BROSE.

(113) Accordingly, on the basis of the data provided by the parties, the Commission takes into account the following value of sales in Table 2 for each party as a basis for setting the basic amount of the fines for the first infringement[74].

TABLE 2

	Undertaking	**Value of Sales (EUR)**
First infringement	MAGNA	[5 000 000 – 15 000 000] […]
	BROSE	[15 000 000 – 25 000 000] […]

8.3.1.2. Second infringement (MAGNA-KIEKERT)

(114) For the second infringement, the relevant value of sales within the meaning of point 13 of the Guidelines on fines is all sales of latches and strikers to BMW and Daimler (for Daimler only in relation to IBK sales (see recital (34)) in the EEA irrespective of any specific award.

(115) The Commission uses the value of all such sales made in 2011 for both MAGNA and KIEKERT for setting the basic amount of the fine, since 2011 is the last full business year of the infringement for both undertakings (see recital (107)).

(116) Accordingly, on the basis of the data provided by the parties, the Commission takes into account the following value of sales in Table 3 for each party as a basis for setting the basic amount of the fines for the second infringement[75].

TABLE 3

	Undertaking	**Value of Sales (EUR)**
Second infringement	MAGNA	[1 000 000 – 5 000 000] […]
	KIEKERT	[60 000 000 – 75 000 000] […]

(117) Each party has, in its settlement submission, confirmed the relevant values of sales for the calculation of the fine for the respective infringement.

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8.3.2. Determination of the basic amount of the fines

(118) The basic amount consists of an amount of up to 30% of an undertaking's relevant value of sales (see recitals (113) and (116)), depending on the degree of gravity of the infringement and multiplied by the number of years of the undertaking's participation in the infringement, and an additional amount of between 15% and 25% of the value of an undertaking's relevant sales, irrespective of duration[76].

8.3.2.1. Gravity of the infringement

(119) 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 alleged infringements, the Commission has regard to a number of factors, such as the nature of the infringements, the combined market share of all the undertakings concerned, the geographic scope of the infringement and/or whether or not the infringement has been implemented.

(120) In its assessment, the Commission considers the facts described in recitals (35) to (47) of this Decision, and in particular the fact that price coordination and exchange of commercially sensitive information with a view to reducing strategic uncertainty as regards future conduct are, by their very nature, among the most harmful restrictions of competition. Therefore, the proportion of the value of sales taken into account for such infringements will generally be set at the higher end of the scale of the value of sales[77].

(121) Given the specific circumstances of this case, in particular the nature and the geographic scope of the infringements covering the entire EEA, the proportion of the value of sales taken into account is 16%.

8.3.2.2. Duration multiplier

(122) In assessing the fine to be imposed on each undertaking, the Commission also takes into consideration the duration of the infringement, as described in recital (76) and Table 1. The increase in fine for duration (duration multiplier) is calculated on the basis of the amount of days of the infringement.

(123) The time period taken into account for calculating the fines for each party to the infringements, and the duration multiplier corresponding to that period is set out in Table 4.

(124) KIEKERT's duration multiplier is modified because it is entitled to partial immunity for the period 15 June 2009 until 4 October 2010 (see recitals (142) and (143)). Accordingly, the Commission does not take into account the entire period from 15 June 2009 until 7 May 2012 (1058 days) of KIEKERT's participation in the second infringement for the calculation of its duration multiplier. Only the period from 5 October 2010 to 7 May 2012 (581 days) is taken into account for the duration multiplier retained for KIEKERT.

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

[77] Point 23 of the Guidelines on fines.

TABLE 4

	Undertaking	Start date	End date	Duration (days)	Duration (years)
First infringement	MAGNA	12 August 2010	21 February 2011	194 days	0,53
	BROSE	12 August 2010	21 February 2011	194 days	0,53
Second infringement	MAGNA	15 June 2009	7 May 2012	1058 days	2,89
	KIEKERT	5 October 2010*	7 May 2012	581 days	1,59

* See the explanation in recital (124).

8.3.2.3. Additional amount for the purposes of deterrence

(125) Both infringements concern price coordination and exchange of commercially sensitive information with a view to reducing strategic uncertainty as regards future conduct. Therefore, the Commission includes in the basic amount a sum of between 15% and 25% of the value of sales to deter undertakings from even entering into such illegal practices on the basis of the criteria listed in recitals (119) and (120) with respect to the variable amount[78].

(126) Having regard to the factors relating to the nature of the infringements and their geographic scope set out in recitals (119) and (120), the proportion of the value of sales to be taken into account for the purpose of calculating the additional amount is set at 16% for each of the infringements.

8.3.2.4. Calculation of the basic amount

(127) In applying the criteria set out in recitals (104) to (126), the basic amounts of the fines to be imposed on each party, for the infringements, are set out in Table 5.

TABLE 5

	Undertaking	Basic amount (EUR)
First infringement	MAGNA	[2 000 000 – 7 000 000] […]
	BROSE	[3 000 000 – 8 000 000] […]
Second infringement	MAGNA	[2 000 000 – 6 000 000] […]
	KIEKERT	[20 000 000 – 35 000 000] […]

78 Point 25 of the Guidelines on fines.

8.4. Adjustments of the basic amount

8.4.1. Aggravating or mitigating circumstances

(128) The Commission may consider aggravating circumstances that result in an increase of the basic amount. These circumstances are listed in a non-exhaustive way in point 28 of the Guidelines on fines. The Commission may also consider mitigating circumstances that result in a reduction of the basic amount. These circumstances are listed in a non-exhaustive way in point 29 of the Guidelines on fines.

(129) In the light of the facts as described in recitals (35) to (47), the Commission does not consider any aggravating or mitigating circumstances.

8.4.2. Deterrence

(130) 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 related may be increased[79].

(131) In this case, such an increase for deterrence is applied to MAGNA, which had an annual worldwide turnover of approximately EUR 35 220 million in 2019. A multiplier of 1.1 is applied to MAGNA to take into account its particularly large turnover. The resulting adjusted basic amounts are set out in Table 6.

TABLE 6

	Undertaking	**Adjusted basic amount (EUR)**
First infringement	MAGNA	[2 000 000 – 7 000 000] […]
	BROSE	[3 000 000 – 8 000 000] […]
Second infringement	MAGNA	[2 000 000 – 6 000 000] […]
	KIEKERT	[20 000 000 – 35 000 000] […]

8.5. Application of the 10% turnover limit

(132) Article 23(2) of Regulation (EC) No 1/2003 provides that the fines imposed on each undertaking which participated in an infringement of Article 101 of the TFEU must

[79] Point 30 of the Guidelines on fines.

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[80].

(133) In this Decision, none of the fines calculated exceeds 10% of the respective undertaking´s total turnover in 2019.

8.6. Application of the Leniency Notice

8.6.1. First infringement (MAGNA-BROSE)

(134) MAGNA submitted an application under the Leniency Notice on 5 May 2015 and was granted conditional immunity from fines for the first infringement on 14 December 2015. MAGNA's cooperation fulfilled the requirements of the Leniency Notice throughout the procedure. MAGNA is therefore granted immunity from fines for the first infringement.

(135) On 11 April 2016, BROSE applied for immunity from fines pursuant to point (8) of the Leniency Notice or, in the alternative, for a reduction of fines that would otherwise have been imposed. It was also the first undertaking to meet the requirements of points (24) and (25) of the Leniency Notice as regards the first infringement.

(136) On 9 July 2019, the Commission informed BROSE of its intention to grant BROSE a leniency reduction within the range of 30%-50% of any fine that would otherwise have been imposed for the first infringement.

(137) As outlined in recital (22), BROSE applied for leniency about three months after the Commission had carried out the inspection at its premises in Germany[81]. BROSE´s cooperation fulfilled the requirements of the Leniency Notice throughout the procedure. It supplemented its application several times and provided additional documents and information. BROSE provided evidence, which was useful to corroborate the earlier period of the infringement until December 2010[82]. However, the provided evidence did not relate to the later period of that infringement and some of the information had already been in the possession of the Commission.

(138) In the light of the assessment in recitals (135) to (137), the fine imposed on BROSE should be reduced by 35%.

8.6.2. Second infringement (MAGNA-KIEKERT)

(139) MAGNA submitted an application under the Leniency Notice on 5 May 2015 and was granted conditional immunity from fines for the second infringement on 14 December 2015. MAGNA's cooperation fulfilled the requirements of the Leniency Notice throughout the procedure. MAGNA is therefore granted immunity from fines for the second infringement.

(140) On 29 March 2016, KIEKERT applied for immunity from fines pursuant to point (8) of the Leniency Notice or, in the alternative, for a reduction of fines that would otherwise have been imposed. It was the first undertaking to meet the requirements of points (24) and (25) of the Leniency Notice as regards the second infringement MAGNA-KIEKERT.

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80 Article 23(2) of Regulation No 1/2003. See also points 32 and 34 of the Guidelines on fines and points 32 and 33 of the Settlement Notice. See also case T-52/02, SNCZ v Commission, ECLI:EU:T:2005:429, paragraph 41.

81 […]

82 See for example, […]

(141) On 9 July 2019, the Commission informed KIEKERT of its intention to grant KIEKERT a leniency reduction within the range of 30%-50% of any fine that would otherwise have been imposed for the second infringement.

(142) In addition, the Commission informed KIEKERT in the Statement of Objections about its intention to grant partial immunity to KIEKERT for the second infringement for the period from 15 June 2009 to 4 October 2010. It was the first party to submit compelling evidence that enabled the Commission to extend the duration of the second alleged infringement back until 15 June 2009[83] and to establish its starting date[84].

(143) KIEKERT is therefore granted partial immunity for the period from 15 June 2009 to 4 October 2010. Accordingly, the Commission does not take into account the period from 15 June 2009 until 4 October 2010 for the calculation of KIEKERT's fine (see recitals (123) and (124) and Table 4).

(144) Concerning the assessment of the remainder of KIEKERT's leniency application, KIEKERT, as outlined in recital (21), applied for leniency about two months after the Commission had carried out the inspection at its premises in Germany[85]. KIEKERT's cooperation fulfilled the requirements of the Leniency Notice throughout the procedure. It supplemented its application several times and provided additional documents and information. It provided for the period as of 5 October 2010 evidence which strengthened the Commission's ability to prove the second infringement and which covered both latches and strikers and extended to the whole infringement period[86].

(145) In the light of the assessment in recital (144), the fine imposed on KIEKERT should be reduced by 40%.

8.7. Application of the Settlement Notice

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

(147) Consequently, the amount of the fine to be imposed on each party should be further reduced by 10%.

9. CONCLUSION: TOTAL AMOUNT OF INDIVIDUAL FINES TO BE IMPOSED

(148) The fines to be imposed pursuant to Article 23(2) of Regulation (EC) No 1/2003 are set out in Table 7.

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83 See for example, […]

84 […]

85 […]

86 See for example, […]

TABLE 7

	Undertaking	Fines (EUR)
First infringement	MAGNA	0
	BROSE	3 225 000
Second infringement	MAGNA	0
	KIEKERT	14 971 000

HAS ADOPTED THIS DECISION:

Article 1

The following undertakings infringed Article 101 of the TFEU and Article 53 of the EEA Agreement by participating from 12 August 2010 until 21 February 2011 in a single and continuous infringement covering the whole of the EEA, which consisted of price coordination and exchange of commercially sensitive information related to the supply of door modules and window regulators for passenger C-class car models A205, C205, S205 and W205 to Daimler:

(a) Magna International Inc., Magna Closures S.p.A., Magna Mirrors Holding GmbH and MAGNA International Europe GmbH;

(b) Brose Beteiligungs-Kommanditgesellschaft, Coburg, Brose Beteiligungs-Kommanditgesellschaft II, Coburg, Brose Verwaltung SE, Coburg, Brose Fahrzeugteile SE & Co. Kommanditgesellschaft, Bamberg and Brose Fahrzeugteile SE & Co. Kommanditgesellschaft, Coburg.

Article 2

The following undertakings infringed Article 101 of the TFEU and Article 53 of the EEA Agreement by participating from 15 June 2009 until 7 May 2012 in a single and continuous infringement covering the whole of the EEA, which consisted of price coordination and exchange of commercially sensitive information related to the supply of latches and strikers for passenger cars to BMW and Daimler (for Daimler only in relation to supplies of G/GN/GL2-latches and strikers through the joint purchasing initiative “Industriebaukasten” between Daimler and BMW):

(a) Magna International Inc., Magna Closures S.p.A. and Magna Mirrors Holding GmbH;

(b) Kiekert AG.

Article 3

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

(a) Magna International Inc., Magna Closures S.p.A., Magna Mirrors Holding GmbH and MAGNA International Europe GmbH, jointly and severally liable: EUR 0;

(b) Brose Beteiligungs-Kommanditgesellschaft, Coburg, Brose Beteiligungs-Kommanditgesellschaft II, Coburg, Brose Verwaltung SE, Coburg, Brose Fahrzeugteile SE & Co. Kommanditgesellschaft, Bamberg and Brose Fahrzeugteile SE & Co. Kommanditgesellschaft, Coburg, jointly and severally liable: EUR 3 225 000.

(2) For the infringement referred to in Article 2, the following fines are imposed on:

(a) Magna International Inc., Magna Closures S.p.A. and Magna Mirrors Holding GmbH, jointly and severally liable: EUR 0;

(b) Kiekert AG: EUR 14 971 000.

The fines shall be credited, in euros, within six months of the date of notification of this Decision, to the following bank account held in the name of the European Commission:

BANQUE ET CAISSE D'EPARGNE DE L'ETAT
1-2, Place de Metz
L-1930 Luxembourg

IBAN: LU02 0019 3155 9887 1000
BIC: BCEELULL
Ref.: EC/BUFI/AT.40299

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 and/or Article 2 lodges an appeal, that undertaking shall cover the fine by the due date, either by providing an acceptable financial guarantee or by making a provisional payment of the fine in accordance with Article 108 of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council[87].

Article 4

The undertakings listed in Article 1 and Article 2 shall immediately bring to an end the infringements referred to in those Articles insofar as they have not already done so.

They shall refrain from repeating any act or conduct described in Article 1 and Article 2, and from any act or conduct having the same or similar object or effect.

[87] Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rues applicable to the general budget of the European Union (OJ L 193, 30.7.2018, p. 80).

Article 5

This Decision is addressed to:

(a) Magna International Inc., 337 Magna Drive, Aurora, Ontario, L4G 7K1, Canada

(b) Magna Closures S.p.A., Via Francia, 101, 57017 Collesalvetti LI Guasticce, Italy

(c) Magna Mirrors Holding GmbH, Kurfürst-Eppstein-Ring 5, 63877 Sailauf, Germany

(d) MAGNA International Europe GmbH, Technologiestrasse 8, 1120 Vienna, Austria

(e) Brose Beteiligungs-Kommanditgesellschaft, Coburg, Max-Brose-Straße 1, 96450 Coburg, Germany

(f) Brose Beteiligungs-Kommanditgesellschaft II, Coburg, Max-Brose-Straße 1, 96450 Coburg, Germany

(g) Brose Verwaltung SE, Coburg, Max-Brose-Straße 1, 96450 Coburg, Germany

(h) Brose Fahrzeugteile SE & Co. Kommanditgesellschaft, Bamberg, Berliner Ring 1, 96052 Bamberg, Germany

(i) Brose Fahrzeugteile SE & Co. Kommanditgesellschaft, Coburg, Max-Brose-Straße 1, 96450 Coburg, Germany

(j) Kiekert AG, Höseler Platz 2, 42579 Heiligenhaus, Germany.

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

Done at Brussels, 29.9.2020

For the Commission

Margrethe VESTAGER
Executive Vice-President