

### Summary of Commission Decision

of 21 February 2018

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

(Case AT.40113 — Spark Plugs)

(notified under document C(2018) 929)

(Only the English text is authentic)

(2018/C 111/09)

On 21 February 2018 the Commission adopted a decision relating to a proceeding under Article 101 of the Treaty on the Functioning of the European Union and Article 53 of the EEA Agreement. In accordance with the provisions of Article 30 of Council Regulation (EC) No 1/2003 <sup>(1)</sup>, the Commission herewith publishes the names of the parties and the main content of the decision, including any penalties imposed, having regard of the legitimate interest of undertakings in the protection of their business secrets.

#### 1. INTRODUCTION

- (1) The Decision relates to a single and continuous infringement of Article 101 of the Treaty and Article 53 of the EEA Agreement.
- (2) The Decision is addressed to the following entities: (i) Robert Bosch GmbH ('Bosch'); (ii) Denso Corporation ('Denso'); and (iii) NGK Spark Plug Co., Ltd and NGK Spark Plug Europe GmbH (collectively 'NGK'), hereafter also referred to as the 'parties'.
- (3) The products concerned by the infringement are spark plugs. The cartel covers the supplies to car manufacturers with production facilities in the EEA. The addressees of the decision coordinated prices and allocated supplies via a pattern of bilateral contacts between Bosch and NGK on the one hand and between Denso and NGK on the other hand.

#### 2. CASE DESCRIPTION

##### 2.1. Procedure

- (4) In April 2011, Denso lodged an application for immunity under the 2006 Leniency Notice <sup>(2)</sup>.
- (5) NGK applied for leniency in September 2011. In May 2013, Bosch also lodged an application for leniency.
- (6) Proceedings were initiated on 17 October 2016 with a view to engaging in settlement discussions with the parties. Subsequently all parties submitted their formal requests to settle to the Commission pursuant to Article 10a(2) of Regulation (EC) No 773/2004 <sup>(3)</sup>.
- (7) On 4 December 2017 the Commission adopted the Statement of Objections. All 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.
- (8) The Advisory Committee on Restrictive Practices and Dominant Positions issued a favourable opinion on 19 February 2018.
- (9) The Commission adopted the Decision on 21 February 2018.

##### 2.2. Addressees and duration

- (10) The following undertakings have infringed Article 101 of the Treaty and Article 53 of the EEA Agreement, by participating, during the periods indicated below, in anti-competitive practices in respect to the supply of spark plugs:

Undertaking	Duration
Bosch (Germany)	19 January 2000-28 July 2011

<sup>(1)</sup> OJ L 1, 4.1.2003, p. 1.

<sup>(2)</sup> Commission Notice on Immunity from fines and reduction of fines in cartel cases (OJ C 298, 8.12.2006, p. 17).

<sup>(3)</sup> 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 (OJ L 362, 20.12.2006, p. 1) and by Commission Regulation 622/2008/EC of 30 June 2008 (OJ L 171, 1.7.2008, p. 3).

Undertaking	Duration
Denso (Japan)	16 February 2001-8 February 2010
NGK (Japan)	19 January 2000-28 July 2011

### 2.3. Summary of the infringement

- (11) The decision covers the supply of spark plugs in the EEA.
- (12) Spark plugs are devices built in a petrol engine of a car which deliver high voltage electric sparks to the combustion chamber. The distribution channels concerned by the cartel are both the Original Equipment Manufacturers ('OEM') supplies and the Original Equipment Spare Parts ('OES') supplies, insofar as the price of those supplies is contractually linked to the price of OEM supplies.
- (13) The cartel consisted of a pattern of bilateral anti-competitive contacts between Bosch and NGK on the one hand and between Denso and NGK on the other hand, through which the parties exchanged commercially sensitive information. At some instances the parties agreed on price quotas, supply shares and 'bottom-line prices'.
- (14) Moreover, the parties agreed to respect their historical supply rights, meaning that if one of the cartel members already had business with a given customer and the new product was intended to replace the current one, the understanding was not to undercut the other's prices, so that the incumbent supplier would keep the business.

### 2.4. Remedies

- (15) The Decision applies the 2006 Guidelines on Fines <sup>(1)</sup>.

#### 2.4.1. Basic amount of fine

- (16) In setting the fines, the Commission took into account the undertakings' sales of spark plugs in the last business year prior to the end of the infringement. This corresponds to 2010 for Bosch and 2009 for Denso. For NGK, despite the fact that 2010 was the last full year of the infringement, the Commission decided to take 2009 as reference year in light of the application of point 26 of the 2006 Leniency Notice.
- (17) Considering the nature of the infringement and its geographic scope (EEA), the percentage for the variable amount of the fines as well as the additional amount ('entry fee') is set at 17 % of the value of the relevant sales.
- (18) The variable amount is multiplied by the number of years or by fractions of the year respectively of the parties' participation in the infringement in order to take fully into account the duration of the participation for each undertaking in the infringement individually. The Commission takes into account the actual duration of participation in the infringement of the parties on the basis of the full years, months and days.

#### 2.4.2. Adjustments to the basic amount

- (19) No aggravating circumstances were applied. The Commission applied a mitigating circumstance to Bosch and Denso, due to the lack of evidence that: (i) Bosch was aware or could reasonably have foreseen the bilateral contacts between NGK and Denso; and (ii) Denso was aware or could reasonably have foreseen the bilateral contacts between NGK and Bosch. Deterrence multipliers of 1.2 and 1.1 were applied to Bosch and Denso respectively.

#### 2.4.3. Application of the 10 % turnover limit

- (20) None of the fines calculated exceed 10 % of the respective undertaking's total turnover in the business year preceding the date of the Decision.

#### 2.4.4. Application of the 2006 Leniency Notice: reduction of fines

- (21) Denso was the first to apply for immunity and to submit information and evidence meeting the conditions of point 8(a) of the 2006 Leniency Notice. It is thus granted immunity from fines.

<sup>(1)</sup> OJ C 210, 1.9.2006, p. 2.

- (22) NGK submitted compelling evidence which enabled the Commission to extend the duration of the infringement to the periods from 19 January 2000 to 24 May 2002 and from 9 February 2010 to 28 July 2011. As a result, in accordance with point 26 of the 2006 Leniency Notice, the Commission did not take into account those periods when setting NGK's fine.
- (23) NGK was furthermore the first undertaking to meet the requirements of points 24 and 25 of the 2006 Leniency Notice and was granted a reduction of 42 % of the fine.
- (24) Bosch was the second undertaking to meet the requirements of points 24 and 25 of the 2006 Leniency Notice and was granted a reduction of 28 % of the fine.

*2.4.5. Application of the Settlement Notice*

- (25) As a result of the application of the Settlement Notice, the amount of the fines imposed on Bosch and NGK was further reduced by 10 %.

### 3. CONCLUSION

- (26) The following fines were imposed pursuant to Article 23(2) of Regulation (EC) No 1/2003.
- a) Bosch: EUR 45 834 000
  - b) Denso: EUR 0
  - c) NGK: EUR 30 265 000
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