



CASE AT.39824 -Trucks

(Only the English text is authentic)

CARTEL PROCEDURE

Council Regulation (EC) 1/2003

Article 7 Regulation (EC) 1/2003

Date: 27/09/2017

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Brussels, 27.9.2017
C(2017) 6467 final

COMMISSION DECISION

of 27.9.2017

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

(AT.39824 - Trucks)

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COMMISSION DECISION

of 27.9.2017

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

(AT.39824 - Trucks)

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THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union¹,

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 Treaty², 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 Treaty³, and in particular Article 10(a) thereof,

Having regard to the Commission decision of 20 November 2014 to initiate proceedings in this case,

Having given the undertaking concerned the opportunity to make known its view on the objections raised by the Commission pursuant to Article 27(1) of Regulation (EC) No 1/2003 and Article 12 of 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 Treaty⁴,

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

Having regard to the final report of the hearing officer in this case⁵,

Whereas:

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 when where appropriate. The TFEU also introduced certain changes in terminology, such as the replacement of "Community" by "Union" and "common market" by "internal market".

³ OJ L 123, 27.4.2004, p. 18.

⁴ OJ L 123, 27.4.2004, p. 18.

⁵ Final report of the Hearing Officer of 26 September 2017.

1. INTRODUCTION

- (1) This Decision relates to a single and continuous infringement of Article 101 of the Treaty on the Functioning of the European Union ("TFEU") and Article 53 of the Agreement on the European Economic Area ("EEA Agreement").
- (2) The infringement consisted of collusion with respect to pricing and gross price increases in the EEA for medium and heavy trucks and the timing and the passing on of costs for the introduction of emission technologies for medium and heavy trucks required by EURO 3 to 6 standards. The infringement covered the entire EEA and lasted from 17 January 1997 until 18 January 2011.
- (3) On 20 November 2014, the Commission initiated proceedings pursuant to Article 11(6) of Regulation (EC) No 1/2003 against the Addressees of this Decision and a number of entities forming part of five additional undertakings.
- (4) The legal entities to which this Decision is addressed are collectively referred to as "the Addressees" or the "non-settling party". The term "non-settling party" is used to make a distinction between the addressees of this Decision and the legal entities that were addressees of Commission Decision C(2016) 4673, which was adopted on 19 July 2016 under the settlement procedure (the "settling parties" as defined in recital (12)) in this case.⁶ The undertakings subject to the investigation, meaning the settling parties and the Addressees, are collectively referred to as "the parties".

2. THE INDUSTRY SUBJECT TO THE PROCEEDINGS

2.1. The product

- (5) The products concerned by the infringement are trucks weighing between 6 and 16 tonnes ("medium trucks") and trucks weighing more than 16 tonnes ("heavy trucks") both as rigid trucks as well as tractor trucks⁷ (hereinafter, medium and heavy trucks are referred to collectively as "trucks").⁸ The case does not concern aftersales, other services and warranties for trucks, the sale of used trucks or any other goods or services sold by the Addressees.
- (6) The trucks have been subject to various European environmental standards, such as the EURO-emission standards. EURO 3, EURO 4, EURO 5, [...] and EURO 6 are different environmental standards with regard to emission of soot particles. The standards were defined by various Commission directives⁹ setting obligatory deadlines as of which date only trucks complying with emission thresholds defined

⁶ Commission Decision C(2016) 4673 of 19.07.2017 under the settlement procedure pursuant to Articles and 23(2) of Regulation (EC) No 1/2003 addressed to [...].

⁷ A rigid truck has an integrated loading space. On a tractor/trailer combo, the tractor has a cuppling instead of loading space for attaching trailers. The cuppled trailer has its own axles.

⁸ Excluding trucks for military use.

⁹ See Directive 98/69/EC of the European Parliament and of the Council of 13 October 1998 relating to measures to be taken against air pollution by emissions from motor vehicles and amending Council Directive 70/220/EEC, OJ L 350, 28.12.1998, p. 1-57; Regulation (EC) No 715/2007 of the European Parliament and of the Council of 20 June 2007 on type approval of motor vehicles with respect to emissions from light passenger and commercial vehicles (Euro 5 and Euro 6) and on access to vehicle repair and maintenance information, OJ L 171, 29.6.2007, p. 1-16; Commission Regulation (EU) No 459/2012 of 29 May 2012 amending Regulation (EC) No 715/2007 of the European Parliament and of the Council and Commission Regulation (EC) No 692/2008 as regards emissions from light passenger and commercial vehicles (Euro 6), OJ L 142, 1.6.2012, p. 16-24.

for the respective EURO-emission standard could be sold within the EEA. The drafting of the Commission directives included a consultation process, in which truck manufacturers as well as industry associations were heard to comment on technical feasibility.

2.2. The undertaking covered by this Decision

- (7) Scania AB (publ) is a limited liability company under Swedish law with its headquarters in Södertälje (Sweden). It operates on an international basis in approximately 100 countries (Scania AB (publ) and all its related entities together are referred to as "Scania" in this Decision). Scania is active in the production and sales of heavy trucks (above 16 tonnes) which are used for long-haulage transport, distribution, construction haulage and specialised purposes. Scania sells its trucks throughout the world [...].¹⁰ Scania has also established a number of financial services companies.
- (8) Scania AB (publ) is the ultimate parent of the whole Scania Group and holds 100% of the shares of Scania CV AB (publ) ("Scania headquarters" or "Scania HQ"). Scania headquarters is the operational parent company of the entire Scania Group, owning and operating assets for R&D (Research & Development), manufacture and distributing Scania products. This includes [...],¹¹ [...]¹² and [...] importer and distributor companies in most European countries. Scania headquarters indirectly holds 100% shares in almost all¹³ of Scania national Distributors¹⁴ in the EEA, including Scania Deutschland GmbH in which Scania headquarters holds 100% shares (hereinafter referred to as "Scania DE").¹⁵ From 1997 to 2012 Scania headquarters indirectly held all shares in Scania DE. Scania sells its trucks from the manufacturing companies to Scania's distributors. Those distributors sell the trucks to Scania Dealers who are responsible for negotiations with individual customers.
- (9) In the period between 2004 and 2010, between [50-60]% and [60-70]% of German Scania Dealers were authorised third-party companies.¹⁶
- (10) As of 30 December 2011 the largest shareholder in Scania AB (publ) is Volkswagen AG which owns 45.66% of the share capital, representing 70.94% of the voting rights in addition to an indirect holding of 13.35% of the share capital and 17.37% of the voting rights in Scania AB (publ) through MAN SE.¹⁷
- (11) The worldwide consolidated turnover of Scania AB (publ) in 2016 was EUR 11 289 million.¹⁸

¹⁰ [...]

¹¹ [...]

¹² [...]

¹³ In the EEA, Scania Distributors are all fully owned by Scania AB (publ) [...].

¹⁴ In accordance with the terminology used by Scania, "Distributors" in this decision refers to the national entities buying trucks from headquarter companies and selling to the Dealers or in some cases to end customers directly. "Distributors" does not include Scania Dealers. "Dealers" are the entities buying trucks from the Distributors and selling them to end customers.

¹⁵ [...]

¹⁶ [...]

¹⁷ [...]

¹⁸ [...]

2.3. Other undertakings subject to the investigation

- (12) Five other undertakings, namely [...] were subject to these proceedings but they are not addressees of this Decision. They opted for the settlement procedure and were the addressees of the Commission Decision C(2016) 4673 of 19 July 2016 (hereinafter referred to as the "settling parties").¹⁹
- (13) The conduct referred to in this Decision involving the settling parties is exclusively used to establish the liability of Scania for an infringement of Article 101 of the Treaty and Article 53 of the EEA Agreement. Reference is made in this Decision to the settling parties only where this is necessary for the understanding of the behaviour of the non-settling party and of the market context of such behaviour.²⁰

2.4. Associations of undertakings, trade fairs, public and private industry statistics

2.4.1. [Industry association]

- (14) Scania is a member of a number of trade associations. Some of those associations are active principally on a country level, while others also cover European topics, such as the [Industry association]. Most of the associations serve amongst others also as a platform for the exchange of truck industry relevant data, such as order intake or market shares based on sold vehicles. The most important association in the context of the investigation in this case is the [Industry association]. Scania was a member of [Industry association] during the time of the infringement.
- (15) [Industry association], [...] and represents the interests of fifteen European car, truck and bus manufacturers at European level.²¹ [Industry association] is an economic interest grouping. Its headquarters are in Brussels.
- (16) Its membership consists of the major international automobile companies, working together to ensure effective communication and negotiation with legislative, commercial, technical, consumer, environmental and other interests.
- (17) [Industry association] also prepares industry statistics. [confidentiality claim pending] [...] [confidentiality claim pending] ([...], [confidentiality claim pending], [...]).²²

2.4.2. Trade fairs

- (18) The most relevant international trade fairs of trucks in Europe in the context of the present investigation are the following.

2.4.2.1. [Trade fair]

- (19) [Trade fair], in German known as the [Trade fair], is one of the world's largest motor shows. It is held every two years in Frankfurt, Germany. The [Trade fair] is organised by the [Industry association]. In the light of the increasing numbers of visitors and exhibitors at the beginning of the 1990s, the [Trade fair] was divided into one trade show for passenger cars and one for commercial vehicles, which take place in alternate years. In odd-numbered years the [Trade fair] for cars is held in

¹⁹ See recital (4).

²⁰ This Decision will refer to the settling parties headquarters as [...]. Their German distribution subsidiaries will be referred to as [...].

²¹ [...]

²² [...] [confidentiality claim pending][...] [confidentiality claim pending][...].

Frankfurt and in even-numbered years the [*Trade fair*] for commercial vehicles is held in Hannover.²³

2.4.2.2. [*Trade fair*]

- (20) [*Industry association*] [...]. [*Industry association*] organises the [*Trade Fair*], also called [*Trade Fair*], the leading platform for road transport in the Netherlands. It is organised in even-numbered years while the [*Trade Fair*] takes place in odd-numbered years. In addition to trucks and vans, the exhibition also shows trailers, specialised vehicles, spare parts, accessories and transport solutions.²⁴

2.4.2.3. [*Trade fair*]

- (21) [*Trade fair*] is a passenger car and light truck show held every two years in Brussels, Belgium. The show is organised by [*Industry association*].²⁵ In even-numbered years, the show for passenger cars and motorcycles takes place, whilst in the odd-numbered years the show for light commercial, recreational vehicles and motorised two-wheelers takes place.

3. DESCRIPTION OF THE TRUCKS MARKET

- (22) The strategic importance of the anticompetitive conduct described in section 6 needs to be seen in the light of the specific characteristics of the trucks market. The truck industry is characterised by a high level of transparency and concentration. The employees of the parties have plenty of opportunities to meet and discuss the market situation. Every year hundreds of meetings take place between the competitors at different hierarchy levels. As described above, the truck producers have regular exchanges within the various industry associations to which they are members (see section 2.4). Within those associations relevant data on order intake and delivery periods or stock levels is exchanged in aggregated format. In addition they have access to competitively relevant data such as truck registrations through public registries. Regularly they participate in important trade exhibitions, such as the [*Trade fair*] or the [*Trade fair*] (see section 2.4 above) and meet and discuss industry relevant topics. Furthermore the high level of concentration on the European truck market further facilitates transparency and the possibility to exchange information within a small group and to be in close contact. In 2010 (that is to say, towards the end of the infringement period), the aggregated market share in the European Economic Area (EEA) of the Addressees and settling parties together for medium and heavy trucks was above 90%.
- (23) [*confidentiality claim pending*]. In addition to those direct exchanges [...] have access to further relevant data through customers or mystery shopping.²⁶
- (24) In addition to the existing transparency resulting from information exchanged in trade associations, official registries, trade fairs and information provided by

²³ [...]

²⁴ [...]

²⁵ [...]

²⁶ [...]; Mystery shopping for the context of this decision is understood as market research by test purchases and requesting offers to gather specific information about competitors' end customer prices, products and services via the competitors' dealer network. The mystery consumer's specific identity and purpose are generally not known by the dealer.

customers, the parties have over the years established various other contacts [*confidentiality claim pending*], [...]to exchange each other's gross price lists and truck configurators.

3.1. Structure of the sales force

- (25) The parties, including the Addressees, have national subsidiaries in key market countries that usually import the trucks and sell their products as national distributors and marketing entities through their respective networks of authorised Dealers or, in certain particular cases/regions, directly to key customers.
- (26) Scania sells its trucks via wholly owned national distributing and marketing subsidiaries in all Contracting Parties to the EEA Agreement, [...]. Those distributing companies then sell the trucks that are bought from the Scania headquarters to fully owned or independent Dealers.²⁷ In Germany Scania operates [40-50] fully owned Dealers. The Scania Dealers have the main customer facing function and sales to most customers are made through contact with the Scania Dealers. Some sales however are made directly by the national distributing companies and at Scania headquarters' level, e.g. large fleet orders.²⁸

3.2. The supply

- (27) The Addressees sell only heavy trucks, but the settling parties offer both medium and heavy trucks. The parties produce rigid trucks as well as tractor trucks and are generally able to offer trucks with all the main technical characteristics required. A rigid truck has an integrated loading space. On a tractor/trailer combo, the tractor has a cuppling for attaching trailers instead of loading space. The cuppled trailer has its own axles. The parties offer a large variety of different weights, volumes, loaders, engines, wheelbase, suspension and frames. A substantial portion of components is standardised and can be used for different models.
- (28) According to [...],²⁹ national sales organisations generally have a certain number of trucks on stock in order to satisfy short term demand. Most of them are equipped with the most chosen options of the respective type of truck. If requested by the customer the truck can also be equipped additionally with special components and equipment. However, if demand for trucks is very high the number of trucks that is on stock is very low or even zero.
- (29) The European market shares in 2010 were approximately: [...] [20-30]%, [...] [10-20]%, [...] [10-20]%, [...] [10-20]%, [...] [10-20]%, [...] [10-20] and [...] [10-20]%. According to [...] the most important truck producers on the key market Germany in 2010 were [...] with a market share of approximately [40-50]% and [...] with approximately [30-40]%, followed by the other parties.

3.3. The demand

- (30) According to the statistics published by [*Industry association*] (see section 2.4.1), the market size for medium and heavy duty trucks in the EEA was about EUR 27.2 billion in 2011.³⁰

²⁷ [...]; see also Scania's annual report 2004 [...] and Scania's annual report 2010 [...].

²⁸ [...]

²⁹ [...]

³⁰ [...]

- (31) [...] has submitted that the demand for trucks is highly cyclical, that is to say, the demand changes in a regular way over time depending on the economic situation. While passenger cars are acquired by both private and professional customers, medium and heavy trucks being commercially used vehicles are acquired solely by professional customers. Customers acquire trucks for a variety of different applications in the three main areas namely long distance transportation, distribution, and construction. Since trucks are durable goods for professional use, customers often postpone the investment in fleet renewal in times of economic crises and compensate for this when their business thrives. Therefore, there is overcapacity at regular intervals, with a strong incentive to promote brands by increasing market shares in markets in which the brands are less well known. [...] explains that trucks are not commodity products and that perceived reliability, technical performance and branding play an important role. Other important aspects are a widespread network of service stations, after sales costs, operating costs, etc.³¹
- (32) Some large fleet owners use tender procedures in order to acquire new trucks. In those cases medium and heavy trucks are often sold directly from the headquarters. All manufacturers have a structure devoted to direct sales, most of them both at headquarters and at country level.³² However, most small customers buy medium and heavy duty trucks from truck dealers on a national level. In those cases dealers purchase the truck ordered by the final customer from the truck producer or a truck producer owned distributor and resells it to the final customer. [...] has explained that the selection and configuration process is much more complex than in the passenger car business.³³
- (33) Although the customers can configure the truck they want to buy more or less precisely (depending on the truck model) on the webpages of for example Scania, in contrast to the passenger car business, indicative price information cannot be obtained in this manner.³⁴ The gross prices or end consumer prices or the changes applied to those prices are not generally communicated to the press or published on freely available sources. Due to the huge variety of different models and variations (eg. [...] offers about 15 000 different truck models), customers generally first place their order and then the manufacturers produce the truck according to the specifications of the customer.
- (34) Customers often ask for package deals, including the truck and its options, accessories, as well as financing, warranty, buyback and repair and maintenance contracts.
- (35) For Scania fleet customers also negotiate with and purchase trucks directly from Scania headquarters or the national marketing subsidiary.³⁵

3.4. Trade between Member States/Contracting Parties

- (36) Trucks are sold by all parties in all Member States of the EU and Contracting Parties to the EEA Agreement [*confidentiality claim pending*].³⁶ [...] has explained that,

³¹ [...]

³² [...]

³³ [...]

³⁴ See screenshots from Scania webpages [...].

³⁵ [...]

³⁶ [...]

despite national specific preferences for configurations, each of the parties is able to offer a broadly identical range of products across all European countries and that they are produced in the same production sites and then delivered to the respective Member State/Contracting Party.³⁷ According to [...] the market structure varies across the EEA and some manufacturers are stronger in their home regions (e.g. Scania and [...] in the Nordic countries and [...] and [...] in Germany).³⁸ [confidentiality claim pending].³⁹

- (37) Although some Member States or regions require minor modifications to the standard models of the trucks (for legislative reasons or because of climatic conditions such as special heating for Nordic countries or more powerful air conditioning in Southern countries), there are no barriers influencing the trade of trucks within the European Economic Area. However, [...] has submitted that customer preferences and requirements may vary in the different European countries.⁴⁰

4. PRICING

4.1. Price setting mechanism in the truck industry

- (38) The pricing mechanism in the truck sector generally follows the same steps for [...]. Like in many other industries, pricing generally starts from an initial gross list price set by the headquarters. Then transfer prices are set for the import of trucks into different markets between the headquarters and the wholly owned or independent distributor companies. Furthermore there are prices to be paid to the national distributors by dealers operating in national markets and the final net customer prices. These final net customer prices are negotiated by the dealers or by the manufacturers where they sell directly to dealers or to fleet customers. Therefore, [...] final prices paid by end customers may differ (for example, by virtue of the application of different rebates at different levels of the distribution chain) [...]. [...].
- (39) [...]. The initial EEA-wide gross price lists contain individual gross prices for basic models and each optional component of the trucks. Therefore a gross price for each tailor made truck model with a specific configuration required in a specific country or by a specific customer can be calculated by adding up the gross list prices for all components contained in that specific model. This explains how a gross price list on headquarter-level contains the basis for truck models in different countries, even though their actual composition is tailored to requirements of that country and later to the specific requirements of the individual customer.
- (40) With regard to the initial gross price lists of new trucks, all of the parties, except [...], established between 2000 and 2006 gross price lists with harmonised gross list prices across the EEA.⁴¹ Those initial EEA-wide gross price lists were decided by the headquarters. [confidentiality claim pending].⁴²

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4.2. Pricing responsibilities within Scania

(41) [...] ⁴³ [...] ⁴⁴

(42) [...] ⁴⁵ [...] ⁴⁶ [...] ⁴⁷ [...].

4.3. Scania's price setting mechanism⁴⁸

(43) Scania sells its trucks to customers via Scania Distributors, most of which are fully owned subsidiaries. The Distributors sell the trucks that are bought from the Scania's headquarters to authorised Scania Dealers (see recital (26)). Sales to most customers are made through contact with the Scania Dealers.

(44) Scania's headquarter sets the Factory Gross Price List which contains individual prices for all of the available components of a truck. The Factory Gross Price List already existed prior to 1997 and was in use during the entire period from 1997 to 2011.⁴⁹ Each truck can be given an individual factory price based on the configuration and the choice of components (for example, the type of engine, cabs, suspension and interior options). However, individual truck chassis specifications are seldom the same with the result that the individual factory price is generally order specific. The Factory Gross Price List is prepared by [...] [...].⁵⁰

(45) Each Scania Distributor (for example, Scania Germany), negotiates with Scania headquarters' a Scania "Distributor net price", which is the price that the Distributor pays to the headquarters for each component of a truck, on the basis of the Factory Gross Price List it has received. The Scania Distributor net price is stated in a document called "RPU" ("*Representantuppgift*" in Swedish). The RPU describes the differences between the Factory Gross Price List and the Scania Distributor net price in terms of discount.⁵¹ The discounts are set by Scania headquarters' [...], but also discussed within the Price Decision Group⁵²; the final decision on the Scania Distributor net price rests with [...].⁵³

(46) In turn the Scania Distributor releases its own Distributor Gross Price List (which consists of the Distributor net price plus margin) for all the available individual components of a truck as well as for a selection of "sample" configured trucks (eg. basic pre-configured trucks with certain packaging options, wheels configurations, chassis, engine power and capacity) to the Scania Dealers in its territory. The Distributor Gross Price List is placed on an electronic database that can be accessed by Scania Dealers only for their territories.

(47) The Scania Dealer will in turn, negotiate a "Dealer net price" which is the price paid by the Scania Dealer to the Scania Distributor. The Dealer net price is lower than the

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Distributor Gross Price List since the Scania Dealers receive a substantial discount in percentage on the latter price. [...].

- (48) Customers buying trucks from Scania Dealers pay the customer price. The customer price is the Dealer net price plus the Scania Dealer's margin and any costs of further customisation of the vehicle, minus discounts and promotions offered to the customer. The actual impact of a price change on a particular sale will depend on a significant number of factors that to a large extent will be determined by the negotiations with the end-user. Therefore, it is possible that a change in a particular price level will, in the end, have no or only a minimal effect on the final customer price.
- (49) [*confidentiality claim pending*] the Distributor net price (see recital (45)) is relevant for the region in which the Scania Distributor operates. The Distributor Gross Price List (see recital (46)) is also valid within the region in which the Scania Distributor operates while the Dealer price (see recital (47)) applies within the region in which the Scania Dealers operates.

(50) [*confidentiality claim pending*].⁵⁴

4.4. Relationship of price increases on European and national level

- (51) As described in sections 4.1 to 4.3 [...] apply different prices for subsequent steps of the distribution chain. Starting from the Factory Gross Price List, the price lists for distribution in each EEA country (Contracting party to the EEA Agreement) are adjusted via discounts that vary depending on the economic situation of the country, technical component requirements and the respective market position of the participant in that country. The national distributors such as Scania DE do not produce trucks but buy them from the headquarters level. They are not independent in setting the gross prices or gross price list of the trucks produced by headquarters. [...]. [...].⁵⁵
- (52) Accordingly, an increase to the European-wide applicable gross price list of trucks (chassis components and available options) will be decided by the headquarters having overall responsibility for pricing across Europe. [...].

4.5. Exchange of current gross price lists and configurators for trucks

(53) [...].⁵⁶ [...].

- (54) According to [...] gross prices and gross price lists do not as such have a high informational value, as prices are often "moon prices" on which substantial rebates of up to 60% are granted [*confidentiality claim pending*]. [*confidentiality claim pending*] [...] [*confidentiality claim pending*].⁵⁷ [*confidentiality claim pending*]. [*confidentiality claim pending*], [...] [*confidentiality claim pending*].⁵⁸ [*confidentiality claim pending*].⁵⁹ [...] has explained that gross price information for chassis components, prices for options and service fees are not in the public domain

⁵⁴ [...]

⁵⁵ [...]

⁵⁶ [...] [*confidentiality claim pending*] [...], [*confidentiality claim pending*] [...] [*confidentiality claim pending*] [...] [*confidentiality claim pending*], [...]. [*confidentiality claim pending*].

⁵⁷ [...]

⁵⁸ [...] [*confidentiality claim pending*] [...].

⁵⁹ [...]

and that information that is publicly available is not as detailed or accurate as the information received directly from the competitors. [confidentiality claim pending] [...] [confidentiality claim pending].⁶⁰

- (55) An internal presentation from 2008 found at [...] shows that [...] had received current price lists from all of the other parties⁶¹ and that [...] was also informed about the fact that European prices of most of their competitors for the standard models only differ as far as the standard equipment differs between countries.⁶²
- (56) An internal presentation of early 2006 from [...] Product Marketing Department indicates the source of the information as coming from European price lists of various parties including Scania, [...] (see recital (128)).⁶³
- (57) [...] [confidentiality claim pending] [...] [confidentiality claim pending].⁶⁴ [confidentiality claim pending].⁶⁵
- (58) Most of the truck producers have developed computer based truck configurators that have replaced paper lists or handbooks and are used to assemble a specific truck for a customer including all or most available options and extras and to calculate its specific gross price.⁶⁶ Scania operates various configurators.⁶⁷ [...] ⁶⁸ [...] has explained that, similar to the gross price lists, the exchange of configurators helped to compare its own offers with those of competitors. Most importantly it could be understood which extras would be compatible with which trucks and which options would be part of the standard equipment or an extra.⁶⁹
- (59) [...] ⁷⁰ [confidentiality claim pending]. [...] [confidentiality claim pending].⁷¹ [confidentiality claim pending].⁷² [confidentiality claim pending].⁷³ [confidentiality claim pending] [...] [confidentiality claim pending] [...] [confidentiality claim pending].⁷⁴

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66 From a document submitted by [...] it is clear that already in 2006 at least Scania, [...] used configurators, see [...].

67 One on factory level, one on distributor level and various on dealer level (DealIT, [...], [...] and [...]), [...].

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5. PROCEDURE

5.1. The Commission's investigation

- (60) On 20 September 2010 [...] applied for immunity from fines in accordance with point 14 of the Leniency Notice.⁷⁵ On 17 December 2010 the Commission granted conditional immunity from fines to [...].
- (61) Between 18 and 21 January 2011, the Commission carried out inspections at, amongst others, the premises of the Addressees.
- (62) On 28 January 2011 [...], on 10 February 2011 at 10.00 am [...] and on 10 February 2011 at 22.22 pm [...] applied for immunity from fines in accordance with point 14 of the Leniency Notice and in the alternative, for a reduction of fines in accordance with point 27 of the Leniency Notice.
- (63) In the course of the investigation,⁷⁶ the Commission has sent several requests for information under Article 18 of Regulation (EC) No 1/2003 to, amongst others, the Addressees.
- (64) On 20 November 2014, the Commission initiated proceedings pursuant to Article 11(6) of Regulation (EC) No 1/2003 against [...] Scania AB (publ), Scania CV AB (publ), Scania Deutschland GmbH and adopted a Statement of Objections, which it notified to those entities.⁷⁷
- (65) Subsequent to the adoption and notification of the Statement of Objections of 20 November 2014, the addressees of the Statement of Objections had access to the investigative file of the Commission.
- (66) In [...] all of the addressees of the Statement of Objections approached the Commission informally and asked to continue the case under the settlement procedure. The Commission subsequently decided to launch settlement proceedings for this case after each of the addressees of the Statement of Objections had confirmed its willingness to engage in settlement discussions.
- (67) Settlement meetings between each addressee of the Statement of Objections and the Commission took place between [...] and [...]. During those meetings, each addressee of the Statement of Objections expressed its views on the objections raised by the Commission against them. Following those settlement meetings the settling parties submitted their formal requests to settle to the Commission pursuant to Article 10a(2) of Regulation (EC) No 773/2004. Scania did not submit a formal request to settle pursuant to Article 10a(2) of Regulation (EC) No 773/2004. On 19 July 2016 the Commission adopted a decision pursuant to Article 7 and Article 23(2) of Regulation (EC) No 1/2003 addressed to the settling parties ("the settlement

⁷⁵ Commission's 2006 Notice on Immunity from fines and reduction of fines in cartel cases OJ (2006/C 298/11).

⁷⁶ The Office of Fair Trade (OFT) opened an investigation into the UK trucks market. The investigation, which concerned the same undertakings as the Commission's investigation, was conducted under the Competition Act 1998 as well as under the Enterprise Act 2002. On 21 December 2011 the OFT closed the criminal investigation under the Enterprise Act 2002. On 15 June 2012 the OFT issued a public statement announcing the closure of its investigation under the Competition Act 1998.

⁷⁷ As set out at recital (3) above, the Commission also opened proceedings against a number of entities of an additional undertaking on 20 November 2014.

decision").⁷⁸ The press release regarding the settlement decision issued on 19 July 2016 by the Commission clarified: *"Today's decision follows the sending of a Statement of Objections to the trucks producers in November 2014. In the context of this investigation, proceedings were also opened with regard to Scania. Scania is not covered by this settlement decision and therefore the investigation will continue under the standard (non-settlement) cartel procedure for this company."*⁷⁹

- (68) In light of Scania having chosen not to submit a settlement proposal, the Commission continued the investigation into Scania's behaviour under the standard procedure.
- (69) Subsequently, Scania was given further access to the Commission's case file. Scania received the accessible parts of the Commission's investigation file and received further access to those parts that were only accessible at Commission premises on 12 and 13 October 2016 respectively.⁸⁰
- (70) By way of written response submitted on 23 September 2016, Scania made known to the Commission its views on the objections raised against it in the Statement of Objections of 20 November 2014. Scania submitted its response to the Statement of Objections on 23 September 2016,⁸¹ a letter of 10 November 2016⁸² and a letter of 23 March 2017.⁸³ Scania also presented its views during an oral hearing that was organised in Brussels on 18 October 2016. On 10 November 2016 Scania provided in writing its views on questions raised during the hearing and on the additional documents provided by the Commission on 12 October 2016.⁸⁴
- (71) On 7 April 2017, in accordance with point 111 of the Commission Notice on best practices for the conduct of proceedings concerning Articles 101 and 102 of the Treaty,⁸⁵ the Commission addressed a Letter of Facts to Scania AB (publ) presenting a list of specific items of evidence that the Commission may rely on to further support its objections as stated in the Statement of Objections. The Commission invited Scania to submit its views on the evidence annexed to the Letter of Facts before any decision was adopted in this case.⁸⁶
- (72) Following the Letter of Facts Scania requested further access to the file on 11 April 2017 and 5 May 2017. The Commission provided Scania with further access to the file on 10 May 2017.⁸⁷
- (73) On 12 May 2017 Scania AB (publ) provided the Commission with its written comments on the evidence annexed to the Letter of Facts.⁸⁸ On 23 June 2017 the Commission addressed the Letter of Facts sent to Scania AB on 7 April 2017 also to Scania CV AB (publ) and Scania Deutschland GmbH inviting them to submit their

⁷⁸ [...] - Commission Decision C(2016) 4673 of 19 July 2016 addressed to [...], 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.39824 – Trucks (Settlement)).

⁷⁹ [...]

⁸⁰ [...]

⁸¹ [...]

⁸² [...]

⁸³ [...]

⁸⁴ [...]

⁸⁵ OJ C 308 of 20 October 2011, p. 6.

⁸⁶ [...]

⁸⁷ [...]

⁸⁸ [...]

views on the evidence annexed to the Letter of Facts before any decision was adopted in this case.⁸⁹ On 7 July 2017 Scania confirmed that the reply to the Letter of Facts of 12 May 2017 equally reflected the position of Scania AB (publ), Scania CV AB (publ) and Scania Deutschland GmbH.⁹⁰

5.2. The main evidence relied on

(74) The principal documentary evidence relied upon consists of the documents submitted by [...], corporate statements made by the leniency applicants (see recitals (60), (62)), documents copied by the Commission during the course of above mentioned inspections (see recital (61)), and replies to the Commission's requests for information.

6. THE COLLUSIVE CONTACTS

6.1. The scope and the different layers of the collusive contacts

(75) Scania participated in collusive meetings and contacts with the settling parties within different forums and on different levels which evolved over time while the participating undertakings, the objectives and the products concerned remained the same. In the early years of the infringement the top management of the parties' headquarters (hereinafter referred to as top management meetings) discussed their pricing intentions, the future gross price increases, [*confidentiality claim pending*] and occasionally agreed their respective gross price increases. The parties colluded with respect to the timing and the passing on of costs for the introduction of trucks complying with EURO 3 to EURO [*confidentiality claim pending*] and exchanged other commercially sensitive information (see recitals (159), (164), (170), (171), (172), (175), (178), [*confidentiality claim pending*], (187), (188), (189)). [*confidentiality claim pending*].

(76) After the introduction of the Euro currency and with the introduction of European wide gross price lists for almost all manufacturers (see section 4.1), the parties continued [*confidentiality claim pending*] through their German subsidiaries (hereinafter referred to as "German level meetings"). In a similar manner to the contacts during the early years [*confidentiality claim pending*] the representatives of the German subsidiaries discussed the future gross price increases as well as the timing and the passing on of costs related to the introduction of emission technologies for medium and heavy trucks required by the EURO 5 and EURO 6 standards, they also exchanged other commercially sensitive information.

6.1.1. Collusive contacts between the representatives of the participants' headquarters

(77) The evidence in the Commission's file shows that the top management of [...], Scania, [...] met [...] ⁹¹ [...] to discuss competitively sensitive information and to coordinate their respective pricing behaviour (top management meetings). [...] [*confidentiality claim pending*] [...] ⁹² [...] submits that within [...] these meetings were sometimes also referred to as "small [...]" meetings, set up in order to prepare

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the official [*Industry association*] meetings (see recitals (15)-(17) above).⁹³ However, these meetings were not organised or chaired by [*Industry association*] but were organised either before or after the official [*Industry association*] meetings, sometimes at [*Industry association*]'s premises.⁹⁴

(78) The principal participants at these top management meetings [...] for Scania were most importantly as follows:⁹⁵

Name	Position at Scania headquarters	Period	Direct superior
[...]	[...]	[...]	[...]
	[...]	[...]	[...]
	[...]	[...]	[...]
	[...]	[...]	[...]
[...]	[...]	[...]	[...]
	[...]	[...]	[...]
[...]	[...]	[...]	[...]
	[...]	[...]	[...]

⁹³ [...]

⁹⁴ [...]

⁹⁵ See factual part below and [...].

	[...]	[...]	[...]
--	-------	-------	-------

- (79) The evidence shows that during top management meetings [...] headquarters discussed their pricing intentions, the future gross price increases, [*confidentiality claim pending*] and occasionally agreed their respective gross price increases. They discussed and occasionally agreed on the timing and the passing on of costs for the introduction of emission technologies for medium and heavy trucks required by EURO 3 to 5 standards and exchanged other commercially sensitive information.⁹⁶ [*confidentiality claim pending*] [...].⁹⁷
- (80) However, [...].⁹⁸ In this regard, [...] was able to retrieve notes taken during these meetings [...] by its participants.
- (81) According to [...] the top management meetings were discontinued after a meeting held on 23 September 2004 in Hannover.⁹⁹ [...].¹⁰⁰ [...].¹⁰¹ [*confidentiality claim pending*], [...] [*confidentiality claim pending*] [...] [*confidentiality claim pending*].¹⁰² [...].¹⁰³ The top level meetings were discontinued after this date and were not resumed.¹⁰⁴
- (82) [*confidentiality claim pending*]. [...] [*confidentiality claim pending*].¹⁰⁵
- (83) [*confidentiality claim pending*].¹⁰⁶ [...] [*confidentiality claim pending*].¹⁰⁷
- (84) [...], [*confidentiality claim pending*]. [...] [*confidentiality claim pending*]. [...] ([...]) [*confidentiality claim pending*].
- (85) [*confidentiality claim pending*]. [...] .¹⁰⁸ [*confidentiality claim pending*].
- (86) [*confidentiality claim pending*].¹⁰⁹ ¹¹⁰ [*confidentiality claim pending*].¹¹¹ [...].¹¹² [...] [*confidentiality claim pending*].
- (87) [*confidentiality claim pending*].¹¹³ [*confidentiality claim pending*].¹¹⁴ [*confidentiality claim pending*] contacts for Scania were principally as follows:¹¹⁵

96 This is also confirmed by [...].

97 [...]

98 [...]

99 [...]

100 [...]

101 [...]

102 [...]

103 [...]

104 This is supported also by an email submitted by [...].

105 [...]

106 [...]

107 [...]

108 [...]

109 [...]

110 [...]

111 [...]

112 [...]

113 [...]

114 [...]

Name	Position at Scania headquarters	Period	Direct superior
[...]	[...]	[...]	[...]
	[...]	[...]	[...]
[...]	[...]	[...]	[...]
	[...]	[...]	[...]
	[...]	[...]	[...]
	[...]	[...]	[...]
[...]	[...]	[...]	[...]
	[...]	[...]	[...]
	[...]	[...]	[...]
	[...]	[...]	[...]
	[...]	[...]	[...]
[...]	[...]	[...]	[...]
	[...]	[...]	[...]

6.1.2. *Collusive contacts between the participants' German subsidiaries*

(88) [...] [confidentiality claim pending].¹¹⁶ [confidentiality claim pending].¹¹⁷ [...] [confidentiality claim pending].¹¹⁸ [...].¹¹⁹ [...] [confidentiality claim pending],¹²⁰ [confidentiality claim pending].¹²¹

(89) The range of topics discussed during the meeting on the German level was very broad, and covered issues such as [confidentiality claim pending], statistics on order intake, technical topics and delivery periods as well as prices and future gross price increases. The exchanges on currently applicable gross price lists also took the form of exchanges of respective configurators (see recitals (57) to (59) above).¹²² [...].¹²³

¹¹⁵ See factual part below and [...].

¹¹⁶ [...]

¹¹⁷ [...]

¹¹⁸ [...] [confidentiality claim pending], [...].

¹¹⁹ [...]

¹²⁰ [...] [confidentiality claim pending] ([...]). [confidentiality claim pending] [...] [confidentiality claim pending] [...].

¹²¹ [...]; [confidentiality claim pending]. [...] [confidentiality claim pending] [...].

¹²² [...]

- (90) [...].¹²⁴
- (91) [*confidentiality claim pending*] [...].¹²⁵ [*confidentiality claim pending*].¹²⁶ Participants were requested to prepare a presentation on certain topics which they shared with the other participants during the meeting. The information on planned gross price increases was regularly included as a topic on the agenda of meetings and participants were asked to include such information in their presentation (see recitals (149), (155), (157), (159), (166)). [...]. [...].¹²⁷
- (92) The future gross price increase information exchanged referred either only to the basic truck models or to the trucks and the available options (often this was indicated separately in the tables exchanged) and usually no net prices or net price increases were exchanged.¹²⁸ [*confidentiality claim pending*] [...] [*confidentiality claim pending*].¹²⁹ [...].¹³⁰
- (93) [*confidentiality claim pending*] [...] [*confidentiality claim pending*].¹³¹ [...] [*confidentiality claim pending*] [...]s [...] [*confidentiality claim pending*].¹³² [...].¹³³ [...] [*confidentiality claim pending*].¹³⁴ [...].¹³⁵ [*confidentiality claim pending*].¹³⁶ Although the exchange of information was organized in Germany, most of the competitors have gross price lists which are European wide applicable Europe-wide.¹³⁷ [...] [*confidentiality claim pending*].¹³⁸
- (94) [...].¹³⁹ [...] [*confidentiality claim pending*].¹⁴⁰ According to [...] there were one or two competitor meetings each year, sometimes more.¹⁴¹
- (95) [...]. New members were normally treated with mistrust.¹⁴²
- (96) The persons most frequently involved in these competitor contacts from Scania were as follows:¹⁴³

123 [...]

124 [...]

125 [...] [*confidentiality claim pending*][...] [*confidentiality claim pending*],[...].

126 [...]

127 [...]

128 [...], although occasionally net prices [*confidentiality claim pending*] were communicated, for example by new participants: [...] submits that normally only prices were communicated once they had been decided within [...] and had been communicated to the German sales organisation. [*confidentiality claim pending*],[...].

129 [...]

130 [...]

131 [...]

132 [...]

133 [...]

134 [...]

135 [...]

136 [...]

137 [...]

138 [...]

139 [...]

140 [...]

141 [...]

142 [...]

143 See factual part below and [...].

Name	Position at Scania Germany	Period	Direct superior
[...]	[...]	[...]	[...]
[...]	[...]	[...]	[...]
	[...]	[...]	[...]
[...]	[...]	[...]	[...]
[...]	[...]	[...]	[...]
	[...]	[...]	[...]
	[...]	[...]	[...]
	[...]	[...]	[...]

(97) [...] [confidentiality claim pending].¹⁴⁴ This practice existed at least since 2007 [confidentiality claim pending].¹⁴⁵ [...] [confidentiality claim pending].

6.2. The collusive meetings and other anticompetitive contacts

1997

(98) On **17 January 1997** a competitor meeting was held in Brussels. [confidentiality claim pending] [...] [confidentiality claim pending] [...] to [...] and [...] (Scania HQ).¹⁴⁶ [...] has submitted [...]’s handwritten notes (dated 18 January 1997) with the heading "competitor meeting".¹⁴⁷ In this meeting [...] was represented by [...] as the handwritten notes refer to his opening speech. [confidentiality claim pending] [...] [confidentiality claim pending] [...]. [confidentiality claim pending] "[...] [confidentiality claim pending] [...] [confidentiality claim pending] – [confidentiality claim pending] [...] [confidentiality claim pending] [confidentiality claim pending] [...] [confidentiality claim pending] [...] [confidentiality claim pending] [confidentiality claim pending] [...] [confidentiality claim pending] [...]"

144 [...] [confidentiality claim pending]
145 [...] [confidentiality claim pending]
146 [...] [confidentiality claim pending]
147 [...] [confidentiality claim pending]

[confidentiality claim pending] - [...] [confidentiality claim pending]
[confidentiality claim pending] [...].

- (99) On **30 June 1997** a competitor meeting organised by Scania was held in Roissy, Paris. Participants to this meeting were [...] (Scania HQ) and [...].¹⁴⁸ [...] chaired the meeting. Handwritten notes from [...] dated 30 June 1997 clearly show that participants discussed market trends and price increases. Under the heading "Prices" the notes read "[...] *Allemagne: fera 1% au 1/9 sur toute la gamme [...]*"¹⁴⁹.
- (100) On **21 November 1997** a bilateral meeting was organised between [...] and [...]. Participants were [...] ¹⁵⁰. [...] [confidentiality claim pending]. [confidentiality claim pending] [...] [confidentiality claim pending] [...] [confidentiality claim pending]. [...] [confidentiality claim pending] [...]. [...] [confidentiality claim pending] [...] [confidentiality claim pending] [...].¹⁵¹

1998

- (101) On **6 February 1998** a competitor meeting organised by [...] was held in [...]. The confirmation of the meeting was sent on 21 January 1998 by [...] and [...] (Scania HQ).¹⁵² For [...] participated replacing [...].¹⁵³ On 29 January [...] received internally a preparatory note for this meeting stating "*Topic: Meeting between manufacturers [...] Aim: Preparation [...] The usual program of the meeting starts generally with a tour de table on the market forecasts of the current and the coming year. You find annexed the model table used. [...] who is in copy is in charge of completing the template and to make it available to you. It is sufficient to complete it during the meeting with the figures provided by your colleagues. What is interesting is to understand whether there are differences and why. When back, hand these elements to our forecasters.*" [confidentiality claim pending], [...] [confidentiality claim pending].¹⁵⁴
- (102) On **6 April 1998** a bilateral meeting took place in Brussels between [...] and [...] (Scania HQ).¹⁵⁵ [...] 's notes from this meeting show that both competitors spoke about several European markets and prices.¹⁵⁶ [confidentiality claim pending] [...] [confidentiality claim pending] [...] [confidentiality claim pending] [...] [confidentiality claim pending] [...]. [confidentiality claim pending]. [...] [confidentiality claim pending]. [...] [confidentiality claim pending].
- (103) Also on **6 April 1998** a "small [...]" meeting was held in Brussels.¹⁵⁷ [...] has submitted minutes of the meeting and the internal report dated 8 April 1998 by [...]. [...] 's [confidentiality claim pending] [...] [confidentiality claim pending].¹⁵⁸

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154 [...] [confidentiality claim pending] [...], [confidentiality claim pending], [confidentiality claim pending] [...]. [confidentiality claim pending] [...].

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[confidentiality claim pending]. [confidentiality claim pending] [...] [confidentiality claim pending] [...] [confidentiality claim pending]. [...] [confidentiality claim pending] [...] [confidentiality claim pending] [...] [confidentiality claim pending] [...] [confidentiality claim pending] [...] [confidentiality claim pending]. [confidentiality claim pending] [...]. [confidentiality claim pending] [...] [confidentiality claim pending]. [...].¹⁵⁹

- (104) On **3 July 1998** a meeting was held in Brussels ("small [...] meeting").¹⁶⁰ Participants were [...], [...] (Scania HQ) and [...]. [...]’s internal report dated 9 July 1998 shows that the competitors exchanged their respective delivery times and the market forecasts for 1998 and 1999.¹⁶¹ [confidentiality claim pending].

[confidentiality claim pending]
[...] [confidentiality claim pending]
[...] [confidentiality claim pending]
[...] [confidentiality claim pending]
[...] [confidentiality claim pending]
[...] [confidentiality claim pending]
[...] [confidentiality claim pending] [...]

[confidentiality claim pending] [...] [confidentiality claim pending] [...] [confidentiality claim pending]. [...] [confidentiality claim pending]. [...].

- (105) On **3 September 1998** the commercial directors of [...] parties met in Hannover.¹⁶² The meeting was attended by [...], [...] (Scania HQ) and [...]. [...]’s internal report dated 4 September 1998 and two market volume tables show that the competitors exchanged market forecasts for 1998 and 1999 for all European countries.¹⁶³ [confidentiality claim pending]. [confidentiality claim pending]. [confidentiality claim pending] [...] [confidentiality claim pending] [...] [confidentiality claim pending]. [...] [confidentiality claim pending] [...] [confidentiality claim pending]. [confidentiality claim pending].

1999

- (106) The competitors continued to meet on a regular basis in 1999. [...] [confidentiality claim pending]. Participants in that period were [...], [...] ([confidentiality claim pending]) and [...]. In addition to general talks about new products, information about [...] future price increases was exchanged in these meetings.¹⁶⁴ [...].¹⁶⁵
- (107) It is also stated in the internal report by [...] dated 4 September 1998¹⁶⁶ about the meeting on 3 September 1998 (see recital (105)) that the next meeting will be held during the press day of [Trade fair]¹⁶⁷ in Brussels and on invitation by [...] and that, if necessary, [...] would organize an ad hoc meeting within the [Industry association] framework. Based on publicly available information the Commission found that the

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[Trade fair] in Brussels to which [...]’s report referred took place from 16 to 24 January 1999.¹⁶⁸

- (108) On 24 December 1999 [...] sent a fax to [...] (Scania HQ), [...], proposing to meet before the Amsterdam show "on commercial matters", suggesting to meet in Bruxelles at [Industry association] on 24 January 2000.¹⁶⁹

2000

- (109) On 7 January 2000 [...] sent a fax to [...] (Scania HQ), [...] informing them that a meeting proposed for 24 January 2000 would take place during the Amsterdam Show on 3 February 2000.¹⁷⁰ [...] indicated that the fax was a follow-up to a fax invitation that [...] had send out on 24 December 1999 to the same recipients proposing to meet before the Amsterdam show "on commercial matters at the [Industry association] on 24 January 2000".¹⁷¹

- (110) On **3 February 2000** a meeting organised by [...] was held in [...]. Participants were [...] (Scania HQ), [...].¹⁷² [confidentiality claim pending] [...] [confidentiality claim pending] [...] [confidentiality claim pending].¹⁷³ [...] [confidentiality claim pending] [...] [confidentiality claim pending] [...] [confidentiality claim pending] [...] [confidentiality claim pending]. [...] next meetings in March in [...] and in September in Frankfurt (the 2000 [...] trade fair was held end September 2000).

- (111) On **6 September 2000** a competitor meeting organised by [...] took place in [...]. Participants at the meeting were [...] (Scania HQ), [...].¹⁷⁵ [...] submitted handwritten notes from [...] which show that price increases were discussed: "[...] → increase. Price 2%. [...]. Scania- 2.5% from January Delivery. [...] pusch. 1.5% → 2% European 1st January 2% [...] 6 → 8% + Medium 65/75/85 – Midium (Medium) line. → +4/6% Frankfurt"¹⁷⁶

[...] also submitted notes with the heading "Benchmarking" dated 25 September 2000. The notes refer to price increases and read:

"[...] Price increases:

[...] +2% 09/2000

SCANIA +2.5% 01/2001 (deliveries)

[...] +1.5 to 2% 06/2000

[...] +2% 01/2001

[...] +2% 06/2000 (new models)

[...] Desire from [...], Scania to see [...]’s prices increase [...] [...]"¹⁷⁷

168 [...]
169 [...]
170 [...]
171 [...]
172 [...]
173 [...]
174 [...]
175 [...]
176 [...]
177 [...]

[...] [confidentiality claim pending]
 [...] [confidentiality claim pending]
 [...] [confidentiality claim pending] [...] [confidentiality claim pending]
 [...] [confidentiality claim pending]
 [...] [confidentiality claim pending]
 [...] [confidentiality claim pending]
 [...] [confidentiality claim pending]
 [...] [confidentiality claim pending]
 [...] [confidentiality claim pending] [...] [confidentiality claim pending] [...] [confidentiality claim pending]
 [...] [confidentiality claim pending] [...]. [confidentiality claim pending] [...] [confidentiality claim pending], [...] [confidentiality claim pending], [...] [confidentiality claim pending].

- (114) A competitor meeting organised by [...] was held in Spa (Belgium) on **2 and 3 April 2001**.¹⁸⁶ The invitation sent by [...] listed at least two contact persons for [...] competitors. For Scania [...], [...] and [...] were mentioned. [confidentiality claim pending]'s [...] [confidentiality claim pending]¹⁸⁷. [...] [confidentiality claim pending] [...]s [confidentiality claim pending] [...] [confidentiality claim pending].¹⁸⁸ It is clear from the contact list sent after the meeting on 5 April 2001 that competitors had decided on persons that should be involved in different information exchanges, such as on "M&S Information" or on "Vehicles" at the level of the headquarters. For Scania [...] is mentioned for both "M&S Information" and "Vehicles"; [...] is mentioned as contact person for "Vehicles".¹⁸⁹ [...] [confidentiality claim pending].
- (115) On **26-27 June 2001** a small [...] meeting organised by Scania was held in Stockholm.¹⁹⁰ Participants were [...] and [...] (Scania HQ).¹⁹¹ [...] who could not attend the meeting had prepared European market forecast figures for [...] for 2001 for all European countries.¹⁹² [...]s internal report of the meeting and the tables submitted by [...] show that the competitors discussed their respective market forecasts for 2002 for [confidentiality claim pending].¹⁹³ [...] reported the meeting orally upon his return to his superior at [...], [...] at that time. [...] submits that participants discussed environmental issues and related political initiatives and that a key topic was the transition from Euro 3 to Euro 4. The participants discussed the consequences of those environmental standards for trucks engines. [...].¹⁹⁴
- (116) An internal Scania protocol found during the inspection shows that on **3 and 4 July 2001** a "competitors meeting" between representatives at headquarters level was held in [...].¹⁹⁵ [confidentiality claim pending] [...].¹⁹⁶ The meeting was attended by [...]

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(Scania HQ), [...] (Scania HQ), [...].¹⁹⁷[...]. [confidentiality claim pending] [...] [confidentiality claim pending]. [...].¹⁹⁸

- (117) During the meeting, [confidentiality claim pending]. This is also confirmed by Scania's notes which read: "A meeting was organised by Scania in order to settle the exchange of material on factory level. It is a follow up of the initiative [...] took, by inviting the competition to a product presentation and test&ride, with the purpose to restart an organised exchange of information between the competitors, in April this year. [see recital (114)]".¹⁹⁹ The note further lists the materials to be exchanged between the competitors which include product brochures and specification sheet as well as body builder guidelines. The parties agreed to organise regular meetings in order to keep up the contacts between them.
- (118) A small [...] meeting organised by [...] was held on **29 and 30 November 2001** in [...] and the participants had dinner on the night before the official meeting on 29 November 2001.²⁰⁰ Participants were [...], [...] (Scania HQ), [...].²⁰¹ [...] 's handwritten notes, his internal report dated 3 December 2001 and sales forecasts tables show that the competitors discussed in detail their respective market forecasts for 2002.²⁰² [confidentiality claim pending].²⁰³

2002

- (119) On **7 February 2002** a meeting was held in connection with a [...] trade fair, with reference to "the next [...] meeting" in the restaurant [...] in Amsterdam.²⁰⁴ The invitation letter was sent by [...] to [...] (Scania HQ),²⁰⁵ [...].²⁰⁶ [...] has submitted a handwritten note of [...], showing that pricing information was exchanged amongst the competitors present. [confidentiality claim pending] [...] [confidentiality claim pending]. [confidentiality claim pending] [...] planned price increases of 2% as of 1 July 2002 "nach Ländern" (which means that either the increases or the time periods would vary according to countries). [...] announced a price increase of 5% for "new trucks with same specifications". [...] [confidentiality claim pending] [...] [confidentiality claim pending]. [...] [confidentiality claim pending]. [confidentiality claim pending]. [confidentiality claim pending] [...] [confidentiality claim pending] [...]. According to the notes [...] announced that in Germany the price for the [...] model would increase by 7% ("[...] Germ. [...] +7%"). [confidentiality claim pending] [...] [confidentiality claim pending] [...] [confidentiality claim pending] [...] [confidentiality claim pending].²⁰⁷

¹⁹⁷ [...]: during the inspection at [...] a set of business cards (copied on letter paper of Scania Netherlands) was found. In handwriting it is mentioned "information exchange meeting, June 3, 4, 2001". It appears that these business cards relate to the meeting held in July rather than in June, as the letter head is from Scania and it is clear from Scania's internal report that the same individuals met in Scania's premises in Zwolle on 3-4 July.

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²⁰⁵ The evidence in the file suggests that [...] was not able to participate in the meeting, [...].

²⁰⁶ [...]

²⁰⁷ [...]

- (120) By e-mail of **8 February 2002** [...] sent [...]’s price lists for [...]’s new [...] and [...] models and extras dated 4 February 2002 as well as package prices to [...] (Scania DE), [...].²⁰⁸
- (121) On **11 February 2002** [...] sent an e-mail to [...] to thank him for the price lists he had sent and asking to receive also the price lists (even preliminary) of the (new) [...] range.²⁰⁹ On 21 February 2002 [...] sent the [...] price lists to [...] (Scania DE) asking them not to distribute these lists too widely in view of the problems with the other competitors regarding the exchange of their price lists.²¹⁰
- (122) By e-mail of **3 May 2002** [...] sent [...] (Scania HQ), [...] and [...] (Scania HQ) a password and website address to access [...]’s product information.²¹¹
- (123) On **27 and 28 June 2002** a small [...] meeting organised by [...] was held in [...].²¹² On 28 March 2002 [...] had sent an invitation to [...], [...] (Scania HQ), [...].²¹³ Participants exchanged amongst others the estimated total volumes of truck sales [confidentiality claim pending].²¹⁴ [...] [confidentiality claim pending].²¹⁵ This shows that Scania was present during the meeting.
- (124) On **1 July 2002** [...] [confidentiality claim pending] [...] [confidentiality claim pending]. [confidentiality claim pending] [...] [confidentiality claim pending] [...] [confidentiality claim pending] [...] [confidentiality claim pending] [...] [confidentiality claim pending] [...].²¹⁶
- (125) [confidentiality claim pending] [...] [confidentiality claim pending] [...] [confidentiality claim pending]. [confidentiality claim pending] [confidentiality claim pending] [confidentiality claim pending].²¹⁷ [confidentiality claim pending]

[confidentiality claim pending]	[confidentiality claim pending]	[confidentiality claim pending]
[...]	[confidentiality claim pending] [...] [confidentiality claim pending] [...] [confidentiality claim pending] [...] [confidentiality claim pending] [...] [confidentiality claim pending]	[confidentiality claim pending] [...], [confidentiality claim pending] [...], [confidentiality claim pending] ([...]) [confidentiality claim pending]
[...]	[confidentiality claim pending] [...] [confidentiality claim pending]	[confidentiality claim pending] [confidentiality claim pending]

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(127) An [...] meeting was organised on **10 and 11 April 2003** [...] and the participants met for dinner on the night before the meeting on 10 April.²²³ Participants were [...], [...] (Scania HQ) and [...]. [...] has explained that [...] who had been invited to the meeting did not participate.²²⁴ Amongst others, the participants discussed the market forecasts and the introduction of the Euro 4 specification. [...] [confidentiality claim pending] [...] [confidentiality claim pending] [...] [confidentiality claim pending] [...] [confidentiality claim pending] [...] [confidentiality claim pending]. [confidentiality claim pending] [confidentiality claim pending] [confidentiality claim pending] [confidentiality claim pending] [confidentiality claim pending]. [confidentiality claim pending]. [confidentiality claim pending]. [confidentiality claim pending]. [...] [confidentiality claim pending] [...] [confidentiality claim pending] [...] [confidentiality claim pending].²²⁵ [...] [confidentiality claim pending].²²⁶ [confidentiality claim pending] [...] [confidentiality claim pending] [...] [confidentiality claim pending]. [confidentiality claim pending] [...]. [...] [confidentiality claim pending] [...] [confidentiality claim pending].²²⁷ [confidentiality claim pending] [confidentiality claim pending] [...] [confidentiality claim pending] [...] [confidentiality claim pending] [confidentiality claim pending]

[...] [confidentiality claim pending]
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[confidentiality claim pending] [...] [confidentiality claim pending] [...]
[...] [confidentiality claim pending]
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[confidentiality claim pending] [...] [confidentiality claim pending] [...] [...]
[confidentiality claim pending]. [...]
[confidentiality claim pending] [...] [confidentiality claim pending] [...] [confidentiality claim pending] [...] [confidentiality claim pending]²²⁸
[...] [confidentiality claim pending] [...] [confidentiality claim pending]
[...] [confidentiality claim pending] [...] [confidentiality claim pending]
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[...] [confidentiality claim pending]
[...] [confidentiality claim pending] [...] [confidentiality claim pending][...]
[confidentiality claim pending]
[...] [confidentiality claim pending].
[...] [confidentiality claim pending] ([...][confidentiality claim pending])
[confidentiality claim pending].

(128) [confidentiality claim pending] [...] [confidentiality claim pending] [...], [confidentiality claim pending] [...], [...] [confidentiality claim pending], [...] [confidentiality claim pending] [...] [confidentiality claim pending]. [confidentiality claim pending] [...]. [confidentiality claim pending] [...] [confidentiality claim pending]. [confidentiality claim pending].²²⁹

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[...][confidentiality claim pending] [...] [confidentiality claim pending].
[confidentiality claim pending] [...] [confidentiality claim pending] [...]
[confidentiality claim pending] [...] [confidentiality claim pending]. [...]
[confidentiality claim pending] [...] [confidentiality claim pending] [...]
[confidentiality claim pending].

(129) [confidentiality claim pending] [...] [confidentiality claim pending] [...]
[confidentiality claim pending]. [confidentiality claim pending] [...] [confidentiality
claim pending] [...] [confidentiality claim pending] [...] [confidentiality claim
pending] [...] [confidentiality claim pending].²³⁰

(130) On **15 October 2003** a small [...] meeting was organised by [...] at the fringes of the
[Trade fair] exhibition in the restaurant [...] in [...] (see recital (127)).²³¹ The
invitation for the meeting was sent by [...] to [...] (Scania HQ), [...].²³² In addition
[...] participated at the meeting.²³³ [...] was unable to participate at the meeting.
Amongst others, the participants discussed the market forecasts of each
competitor.²³⁴ [...] has submitted handwritten notes of that meeting reading: "[...]"
Meeting 15/10 – [...] to consolidate + distribute market figures. [...] EURO IV [...]
–No aggressive pushing of Euro IV by press releases – will call each other if
necessary. – Next mtg April at [...]".²³⁵
[...] [confidentiality claim pending] [...] [confidentiality claim pending] [...]
[confidentiality claim pending].²³⁶ [confidentiality claim pending]. [...].²³⁷

(131) On **14 November 2003** [...] informed per his competitor counterparts in the
headquarters and in Germany, namely [...] (Scania HQ), [...] (Scania DE), [...] by
email that responsibility for product comparisons had shifted to his department. He
asked everybody to send price lists, invitations and other information from now on to
him.²³⁸

2004

(132) On **20 January 2004** a competitor meeting "Wettbewerbentreffen" took place in [...] at the premises of [...].²³⁹ Participants were [...] (Scania DE) and [...] (Scania DE), [...]. During the meeting the competitors made a review of the year 2003 and a forecast for the year 2004. They exchanged sales information and documents such as price lists, informing each other about the respective contact persons for price lists. Furthermore the competitors exchanged information on gross price increases for trucks and optional features. Several pages of handwritten notes were found in the office of [...] during the inspections.²⁴⁰ The notes are written on paper with the [...] logo and were taken, according to [...], by [...] during the meeting. [confidentiality claim pending] [...] [confidentiality claim pending] [...] [confidentiality claim

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[confidentiality claim pending] [...] [confidentiality claim pending]. [confidentiality claim pending].²⁴⁷

- (135) On **27 and 28 May 2004** a "small [...]" meeting was held in Nürnberg, Germany.²⁴⁸ During the meeting [...] took handwritten notes which show that sensitive market information had been exchanged concerning the timing, prices and additional costs of Euro 4 and 5 emission standards. For [...] participated at the meeting, for [...] ²⁴⁹ - the other participants are unknown. [confidentiality claim pending] [...] [confidentiality claim pending] [...], [confidentiality claim pending] [...] [confidentiality claim pending] [...] [confidentiality claim pending] [...] and [...] announced that they would not present Euro 4 / Euro 5 at the [Trade fair]. During the meeting [...] announced that the delivery periods for all competitors would be approximately October 2004 and for [...] August 2004.²⁵⁰

[confidentiality claim pending] [...] [confidentiality claim pending] [...] [confidentiality claim pending] [...] [confidentiality claim pending] - [...] [confidentiality claim pending] [...] [confidentiality claim pending] [...] [confidentiality claim pending] [...] [confidentiality claim pending] [...].²⁵¹
[...] [confidentiality claim pending] ²⁵²

[confidentiality claim pending] [...]

[confidentiality claim pending]
[...] [confidentiality claim pending]

[...] [confidentiality claim pending] [...] [confidentiality claim pending]
[...] [confidentiality claim pending]
[...] [confidentiality claim pending] [...] [confidentiality claim pending]
[...] ²⁵³

- (136) On **13 July 2004** [...] (Scania HQ) sent an e-mail to [...], with copy to [...] (Scania HQ). She wrote: "Dear competitor colleagues, It was nice seeing you again and to know that you enjoyed your visit to Scania! Enclosed you will find the exchange list updated [confidentiality claim pending]. See you next time at [Trade fair] in Hannover, Convention Centre Room 104, September 21 at 13.30 to 15.00 (please note the change of time). Until then I wish you all a nice and relaxing summer holiday!". The attached power point slide shows [...] [confidentiality claim pending]. Certain of the undertakings reported the information exchange to other levels within their organisation.²⁵⁴

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- (137) An internal [...] email dated **25 August 2004** from [...] to [...], reported on a meeting with competitors held on **24 August 2004** in [...].²⁵⁵ According to [...], the meeting was attended by [...] and [...] (Scania HQ) and [...] (Scania DE), [...].
[confidentiality claim pending]. [confidentiality claim pending]
[...] [confidentiality claim pending]. [confidentiality claim pending] [...] [confidentiality claim pending]. [...] [confidentiality claim pending] [confidentiality claim pending]. [...]
[...] [confidentiality claim pending]. [...] [confidentiality claim pending] .
[...] [confidentiality claim pending] [...] [confidentiality claim pending] [...] [confidentiality claim pending]. [confidentiality claim pending].
[...] [confidentiality claim pending].
[confidentiality claim pending].
[...] [confidentiality claim pending] [...] [confidentiality claim pending]. [...] [confidentiality claim pending].
[...] [confidentiality claim pending] ([...])
[confidentiality claim pending] ([...])
[...] [confidentiality claim pending] [...] [confidentiality claim pending] [...] [confidentiality claim pending].

Several pages of handwritten notes were found in a folder named "[Trade fair] 2004" in the office of [...] during the inspections at [...].²⁵⁶ [confidentiality claim pending] [...] [confidentiality claim pending] [...] [confidentiality claim pending] [...] [confidentiality claim pending].

Page 1 shows information on [...]’s Euro 4 and 5 models (timing and technical details) as well as gross prices for various engines with those Euro standards. In a separate box price increases of 1.9% from September and an increase of 2.5% for the [...] and [...] series are mentioned.

Page 2 shows information on Euro 4 and 5 from Scania. In addition to many technical details a price increase of 5 – 8 % is mentioned.

Page 3 reflects technical information and information on Euro 4 and 5 from [...] and [...]. Under [...] a price increase of 3% is mentioned. Next to the information stemming from [...] the notes read "[...] + [...] 1 week [Trade fair] 2000.- Euro gross".

Page 4 shows technical information and information on the [Trade fair] exhibition from [...]. The notes further read: "(+ 2% increase)".

[confidentiality claim pending] [...] [confidentiality claim pending] [...] [confidentiality claim pending] [...] [confidentiality claim pending] [...] [confidentiality claim pending] [...] [confidentiality claim pending] [...] [confidentiality claim pending].²⁵⁷ Certain of the undertakings involved reported the information exchange to other levels within their organisation.²⁵⁸

- (138) On **23 and 24 September 2004** a top level meeting was planned to take place in Hannover (in connection with an [...] -meeting) between [...], [...] (Scania HQ), [...].²⁵⁹ [confidentiality claim pending] [...] [confidentiality claim pending]. [confidentiality claim pending]. [confidentiality claim pending] [...] [confidentiality claim pending]

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claim pending].²⁶⁰ [...] [confidentiality claim pending] [...] [confidentiality claim pending]. [...] [confidentiality claim pending] [...] [confidentiality claim pending] [...] [confidentiality claim pending]. [confidentiality claim pending] [...] [confidentiality claim pending], [...] [confidentiality claim pending].²⁶¹ [...].²⁶²

[...] has identified an internal report that was drafted on the basis of the information exchanged during the Hannover meeting. The report reads amongst others:²⁶³ "PRICES EVOLUTIONS

Although all Manufacturers seem to suffer from price increase from their suppliers, the general price increase will not exceed **1% to 2%** at the end of 2004".²⁶⁴

(139) [confidentiality claim pending] [...] [confidentiality claim pending] [...] [confidentiality claim pending] [...] [confidentiality claim pending] [...] [confidentiality claim pending] [...] [confidentiality claim pending]. [confidentiality claim pending] [...] [confidentiality claim pending], [...] [confidentiality claim pending] [...] [confidentiality claim pending] [...] [confidentiality claim pending] [...] [confidentiality claim pending] [...] [confidentiality claim pending] [...] [confidentiality claim pending].²⁶⁵ He asked competitors to inform him of contact persons concerning the subject within their organisations.²⁶⁶

(140) On **2 December 2004** [...] sent an e-mail to [...] (Scania DE), [...] and [...] requesting price increases planned for 2005: "Price increases 2005: same as every year, the boss wants to know if and when you will increase prices next year. For this reason, please share this information with everyone in order to save time of individual requests". He promised to circulate a summary once he had collected all the information.²⁶⁷

[confidentiality claim pending] [...] [confidentiality claim pending] [...] [confidentiality claim pending]. [confidentiality claim pending] [...] [confidentiality claim pending] [...] [confidentiality claim pending].²⁶⁸

[confidentiality claim pending] [...] [confidentiality claim pending] [...].²⁶⁹ [confidentiality claim pending]

[...]

[confidentiality claim pending]. [...]

[...]

[confidentiality claim pending] [...] [confidentiality claim pending]

[...] [confidentiality claim pending] [...]

[confidentiality claim pending] [...] [confidentiality claim pending] [...]

[confidentiality claim pending] [...]

[...]

[confidentiality claim pending]

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[...]
[confidentiality claim pending]

[...]
[confidentiality claim pending] [...] (Scania DE) sent an update to [...] the same day on 8 December 2004, informing him that "from March 2005 we will increase all our P, R and T series by 1.5%". Some of the undertakings involved reported the information exchange to other levels within their organisation.²⁷⁰

(141) Also on **2 December 2004** [...] (Scania DE) sent an email to [...] (Scania DE) with the subject line "EURO 4 -5 - engines".²⁷¹ In the email he asks his competitors "when do you deliver which engines (horse power) with EURO 4 and/or EURO 5 to your clients and at which gross price. As this is certainly interesting for all colleagues, I will collect the info and distribute it to everybody. [...]".

[...] [confidentiality claim pending] [...] [confidentiality claim pending] [...] [confidentiality claim pending] [...]. [confidentiality claim pending].

(142) [confidentiality claim pending] [...] [confidentiality claim pending]. [confidentiality claim pending] [...] [confidentiality claim pending] [...] [confidentiality claim pending] [...] [confidentiality claim pending]. [...] [confidentiality claim pending] [...] [confidentiality claim pending]. [...] [confidentiality claim pending] [...].²⁷²

2005

(143) [confidentiality claim pending] [...] [confidentiality claim pending] [...].²⁷³
[confidentiality claim pending] claim pending
[...]
[confidentiality claim pending]

[...] [confidentiality claim pending]
[...] [confidentiality claim pending].

[...] [confidentiality claim pending].
[...]
[confidentiality claim pending] ([...]) [confidentiality claim pending]
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[...] [confidentiality claim pending]
[confidentiality claim pending] [...] [confidentiality claim pending]
[...] [confidentiality claim pending]

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²⁷³ [...]

[...]
[confidentiality claim pending] [...] [confidentiality claim pending]
[...] [confidentiality claim pending]
[confidentiality claim pending].
[...]
[confidentiality claim pending] [...] [confidentiality claim pending]
[confidentiality claim pending]
[...]
[confidentiality claim pending].
[confidentiality claim pending] [...] [confidentiality claim pending]; [...]"

- (144) A [...] competitor newsletter on the new [...] refers to a competitors meeting that was held at [...] France in [...] on **3 and 4 February 2005**.²⁷⁴ It is clear from the newsletter that during that meeting [...] announced a 5% increase in the context of EURO 4/5 introduction.²⁷⁵ [confidentiality claim pending] [...] [confidentiality claim pending] [...].²⁷⁶ It appears that some handwritten notes found in [...] office could have been taken during the meeting. The notes are headed "*Presentation [...]*" and mention a price increase of approximately 5%. The notes also mention introduction dates of EURO 4/5 engines of [...], Scania, [...] and [...]. For Scania they also mention the pricing for these engines as well as the number of orders received. Regarding "[...] pricing" they state "*information exchange through contact person*".²⁷⁷ In addition, [...] has submitted handwritten notes from [...] and an internal report about the meeting. From the notes it is clear that the competitors discussed the exchange of "*price lists for markets*" and that [...] was planning a price increase of 5% for the new [...] model.²⁷⁸ Scania's internal report of that meeting mentions that [...] proposed an "*exchange of prices which was not accepted by the majority*".²⁷⁹ [...] [confidentiality claim pending] personal notes of the meeting mention that a contact person for an exchange of prices should be found for the next meeting. Scania explained however that no further actions were taken as a result of that issue.²⁸⁰
- (145) On **20 June 2005** [...] sent an email to [...] (Scania DE) and [...] asking for "*current*" price lists in preparation of the competitor meeting planned on 4 and 5 July (see recital (146)).²⁸¹
- (146) On **4-5 July 2005** an "*Internationaler Wettbewerberkreis*" meeting was held at [...] in Munich with representatives from [...] the parties. [confidentiality claim pending] to the meeting, such as [...] (Scania DE) and [...] [confidentiality claim pending] for Scania,²⁸² [...].²⁸³ For Scania [...] [confidentiality claim pending] and [...]

²⁷⁴ [...] the presentation mentions the date 3-4 February 2004, however from the context it is clear that the meeting was held in 2005 rather than in 2004, see also [...].

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²⁸⁰ [...].

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[*confidentiality claim pending*] ultimately attended the meeting.²⁸⁴ From the programme of the meeting it appears that partly common activities and meetings were scheduled and that, in addition, special sessions were foreseen only for the "Group German Market" and the "Group Factory Level".²⁸⁵ Agenda points were, among others, "Group Factory Level: Exchanging Information" and "Group German Market: Exchanging Information".²⁸⁶ In preparation of the meeting [...] had sent an email to the German counterparts on 8 June to collect price increase information in order to distribute the combined information during the meeting.²⁸⁷ At the meeting she held a presentation indicating price increases for all [...] trucks as of 1 January 2006 on an average of +2,9%.²⁸⁸ [...] [*confidentiality claim pending*].²⁸⁹ The next day, on 6 July 2005 [...] sent an e-mail to [...] with the following subject: "Wettbewerbertreffen bei [...]". He attached the presentation given the day before.²⁹⁰ He also sent an internal email within [...] summarizing the conclusions of the meeting the day before.²⁹¹ In the email he states: "[...] however only the competitors of [...] and of course [...] were present. [...] + SCANIA were represented only with international persons. [...][: [...] no price increases are planned for 2005! [...]: [...] no price increases are planned for 2005! [...]: Due to the new models which will be presented at the [Trade fair] there will also be a price increase ! (how much?)". On the same day, in an internal e-mail within [...],²⁹² summarizing information gathered during the presentation, [...] wrote: "[...] Scania - Will be showing a full range of Euro 4 (and some Euro 5) compliant engines at the [Trade fair]. 2000 Euro 4 orders already. [...]". The e-mail also contains information regarding introduction dates for EURO 4 and/or EURO 5 engines of [...].

- (147) On **12 July 2005** [...] sent an e-mail [*confidentiality claim pending*] [...] [*confidentiality claim pending*], [...], with copies to [...] and [...] on "Competitors exchange material" and referred to the meeting on 4 and 5 July 2005 (see recital (146)): "At our meeting last week we gave all of you the current [...] Price List (based on German market). Please send us yours too if possible, if not give us a short info concerning the way we want to exchange it in the future (e.g. contact direct German market responsible persons) and if it is possible to give us a Configurator or just pdf files." Due to a misspelling of his name in the email address [...] did not receive the email.²⁹³ The same day [...] replied to [...]: "We would like to keep the price exchange on market level, means: please contact (as in the past) our colleagues [...] and [...]."²⁹⁴
- (148) On **26 July 2005** [...] (Scania DE) sent an e-mail to [...] with regard to details about the future introduction of Scania models with EURO 4 and EURO 5 motors. In that e-mail [...] (Scania DE) confirmed that Scania would present its entire line of EURO 4 motors at the upcoming [Trade fair] and that EURO 5 models would not be

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available before spring 2006. He further explained: "[...] *This information we had already given to you at the last [Trade fair] in Hannover. The exact dates and also prices I will get after the factory holidays in Södertälje and I can give you a more detailed picture at our meeting in Munich. Do we see each other in Munich? [...]*".²⁹⁵

(149) A "Competition meeting" was held on **12 September 2005** in [...] in view of the upcoming [Trade fair] exhibition. On 26 August [...] had sent an invitation and an agenda to [...] (Scania DE), [...].²⁹⁶ The agenda mentioned amongst other things the topics: "*situation EURO 4/5 [...], planned price increases for 2006, further cooperation in this round [...]*".²⁹⁷ [confidentiality claim pending] [...] [confidentiality claim pending]. [confidentiality claim pending] [...] [confidentiality claim pending] [...].²⁹⁸ [confidentiality claim pending] [...] [confidentiality claim pending]. [confidentiality claim pending] [...] [confidentiality claim pending] [...] [confidentiality claim pending].²⁹⁹ [confidentiality claim pending]. [confidentiality claim pending] [...] [confidentiality claim pending]. [confidentiality claim pending] [...] [confidentiality claim pending]. [confidentiality claim pending]. [confidentiality claim pending] [...] [confidentiality claim pending] [...] [confidentiality claim pending] [...] [confidentiality claim pending] [...] [confidentiality claim pending]. [...] [confidentiality claim pending] [...] [confidentiality claim pending] [...] [confidentiality claim pending]. [...] [confidentiality claim pending] [...] [confidentiality claim pending] [...] [confidentiality claim pending]. [confidentiality claim pending]: [confidentiality claim pending]. [...] [confidentiality claim pending] [...] [confidentiality claim pending] ([...]) [...] [confidentiality claim pending] [...] [confidentiality claim pending], [confidentiality claim pending].³⁰⁰ [confidentiality claim pending] [...] [confidentiality claim pending].³⁰¹ [...] [confidentiality claim pending] [...] [confidentiality claim pending] [...] [confidentiality claim pending].³⁰²

(150) Two versions of an excel table containing the pricing information exchanged during the **12 September 2005** meeting with the title "*Price increases competition 2006.xls*" were found during the inspections at [...] in a binder named "*Competition 2005*" in [...] office, in a cupboard of [...] and in a binder in [...] office.³⁰³ The list found in [...] office shows for [...] producer ([...], Scania, and [...]) several columns with the headings: "*Series; Comments, Timing, Increase, List Prices, Extras*". Apparently [...] used the basic table (found in [...] office) to add the respective information for the [...] models [...]. From the context of the table it is clear that it was created before 2006 ("*[...] will change from January 2006 its gross price list to the European standard.*") In the table updated by [...] the columns "timing" and "increase" the following information appeared: "*[...] January 2006 8-10%; [...] April 2006 2-3%; [...] January 2006 2.9% -9%; [...] January 2006 2.9% - 20%; [...] September 2005 1.20%; [...] September 2005 1.50%; [...] September 2005 2.50%; [...] September 2005 2.00%; [...] September 2005 5.00%; [...] September 2005 2.00%; [...] September 2005 5.00%; Scania all March 2006 2-3%; [...]*"

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299 [confidentiality claim pending][...].

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[...] [confidentiality claim pending] [...] [confidentiality claim pending].

- (153) On **12 May 2006** [...] sent an inquiry to competitors in Germany with the subject "*Price increases 2006?*".³¹³ The email was sent to [...] (Scania DE), [...] and [...]. In the email [...] asks [...] of the competitors "*Dear colleagues, could you quickly reply if, and disregarding all price increases that have already been implemented in 2006, further price increases are foreseen in 2006. [...]*".³¹⁴ The same day [...] forwarded the email internally to [...] and [...] asking for input. On 17 May 2006 [...] replied to both: "*Hi, I already spoke to [...] today. I told [...] that we will not have any price increase in 2006. [...] also says that they will not have a price increase in 2006.*".³¹⁵ On 24 May [...] sent an email to [...] asking for a compilation of the results of her inquiry. In reaction to that request she informed the competitors on 30 May that [...], Scania, [...] and [...] were not planning any price increases and that [...] had not replied to her request. Still on 30 May and after receiving an email by [...] she updated the competitors forwarding [...]’s reply that [...] was not planning to increase its prices either.³¹⁶
- (154) In an email dated **26 June 2006** [...] asked again for the planned price increases for 2006 and 2007. The email was addressed to [...] (Scania DE) [...] and in copy. In reply to the email from [...], [...] sent an email on 28 June 2006, attaching a PowerPoint presentation named "*Price increases Competitors 2006.ppt*".³¹⁷ [...] [confidentiality claim pending] [...], [...] [confidentiality claim pending]. [...] [confidentiality claim pending] [...], [...] [confidentiality claim pending] ([...]), [...] ([confidentiality claim pending] [...]), [...] [confidentiality claim pending] [...], [...] [confidentiality claim pending] ([...]), [...] [confidentiality claim pending] ([...]), [...] [confidentiality claim pending] ([...]), [...] [confidentiality claim pending] ([...]).³¹⁸
- (155) On **25 August 2006** a competitor meeting ("*Wettbewerbertreffen*") organised by [...] took place at the [...] in [...].³¹⁹ Participants were [...] (Scania DE), [...] and [...].³²⁰ [...] has submitted several presentations of participants to the meeting, showing that [...], Scania, [...] and [...] were represented during the meeting.³²¹ The meeting that is referred to as Wettbewerbertreffen [*Trade fair*] 2006 was a pre-meeting for the [*Trade fair*] for commercial vehicles - the "*[Trade fair] Nutzfahrzeuge*" - that was organised from 21 to 28 September 2006 in Hannover. [...] sent an email on 12 July 2006 with the date, place and agenda of the meeting. The agenda shows that amongst others planned price increases for 2007 were to be discussed.³²² Several presentations that were specifically prepared for the meeting show the exchange of future pricing information.³²³ A presentation by [...] with the title "*Wettbewerbertreffen [Trade*

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319 [...] [...] [confidentiality claim pending] [confidentiality claim pending] [confidentiality claim pending], [...].

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fair] 2006" mentions under the point "price increases" [...]s intention to increase prices in 2007 for the [...] approximately by 1,5 %, the [...] approximately by 2 % and the [...] approximately by 1,5 %.³²⁴ The presentation is classified as "confidential".³²⁵ [...]s presentation by [...] mentions a general price increase for all series and extras of 1.9% on the gross list price from 1 January 2007.³²⁶ [...]s presentation by [...] mentions under the heading price increases 2007 that for the semester 2006/2007 no price increases are scheduled and that gross prices had been newly positioned with the introduction of the [...] series with the new [...] technology for Euro 4/5.³²⁷ [...]s [confidentiality claim pending] [...] [confidentiality claim pending] [...] [confidentiality claim pending] [...] [confidentiality claim pending] [...] [confidentiality claim pending]. [confidentiality claim pending] [...] [confidentiality claim pending]. [confidentiality claim pending] [...] [confidentiality claim pending].³²⁸ Among the documents, there was also a gross price list of Scania shared with the meeting participants.³²⁹

(156) [confidentiality claim pending] [...] [confidentiality claim pending] [...] [confidentiality claim pending] [...] [confidentiality claim pending] [...] [confidentiality claim pending] [...] [confidentiality claim pending] [...] [confidentiality claim pending] [...] [confidentiality claim pending] [...] [confidentiality claim pending]. [confidentiality claim pending].³³⁰

2007

(157) On **25 January 2007** [...] and [...] (Scania DE) [confidentiality claim pending] [...] [confidentiality claim pending] [...]. He proposed the following topics, amongst others, as agenda points: "- Situation Euro 5 for all models" and "- Price increases 2007/Price list."³³¹ Subsequent to the e-mail invitation, on a competitor meeting (*Wettbewerbtreffen 2007*) was organised **15 and 16 March 2007** [confidentiality claim pending] [...] [confidentiality claim pending] [...].³³² [confidentiality claim pending] [...] [confidentiality claim pending] during the inspection in [...]s [...] office.³³³ In several folders named "[...], Scania" and "[...]" several presentations and documents were saved. [...]s presentation shows price changes from order date 1 January 2007 / delivery date 1 April 2007. It mentions Trucks +1,5% and most EURO4/5-engines -1000 EUR.³³⁴ A presentation given by [...] indicates price increases for [...] of 3,5% and [...] of 2,7% in the 2007 pricelist.³³⁵ The presentation reads:

"Price list 2007
 [...]: no changes
 [...]: no changes

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[...]
[...] - + 3.5%
[...] - + 3.5%
[...] - + 2.7%
[...] - + 3000€ in comparison to [...]"

A presentation held by [...] indicates price increases for [...] -models applied for orders as of 12 March 2007.³³⁶ The presentation reads:

"Price increases 2007

The price adjustment foresees an increase of 2% of the list prices for the vehicles and the extras.

The list price adjustment for the models [...] is applicable for all orders from 12 March 2007 onwards.

[...] + 2%

[...] + 2%

[...] +2%"

A presentation by [...] indicates under the heading "price development 2007"³³⁷:

"Price development 2007

- [...] up to 16 t 1.0%

- [...] 18 t 2.0%

- [...] 2.0%

- [...] 1.5%

- [...] 2.5%

It contains no reference to any date on which the increases are to be applied. A presentation by Scania contains a slide with general items, including an agenda item "Price increase - Planning for October 2007."³³⁸ [confidentiality claim pending] [...] [confidentiality claim pending].

[confidentiality claim pending].³³⁹ [confidentiality claim pending] [...] [confidentiality claim pending]. The above information was used in an internal [...] presentation on "competitor news" dated 26 April 2004.³⁴⁰ Certain of the undertakings involved reported the information exchange to other levels within their organisation.³⁴¹

- (158) On **25 June 2007** [...] sent an email to [...] and [...] (Scania DE) with the subject "Planning 2008". In the e-mail she asked the following questions: "1) Price increases for 2008 - If different then by series"; " 2) Total 2008 market assessment and/or from 6t-15.9t/>16t"; "3) Further attempts Euro 5 engines in the series + prices". [...] proposed to compile the replies. [confidentiality claim pending] [...] [confidentiality claim pending] [...] [confidentiality claim pending] [...] [confidentiality claim pending].³⁴² [...] [confidentiality claim pending]. [confidentiality claim pending]. [confidentiality claim pending] [...] [confidentiality claim pending].³⁴³

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On 26 July 2007 [...] circulated [...]’s information to competitors³⁴⁴ explaining that "The price increase for [...] will be of 2% and it will be applied from 1 January 2008". On market assessment for 2008 she explained: "Our plan for 2008 is as follows: 92,500 total units" ..

- (159) A competitor meeting was held in preparation of the 2007 [Trade fair] exhibition on **27 and 28 September 2007** [confidentiality claim pending] at Scania in Koblenz.³⁴⁵ When sending the invitation for this meeting [...] (Scania DE) stated in his e-mail on 27 August 2007 addressed to [...] and [...] that "An exchange of information should always be the basis of our meeting and therefore I expect from every member of our group a proper preparation".³⁴⁶ In a further e-mail dated 9 September 2007 [...] confirmed the date of the meeting and proposed as one of the discussion points "envisaged price increases".³⁴⁷ Several presentations were exchanged during the meeting.³⁴⁸ A power point presentation of [...] refers to price increases of 2.5-3.0% as of 1 November 2007. Delivery periods and details and prices of new products are also disclosed. [...] and Scania gave presentations disclosing details and prices of new products, price increases ([...] 3%) and delivery periods. The presentation by [...] indicated a price increase of 2% for all models as of 1 January 2008. On **1 October 2007** [...] reported internally on the competitors meeting held on 27-28 September 2007. He confirmed that Scania, [...] and [...] participated, but not [...] and that all details were available in the respective power point presentations.³⁴⁹
- (160) [confidentiality claim pending] [...] [confidentiality claim pending] [...] [confidentiality claim pending] [...] [confidentiality claim pending]. [confidentiality claim pending]. [confidentiality claim pending] [...] [confidentiality claim pending]. [confidentiality claim pending] [...] [confidentiality claim pending] [...] [confidentiality claim pending] [...] [confidentiality claim pending] [...].³⁵⁰
- (161) On **6 and 7 November 2007** [...] organised a competitor meeting [...] [confidentiality claim pending] [...].³⁵¹ [confidentiality claim pending]. [...] has submitted the business cards of the participants, which were stored on a [...] computer in a folder called "competitor meetings" in a subfolder called "2007_11_06 [...] participants WB meeting". [confidentiality claim pending] [...] [confidentiality claim pending] [...] [confidentiality claim pending] [...] [confidentiality claim pending] [...] [confidentiality claim pending] [...].³⁵² [confidentiality claim pending] [...] [confidentiality claim pending] [...] [confidentiality claim pending].³⁵³

2008

- (162) A power point presentation dated 2008 and submitted by [...] lists several price increases of [...]’s competitors. The presentation shows a price increase of 1.5 % for [...] in 2008, an increase of 3% for [...] on the [...] model in 2008, a 1% increase for

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[...] on the [...] and [...] models, a planned price increase in 2008 for [...] without percentage and a 2% increase for Scania as of 2007. [confidentiality claim pending]. [confidentiality claim pending]. [confidentiality claim pending]. [confidentiality claim pending] [...] [confidentiality claim pending] [...] [confidentiality claim pending].³⁵⁴

- (163) On **14 January 2008** [...] (Scania DE), [...] and [...] about a planned facelifts of [...] -models. *"With regard to [...] this will be linked with a price increase – 3% on basic models and 5% on options. This results in an average of ca. 4%."*³⁵⁵
- (164) On **18 January 2008** [...] sent an e-mail with reference to *"Preisentwicklung 2008"* to [...] (Scania DE), [...]: *"the last inquiry on price development followed our common meeting at Scania [see recital (159)]. I have been asked to inquire on the last status for the year 2008. The completed list I will naturally send to you immediately."*³⁵⁶ On 6 February 2008 [...] replied to [...]: *"Have you received more information for your list? If yes, please let me know, I would be happy to give more information if I could get something?"* Subsequently, on 12 February 2008, [...] sent an e-mail to [...] (Scania DE), [...] with copy to [...] *"attached the evaluation of the request for price increases 2008 and delivery periods 1/2008"* with an excel table containing future price increases for 2008 in percentages based on gross price lists and delivery periods.³⁵⁷ Certain of the undertakings involved reported the information exchange to other levels within their organisations.³⁵⁸
- (165) On **28 January 2008** [...] (Scania DE) thanked [...] for information on the new [...] model and asked: *"Can you tell me today something about the price? Is there an increase planned for this vehicle?"* [confidentiality claim pending] [...] [confidentiality claim pending] [...] [confidentiality claim pending].³⁵⁹
- (166) On **12 and 13 March 2008** a competitor meeting (*Wettbewerbertreffen*) was held in Koblenz with representatives of [...], Scania, [...] and [...].³⁶⁰ On 24 January 2008 [...] (Scania DE) had sent an invitation for the meeting.³⁶¹ On 10 March 2008 he sent another e-mail to [...] proposing the topics to be discussed. [...] replied the same day, with copy to all counterparts: *"so that everybody has the numbers, I suggest that we add total market forecast 2008/2009 and price increases 2008/2009 to the agenda point on general requests. We could use the table already in use...if everybody agrees of course"*. The attachments to those e-mails contain an excel table with heading *"competitor price increases 2008/2009"*.³⁶² During the meeting several presentations were given and exchanged.³⁶³ A presentation by [...] indicates a past price increase of 2% on all orders from 17 December 2007 and states: *"no further price increase planned"*.

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356 [...] refers to a request received from [...] on 16 January 2008, asking for *"delivery times from competition"* [...] – [...] forwarded the information received from [...] on 17 January 2008 and on 22 January 2008 to [...].

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A presentation by [...] shows a price increase of 2% on all models on 1 January 2008 and an additional planned price increase of 2% for model "[...]" on 1 July 2008.
[confidentiality claim pending] [...] [confidentiality claim pending] [...] [confidentiality claim pending].

A presentation by [...] indicates price increases for [...] and [...] models of 1,5% from order date 04/2008, additional increases of 1,8% from order date 10/2008 as well as increases of 1,8% from order date 04/2009. [...] also gave a presentation on [...]s [...] configurator. These figures are also reflected in an excel table submitted by Scania, showing the price increases introduced or planned in March 2008 and in a power point slide sent by [...] on 15 March internally to [...], informing them that the information had not yet been sent to the HQ in Sweden.³⁶⁴
[confidentiality claim pending] [...] [confidentiality claim pending] .³⁶⁵

(167) [confidentiality claim pending] [...] [confidentiality claim pending] [...] [confidentiality claim pending] [...] [confidentiality claim pending][...] [confidentiality claim pending]. [confidentiality claim pending] [...] [confidentiality claim pending] [...] [confidentiality claim pending] confidentiality claim pending[...] [confidentiality claim pending]. [confidentiality claim pending]. [confidentiality claim pending] [...] [confidentiality claim pending] [...] [confidentiality claim pending] [...] [confidentiality claim pending] [...] [confidentiality claim pending] [...] [confidentiality claim pending] [...] [confidentiality claim pending] [...] [confidentiality claim pending] [...] [confidentiality claim pending] [...] [confidentiality claim pending] [...] [confidentiality claim pending] [...] [confidentiality claim pending] [...] [confidentiality claim pending].³⁶⁶

(168) A competitor meeting was organised by [...] in [...] (Germany) on **3 and 4 September 2008** in preparation for the [Trade fair] Hannover that was held from 25 September until 2 October 2008.³⁶⁷ On 14 July 2008 [...] sent an email to [...] (Scania DE), [...] and [...] with [...] in copy, proposing possible dates for the meeting. On 20 July 2008 [...] proposed to exchange the respective presentations already by 15 August 2008.³⁶⁸ [...] Scania's presentations to the other parties on 15 August 2008, mentioning that all other parties except [...] and [...] had already shared information.³⁶⁹ From an e-mail of [...] dated 31 July 2008 it appears that the reason for exchanging the information before the meeting in [...] was that Scania, [...] and [...] could not participate in the "official meeting" on 3 and 4 September 2008.³⁷⁰

(169) [confidentiality claim pending] [...] [confidentiality claim pending] [...] [confidentiality claim pending] [...] [confidentiality claim pending] [...] [confidentiality claim pending] [...] [confidentiality claim pending].³⁷¹

(170) On **28 October 2008** [...] sent an e-mail with an annexed excel table to [...] (Scania DE), [...] with reference to "Request, delivery periods, price increases in October 2008": "As discussed in Thalfang,³⁷² please find enclosed the data on the above mentioned subjects in order to be sent back with your data".³⁷³

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[...] replied to [...] on 4 November 2008, indicating a price increase of 2.5% for all Scania series as of delivery date 1 February 2009.³⁷⁴

- (171) On **7 November 2008** [...] sent an e-mail to the addressees of the original email of 28 October 2008 with reference to *"Request, delivery periods, price increases in October 2008"* with an annexed excel table which contained the collected data for each of the competitors' delivery periods and the price increases which were planned for spring 2009. Price increases were identified by percentage. For example a 3% increase for delivery after 1 April 2009 is indicated for [...], for [...] a 1.8% increase for orders from April 2009 or delivery from July 2009, for Scania a 2.5% increase for delivery from February 2009, for [...] a 3% price increase for orders from February 2009, for [...] a 2% price increase for some models from 1 January 2009 and for [...] *"no price increase for spring 2009"* is indicated.³⁷⁵ [confidentiality claim pending] [...] [confidentiality claim pending] [...] [confidentiality claim pending]. [confidentiality claim pending].³⁷⁶

2009

- (172) On **2 January 2009** [...] sent an e-mail to [...] (Scania DE), [...] and [...] asking for an update on delivery times and price increases.³⁷⁷ On 13 January 2009 she sent an excel table containing collected competitor delivery times and planned price increases valid from the beginning of 2009. She wrote with the heading *"Request delivery periods/price increases in January 2009"* - *"To all those whose data I have already received. I will send the list around one more time when it has been completed"*.³⁷⁸ Certain of the undertakings involved reported the information exchange to other levels within the organisation.³⁷⁹ On 4 February 2009 [...] sent the same recipients an updated table containing the collected information on delivery times and planned price increases which would take place in January-April or spring time 2009.³⁸⁰ Certain of the undertakings involved reported the information exchange to other levels within their organisations.³⁸¹
- (173) On **26 February 2009** [...] contacted the competitors to discuss a request from the magazine *"European Truck Challenge 2009"* that asked for net prices of trucks. [...] stated *"At [...] it is practise that at maximum we can communicate list prices. [...] My question is how you will treat this?"* [confidentiality claim pending] [...] [confidentiality claim pending]. [confidentiality claim pending]. [...] [confidentiality claim pending]. [confidentiality claim pending]. **On 4 March 2009** [...] further explained to [...]: *"After feedback from [...] and [...] I want to give you a short update. We will not communicate leasing rates or sales prices."*³⁸²
- (174) In an email sent in February 2009 [...] suggested to hold a phone conference on **27 February 2009** [confidentiality claim pending]. The email, which is included in

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Scania's telephone conference minutes, reads: "Dear all, indifferent to the outlook we had last year in August [confidentiality claim pending], when we had a telephone conference on the European truck market, the clouds that back then were grey are today pitch black. Given the outcome of our discussions then, I would like to propose a new telephone conference where we share some thoughts." [confidentiality claim pending] [...] [confidentiality claim pending] [...] [confidentiality claim pending].³⁸³

- (175) On **2 April 2009** [...] sent an e-mail [...] to [...] (Scania DE), [...] and [...] on "Request delivery periods and price increases in April 2009". She wrote: "Time has come again. I will send to you enclosed the data on the above mentioned topic. Although the situation is currently difficult for us all, I would be happy for a quick answer. Once I have received all the data, I will send it around again." The excel table contains price increase information, defined in percentages, valid as of spring time 2009 or later, for example as of 1 June 2009 for [...].³⁸⁴ [confidentiality claim pending] [...] [confidentiality claim pending].³⁸⁵ [confidentiality claim pending] [...]. Certain of the undertakings involved reported the information exchange to other levels within their organisations.³⁸⁶ [confidentiality claim pending]. [...] [confidentiality claim pending].³⁸⁷
- (176) On **22 June 2009** [...] sent another e-mail to [...] (Scania DE), [...] and [...] asking for the respective price increases and indicating that [...] did not plan any further price increases for 2009.³⁸⁸
- (177) On **26 June 2009** [...] sent a provisional table with some updated information that she had received from certain recipients of her initial email,³⁸⁹ reminding the competitors that had not yet replied to her initial request (Scania, [...]) to send the current information on price increases.³⁹⁰
- (178) On **14 July 2009** [...] sent an e-mail headed "*Delivery periods and price increases situation July 2009*" with the finalized compiled data on competitors' delivery periods and on planned price increases to [...], (Scania DE), [...] and [...].³⁹¹ The excel table shows that except Scania, [...] the competitors were envisaging any price increases for 2009. It is also mentioned that [...] had suspended the price increase that was planned for June 2009 and that [...] was not yet decided.
- (179) [confidentiality claim pending] [...] [confidentiality claim pending] [...] [confidentiality claim pending] [...] [confidentiality claim pending] [...]. [confidentiality claim pending]. [confidentiality claim pending] [...]. [confidentiality claim pending]. [confidentiality claim pending] [...]. [confidentiality claim pending].³⁹²

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389 [...] had also forwarded information received from competitors internally to a member of [...] headquarters ([...]).

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[...] ³⁹³ [confidentiality claim pending] [...] [confidentiality claim pending]. ³⁹⁴
[confidentiality claim pending] [...] [confidentiality claim pending] [...] [confidentiality claim pending]. ³⁹⁵ [confidentiality claim pending].
[confidentiality claim pending] [...] [confidentiality claim pending] [...] [confidentiality claim pending]. ³⁹⁶
[confidentiality claim pending] [...] [confidentiality claim pending] [...] [confidentiality claim pending] [...] [confidentiality claim pending] [...] [confidentiality claim pending]. ³⁹⁷
[confidentiality claim pending] [...] [confidentiality claim pending] [...] [confidentiality claim pending] [...] [confidentiality claim pending] [...] [confidentiality claim pending]. ³⁹⁸
[confidentiality claim pending] [...] [confidentiality claim pending] [...] [confidentiality claim pending] [...] [confidentiality claim pending]. ³⁹⁹
[confidentiality claim pending] [...] [confidentiality claim pending] [...] [confidentiality claim pending] [...] [confidentiality claim pending] [...] [confidentiality claim pending] [...] [confidentiality claim pending] [...] [confidentiality claim pending]. ⁴⁰⁰
[confidentiality claim pending] [...] [confidentiality claim pending]. ⁴⁰¹

(180) Also on **20 July 2009** [...] (Scania DE) invited competitors to the opening of Scania's Democenter on 17 and 18 September 2009 and requested "*topics to discuss*". On **21 July 2009** [...] responded to [...] (Scania DE), [...] (Scania DE) and [...]: "*Good morning, I am on board. Spontaneous suggestions for topics: [...] - EURO VI? I know – are we allowed and do we want to talk about this? – How do we all get this year's totally messed up price level raised up again?*". ⁴⁰² On **23 July 2009** [...] circulated the topics collected for the agenda including the one proposed by [...]. ⁴⁰³

(181) A competitor meeting was held at Scania's Democenter in Koblenz on **17 and 18 September 2009** (see recital (180)). [...] and [...] were present at the meeting. ⁴⁰⁴ [...]s [...] [confidentiality claim pending] [...] [confidentiality claim pending]. ⁴⁰⁵ The presentations given at the meeting show that amongst others future list price increases for 2010 of [...] and Scania were discussed. [...] has submitted [...] version of the presentation which reads, in addition to the official presentation: "*Euro 6 (no slide) → if possible delay Euro 6 improvement price level (no slide) → price increase 2010 will come*". ⁴⁰⁶ In addition, [...] has further submitted internal notes stemming from the meeting showing the price increases of [...] and Scania and stating that [...] and [...] do not envisage any price increases. ⁴⁰⁷ Those notes also

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show that all producers had criticised [...] during this meeting for its aggressive price policy. [confidentiality claim pending] [...] [confidentiality claim pending] [...]. [...] submitted a table headed "news in 2010", which according to [...] was drafted after the competitor meeting, and states amongst others that [...] would introduce EURO 6 only once [...] had announced it.⁴⁰⁸ [confidentiality claim pending] [...] [confidentiality claim pending] [...] [confidentiality claim pending] [...].⁴⁰⁹ Certain of the undertakings involved reported the information exchange to other levels within the organisation.⁴¹⁰

(182) On **9 October 2009** [...] sent an e-mail with reference to "Request for delivery periods and price increases in October 2009" and an enclosed excel table on the delivery periods and planned price increases to [...] and [...] (Scania DE). The email reads: "The enclosed data is what we exchanged in July. If I receive your amendments by the week 43, I can send it to all still before my holidays."⁴¹¹

The same day [...] confirmed to [...] that [...] still does not plan price increases as already indicated in July 2009.⁴¹²

On 15 October 2009 [...] informed [...] that currently no price increases were planned at [...].⁴¹³

On 20 October 2009 [...] provided [...] with the respective delivery periods and informed her that no price increases were planned.⁴¹⁴

(183) [confidentiality claim pending] [...] [confidentiality claim pending] [...] [confidentiality claim pending] [...] [confidentiality claim pending] [...].⁴¹⁵ [confidentiality claim pending] [...] [confidentiality claim pending] [...] [confidentiality claim pending] [...] [confidentiality claim pending] [...]. [confidentiality claim pending] [...]. [confidentiality claim pending] [...]. [confidentiality claim pending] [...]. [confidentiality claim pending] [...]. [confidentiality claim pending] [...].⁴¹⁶ [confidentiality claim pending] [...] [confidentiality claim pending] [...].⁴¹⁷ [confidentiality claim pending] [...] [confidentiality claim pending] [...]. [confidentiality claim pending] [...].⁴¹⁸ [confidentiality claim pending] [...] [confidentiality claim pending] [...] [confidentiality claim pending] [...].⁴¹⁹ [confidentiality claim pending] [...] [confidentiality claim pending] [...] [confidentiality claim pending] [...].⁴²⁰

408 [...] 409 [...] 410 [...] 411 [...] 412 [...] 413 [...] 414 [...] 415 [...] 416 [...] 417 [...] 418 [...] 419 [...] 420 [...]

[confidentiality claim pending] [...]s [...] [confidentiality claim pending] [...] [confidentiality claim pending] [...] [confidentiality claim pending] [...].⁴²¹

(184) [confidentiality claim pending] [...] [confidentiality claim pending] [...] [confidentiality claim pending] [...] [confidentiality claim pending] [...].⁴²²
[confidentiality claim pending].
[confidentiality claim pending] [...] [confidentiality claim pending] [...] [confidentiality claim pending].⁴²³

(185) On **28 October 2009** [...] sent an email to [...] referring to [...]s July price increase list (see recital (176)) and asked whether a more current [...] list was available. She also reported that *"We have information from Scania. Price increase of 3% planned for facelift to become effective on 1.1.2010."*⁴²⁴ [...] answered that [...] had just asked the currently planned price increase data from the competitors and forwarded the most recent table from [...] to the pricing team [...] at HQ.⁴²⁵

2010

(186) On 4 January 2010 [...] sent an e-mail to [...] (Scania DE), [...] and [...] on *"Request for delivery periods and price increases in January 2010"*. She wrote: *"Enclosed you will find the usual questionnaire on the above mentioned topic and please send all amendments to me."*⁴²⁶

On 7 January 2010 [...] indicated to [...] price increases applied from 1 February 2010 for *"[...] -model 800 EUR, [...] -model 900 EUR, [...] -model 1000 EUR, [...] -model 1000 EUR ([...] 1500 EUR)"*.⁴²⁷
[confidentiality claim pending] [...] [confidentiality claim pending] [...] [confidentiality claim pending]. [...].⁴²⁸

On 14 January 2010 [...] reported to [...] that no price increases were planned.⁴²⁹

(187) On **7 April 2010** [...] requested updates for planned price increases and delivery periods from [...] (Scania DE), [...] and [...] [confidentiality claim pending] [...] [confidentiality claim pending].⁴³⁰ After all the recipients had replied to the initial email⁴³¹ [...] sent the compilation of the replies to [...] (Scania DE) [...] and [...] with the heading *"Request for delivery periods and price increases for April"*. She wrote: *"Please find enclosed the current status on the above mentioned inquiry."*⁴³²

(188) On **28 June 2010** [...] sent an e-mail to [...] (Scania DE), [...] and [...] with the heading *"Request delivery periods and price increases July 2010"*. The excel table containing the competitors information for amendments was enclosed. She wrote: *"the usual inquiry on the above mentioned topic. I will be happy to receive answers*

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also telephonically."⁴³³

[confidentiality claim pending] [...] [confidentiality claim pending] [...] [confidentiality claim pending] [...] [confidentiality claim pending].⁴³⁴

[confidentiality claim pending] [...] [confidentiality claim pending] [...] [confidentiality claim pending] [...] [confidentiality claim pending] [...].⁴³⁵ The same day [...] reported to [...]s price increases ⁴³⁶ and clarifies in a second email that price increases are applied from delivery date 1/10/2010. [...] sought further confirmation on whether the price increase would apply also to extras.⁴³⁷

[confidentiality claim pending] [...] [confidentiality claim pending] [...] [confidentiality claim pending] [...].⁴³⁸

On 8 July 2010 [...] sent the compiled data to the same recipients in the format of an updated excel table containing each competitors' delivery periods and the state of play in July on planned price increases. For most of the competitors the list indicated that no price increases were planned, while for [...] a 2% increase was foreseen for 1 October 2010 and for [...] a price increase of 2% was indicated as of 1 January 2011.^{439 440}

(189) On **27 August 2010** [...] sent an internal email to [...] reporting on information he had received from Scania during a conversation with [...] (Scania DE).⁴⁴¹ Amongst other business related information, [...] also reports in that email on Scania's delivery periods and planned price increases from 1,9% to 2,5% for the German market in the beginning of 2011.

(190) [confidentiality claim pending] [...] sent [confidentiality claim pending] price increases to [...] (Scania DE), indicating price increases [confidentiality claim pending] [...] [confidentiality claim pending] [...] [confidentiality claim pending] [...] [confidentiality claim pending] [...] [confidentiality claim pending] [...] [confidentiality claim pending] [...] [confidentiality claim pending] [...] [confidentiality claim pending] [...].⁴⁴²

[confidentiality claim pending] [...] forwarded [confidentiality claim pending] to the price-building team, the sales-team, the product management-team and the controlling-team at [...] Headquarters. [confidentiality claim pending] [...] [confidentiality claim pending] [...] [confidentiality claim pending] [...].⁴⁴³

[confidentiality claim pending] [...] [confidentiality claim pending] [...] [confidentiality claim pending] [...] [confidentiality claim pending] [...]. [confidentiality claim pending] [...], [confidentiality claim pending] [...] [confidentiality claim pending] [...] [confidentiality claim pending] [...] [confidentiality claim pending] [...] [confidentiality claim pending] [...]. [confidentiality claim pending] [...]. [confidentiality claim pending] [...]

433 [...] 434 [...] 435 [...] 436 [...] 437 [...] 438 [...] 439 [...] 440 [...] 441 [...] 442 [...] 443 [...]

[*confidentiality claim pending*] [...] [*confidentiality claim pending*] [...] [*confidentiality claim pending*] [...] [*confidentiality claim pending*].⁴⁴⁴

7. APPLICATION OF ARTICLE 101(1) OF THE TREATY AND ARTICLE 53(1) OF THE EEA AGREEMENT

7.1. Jurisdiction

- (191) In this case the Commission is the competent authority to apply Article 101 of the Treaty; and Article 53 of the EEA Agreement on the basis of Article 56 of the EEA Agreement, since the infringement had an appreciable effect on trade between Contracting Parties to the EEA Agreement (see section 3.4). In addition, Articles 101 and 102 of the Treaty apply irrespective of where the undertakings are located or where the agreement has been concluded, provided that the agreement or practice is implemented inside the Union/EEA.⁴⁴⁵
- (192) The parties in the anti-competitive conduct described in this Decision are worldwide producers of trucks which are headquartered in the EEA. They sell to customers in all Contracting Parties to the EEA Agreement. All of the parties with the exception of [...] have European-wide applicable gross prices and gross price lists (see section 4.1). [...] discussed, coordinated [*confidentiality claim pending*] their pricing intentions at top management level for various European markets before the introduction of European-wide price lists. [*confidentiality claim pending*]. [*confidentiality claim pending*] [...] [*confidentiality claim pending*]. [*confidentiality claim pending*].⁴⁴⁶
- (193) [*confidentiality claim pending*].⁴⁴⁷ [*confidentiality claim pending*] [...] [*confidentiality claim pending*] [...]. After the accession of the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia to the Union on 1 May 2004 and the accession of Romania and Bulgaria on 1 January 2007 Article 101(1) of the Treaty and Article 53 of the EEA Agreement became applicable as regards anticompetitive conduct in those markets.

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

7.2.1. Legal basis

- (194) Article 101(1) of the Treaty and Article 53(1) of the EEA Agreement prohibit agreements between undertakings, decisions by associations of undertakings and concerted practices which may affect trade between Member States or the Contracting Parties to the EEA Agreement respectively and which have as their

⁴⁴⁴ [...]

⁴⁴⁵ See Joined Cases 89/85, 104/85, 116/85, 117/85 and 125/85 to 129/85, *Ahlstrom and Others v Commission* [1988] ECR 5193, paragraphs 16-17; case T-104/13, *Toshiba v Commission*, EU:T:2015:610, paragraph 155; case T-91/11, *InnoLux v Commission*, EU:T:2014:92, paragraph 59.

⁴⁴⁶ [...]

⁴⁴⁷ Until 30 April 2004, the Member States of the EEA were Belgium, Denmark, France, Germany, Greece, Ireland, Italy, Luxembourg, The Netherlands, Portugal, Spain, the United Kingdom, Austria, Sweden, Finland, Iceland, Liechtenstein and Norway. On 1 May 2004, the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia joined the EU and thereby the EEA. On 1 January 2007 Romania and Bulgaria joined the EU and thereby the EEA.

object or effect the prevention, restriction or distortion of competition within the internal market and/or the EEA as applicable.

7.2.2. *Agreements and concerted practices*

7.2.2.1. Principles

- (195) An agreement can 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. It does not have to be made in writing, no formalities are necessary, and no contractual sanctions or enforcement measures are required. The existence of an agreement may be express or implicit in the behaviour of the parties.
- (196) 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 forms 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.⁴⁴⁸
- (197) An agreement for the purposes of Article 101(1) of the Treaty does not require the same certainty as would be necessary for the enforcement of a commercial contract at civil law. Moreover, [*confidentiality claim pending*], the term “agreement” can properly be applied not only to any overall plan or to the terms expressly agreed but also to the implementation of what has been agreed on the basis of the same mechanisms and in pursuance of the same common purpose. As the Court of Justice has pointed out it follows from the express terms of Article 101(1) of the Treaty that agreements may consist not only in an isolated act but also in a series of acts or a course of conduct.⁴⁴⁹
- (198) An agreement within the meaning of Article 101(1) of the Treaty can be regarded as having been concluded where there is a concurrence of wills on the very principle of a restriction of competition, even if the specific features of the restriction envisaged are still under negotiation.⁴⁵⁰
- (199) The criteria of co-ordination and co-operation laid down by the case law of the Court, far from requiring the elaboration of an actual plan, must be understood in the light of the concept inherent in the provisions of the Treaty relating to competition, according to which each economic operator must determine independently the commercial policy which it intends to adopt in the internal market. Although that

⁴⁴⁸ See Case T-7/89 *Hercules v Commission* ECLI:EU:T:1991:75, at paragraph 256. See also Case 48/69, *Imperial Chemical Industries v Commission* ECLI:EU:C:1972:70, at paragraph 64, and Joined Cases, C-40/73 to C-48/73, C-50/73, C-54/73 to C-56/73, C-111/73, C-113/73 and C-114-73 *Suiker Unie and others v Commission* ECLI:EU:C:1975:174, paragraphs 173-174.

⁴⁴⁹ See Case C-49/92P *Commission v Anic Partecipazioni*, ECLI:EU:C:1999:356, paragraph 81.

⁴⁵⁰ See Case T-9/99, *HFB Holding and Others v Commission*, ECLI:EU:T:2002:70, paragraph 5, paragraphs 151 to 157 and 206 [MSP: Please note that para 5 and 151 to 157 are not published].

requirement of independence does not deprive undertakings of the right to adapt themselves intelligently to the existing or anticipated conduct of their competitors, it strictly precludes any direct or indirect contact between such operators the object or effect of which is either to influence the conduct on the market of an actual or potential competitor or to disclose to such a competitor the course of conduct which they themselves have decided to adopt or contemplate adopting on the market.⁴⁵¹

- (200) The concept of agreement in Article 101(1) of the Treaty applies equally to inchoate understandings and partial and conditional agreements in the bargaining process which lead up to the definitive agreement. It is therefore not necessary, in order for there to be an infringement of Article 101(1) of the Treaty, for the participants to have agreed in advance upon a comprehensive common plan. According to the settled case law, in order for there to be an agreement within the meaning of Article 101 of the Treaty, it is sufficient that the undertakings have expressed their joint intention to behave on the market in a certain way.⁴⁵² This also applies to gentlemen's agreements which represent a faithful expression of such a joint intention concerning a restriction of competition.⁴⁵³
- (201) Thus, conduct may fall under Article 101(1) of the Treaty 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 co-ordination of their commercial behaviour.⁴⁵⁴ The existence of a concerted practice can also be demonstrated by evidence that contacts took place between a number of undertakings and that they in fact pursued the aim of removing in advance any uncertainty as to the conduct expected from them on the market.⁴⁵⁵
- (202) A concerted practice implies, besides undertakings concerting together, conduct on the market pursuant to those collusive practices, and a relationship of cause and effect between the two.⁴⁵⁶ It can either result from a unilateral disclosure or mutual exchange of information. Therefore, also an undertaking that merely accepts the receipt of information unilaterally disclosed might participate in a concerted practice.⁴⁵⁷ A unilateral disclosure or a mutual exchange of information constitutes a concertation, if the information exchanged is capable of removing strategic

⁴⁵¹ Joined Cases C-40/73 to C-48/73, C-50/73, C-54/73 to C-56/73, C-111/73, C-113/73 and C-114/73, *Suiker Unie and Others v Commission* ECLI:EU:C:1975:174, paragraphs 173 et seq.

⁴⁵² See joined cases T-305/94, T-306/94, T-307/94, T-313/94 to T-316/94, T-318/94, T-325/94, T-328/94, T-329/94 and T-335/94, *Limburgse Vinyl Maatschappij N.V. and others v Commission* ("PVC II"), ECLI:EU:T:1999:80, paragraph 715.

⁴⁵³ See case T-9/99, *HFB Holding and Others v Commission*, ECLI:EU:T:2002:70, paragraph 207, (appeals against the judgment in Case T-9/99 were dismissed in their entirety by the judgment of the Court of Justice in cases C-189/02 P, C-202/02 P, C-205/02 P to C-208/02 P and C-213/02 P, *Dansk Rørindustri and Others v Commission*, ECLI:EU:C:2005:408), as well as judgment of the Court of Justice C-105/04 P, *Nederlandse Federatieve Vereniging voor de Groothandel op Elektrotechnisch Gebied v Commission*, ECLI:EU:C:2006:592, paragraphs 80, 94-100, 110-113, 135-142, 162.

⁴⁵⁴ See also Case T-7/89 *Hercules v Commission*, ECLI:EU:T:1991:75, paragraph 256.

⁴⁵⁵ See Joined Cases 40/73 to 48/73, 50/73, 54/73 to 56/73, 111/73, 113/73 and 114/73 *Suiker Unie and others v Commission* ECLI:EU:C:1975:174, paragraphs 175 and 179 and Case T-132/07, *Fuji Electric Co. Ltd. v Commission*, ECLI:EU:T:2011:344, paragraph 88.

⁴⁵⁶ Case C-49/92 P, *Commission v Anic Partecipazioni*, ECLI:EU:C:1999:356, paragraph 118.

⁴⁵⁷ Joined Cases T-25/95 and others, *Cimenteries v Commission*, ECLI:EU:T:2000:77, paragraph 1849.

uncertainty.⁴⁵⁸ Where the Commission has proved the existence of a concertation, it may be presumed, subject to proof to the contrary, that undertakings taking part in such a concertation and remaining active in the market will take account of the information exchanged with competitors in determining their own conduct on the market, all the more so when the concertation occurs on a regular basis and over a long period. Where the object of such concertation is the distortion of competition, a concerted practice is caught by Article 101(1) of the Treaty even in the absence of anti-competitive effects on the market.⁴⁵⁹

- (203) As concerns complex infringements of long duration it is not necessary for the Commission to characterise the conduct as exclusively an agreement or a concerted practice. These concepts are fluid and may overlap. The anti-competitive behaviour may well be varied from time to time, or its mechanisms adapted or strengthened to take account of new developments. Indeed, it may not even be possible to make such a distinction, as an infringement may present simultaneously the characteristics of each form of prohibited conduct, while when considered in isolation some of its manifestations could accurately be described as one rather than the other.⁴⁶⁰ It would however be artificial analytically to sub-divide what is clearly a continuing common enterprise having one and the same overall objective into several different forms of infringement. A cartel may therefore be an agreement and a concerted practice at the same time. Article 101 of the Treaty lays down no specific category for a complex infringement of the type concerned in this case.⁴⁶¹
- (204) Where, for instance, an undertaking is present at meetings in which the participants agree on certain behaviour on the market, that undertaking may be held liable for an infringement even where its own conduct on the market does not comply with the conduct agreed. It is also well-settled case-law that *"the fact that an undertaking does not abide by the outcome of meetings which have a manifestly anti-competitive purpose is not such as to relieve it of full responsibility for the fact that it participated in the cartel, if it has not publicly distanced itself from what was agreed in the meetings"*.⁴⁶² The action taken by an undertaking to distance itself from the outcome of the meeting should take the form of an announcement by that

⁴⁵⁸ Communication from the Commission - Guidelines on the applicability of Article 101 of the Treaty on the Functioning of the European Union to horizontal co-operation agreements, OJ C 11, 14.11.2011, p. 1 et seq., point 61.

⁴⁵⁹ See also Case C-199/92 *P Hüls v Commission*, ECLI:EU:C:1999:358, paragraphs 158-166, Case C-8/08, *T-Mobile Netherlands*, EU:C:2009:343, paragraph 51 et seq., Case C-238/05, *Asnef-Equifax*, ECLI:EU:C:2006:734, paragraph 54; Communication from the Commission - Guidelines on the applicability of Article 101 of the Treaty on the Functioning of the European Union to horizontal co-operation agreements, OJ C 11, 14.11.2011, p. 1 et seq., point 62.

⁴⁶⁰ Case C-49/92 *P Commission v Anic Partecipazioni*, ECLI:EU:C:1999:356, paragraph 81.

⁴⁶¹ See again Case T-7/89 *Hercules v Commission*, ECLI:EU:T:1991:75, paragraph 264.

⁴⁶² See Judgment of the General Court of 14 May 1998, *Sarriò v Commission*, T-334/94, ECLI:EU:T:1998:97, paragraph 118. See Judgment of the General Court of 6 April 1995, *Tréfileurope Sales v Commission*, T-141/89, ECLI:EU:T:1995:62, paragraph 85; Judgment of the General Court of 17 December 1991, *Hercules Chemicals v Commission*, T-7/89, ECLI:EU:T:1991:75, paragraph 232; and Judgment of the General Court of 15 March 2000, *Cimenteries CBR and others v Commission*, Joined Cases T-25/95, T-26/95, T-30/95, T-31/95, T-32/95, T-34/95, T-35/95, T-36/95, T-37/95, T-38/95, T-39/95, T-42/95, T-43/95, T-44/95, T-45/95, T-46/95, T-48/95, T-50/95, T-51/95, T-52/95, T-53/95, T-54/95, T-55/95, T-56/95, T-57/95, T-58/95, T-59/95, T-60/95, T-61/95, T-62/95, T-63/95, T-64/95, T-65/95, T-68/95, T-69/95, T-70/95, T-71/95, T-87/95, T-88/95, T-103/95 and T-104/95, ECLI:EU:T:2000:77, paragraph 1389.

undertaking, for example, that it would take no further part in the meetings (and therefore did not wish to be invited to them). In that regard, where an undertaking tacitly approves of an unlawful initiative, without publicly distancing itself from the content of that initiative or reporting it to the administrative authorities, the effect of its behaviour is to encourage the continuation of the infringement and to compromise its discovery. It thereby engages in a passive form of participation in the infringement which is therefore capable of rendering that undertaking liable in the context of a single agreement.⁴⁶³

- (205) Moreover, the notion of publicly distancing oneself as a means of excluding liability must be interpreted narrowly. In order to disassociate itself effectively from anti-competitive discussions, it is for the undertaking concerned to indicate to its competitors that it does not in any way wish to be regarded as a member of the cartel and to participate in anti-competitive meetings. In any event, silence by an operator in a meeting during which an unlawful anti-competitive discussion takes place cannot be regarded as an expression of firm and unambiguous disapproval of that unlawful conduct.⁴⁶⁴

7.2.2.2. Application in this case

- (206) The facts described in this Decision (see section 6.2) demonstrate that the Addressees were involved in collusive arrangements concerning the sale of medium and heavy trucks (see section 2.2) through several layers of competitor meetings and other contacts at headquarter level, [*confidentiality claim pending*], as well as at the German subsidiaries level (see section 6).
- (207) The collusive arrangements between Scania and the settling parties consisted of collusion with respect to pricing and gross price increases in the EEA for medium and heavy trucks and the timing and the passing on of costs for the introduction of emission technologies for medium and heavy trucks required by EURO 3 to 6 standards, as well as exchanges of other commercially sensitive information. The information exchanged on future pricing intentions, [*confidentiality claim pending*].
- (208) While the nature and intensity of the communications may have varied over time, the network of multilateral and bilateral contacts described in section 6 took place regularly [...].
- (209) [...] [*confidentiality claim pending*] [...] [*confidentiality claim pending*]. The evidence submitted by [...] shows that the competitors held detailed discussions in 1997 concerning their approaches to the introduction of the EURO 3 standard. Furthermore, [...] has submitted that, in particular between 2003 and 2006 for the introduction of EURO 4 and 5 technologies, [...] 2009/2010 for EURO 6, competitors had intense and regular contacts regarding, amongst other things, their timing of the

⁴⁶³ See Judgment of the General Court of 8 July 2008, *AC-Treuhand v Commission*, T-99/04, ECLI:EU:T:2008:256, paragraph 130. See also Judgment of the Court of Justice of 25 January 2007, *Sumitomo Metal Industries, and Nippon Steel v Commission* ('Seamless steel tubes'), Joined Cases C-403/04 P and C-405/04 P, ECLI:EU:C:2007:52, paragraphs 47 and 48.

⁴⁶⁴ See Judgment of the General Court of 5 December 2006, *Westfalen Gassen Nederland v Commission*, T-303/02, ECLI:EU:T:2006:374, paragraphs 103 and 124 and Judgment of the General Court of 2 February 2012, *Denki Kagaku Kogyo Kabushiki Kaisha and Denka Chemicals v Commission*, Case T-83/08, ECLI:EU:T:2012:48, paragraph 53.

launch of trucks complying with those standards and passing on the costs of complying with such standards.

- (210) The parties aimed at further reducing the remaining uncertainty in the market in order to decide with greater accuracy when to introduce new technologies leading to increased truck prices as well as when and how to increase gross prices applicable, for most of the producers, European wide. *[confidentiality claim pending]*.
- (211) *[confidentiality claim pending]*. In addition, the contacts between the German subsidiaries of the truck producers, *[confidentiality claim pending]*, were the occasion to exchange the intended gross price increases, *[confidentiality claim pending]*. The repeated multi- and bilateral contacts described in this Decision led to the *[confidentiality claim pending]* exchange of commercially sensitive information or competitive intentions *[confidentiality claim pending]*. *[confidentiality claim pending]*.
- (212) The documentary evidence in the Commission's file shows that the contacts:
- (a) related to *[confidentiality claim pending]*' intended changes of gross prices and gross price lists as well as the respective timing of such changes (see recitals *[confidentiality claim pending]*, (102), *[confidentiality claim pending]*, (109), *[confidentiality claim pending]*, (119), *[confidentiality claim pending]*, (132), (134), (135), (137), (140), *[confidentiality claim pending]*, (146), (149), (150), (152), (153), *[confidentiality claim pending]*, (159), (163), (164), (165), (166), (170), (172), (176), (178), *[confidentiality claim pending]*, (181), (182), *[confidentiality claim pending]*, (186), (187), (188) and (190)); *[confidentiality claim pending]* [...] (see recitals *[confidentiality claim pending]*, (141), *[confidentiality claim pending]*, and (187));
 - (b) related to the timing of the introduction of emission technologies for medium and heavy trucks required by EURO 3 to 6 standards (see recitals *[confidentiality claim pending]*, (109), *[confidentiality claim pending]*, (115), *[confidentiality claim pending]*, (130), (135), *[confidentiality claim pending]* (141), *[confidentiality claim pending]*, (149), *[confidentiality claim pending]*, (180), *[confidentiality claim pending]*), as well as the passing on of the costs for the introduction of these standards ((109), *[confidentiality claim pending]*, (158), *[confidentiality claim pending]* and *[confidentiality claim pending]*);
 - (c) were used to share other competitively sensitive information *[confidentiality claim pending]*, [...] (*[confidentiality claim pending]*), current net prices [...] and gross price lists (even before they entered into force), truck configurators (see recitals (120), (121), (122), (132), (133), (145), (147), *[confidentiality claim pending]* and (158)), delivery periods (see recitals (159), (164), (170), (171), (172), (175), (178), (182), *[confidentiality claim pending]*, (186), (187), (188), (189)) or order intake and stock levels (*[confidentiality claim pending]*).
- (213) The parties were in touch mainly through multilateral contacts at various levels, sometimes having joint contacts and meetings at different levels (see for example joint contacts and meetings between headquarter employees and German subsidiaries' employees, recitals (131), (137), *[confidentiality claim pending]*, (146) and *[confidentiality claim pending]*). Those contacts were linked to each other by their subject-matter and timing, through open references to each other and by the transmission of the information gathered (for communication from country level to headquarter level see for example recitals (137), *[confidentiality claim pending]*,

- (150), (166), [*confidentiality claim pending*], (176), [*confidentiality claim pending*], (182), [*confidentiality claim pending*] and [*confidentiality claim pending*].
- (214) The activities described above constituted a form of co-ordination and cooperation by which the parties knowingly substituted practical co-operation between them for the risks of competition. The conduct in question took the form of either an agreement or a concerted practice in which the competing undertakings refrained from determining independently the commercial policy which they intended to adopt on the market but instead coordinated their pricing behaviour through direct contacts and engaged in the coordinated delay of the introduction of new technologies.
- (215) The documentary evidence shows that the contacts went well beyond a mere exchange of general market information on the occasion of sporadic competitor contacts, but instead constituted arrangements by which the participants coordinated their future pricing behaviour and disclosed to one another factors relevant for their future pricing behaviour through regular contacts. [*confidentiality claim pending*].
- (216) As set out at recital (202) above, it is well-established case-law that it may be presumed, subject to proof to the contrary, that undertakings taking part in such a concertation and remaining active on the market will take account of the information exchanged with competitors in determining their own conduct on the market. That conclusion also applies where the participation of one or more undertakings in meetings with an anti-competitive purpose is limited to the mere receipt of information concerning the future conduct of their market competitors since the receiving undertaking could not fail to take into account, directly or indirectly, the information obtained in order to determine the policy which it intended to pursue on the market.⁴⁶⁵
- (217) In this case, the parties exchanged the above information [*confidentiality claim pending*] over a long period of time and continued to produce and to sell trucks throughout the infringement period. There are no indications that Scania did not take account of the information exchanged with competitors when determining its conduct on the market.⁴⁶⁶ Scania's claim⁴⁶⁷ that it did not use the information received from competitors cannot be considered as sufficient to rebut the presumption and Scania has not provided any plausible alternative reasons why, if not for anticompetitive purposes, Scania's representatives from top management to employees at the German subsidiary regularly and frequently discussed competitively sensitive topics with their competitors.
- (218) [*confidentiality claim pending*] [...] [*confidentiality claim pending*] ([*confidentiality claim pending*]). [*confidentiality claim pending*] [...] [*confidentiality claim pending*] ([*confidentiality claim pending*], [*confidentiality claim pending*], [*confidentiality claim pending*], [*confidentiality claim pending*], [*confidentiality claim pending*], [...]) [*confidentiality claim pending*] [...], [*confidentiality claim pending*]).
- (219) [*confidentiality claim pending*] [...] [*confidentiality claim pending*].

⁴⁶⁵ See Joined Cases T-202/98, T-204/98 and T-207/98 *Tate & Lyle and others v Commission*, ECLI:EU:T:2001:185, at paragraph 58.

⁴⁶⁶ See Case C-49/92 P *Commission v Anic Partecipazioni SpA*, ECLI:EU:C:1999:356, at paragraph 121.

⁴⁶⁷ [...]

7.2.2.3. Arguments of the addressees and assessment thereof by the Commission

- (220) Scania contests that any explicit agreements between the participants were underlying their discussions. Scania also contests that it ever was a party to any agreements to increase prices, to coordinate its pricing behaviour or to collude with competitors on any competitively relevant parameter.⁴⁶⁸
- (221) Scania argues⁴⁶⁹ that the Commission must prove beyond reasonable doubt that Scania has participated in an infringement, quoting an interpretation from a legal opinion that Scania has had drawn up in the course of preparing its response to the Statement of Objections.⁴⁷⁰ In Scania's view, the Commission has not proved beyond reasonable doubt that Scania has participated in all "small [...] meetings" (meetings between the top managers of the parties' headquarters).
- (222) Scania further claims that some evidence, namely the contemporary notes of [...] are not reliable⁴⁷¹. In addition Scania claims that [...] referred to these information exchanges as being of limited value and unreliable. Scania highlights that Scania's representatives at the competitor meetings, [...], currently deny having entered into any agreements or attended meetings with competitors on prices or price increases, timing of introduction or price surcharges for the European emission standard compliant engines.⁴⁷²
- (223) First, contrary to Scania's view, the Commission has proven the infringement to the required legal standard. When establishing an infringement of Article 101 of the Treaty, the Commission must prove the infringements which it has found and adduce evidence capable of demonstrating to the requisite legal standard the existence of the facts constituting an infringement.⁴⁷³ Thus, the Commission must show precise and consistent evidence in order to establish the existence of the infringement and to support the firm conviction that the alleged infringements constitute appreciable restrictions of competition within the meaning of Article 101 of the Treaty. That requirement is not satisfied, in particular, where a plausible explanation can be given for those alleged infringements which rules out an infringement of Union rules on competition.⁴⁷⁴
- (224) The Commission also notes that in most cases, the existence of an anti-competitive practice or agreement must be inferred from a number of coincidences and indicia which, taken together, may, in the absence of another plausible explanation, constitute evidence of an infringement of the competition rules.⁴⁷⁵ The explicit evidence [*confidentiality claim pending*] conduct is often only fragmentary and

⁴⁶⁸ [...]

⁴⁶⁹ Quoting Commission Case T-36/05 *Coats Holdings and Coats v Commission*, ECLI:EU:T:2007:268, paragraphs 68-69.

⁴⁷⁰ [...]

⁴⁷¹ [...]

⁴⁷² [...]

⁴⁷³ See again Case T-36/05 *Coats Holdings v. Commission* [2007] ECR II-110, paragraph 69.

⁴⁷⁴ See again Case T-36/05 *Coats Holdings v. Commission* [2007] ECR II-110, paragraph 70, and Joined Cases T 44/02, T-54/02, T-56/02, T-60/02 and T-61/02 *Dresdner Bank and Others v Commission* [2006] ECR II 0000, paragraph 62.

⁴⁷⁵ Joined Cases C-204/00 P, C 205/00 P, C 211/00 P, C 213/00 P, C 217/00 P and C 219/00 P *Aalborg Portland and Others v Commission* ECLI:EU:C:2004:6, paragraphs 55 to 57, and joined Cases C-403/04 P and C 405/04 P *Sumitomo Metal Industries and Nippon Steel v Commission* ECLI:EU:C:2007:52, paragraph 51.

sparse.⁴⁷⁶ It is not necessary, however, that every piece of evidence relied on by the Commission must meet the requirement of being precise and consistent in relation to every aspect of the infringement but, rather, that "*the body of evidence relied on by the institution, viewed as a whole, meets that requirement*".⁴⁷⁷

- (225) As can be seen from Section 6.2 and recital (212) of this Decision, the contemporaneous evidence gathered during the course of the Commission's investigation and submissions of the settling parties precisely and consistently show that Scania participated in various competitor meetings in which Scania colluded with the settling parties with respect to intended changes of gross prices and gross price lists as well as the respective timing of such changes; and the timing of the introduction of emission technologies for medium and heavy trucks required by EURO 3 to 6 standards; and shared other competitively sensitive information such as [...], order intake and gross price lists (even before they entered into force) [*confidentiality claim pending*], contrary to Article 101(1) of the Treaty and Article 53(1) of the EEA Agreement. Furthermore, Scania has not provided a plausible explanation capable of ruling out an infringement of Union rules on competition.
- (226) With regard to Scania's specific arguments on the credibility of the handwritten notes taken during the meetings by [...] it is clear that they contain information about exchanges that took place during the competitor meetings [*confidentiality claim pending*]. [...]s handwritten notes therefore constitute a reliable record of the meetings. Moreover, the personal opinion on the quality of the pricing information received in the course of the exchanges expressed by [...] does not put into question the probative value of his handwritten notes as a correct recording of the exchanges during the competitors' meetings.
- (227) Scania argues that during interviews conducted by Scania's lawyers in preparation of the reply to the Statement of Objections, [...] (see recitals (77) to (81)), Scania's representatives during the top management meetings, could not recall⁴⁷⁸ having communicated future price increase information to competitors or having received such information from competitors and denied the existence of anticompetitive agreements or attendance of meetings. Such unsubstantiated statements are not sufficient to rebut the contemporaneous written evidence relied upon by the Commission to prove the infringement. Secondly, the basis on which [...] made their statements does not correspond to a correct definition of the terms "future prices" and "price intentions". During the interviews, when asked by [...] for clarifications as to what is meant by "future prices" and "price intentions" in the context of communications with competitors, the transcripts of the interviews show that Scania's legal counsel gave the following explanation: "*these two terms should be understood as relating to prices or price increases that have not yet been announced to distributors, dealers and/or customers or have not yet been incorporated into the relevant sales support materials and tools.*"⁴⁷⁹. The Commission does not share the interpretation of "future prices" and "price intention"

⁴⁷⁶ Case T-53/07, *Trade Stamil sp Z.o.o v Commission*, ECLI:EU:T:2011:360, paragraph 64.

⁴⁷⁷ Joined Cases T-67/00, T-68/00, T-71/00 and T-78/00 *JFE Engineering v Commission* EU:T:2004:221, paragraphs 179 and 180; Case T-112/07 *Hitachi Ltd, Hitachi Europe Ltd and Japan AE Power Systems Corp. v Commission* ECLI:EU:T:2011:342, paragraph 60.

⁴⁷⁸ [...]

⁴⁷⁹ [...]

as provided by Scania's legal counsel during the interviews as it excludes information that has only been communicated within the undertaking to wholly owned distributors, thereby removing from the scope of "future prices" and "price intentions" any information which, up until that point, had only been communicated internally within the relevant undertaking.

- (228) As will be further explained in section 7.2.3 even if the prices or the price increases had been announced to wholly owned distributors, to the Dealers and/or to customers that fact does not imply that, at the time of the anticompetitive exchange between the parties, those prices or price increases constituted objective market data that were readily available.⁴⁸⁰ Even on the assumption that they are correct, the statements of Scania's employees would therefore not mean that anti-competitive conduct did not take place. The same applies to [...]s statements about information received from competitors and to the denial of an anti-competitive agreement, to which they gave statements based on Scania's own definition quoted in recital (227).⁴⁸¹

7.2.2.4. Conclusion

- (229) As demonstrated in Section 6.2 Scania regularly participated in the anticompetitive contacts throughout the entire infringement period and took part in the overall agreements or concerted practices, or both. On the basis of the above the infringement in which Scania participated in this case presents all the characteristics of an agreement or a concerted practice, or both, in the sense of Article 101 of the Treaty and Article 53 of the EEA Agreement.

7.2.3. *Restriction of competition*

7.2.3.1. Principles

- (230) Article 101(1) of the Treaty and Article 53 of the EEA Agreement expressly consider agreements and concerted practices restrictive of competition when they:⁴⁸²

- directly or indirectly fix selling prices or any other trading conditions;
- limit or control production, markets or technical development;
- share markets or sources of supply.

- (231) Taking into account the fact that Article 101 of the Treaty, like the other competition rules of the Treaty, is designed not only to protect the immediate interests of competitors or consumers but also to protect the structure of the market and thus competition as such, the Court has held that it is not possible on the basis of that wording to conclude that only concerted practices which have a direct effect on the prices paid by end users are prohibited.⁴⁸³ Rather, the Court has held that the coordination of gross prices between competitors may distort competition within the internal market and, hence, constitute a concerted practice within the meaning of Article 101 of the Treaty.⁴⁸⁴

⁴⁸⁰ See joined Cases T-202/98, T-204/98 and T-207/98 *Tate & Lyle and Others v Commission*, ECLI:EU:T:2001:185, paragraph 60.

⁴⁸¹ [...]

⁴⁸² The list is not exhaustive.

⁴⁸³ Case C-8/08 *T-Mobile Netherlands and Others v Commission*, paragraphs 36 to 38.

⁴⁸⁴ Case T-386/10, *Aloys F. Dornbracht v Commission*, ECLI:EU:T:2013:450, paragraph 180

- (232) To be caught by the prohibition laid down in Article 101 of the Treaty, an agreement or concerted practice must have "*as [its] object or effect the prevention, restriction or distortion of competition within the internal market*". According to established case-law the alternative nature of that requirement, indicated by the conjunction "or" leads to the need to consider the precise object of the agreement in the economic context in which it is to be applied. Accordingly, 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 of the Treaty, to prove that it has actual effects on the market.⁴⁸⁵ Consequently, where the anti-competitive object of the agreement is established it is not necessary to examine its effects on competition.⁴⁸⁶
- (233) In order to determine whether an agreement between undertakings reveals a sufficient degree of harm to competition that it may be considered a restriction of competition 'by object' within the meaning of Article 101(1) of the Treaty, regard must be had to the content of its provisions, its objectives and the economic and legal context of which it forms a part. When determining that context, it is also necessary to take into consideration the nature of the goods or services affected, as well as the real conditions of the functioning and structure of the market or markets in question.⁴⁸⁷ In cases where the anticompetitive object is readily apparent, the analysis of the economic and legal context in which the practice occurs may be limited to what is strictly necessary.⁴⁸⁸
- (234) In this regard, the Commission recalls that each economic operator must determine independently the policy which it intends to adopt on the internal market and the conditions which it intends to offer to its customers.⁴⁸⁹
- (235) While it is true that this requirement of independence does not deprive operators of the right to adapt themselves intelligently to the existing or anticipated conduct of their competitors, it does, however, strictly preclude any direct or indirect contact between them, the object or effect of which is to create conditions of competition which do not correspond to the normal conditions of the market in question, regard being had to the nature of the products or services offered, the size and number of the undertakings and the volume of the said market.⁴⁹⁰ As such, an exchange of information between competitors is incompatible with rules on competition if it reduces or removes the degree of uncertainty as to the operation of the market in question with the result that competition between undertakings is restricted⁴⁹¹ as the disclosure of sensitive information removes uncertainty as to the future conduct of a

⁴⁸⁵ Case C-67/13 P, *Groupement des cartes bancaires v Commission*, ECLI:EU:C:2014:2204, paragraph 51.

⁴⁸⁶ Case C-32/11 *Allianz Hungária Biztosító u.a.*, ECLI:EU:C:2013:160, paragraphs 33-34.

⁴⁸⁷ Case C-67/13 P, *Groupement des cartes bancaires v Commission*, ECLI:EU:C:2014:2204, paragraph 53.

⁴⁸⁸ Case C-373/14 P, *Toshiba Corporation v Commission*, ECLI:EU:C:2016:26, paragraph 29.

⁴⁸⁹ Case C-194/99 *Thyssen Stahl v Commission*, ECLI:EU:C:2003:527, paragraphs 57 and 82.

⁴⁹⁰ Case C-194/99 *Thyssen Stahl v Commission*, ECLI:EU:C:2003:527, paragraphs 57 and 83.

⁴⁹¹ Case T-396/10, *Zucchetti Rubinetteria v Commission* ECLI:EU:T:2013:446, paragraph 57, Case C-194/99, *Thyssen Stahl v Commission*, ECLI:EU:C:2003:527, paragraph 81.

competitor and thus directly or indirectly influences the strategy of the recipient of the information.⁴⁹²

7.2.3.2. Application to this case

- (236) The anti-competitive behaviour in this case had the object of restricting competition in the EEA.
- (237) The principal aspect of the [*confidentiality claim pending*] concerted practices in this case, which can be characterised as a restriction of competition, is the coordination of prices and gross price increases through contacts on pricing, the date and the additional costs of the market introduction of new trucks complying with emission standards and the exchange of competitively sensitive information.
- (238) In particular, Scania engaged in discussions with competitors:
- (a) agreeing and/or coordinating on intended changes of gross prices and gross price lists as well as the respective timing of such changes, [*confidentiality claim pending*] [...];
 - (b) [*confidentiality claim pending*] coordinating on the timing and the passing on of costs for the introduction of emission technologies for medium and heavy trucks required by EURO 3 to 6 standards;
 - (c) sharing other commercially sensitive information such as delivery periods, order intake, stock figures, [...], current net prices [...] gross price lists (even before entering into force) and truck configurators.
- (239) [*confidentiality claim pending*] concerted practices had as its object the restriction of competition within the meaning of Article 101(1) of the Treaty and further enabled the undertakings to adapt their pricing strategy in the light of the information received from the competitors. [*confidentiality claim pending*] described in detail in the factual part of this Decision [*confidentiality claim pending*].
- (240) The parties discussed various factors regarding future pricing and the future evolution of gross prices with other competitors. Such discussions run counter to the requirement that each economic operator must determine independently the policy which it intends to adopt on the internal market, since that requirement of independence strictly precludes any direct or indirect contact between such operators with the object or effect either of influencing the conduct on the market of an actual or potential competitor or of disclosing to such a competitor the course of conduct which they themselves have decided to adopt or contemplate adopting on the market. The individual assessment by a truck producer of information that is public and available, should not be confused with the joint evaluation by several competitors of that event, in combination, as the case may be, with other information on the state of the market, and of its impact on the development of the sector, shortly before they take decisions affecting their pricing in the market.⁴⁹³ The fact that a gross price increase has been decided internally does not mean that the information has lost its sensitive nature as the case law referred to in recitals (233)-(235) clearly categorised

⁴⁹² Case T-396/10, *Zucchetti Rubinetteria v Commission*, ECLI:EU:T:2013:446, paragraph 58, Case C-238/05, *Asnef-Equifax and Administración del Estado*, ECLI:EU:C:2006:734, paragraph 51.

⁴⁹³ See, to that effect, Case T-587/08, *Fresh Del Monte Produce v Commission*, ECLI:EU:T:2013:129, at paragraphs 344-346.

such a disclosure as a discussion which runs counter to the requirement that each economic operator must determine independently the policy which it intends to adopt on the market.

- (241) As explained in section 3.3 the truck market is a highly cyclical market with professional customers only. Trucks are offered with a very high number of possibilities to customize in order to best fit the needs of the customer. This also explains why the gross price lists contain individual prices for a large number of options for different truck models. The trucks market is also characterized by a high level of concentration and transparency with hundreds of meetings every year between the competitors (see recitals (22) to (24)). However, in contrast to the market for passenger cars, customer prices are not published or advertised. The gross prices or upcoming changes to the gross prices for trucks are not published and are not available through freely accessible public sources (recital (33)).
- (242) Through [confidentiality claim pending] a regular information exchange, the Addressees obtained confirmation of the level of general gross prices and gross price increases, technologies available as well as the timing of the introduction of the new technologies to the market and their prices applied [confidentiality claim pending]. Through the exchange of other commercially sensitive information (see recital (238)(c)) the [confidentiality claim pending]. [confidentiality claim pending] [...] [confidentiality claim pending]. [confidentiality claim pending]. [confidentiality claim pending] [...] [confidentiality claim pending] [...] [confidentiality claim pending]. [confidentiality claim pending].
- (243) Also by discussing the date of the introduction of the new environmental standards and the additional costs triggered by the new technology (see recital (317)(b)) the Addressees obtained knowledge of the intended level of gross prices. [confidentiality claim pending]. [confidentiality claim pending]. [confidentiality claim pending].
- (244) [confidentiality claim pending] [...] [confidentiality claim pending] [...] [confidentiality claim pending] [...] [confidentiality claim pending].
- (245) [confidentiality claim pending]. Certain information, such as increases to gross prices or no changes to gross price lists would, by the very nature of that information, not have been available from customers in any event.
- (246) Scania's headquarters decided on gross price increases European-wide, reflected in the European-wide Factory Gross Price List, and had a decisive influence on pricing also on a national level. Further Scania's headquarters decided on market introduction dates and on the factory gross price level of the trucks complying with the new environmental standards. [confidentiality claim pending].⁴⁹⁴ [confidentiality claim pending]. [confidentiality claim pending].⁴⁹⁵
- (247) [confidentiality claim pending].
- (248) Via its [...] and the Price Group Scania headquarters has the decisive influence on the level of discounts that are applied to the initial Factory Gross Price List. Scania itself has described in its various replies to the Commission's requests for

⁴⁹⁴ In some instances, the implementation of increases to the factory gross price list was delayed. Such delay is not, however, such as to undermine the Commission's conclusion that Scania's headquarters exercised decisive influence over the group's overall European pricing strategy.

⁴⁹⁵ [...]

information that the Factory Gross Price List is the basis for setting the "factory-to-distributor net price" and confirmed that the final decision for this price rests with [...].⁴⁹⁶ [*confidentiality claim pending*].⁴⁹⁷ Scania has also confirmed that the document "RPU" ("Representantuppgift" in Swedish), which is issued by Scania headquarters, is the document containing the differences between the Factory Gross Price List and the "factory-to-distributor net price" in terms of discount."⁴⁹⁸

(249) This description of the price setting procedure explained in Scania's replies to the requests for information and the actual exercise of Scania headquarters' power in setting the distributor net prices is confirmed by internal documents of Scania's Price Council⁴⁹⁹. [...].⁵⁰⁰

[...].⁵⁰¹

[...].⁵⁰²

(250) [...].⁵⁰³

[...]⁵⁰⁴ [...]⁵⁰⁵ [...].⁵⁰⁶

(251) The evidence shows that Scania headquarters had not only the power to decide on the factory gross list prices, but also a strong decision making position with regard to the discount levels applied and, therefore, with regard to the price to be paid by the national distributing subsidiaries, the net distributor prices for specific horse power engines.

(252) [...].⁵⁰⁷ [...].⁵⁰⁸ [...].⁵⁰⁹

(253) [...].⁵¹⁰ [...].

(254) [...].

(255) [...].⁵¹¹

(256) In light of the foregoing, the Commission considers that the [*confidentiality claim pending*] concerted practices that Scania engaged in with the other parties concerning medium and heavy trucks had as its object the restriction of competition within the meaning of Article 101(1) of the Treaty and Article 53(1) of the EEA Agreement through the coordination of prices and gross price increases through contacts on pricing, the date and the additional costs of the market introduction of new trucks

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complying with emission standards as well as the exchange of competitively sensitive information.

7.2.3.3. Scania's arguments and assessment thereof by the Commission

(257) In its response to the Statement of Objections Scania alleges that the information exchanged between the competitors was not likely to remove uncertainty as to the future pricing behaviour of truck manufacturers.⁵¹² Scania alleges that the Commission failed to take into account the economic and legal context of the agreements or concerted practice and failed to properly establish the future or anticompetitive nature of the price information exchanged.⁵¹³ Scania bases this on several arguments, which the Commission considers unfounded, as set out in the following.

(a) Scania's argument that the exchange was a benchmarking exercise in accordance with the Horizontal Guidelines

(258) Scania refers to the Horizontal Guidelines⁵¹⁴ and claims that the exchanges with competitors are covered by the section: "*Information exchange is a common feature of many competitive markets and may generate various types of efficiency gains. [...] Companies may improve their internal efficiency through benchmarking against each other's best practices.*"

(259) Scania draws the conclusion that therefore, a stand-alone information exchange on current prices cannot be presumed to be an infringement. Its characteristics and legal and economic context must be considered before any conclusion may be reached as to its impact on competition.⁵¹⁵

(260) First, contrary to Scania's position, the Horizontal Guidelines⁵¹⁶ do not refer to the exchange of future prices or future gross price increases for coordination purposes between competitors as being a legitimate means to achieve efficiency gains. Replacing competition on prices by coordination [*confidentiality claim pending*] cannot be understood as "efficiency" within the meaning of the Horizontal Guidelines. Exchanges of information about the future intentions of competitors in relation to their market conduct are likely to enable competitors to reach a common understanding on the coordination of competitive conduct among them (as they remove strategic uncertainty) and consequently facilitate collusion.⁵¹⁷

(261) In principle, the price of a product is the competitively most sensitive parameter. Therefore, a disclosure or mutual exchange of information on future prices is capable of removing strategic uncertainty, unless it comprises objective market data.⁵¹⁸

(262) Moreover, although the Horizontal Guidelines contain certain references to cartels, "*they are not intended to give any guidance as to what does and does not constitute a*

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⁵¹⁴ Commission Notice - Guidelines on the applicability of Article 101 of the Treaty on the Functioning of the European Union to horizontal co-operation agreements, OJ C 11, 14.1.2011, p. 1–72.

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⁵¹⁶ Commission Notice - Guidelines on the applicability of Article 101 of the Treaty on the Functioning of the European Union to horizontal co-operation agreements, OJ C 11, 14.1.2011, p. 1–72.

⁵¹⁷ Horizontal Guidelines, paragraphs 66, 73 and 74.

⁵¹⁸ Case T-53/03, *BPB vs Commission*, ECLI:EU:T:2008:254, paragraph 236.

cartel as defined by the decisional practice of the Commission and the case-law of the Court".⁵¹⁹

- (263) The fact that the competitor exchanges regarding gross price increases in various occasions took place in the context of meetings in which legitimate technical questions covered by the Horizontal Guidelines were also discussed, does not expand the scope of the Horizontal Guidelines to the exchange of future price increases. While paragraph 57 of the Horizontal Guidelines mentions possible efficiencies from benchmarking: (i) this does not refer to exchanging pricing information; (ii) is applicable in situations where there is an identifiable advantage for customers (choice; cost savings etc.); [*confidentiality claim pending*]. Paragraph 59 of the Horizontal Guidelines specifically excludes information exchanges relating to the fixing of price or quantities as these are likely to constitute cartels.
- (264) The exchange of future gross price increases is therefore not covered by the scope of what the Horizontal Guidelines consider as legitimate benchmarking for developing best practices and the Commission has taken this legal context into account in its analysis. Furthermore, the collusion related to delaying the introduction of new emissions standards technologies and the passing on of costs related to the introduction of such technology does not present any discernible advantages for customers and cannot qualify as legitimate benchmarking within the meaning of the Horizontal Guidelines.
- (b) Scania's arguments that the information exchanged with competitors was not capable of removing strategic uncertainty
- (265) Scania claims that the exchanges of price information between the parties do not constitute an infringement of Article 101(1) of the Treaty "by object",⁵²⁰ arguing that the information exchanged was not likely to remove uncertainty as to the future pricing behaviour of truck manufacturers such that, having regard to their content, objectives and the economic and legal context of which they form a part, the exchanges did not reveal in themselves a sufficient degree of harm to competition so as to have the object of infringing Article 101(1) of the Treaty.⁵²¹ In this regard, Scania considers that an exchange at the level of gross price lists was not capable of removing uncertainty as to net prices charged or as to the future pricing of competitors.⁵²² In addition, Scania argues that pricing information disclosed by Scania to its competitors was not future information. According to Scania, the prices communicated to competitors had already been decided before the exchange,⁵²³ in most cases had already been communicated to Scania's distribution network and used in negotiations with customers⁵²⁴ and had already been applied to a significant number of orders.⁵²⁵ ⁵²⁶ Scania considers that gross price increases need to be communicated to Dealers in advance of any price increase that a Scania Distributor will implement and once increased prices are communicated to the Scania Dealers,

⁵¹⁹ Horizontal Guidelines, paragraph 9.

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they become part of the negotiations with customers and thereby become publicly available information.⁵²⁷ Scania therefore considers that, both with respect to its own price information and that received from the other parties, the price related exchanges between the German subsidiaries were limited to exchanges of prices that were already in the public domain.⁵²⁸

- (266) As the Court has held, an exchange of information which is capable of removing uncertainty between participants as regards the timing, extent and details of the modifications to be adopted by the undertakings concerned in their conduct on the market, must be regarded as pursuing an anticompetitive object.⁵²⁹ Moreover, a concerted practice may have an anticompetitive object even though there is no direct connection between that practice and consumer prices.⁵³⁰ In this case Scania [...] colluded on prices and increases to their EEA-wide gross price lists. [...] They also colluded on the timing for the introduction of new models complying with new environmental standards and increases to their EEA-wide gross price lists in connection with the launch of those new models [*confidentiality claim pending*].
- (267) The Commission does not agree that because by disclosing pricelists containing the gross price increases were disclosed to the Dealer network and contracts for future deliveries were based on those pricelists, the gross price increase itself had become public to the extent that it could legitimately be considered as readily accessible objective market data.⁵³¹
- (268) Concerning the public nature of the information exchanged, it should first be noted that publicly available sources show that if a customer intends to buy a truck, in contrast to the passenger cars industry, it is not possible to configure a specific truck through publicly available websites of the different producers which would also give at least an approximate level of the price to be paid (see recital (33)). Therefore in the trucks industry even the current prices of chassis and different options are not freely publicly available. To get a price offer the customer has to contact one of the authorized Dealers of the truck producers.
- (269) [*confidentiality claim pending*], [...] [*confidentiality claim pending*].⁵³² [*confidentiality claim pending*] [...] [*confidentiality claim pending*] [...].⁵³³
- (270) [*confidentiality claim pending*] [...] [*confidentiality claim pending*].⁵³⁴ [...] has explained that gross price information that is publicly available is not as detailed and accurate as the information received directly from the competitors. [*confidentiality claim pending*].⁵³⁵
- (271) In this respect, Scania has not provided any examples of price increase announcements by any of the participants to the public via a freely accessible

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529 Case C-286/13 P, *Dole Food and Dole Fresh Fruit Europe v Commission*, ECLI:EU:C:2015:184 , paragraph 122.

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

531 Case T-53/03, *BPB vs Commission*, ECLI:EU:T:2008:254, paragraph 236.

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information source, for example, a magazine, press release or on the internet, taking place before the date on which they were exchanged between the participants. [confidentiality claim pending] parties' price communications to journalists. For example, following a journalist's request for price information on specific truck models [confidentiality claim pending] [...] [confidentiality claim pending] [...] [confidentiality claim pending]

[...]

[confidentiality claim pending]⁵³⁶

[...] (Scania DE) follows up the e-mail-exchanges by communicating to [...]:

"Hello, altogether:

[confidentiality claim pending] [...] [confidentiality claim pending] [...] [confidentiality claim pending].

We will not communicate lease rates or sales prices."⁵³⁷

- (272) However, even if current list prices for specific models were occasionally provided to the press, Scania could not provide any evidence that any of the future gross price increases exchanged between the participants were ever communicated to the press before the date of the exchange.
- (273) Concerning Scania's claim it had already disclosed some of the information exchanged within its distribution network and that, in certain circumstances, Dealers had already concluded contracts for trucks with a future delivery date, this does not change the fact that the price increases exchanged between the parties only applied for future production or delivery dates and thereby have a non-public future character.
- (274) Firstly, it is clear from the documentary evidence gathered that the information exchanged was not limited to definitive prices applicable in the market at the time of the exchange (see for example recital (150) referring explicitly to "*envisaged or decided price increases*" [confidentiality claim pending]). Such information on envisaged gross price increases – or a party's intention not to increase prices – was not available to their competitors through other sources. It could only be obtained through direct competitor contacts and information received from competitors was often still at a planning stage. Furthermore, [confidentiality claim pending] (see recitals (176) and (178)).
- (275) Secondly, all of the announcements of new gross prices took place within the Scania network, and were not directly accessible to competitors. [confidentiality claim pending]⁵³⁸ [confidentiality claim pending].⁵³⁹
- (276) Thirdly, Scania's conclusion that the information exchanged did not amount to future pricing intentions is premised on the fact that the relevant pricing decision had been taken and communicated internally within the Scania network and based on lead times for production. That approach fails to consider the nature of the information

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⁵³⁸ See joined Cases T-202/98, T-204/98 and T-207/98 *Tate & Lyle and Others v Commission*, ECLI:EU:T:2001:185, paragraph 60.

⁵³⁹ Case C-359/01 P, *British Sugar v Commission*, ECLI:EU:C:2004:255.

from the receiving party's perspective and whether a price increase to be applied to future production was publicly available outside of Scania's sales network. Even in a market with lead times for production, a company has the possibility to adjust gross prices or discounts.

- (277) According to [...], information on gross price increases was sometimes exchanged prior to [...] having communicated that information to its local sales force and sometimes after local sales force had been informed. As such, in certain instances the parties were being made aware of a competitor's future pricing intentions even before its own sales forces were aware of the planned price changes.⁵⁴⁰
- (278) Fourthly, contrary to Scania's claim that competitors would know about the price increases via customers or Scania Dealers themselves,⁵⁴¹ Scania confirmed during the oral hearing that it has no control or knowledge about what its Dealers communicate to their clients. Scania could not demonstrate that Dealers would even inform customers about percentages of price increases to be applied as of a certain future delivery date and not just about concrete prices for specific models ordered for a specific delivery date.⁵⁴²
- (279) Furthermore, while in some instances information on gross price increases may, theoretically have been available from potential customers, [...], for example, has submitted that customers generally do not share the intended gross price increases of competitors in the course of price negotiations as such information does not strengthen the customers' negotiation power.⁵⁴³ Indeed, it would be against the interest of the customers to share price increase information during the price negotiation process with the Dealers as it would not help the customer to get the lowest possible price for the product.
- (280) Finally, the accuracy and detail of the information exchanged between the parties far exceeded anything that the parties could obtain from the market. The compiled excel sheets gave information on the future price evolution of the market in the months ahead at a level of accuracy which could not be obtained from the market through any other sources than the collusive contacts with competitors.

(c) Scania's argument that the gross prices had no informational value

- (281) In Scania's view, gross price lists do not have any informational value and do not give any insight into the pricing behaviour of the competitors.⁵⁴⁴ Scania disagrees with the Commission's statement in the Statement of Objections, describing the transparency on the market created between the competitors via exchanges of current price lists and configurators, according to which the gross price information would [*confidentiality claim pending*]⁵⁴⁵ [*confidentiality claim pending*].⁵⁴⁶ Scania argues that due to different discount levels, that are applied to the factory gross price list for

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⁵⁴¹ [...]. The Commission notes that with this argument Scania confirms that the price increases exchanged with the competitors on factory gross price level affected the prices uploaded to the price system for Scania Dealers. In this regard, Scania contradicts its claim that all price levels are independent.

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⁵⁴⁵ Recital 84 of the Statement of Objections.

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different countries, no pan-European pricing trends could be deduced from either the factory gross price list, national gross prices or customer end prices.⁵⁴⁷

- (282) The Commission's findings in this Decision relate to Scania's involvement in exchanges of future prices and gross price increases between competitors which were generally applied on a European-wide basis. [confidentiality claim pending] [...], [confidentiality claim pending] [...].
- (283) First, the parties operate in a market that is both highly concentrated – the parties together hold above 90% of the European market for medium and heavy trucks (see recital (22)) – and very transparent. The producers offer comparable products and have access through their membership in various trade associations (see section 2.4) and through publicly accessible registers to recent and frequently updated statistics containing aggregated figures, most importantly on new truck registrations, order intake, delivery periods or stock levels. Therefore competitors are in a position to understand to a high degree each other's order situation as well as production capacity utilisation. In addition, truck producers receive real "net" customer prices offered by their competitors through various channels (see recitals (54) and (59)). [confidentiality claim pending] [...] [confidentiality claim pending]. Through their extensive exchanges of hardcopy and electronic versions of the gross price lists [confidentiality claim pending] (see recitals (120), (121), (122), [confidentiality claim pending], (133), (145), (147), [confidentiality claim pending] and [confidentiality claim pending] – all of which contain detailed breakdowns of the available components for a manufacturer's trucks – [confidentiality claim pending] [...] [confidentiality claim pending].
- (284) Following such exchanges, one of the few price relevant factors of significance in the truck industry that remained uncertain was whether the official pricing policy of the respective competitors would change, and if so, why and at what point in time. [confidentiality claim pending] [...] [confidentiality claim pending] [...] [confidentiality claim pending] [...] [confidentiality claim pending].⁵⁴⁸ As the General Court held "(...) even if the changes in transaction prices did not follow those in list prices, that does not exclude the possibility that the coordinated increases in those list prices were capable of having an impact on the prices paid both by the wholesalers and by the end consumer, by permitting those prices either to be increased or, at the least, to be maintained".⁵⁴⁹ In order to find that a concerted practice has an anti-competitive object, there does not need to be a direct link between that practice and end consumer prices.⁵⁵⁰
- (285) [confidentiality claim pending]. [confidentiality claim pending] [...] [confidentiality claim pending]. [confidentiality claim pending] [...] [confidentiality claim pending].⁵⁵¹
- (286) Another important factor for competition was the uncertainty about competitors' introduction of new models and the price positioning of those models, in particular in

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⁵⁴⁹ Joined Cases T-379/10 and T-381/10 *Keramag Keramische Werke and Others v Commission*, ECLI:EU:T:2013:457, paragraph 61.

⁵⁵⁰ See for example Case C-8/08, *T-Mobile Netherlands*, ECLI:EU:C:2009:343, paragraphs 36-39.

⁵⁵¹ [...]

the context of the introduction of new models complying with new EURO emission standards. In a competitive environment competitors strive to get ahead of the competitors in presenting more advanced technology. [*confidentiality claim pending*].

(287) Furthermore, the exchange of other competitively sensitive information such as delivery periods and stock figures enabled the parties to receive factors of their competitors' production planning [*confidentiality claim pending*].

(288) Furthermore, the frequency of the contacts and the active role Scania played in the exchange, undermine the credibility of Scania's claim that the information exchanged between the parties was of little or no value. The fact that, in addition to the exchange of gross price increase and date of the introduction of the trucks complying with the new emission standards, other technical information was also exchanged during the meetings with competitors does not constitute a plausible explanation for the regular exchange of competitively sensitive information.

(d) Scania's argument that the pricing structure made the price coordination impossible

(289) Scania argues that due to the pricing structure, price coordination in the trucks market was not possible. In the context of that argument Scania refers to a benchmarking exercise of [...], in which [...] requested that its subsidiaries report back information on competitor prices in their individual national markets.⁵⁵² Scania also refers to a similar market overview from [...].⁵⁵³ Scania further refers to internal e-mails of [...], in which an employee of [...] indicated that the price situation is not stable and varies also locally in Germany.⁵⁵⁴ According to Scania that evidence indicates that there is no reference market from which more general pan-European pricing trends could be deduced.⁵⁵⁵ Scania finally claims that based on observed national distributor price lists, competitors would not be able to "reverse-engineer" or deduce a European pricing strategy.⁵⁵⁶

(290) The Commission disagrees with Scania's views. First, it is established case law⁵⁵⁷ that price collusion can take place on different levels of the pricing process. Secondly, the Commission is not alleging that the parties were agreeing to charge the same prices – either at the gross price level or at the end customer level or anywhere in between. Rather, the Commission concludes on the basis of the evidence gathered during its investigation and presented in section 6.2 that [...] exchanged sensitive pricing information and future pricing intentions, [*confidentiality claim pending*] [...] [*confidentiality claim pending*]. Therefore, while the parties did not reach a formal agreement as to actual price levels, the gross price information exchanged together with the other information available to the parties (see recitals (22) to (24) and (287)) [*confidentiality claim pending*].

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⁵⁵⁷ Case C 8/08 T Mobile Netherlands and Others v Commission, ECLI:EU:C:2009:343 paragraphs 36 to 38.

- (291) Contrary to Scania's allegations, the Commission understood and took into account the fact that different gross price lists are applied for different steps of the distribution chain and that the transaction prices for each country are adjusted via essential discounts depending on the economic situation of the country, technical component requirements and the respective market position of the participant in that country. *[confidentiality claim pending]* [...]. *[confidentiality claim pending]*.
- (e) The relationship between the factory gross price lists and national gross price lists
- (292) In its reply to the Statement of Objections, Scania claims that national gross prices and end transaction prices are independent of the EEA-wide factory gross price list.⁵⁵⁸ Scania claims in its reply to the Statement of Objections that "*Scania's marketing department and the Scania distributors actually negotiate prices on an arm's length basis*"⁵⁵⁹ and that due to a restructuring of its pricing system in the mid-1990s "*Negotiations since then (and during the time of the alleged infringements) have not been based on the "Factory Gross Price List"; that list, which is generally not even shared with Scania Distributors*" [...].⁵⁶⁰ Scania claims that the Factory Gross Price List has been replaced, for pricing purposes by separate "*factory-to-distributor net price lists*" for each country.⁵⁶¹ Scania maintained the position adopted in the reply to the Statement of Objections in its reply to the Letter of Facts.⁵⁶²
- (293) The description of the pricing system that Scania provided in its reply to the Statement of Objections is inconsistent with the description Scania had previously provided in response to three separate requests for information it received under Article 18(2) of Council Regulation (EC) N° 1/2003 of 16 December 2002 (hereinafter referred to Regulation 1/2003).⁵⁶³
- (294) In its replies to the three previous request for information – in respect of which Scania could be liable for fines of up to 1 % of its total turnover in the preceding business year for providing incorrect or misleading information – Scania explained that the Factory Gross Price List is prepared by [...] at headquarters level.⁵⁶⁴ Each Scania Distributor (for example, Scania Germany), negotiates with Scania headquarters a Scania "Distributor net price" for each component of a truck, on the basis of the Factory Gross Price List it has received. *[confidentiality claim pending]*.⁵⁶⁵ Also Scania explained that the document "RPU" ("Representantuppgift" in Swedish) was the document containing the differences between the Factory Gross Price List and the "factory-to- distributor net price" in terms of discount⁵⁶⁶ (see further section 4.3.). The Statement of Objections reflected the facts as provided by Scania in its replies to the request for information *in tempore non suspecto*.

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561 The three affidavits contain the exact same wording to describe the purpose of the Factory Gross Price List, see [...].

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- (295) In contrast to its previous explanations, in the reply to the Statement of Objections Scania alleges that prices for national markets in Europe are the result of negotiations between Scania headquarters and the respective national distributor at "arm's length" and are not based on the Factory Gross Price List.
- (296) The Commission disagrees with Scania's view. Firstly, the arm's length principle is used to determine prices in a way that independent parties would negotiate the prices in order to allocate taxable profit for cross-boarder transactions between associated enterprises (for example, parent-subsidiary companies and sister-companies). Tax authorities apply an arm's length price for cross-boarder transactions within a company group if the prices or other conditions actually used differ from those comparably placed unrelated enterprises would have negotiated.⁵⁶⁷ The fact that Scania headquarters uses transfer prices, i.e. distributor net prices, that respect an arm's length principle does not demonstrate an independent position of Scania's national distributors in the negotiation process, but rather demonstrates that Scania headquarters sets those prices in line with the price ranges that the national tax authorities of Sweden and the respective import country accept for tax purposes to prevent companies from shifting their profits freely to low-tax countries.
- (297) Secondly, even if prices paid by the national distributors to Scania headquarters complied with the "arm's length principle", this does not indicate that Scania's national distributors took pricing decisions independently or had an independent position in the negotiations with Scania headquarters regarding negotiations of discounts. In this regard, the Commission notes that, as Scania explained in its replies to requests for information, Scania sells its trucks via fully owned subsidiaries in all Contracting parties to the EEA Agreement, [...].⁵⁶⁸ That structure is also confirmed by the company's annual statements.⁵⁶⁹ As wholly owned subsidiaries of Scania, the national distributors do not have the negotiation position of independent companies.⁵⁷⁰
- (298) Thirdly, Scania's own replies to the Commission's requests for information as well as internal documents of Scania explained in section 4.2. and further internal documents on pricing responsibilities of Scania headquarters' departments for the sales subsidiaries, as described in section 4.2 and 4.3, demonstrate that Scania headquarters and its wholly owned distributors were not negotiating partners with equal powers.
- (299) Scania claims in its reply to the Statement of Objections that the differences between the descriptions contained in the reply to the Statement of and the replies to the requests for information are the result of Scania having "*further investigated how pricing discussions occurred between Scania headquarter and its distributors in the relevant time period*".⁵⁷¹ However:

⁵⁶⁷ See OECD Guidelines Chapter II.

⁵⁶⁸ [...]

⁵⁶⁹ File Annual Statements of 2004 and 2010 and quote here.

⁵⁷⁰ In this respect, the Commission notes that the report called "Competitive assessment of alleged Scania price exchanges" drafted by RBB economics that Scania provided as an attachment to Scania's response to the Statement of Objections is of limited utility given that it is mistakenly based on the assumption that only some national distributors of Scania are wholly owned by Scania [...].

⁵⁷¹ [...]

- (a) In contrast to its replies to the Commission's requests for information, Scania does not provide any contemporaneous documentary evidence supporting the description set out in its reply to the Statement of Objections. Even the affidavits, do not refer to or provide any documentary evidence to support the statements. In this regard the Commission notes that the affidavits and Scania's reply to the Statement of Objections explain that the Factory Gross Price List serves as "(...) *an internal pricing reference tool which among other thing is used to establish the price hierarchy between different performance steps of truck components in the Scania factory's pricing process*". If this is indeed the case, the Commission considers that Scania – given its size and economic importance – should have been in a position to provide documentation in support of that position.
- (b) It is not credible that during the investigative procedure, upon being requested multiple times by the Commission to provide a description of its pricing system, with the risk of being liable for considerable penalties in the event that it provided incorrect or misleading information, Scania did not conduct a sufficiently thorough review of its internal pricing system to be able to present correctly the fundamental elements of its pricing system in its replies to the requests for information.
- (c) Scania's statements in its reply to the Statement of Objections contradict previous unambiguous statements made in response to the Commission's requests for information. For example, in its reply to the Statement of Objections Scania denies the decisive role of Scania headquarters in price setting without providing documentary evidence to support its claims. During the investigative phase of the procedure, however, the Commission explicitly requested that Scania identify which Scania employees were involved in the pricing process. In its reply to the request for information of 27 March 2012⁵⁷² as a response to Question 7. "*Please add to the list any other employees that were and are involved in the pricing process*" Scania replied: "*7.4. On the basis of these pricing processes that exist within Scania, Scania considers that the most relevant individuals for the purpose of the Commission's question 7 are those that are involved in the pricing process at Scania factory level. 7.5. Please refer to confidential annex 1.*" In Annex 1 Scania identified the following employees having a "*Key role in the European Pricing Process*" during the infringement period: [...]. They all worked for Scania headquarters during different but also overlapping periods. The Commission notes that no employees from Scania Germany or any other distributor companies of Scania were mentioned as employees involved in the pricing process.⁵⁷³ The Commission highlights that [...] attended the top management meetings between [...] headquarters (see section 6.1.1).
- (d) Scania's statements in its reply to the Statement of Objections contradict contemporaneous documentary evidence demonstrating the influence that Scania's headquarters had in the price setting mechanism. [...] ⁵⁷⁴. [...] ⁵⁷⁵ [...].

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(300) Scania's replies to the Commission's requests for information (see recital (293)) show that only Scania headquarters had the power to set gross prices for trucks in Europe contrary to Scania's claim in its reply to the Statement of Objections. In the replies to the Commission's requests for information there is no reference whatsoever to an arm's length negotiation between the headquarters and the national subsidiaries in pricing and no employees of Distributors were included as relevant employees involved in the pricing process in Scania's reply to the requests for information.

(301) In the light of the foregoing, therefore, the Commission considers that, balancing the weight of the evidence before it, the most credible description of Scania's pricing mechanism is that provided in response to the Commission's requests for information, and which formed the basis of the Commission's preliminary conclusions in the Statement of Objections. The Commission considers that the description put forward by Scania in its reply to the Statement of Objections lacks credibility and is insufficient to undermine the Commission's preliminary conclusions. It is therefore concluded that, during the period of the infringement, the Factory Gross Price List constituted an important – and competitively sensitive – component in Scania's price setting mechanism.

(f) Lack of harm to consumers

(302) In its reply to the Statement of Objections Scania further alleges that a delay in the introduction of new trucks complying with the EURO emission standards could not have caused harm to customers as the Commission would *"ignore the fact that the development of EURO compliant engines by truck manufacturers was (and still is) exclusively driven by the regulatory initiatives taken by the EU institutions and not triggered by any perceived competition between the competitors on innovation."*⁵⁷⁶ Scania further states that *"customers consistently demonstrated limited interest in EURO compliant products and, generally, only purchased them when the legislative requirements became mandatory"*.⁵⁷⁷

(303) [confidentiality claim pending] [...] [confidentiality claim pending]. They discussed whether one or more of them had tax based incentives to introduce the new technology earlier [confidentiality claim pending]. Closely linked to that discussion the parties also exchanged [confidentiality claim pending]. [confidentiality claim pending] [...] [confidentiality claim pending].

(304) Scania's argument that the introduction of the new emission technology is driven by Union legislation and not by competition on innovation is incapable of altering the Commission's conclusion that such conduct constituted an infringement of Article 101 of the Treaty and Article 53 of the EEA Agreement. The fact that the parties were under a legal obligation to introduce new emission technology by a specific date did not prevent the parties from offering such new technology to customers prior to the regulatory deadline for introduction, or choosing not to increase prices for trucks equipped with the new technology. Indeed, Scania itself has stated that it sold trucks complying with a EURO 4 emission standard to customers before the standard became compulsory. The Union legislation on environmental standards in no way limited the competition on innovation. It exclusively set the final compulsory deadline when the new emission technology must be available for customers. The

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statement regarding sales of EURO 4 trucks before the compulsory deadline also contradicts Scania's argument that customers only purchased the trucks complying with the new emission standards when it became legally compulsory. In addition, neither Scania's internal documents nor the discussions between the parties show a lack of interest by customers in buying more environmental-friendly trucks as an argument to delay the market-introduction of new technology.

7.2.3.4. Conclusion

(305) In the light of the above, the concerted practices and/or agreements referred to in recital 6.2 have as their object the restriction and/or distortion of competition through collusion with respect to pricing and gross price increases in the EEA for medium and heavy trucks and the timing and the passing on of costs for the introduction of emission technologies for medium and heavy trucks required by EURO 3 to 6 standards.

(306) [*confidentiality claim pending*].⁵⁷⁸ When undertakings, as in this case, are in direct contact with competitors, even if they merely receive information concerning commercially sensitive future conduct of competitors, they can be considered as having taken part in a concerted practice since the receiving undertaking could not fail to take into account, directly or indirectly, the information obtained in order to determine the policy which it intended to pursue on the market.⁵⁷⁹ [*confidentiality claim pending*] [...] [*confidentiality claim pending*].

(307) [*confidentiality claim pending*].

7.2.4. Single and continuous infringement

7.2.4.1. Principles

(308) According to settled case-law, the agreements and concerted practices referred to in Article 101(1) of the Treaty necessarily result from collaboration by several undertakings, who are all co-perpetrators of the infringement but whose participation can take different forms according, in particular, to the characteristics of the market concerned and the position of each undertaking on that market, the aims pursued and the means of implementation chosen or envisaged.⁵⁸⁰ Therefore, an infringement of Article 101 of the Treaty may result not only from an isolated act but also from a series of acts or from a continuous conduct. That interpretation cannot be challenged on the ground that one or more elements of that series of acts or continuous conduct could also constitute in themselves and taken in isolation an infringement of Article 101 of the Treaty. When the different actions form part of an overall plan, because their identical object distorts competition within the internal market, the Commission

⁵⁷⁸ It is well established that conduct on exchanging information is incompatible with the rules on competition if it reduces or removes the degree of uncertainty as to the operation of the market in question with the result that competition between undertakings is restricted. See Judgment of the Court of Justice of 28 May 1998, *John Deere v Commission*, C-7/95 P, ECLI:EU:C:1998:256, paragraph 90 and Judgment of the Court of Justice of 2 October 2003, *Thyssen Stahl v Commission*, C-194/99, ECLI:EU:C:2003:527, paragraph 81. See also Judgment of the Court of Justice of 23 November 2006, *Asnef-Equifax and others v Ausbanc*, C-238/05, paragraph 51.

⁵⁷⁹ See Judgment of the General Court of 12 July 2001, *Tate & Lyle and others v Commission*, Joined cases T-202/98, T-204/98 and T-207/98, paragraph 58.

⁵⁸⁰ Case C-49/92 P *Commission v Anic Partecipazioni* [1999] ECR I-4125, at paragraph 79.

is entitled to impute responsibility for those actions on the basis of participation in the infringement considered as a whole.⁵⁸¹

- (309) It would be artificial to split up such continuous conduct, characterised by a single purpose, by treating it as consisting of several separate infringements, when what was involved was a single infringement which progressively would manifest itself in both agreements and concerted practices.⁵⁸² The concept of a single infringement covers a situation in which a number of undertakings have participated in an infringement consisting in continuous conduct in pursuit of a single economic aim designed to distort competition or, yet again, in individual infringements linked to one another by the same object (all the elements sharing the same purpose) and the same subjects (the same undertakings, which are aware that they are participating in the common object).⁵⁸³
- (310) Although Article 101 of the Treaty does not refer explicitly to the concept of single and continuous infringement, it has consistently been held that an undertaking may be held responsible for an overall cartel even though it is shown that it participated directly only in one or some of the constituent elements of that cartel, if it is shown that it knew, or must have known, that the collusion in which it participated was part of an overall plan and that the overall plan included all the constituent elements of the cartel.⁵⁸⁴
- (311) The fact that the undertaking concerned did not participate directly in all the constituent elements of the overall cartel cannot relieve it of responsibility for the infringement of Article 101(1) of the Treaty. Such a circumstance may nevertheless be taken into account when assessing the seriousness of the infringement which it is found to have committed. Such a conclusion is not at odds with the principle that responsibility for such infringements is personal in nature, nor does it neglect individual analysis of the evidence adduced, in disregard of the applicable rules of evidence, or infringe the rights of defence of the undertakings involved.⁵⁸⁵
- (312) In order to establish that an undertaking participated in such a single and continuous infringement, the Commission must show that the undertaking intended to contribute by its own conduct to the common objectives pursued by all the participants and that it was aware of the actual conduct planned or put into effect by other undertakings in pursuit of those same objectives, or that it could reasonably have foreseen it, and that

⁵⁸¹ Joined cases C-204/00 P, C-205/00 P, C-211/00 P, C-213/00 P, C-217/00 P and C-219/00 P *Aalborg Portland and others v Commission* [2004] ECR I-123, at paragraph 258. See also Case C-49/92 P *Commission v Anic Partecipazioni SpA* [1999] ECR I-4125, at paragraphs 78-81, 83-85 and 203.

⁵⁸² Case T-6/89 *Enichem Anic v Commission* [1991] ECR II-1623, at paragraph 204, upheld by the ECJ in Case C-49/92 P *Commission v Anic Partecipazioni* [1999] ECR I-4125, at paragraph 82.

⁵⁸³ Case T-446/05 *Amann & Söhne GmbH & Co. KG a.o. v Commission* [2010] ECR II-1255, at paragraph 89.

⁵⁸⁴ Cases T-295/94 *Buchmann v Commission* [1998] ECR II-813, at paragraph 121; T-304/94 *Europa Carton v Commission* [1998] ECR II-869, at paragraph 76; T-310/94 *Gruber + Weber v Commission* [1998] ECR II-1043, at paragraph 140; T-311/94 *Kartonfabriek de Eendracht v Commission* [1998] ECR II-1129, at paragraph 237; T-334/94 *Sarrió v Commission* [1998] ECR II-1439, at paragraph 169; T-348/94 *Enso Española v Commission* [1998] ECR II-1875, at paragraph 223; Case T-9/99, *HFB Holding and others v Commission* [2002] ECR II-1487, at paragraph 231.

⁵⁸⁵ Joined Cases T-101/05 and T-111/05 *BASF and UCB v Commission* [2007] ECR II-4949, at paragraph 160.

it was prepared to take the risk.⁵⁸⁶ The case-law requires that a cartel participant was or must have been aware of the general scope and the essential characteristics of the cartel as a whole.⁵⁸⁷ An undertaking which may have participated directly in only some of the forms of anticompetitive conduct comprising an infringement, but has 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 has been prepared to take the risk, may be held liable for the infringement as a whole.⁵⁸⁸

- (313) The principle of legal certainty requires that, if there is no evidence directly establishing the duration of an infringement or of the participation of an undertaking therein, the Commission should adduce at least evidence of facts sufficiently proximate in time for it to be reasonable to accept that the infringement continued without interruption between two specific dates.⁵⁸⁹ The fact that evidence of the infringement was not produced for certain specific periods does not preclude the infringement from being regarded as established during a longer overall period than those periods provided that such a finding is supported by objective and consistent indicia.⁵⁹⁰
- (314) The case law permits the Commission to assume that the infringement or the participation of an undertaking in the infringement has not been interrupted, even if it has no evidence of the infringement in relation to certain specific periods, provided that the various actions which form part of the infringement pursue a single purpose and are capable of falling within the framework of a single and continuous infringement; such a finding must be supported by objective and consistent indicia showing that an overall plan exists.⁵⁹¹

7.2.4.2. Application to this case

- (315) In this case, the agreements and/or concerted practices between Scania and the settling parties constituted a single and continuous infringement of Article 101(1) of the Treaty and Article 53 of the EEA Agreement [...]. The infringement consisted of collusion with respect to pricing and gross price increases in the EEA for medium and heavy trucks and the timing and the passing on of costs for the introduction of emission technologies for medium and heavy trucks required by EURO 3 to 6 standards.

⁵⁸⁶ Joined cases C-204/00 P, C-205/00 P, C-211/00 P, C-213/00 P, C-217/00 P and C-219/00 P *Aalborg Portland and others v Commission* [2004] ECR I-123, at paragraph 83; Case C-49/92 P *Commission v Anic Partecipazioni SpA* [1999] ECR I-4125, at paragraph 87; Case T-208/06 *Quinn Barlo Ltd a.o. v Commission*, not yet reported, at paragraph 128.

⁵⁸⁷ Joined Cases T-259/02 to T-264/02 and T-271/02 *Raiffeisen Zentralbank Österreich and others v Commission* [2006] ECR II-5169, at paragraph 193.

⁵⁸⁸ See to that effect: Case C-441/11 P *Commission v Verhuizingen Coppens NV*, not yet reported, at paragraph 43.

⁵⁸⁹ Case T-279/02 *Degussa AG v Commission* [2006] ECR II-897, at paragraph 153; Case T-43/92 *Dunlop Slazenger v Commission* [1994] ECR II-441, at paragraph 79; Case T-62/98 *Volkswagen v Commission* [2000] ECR II-2707, at paragraph 188.

⁵⁹⁰ Case *Nederlandse Federatieve Vereniging voor de Groothandel op Elektrotechnisch Gebied v Commission* [2006] ECR I-8725, at paragraphs 97-98.

⁵⁹¹ Joined cases T-147/09 and T-148/09 *Trelleborg Industrie SAS and others v Commission*, ECLI:EU:T:2013:259, at paragraph 61.

- (316) The Commission considers that the facts described in this Decision demonstrate that through the conduct described in section 6.2 (a) the parties pursued a common plan with a single anti-competitive aim, and (b) Scania was aware, or should have been aware of the general scope and the essential characteristics of the network of collusive contacts and intended to contribute [*confidentiality claim pending*] through its actions.⁵⁹²
- (a) Common plan with a single anti-competitive aim
- (317) Scania and the settling parties pursued a common plan with the single anti-competitive aim of restricting competition on the market for medium and heavy trucks in the EEA. [*confidentiality claim pending*] by engaging in practices that reduced the levels of strategic uncertainty as between the parties with respect to future prices and gross prices increases and the timing and passing on of costs in relation to the introduction of trucks complying with environmental standards. In this respect, the parties' exchanges:
- (a) related to intended changes of gross prices and gross price lists, [*confidentiality claim pending*] [...]; as well as the respective timing of such changes;
- (b) related to the timing and the passing on of costs for the introduction of emission technologies for medium and heavy trucks required by EURO 3 to 6 standards;
- (c) were used to share other competitively sensitive information such as delivery periods, order intake, stock figures, [...], current net prices and [...] and gross price lists (even before entering into force) and truck configurators.
- (318) The Commission takes the view that that conduct formed part of a common plan having a single anti-competitive aim for the following reasons.
- (319) First, all of the contacts concerned the same products, namely heavy and medium trucks (see recital (5)).
- (320) Second, the nature of the information shared – price information, gross price increase information, anticipated launch dates of trucks complying with new environmental standards and competitors' intentions as to whether to pass the associated costs on to customers - stayed the same over the entire duration of the infringement as illustrated by the following. For example, information on future pricing intentions was continuously shared both for the short term but also for the medium term, indicating envisaged gross price changes (in percentages) (see for example recitals (146), [*confidentiality claim pending*], (155), [*confidentiality claim pending*], (159), (164), (166), (170), [*confidentiality claim pending*], (188), [*confidentiality claim pending*]). Scania and the settling parties also frequently informed each other that no price changes were planned or foreseen (see for example recitals [*confidentiality claim pending*] (145), [*confidentiality claim pending*], (153), [*confidentiality claim pending*], (166), (170), (176), (178), [*confidentiality claim pending*], (182), [*confidentiality claim pending*], (188) and [*confidentiality claim pending*]), or that planned price increases were delayed, cancelled or modified (see for example recitals [*confidentiality claim pending*], (176) and (178)).

⁵⁹² Case T-587/08, *Fresh Del Monte Produce v Commission*, ECLI:EU:T:2013:129, paragraphs 592-593, 595, 637-639 and 648.

- (321) Furthermore, with respect to the collusion on the timing and additional costs to the new environmental standard (see recital (317)(b)), Scania and [...] discussed the date of the introduction of the new environmental standards and the additional costs triggered by the new standards during the same meetings or respectively in the same e-mails, with the same undertakings and the discussions concerned the same products, namely medium and heavy trucks. [confidentiality claim pending]. Consequently the nature of the discussions [confidentiality claim pending] was related and complementary to the parties' collusion concerning prices and gross price increases.
- (322) Similarly, [confidentiality claim pending] [...] [confidentiality claim pending], the parties continued to collude by exchanging the same type of information. Even in absence of a common agreement on, for example, the precise level of future price increases, such conduct furthered the same aim of restricting competition on the market for medium and heavy trucks in the EEA, by reducing the levels of strategic uncertainty as between the parties with respect to future prices and gross prices increases and the timing and passing on of costs in relation to the introduction of trucks complying with environmental standards.
- (323) Third, the anti-competitive contacts took place frequently and involved the same group of truck producers, namely Scania and the settling parties. The individuals involved in the contacts belonged to the same manufacturers and arranged the exchanges in small groups of employees within the manufacturers.⁵⁹³ Both [...] and [...] [confidentiality claim pending]. [confidentiality claim pending].⁵⁹⁴
- (324) Furthermore, competitors designated contact persons within their organisations (see for example recitals [confidentiality claim pending], (131), [confidentiality claim pending] and (139)) and, in the event of changes in the relevant personnel, introductions to the successor took place to ensure a smooth transition and the continuity of the contacts (see for example recitals (131) and [confidentiality claim pending]).
- (325) Fourth, while the level and internal responsibilities of the employees involved in the conduct evolved during [confidentiality claim pending], the nature, aim and scope of the contacts and meetings remained the same throughout the duration [confidentiality claim pending].
- (326) As described in section 6.1.1 the collusive contacts that took place between the headquarters' representatives [confidentiality claim pending]; as well as the discussions that took place from 2004 at the level of the parties' German subsidiaries, all had the anticompetitive aim of restricting competition on the market for medium and heavy trucks in the EEA by colluding with respect to future prices and gross prices increases and the timing and passing on of costs in relation to the introduction of trucks complying with environmental standards.

⁵⁹³ Although the information exchange was conducted as of 2004 via employees of the German subsidiaries and, thus, the circle of employees involved enlarged, the coordination of competitive behaviour remained limited to a relatively small number of key individuals. These were in particular the employees listed in section 6.1.

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- (327) The following elements also support the Commission's conclusion that the shift in the exchanges from the top management level to the German subsidiary level did not affect the continuous nature of the infringement:
- (a) [*confidentiality claim pending*]; and discussions at the German level taking place as of 2004 ((see for headquarter level meeting recitals (79), (81), (102), (103), (104), (113), (119), [*confidentiality claim pending*] (138); for German level meetings, see section 6.1.2)). As a result, although the direct contacts in the top management meetings were not continued after 16 September 2004 (recital (138)), [*confidentiality claim pending*].⁵⁹⁵ [*confidentiality claim pending*].⁵⁹⁶ [*confidentiality claim pending*]. [*confidentiality claim pending*] [...]. [*confidentiality claim pending*].
 - (b) The German subsidiaries of the parties did not produce trucks and were not in charge of developing new technologies for their undertakings as these responsibilities were the exclusive competence of the headquarters. [*confidentiality claim pending*]
 - (c) [*confidentiality claim pending*]. Scania headquarters has the power to determine factory gross prices and discounts applied to the wholly owned Distributors (see section 4.2). [...] ⁵⁹⁷ [...] [*confidentiality claim pending*].
- (328) The change [*confidentiality claim pending*] was, therefore, collectively managed in a coordinated fashion between the different parties with a view to ensuring continuity in the exchanges.
- (329) Fifth, while the manner in which the information was exchanged, naturally, evolved over the 14 year duration of the infringement, it did so in a gradual manner and the fundamental nature of the exchanges remained the same – from multilateral exchanges either through in-person meetings or presentations (often at the margins of trade fairs such as the [*Trade fair*] (see recitals (110), [*confidentiality claim pending*], (126), (136), (137), (146), (153), (164), (168)), the contacts evolved to multilateral exchanges via email through the compilation of future pricing information organised by email and presented in a spreadsheet (see recitals (150), (164), (166), (170), (171), (172) and (175)).⁵⁹⁸
- (330) It follows from the above that the common characteristics of the content of the contacts of Scania with [...], [*confidentiality claim pending*] the timing of the contacts and their proximity in time confirm that the collusive contacts were linked and complementary⁵⁹⁹ in nature. This is because each of them was intended to deal with one or more consequences of the normal pattern of competition within the

⁵⁹⁵ [*confidentiality claim pending*][...] [*confidentiality claim pending*][...].

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⁵⁹⁸ As of January 2004 and until the start of the Commission's inspections in January 2011 Scania DE and [...] updated each other [*confidentiality claim pending*] on changes to their future gross prices and price lists. Such exchanges included one party regularly sending requests and summaries of future gross price increases to ensure a continuous exchange. This very well structured exchange of future pricing intentions was organised through multilateral emails and telephone calls, the information gathered was compiled (most commonly in excel tables) and distributed amongst [...]. In addition, [...] continued to share other competitively sensitive information such as gross price lists and trucks configurators, their order intake, delivery periods [*confidentiality claim pending*].

⁵⁹⁹ Case T-587/08 *Del Monte v Commission*, ECLI:EU:T:2013:129, paragraph 593.

framework of a [...] plan having a single objective, namely the collusion with respect to pricing and gross price increases in the EEA for medium and heavy trucks and the timing and the passing on of costs for the introduction of emission technologies for medium and heavy trucks required by EURO 3 to 6 standards.⁶⁰⁰

(b) Awareness and intention to contribute

- (331) Scania intended to contribute to the common objectives of the anti-competitive conduct described in section 6 and was aware of the general scope and the essential characteristics [*confidentiality claim pending*] or ought reasonably to have foreseen it and was prepared to take the risk.
- (332) In this respect, it is clear from the evidence presented in section 6.2 and recital (212) that Scania participated directly in all of the relevant aspects [*confidentiality claim pending*]. It exchanged price information and future pricing intentions with the settling parties, and coordinated on new technological launches including the timing and passing on of costs, as well as participating in exchanges of other commercially sensitive information. In addition, Scania took an active part [*confidentiality claim pending*] and organised meetings (see recitals (99), (113), (115), (117), (134), (136), (159), (166), (180) and (181)); Scania participated in the relevant email exchanges [*confidentiality claim pending*]; and was involved in meetings at all [*confidentiality claim pending*] levels as presented in section 6.2.
- (333) Furthermore, even though Scania only produces and sells heavy trucks, Scania was aware or ought reasonably to have been aware that the settling parties produced medium trucks as well and the collusive contacts covered both heavy and medium trucks. The collusive contacts listed in section 6.2. in which Scania participated covered not only the heavy trucks but also the medium trucks. As explained in recital (39), the EEA-wide gross price lists contained prices for all truck models and available options. Accordingly, discussions on price increases generally extended to both heavy and medium trucks. At some meetings at which Scania was present, the parties indicated separate price increases for heavy and medium trucks (see recitals [*confidentiality claim pending*], (111), [*confidentiality claim pending*] or reported price increases divided by model-lines (see recitals [*confidentiality claim pending*], (119), (121), [*confidentiality claim pending*], (134), (135), [*confidentiality claim pending*], (145), (146), [*confidentiality claim pending*], (150)). Therefore, Scania was aware or at least ought to have been aware that the anti-competitive practices extended to heavy and medium trucks.
- (334) For the above reasons, the Commission concludes that Scania intended to contribute to the infringement and was aware or ought reasonably to have been aware of the infringement.

7.2.4.3. Scania's arguments and the Commission's assessment thereof

(a) Common objective

- (335) Scania contests that the conduct constituted a single and continuous infringement for which it can be held liable. Firstly, Scania argues that the exchanges at the Headquarter level and at the German level "*related to prices at a different level of the*

⁶⁰⁰ Case T-54/03 *Lafarge v Commission*, ECLI:EU:T:2008:255, at paragraph 482; Joined Cases T-101/05 and T-111/05 *BASF and UCB v Commission*, ECLI:EU:T:2007:380, paragraph 179.

distribution chain".⁶⁰¹ Secondly, Scania claims that for a common objective and similar pattern of behaviour to be found, it is necessary that a significant temporal overlap exists between the different manifestations of conduct within a single and continuous infringement, which is not fulfilled in this case.⁶⁰² [*confidentiality claim pending*].⁶⁰³ Fourthly, Scania claims that where parties to anti-competitive acts are the same and the alleged infringements take place within the same sector, it is very likely that the practices employed have certain similarities and that this cannot suffice to establish a close link where those practices have an economically different object and purpose.⁶⁰⁴ Fifthly, Scania claims that there is "no evidence of contacts or other anticompetitive conduct" for 1999 and that there is "no conclusive evidence that Scania participated in meetings in 2002."⁶⁰⁵ Finally, Scania claims that an interaction between the different levels is required and claims that this is not given in this case.⁶⁰⁶

- (336) The Commission disagrees with the arguments put forward by Scania for the following reasons set out in recitals (337) to (343).
- (337) Firstly, as the Commission explained in Section 7.2.4.2 (316)(a) the contacts at the different levels all sought to achieve the same anti-competitive aims, in respect of the same products, through collusion with respect to future prices and gross prices increases and the timing and passing on of costs in relation to the introduction of trucks complying with environmental standards. The type of information exchanged was in essence identical and a distinction cannot be made according to whether it was communicated by the headquarters themselves, as observed during the first phase [*confidentiality claim pending*], or whether they were communicated by employees of the German subsidiaries, as observed during the second phase [*confidentiality claim pending*].
- (338) In this context the Commission also recalls that, in addition to the fact that the same kind of information was exchanged, the gross price increases were decided upon by the headquarters of Scania and the settling parties⁶⁰⁷ and applied on a European-wide basis (as set out in Sections 4.1 to 4.3) so that the coordination at the German level cannot be regarded as distinct from the coordination at the headquarters level.
- (339) Second, Scania's claim that there cannot be a single and continuous infringement in this case as the infringement at the different levels did not take place at the same time is unfounded. In this case, discussions between competitors were ongoing over a long duration and at one point, discussions shifted from headquarter level to the German subsidiary level. However, the participating undertakings, the products and the content of the discussions remained the same. In such a case a temporal overlap cannot be required. [*confidentiality claim pending*].
- (340) Third, the Commission also disagrees with Scania's argument that the overlap of discussions on different levels argues against a migration of the exchanges. On the contrary, a temporally parallel exchange ensured the correctness and stability of the

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607 With exception of [...].

continuous exchange of the information. The Commission considers that, notwithstanding the migration of the exchanges from the headquarters level to the German subsidiary level, the structure and nature of the parties' exchanges and the organisation [*confidentiality claim pending*] demonstrates that the parties' conduct formed part of a common plan. In particular: (a) the exchanges took place through a network of regular meetings at all levels, conducted by a relatively small group of individuals; (b) with meetings, on occasion, being organised and held in parallel; and (c) that the documentary evidence shows that information exchanged during meetings [*confidentiality claim pending*]; and (d) the fact that certain of Scania's employees, who were involved [*confidentiality claim pending*], held positions with direct reporting lines between the headquarters and the German subsidiary level (see recitals (41), (42) and (78)).

- (341) Fourth, contrary to Scania's arguments, even though the channel of the information exchange evolved, the subject of the exchange and the product retained the same scope and pattern over the entire period. When contacts shifted from the headquarters level to the German subsidiaries, the agents of the undertakings acting for the purpose [*confidentiality claim pending*] may have been different persons with different functions, but they nevertheless represented the same undertakings and continued to exchange the same type of information with the same object and purpose in similar ways.
- (342) Fifth, concerning evidence of anti-competitive meetings in 1999, contrary to what Scania contends, the existence of such meetings is not only based on a statement by [...] but is corroborated by other evidence in the file, including a statement by [...], and contemporaneous evidence from [...] (see recitals (106)-(108)). Regarding Scania's participation at meeting in 2002 there is contemporaneous evidence that Scania was present and gave data to the other participants (see recitals (123) and (126)).⁶⁰⁸ In any event, the Commission notes that, in the absence of any clear evidence indicating a termination [*confidentiality claim pending*] – or a clear statement by Scania informing the settling parties of its intention to cease participating [*confidentiality claim pending*] – and the numerous pieces of evidence gathered by the Commission demonstrating that [*confidentiality claim pending*] continued both between 1999 and 2002 and thereafter, the Commission is justified in taking the view that Scania participated in the infringement from 17 January 1997 until 18 January 2011 without interruption.⁶⁰⁹
- (343) Finally, Scania's argument that there was no interaction between the different levels of contacts is incorrect. In this case, contacts shifted from the headquarters level, where the EEA-wide gross price increase decisions were taken, to the level of their 100% controlled German subsidiaries. [*confidentiality claim pending*]. Even if Scania did not receive the email of 12 July 2005 (see recital (147)) because [...]']s name was misspelled Scania participated in the anti-competitive exchange between the German subsidiaries after the top level contacts ended. Therefore, it is reasonable to conclude that individuals at [*confidentiality claim pending*] Scania knew or ought to have known that the anti-competitive contacts continued at German level between the same undertakings.

⁶⁰⁸ See also Dalmine/Commission, T 50/00, Rec. p. II 2395, JFE Engineering e.a./Commission, T 67/00, T 68/00, T 71/00 et T 78/00, Rec. p. II 2501 and Case C-613/13 Keramag.

⁶⁰⁹ Case C-441/11 P *Commission v Verhuizingen Coppens* EU:C:2012:778, paragraph 75.

(b) Awareness

- (344) Scania claims that, at least as far as Scania is concerned, the individuals of Scania that participated in the competitor contacts at the different levels were not aware and could not be considered as having been aware that they were contributing to a common objective.⁶¹⁰ Specifically Scania argues that there is no evidence that participants in the top management meetings were aware, or should have been aware, of the existence and/or subject-matter [*confidentiality claim pending*] the German level. Scania also argues there is no evidence that the participants at German level were aware, or should have been aware of the meetings at headquarters level.⁶¹¹ Scania further claims that it was not aware that competitors had gross price lists that were applicable European-wide and that price increases received via the German level contacts had a European scope.⁶¹²
- (345) Scania argues that the Commission has not proven that the information received by Scania employees at the German level was forwarded to Scania headquarters and that Scania's participants in the German level contacts deny any transmission of price information exchanged in Germany to the Scania headquarters.⁶¹³
- (346) The Commission disagrees with Scania's arguments. As regard the awareness of Scania as an undertaking of the scope and essential characteristics of the infringement, it is irrelevant whether the exchanges were internally reported within the undertaking Scania. The decisive factor is rather that Scania's employees at different levels (starting at headquarters level and later via fully controlled German subsidiaries) took part in the infringement and were aware of the essential characteristics and the scope [*confidentiality claim pending*].
- (347) [*confidentiality claim pending*].
- (348) In any event, the Commission notes that overall responsibility for the pricing of the trucks within the EEA lies with Scania headquarters (see section 4.3) and the employees of Scania Germany [*confidentiality claim pending*] worked for a subsidiary of Scania headquarters.
- (349) Finally, it is apparent from the content of the exchanges presented in section 6.2, that Scania must have been aware of the fact that most of the truck producers had gross price lists that were applicable European-wide and that the exchanges related to those prices (see recital (111)). It is not plausible that all parties but Scania knew that the price increases discussed were applicable European-wide. Scania's argument that the employees of Scania Germany assumed that the other parties also gave German-wide price increase information is not substantiated by any contemporaneous evidence. In addition, as Scania Germany did not set gross price increases independently from its headquarters (see sections 4.2 to 4.4), nor did it produce trucks or decide on when to introduce trucks complying with new environmental standards or whether the related additional costs should be passed on, it must have been aware that the gross price increases it communicated to competitors were applicable for [*confidentiality claim pending*] other European countries (even if country specific discounts were applied afterwards). Furthermore, for the reasons set out in section 7.5 the Commission also

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considers that the information that Scania provided to the other participants included prices and future gross price increases applicable European-wide.

7.2.4.4. Conclusion

(350) On this basis of the foregoing, the Commission considers that the conduct described in section 6 constitutes a single and continuous infringement in pursuant of a common aim, to which Scania intended to contribute by its own conduct and that it was aware of the actual conduct planned or put into effect by other undertakings in pursuit of those same objectives, or that it could reasonably have foreseen it, and that it was prepared to take the risk such that it can be held liable for the infringement as a whole.

7.2.5. *Effect upon trade between EEA Member States*

7.2.5.1. Principles

(351) Article 101(1) of the Treaty is aimed at agreements which might harm 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 European Economic Area.

(352) The Court of Justice of the European Union has consistently held that, "*in order that an agreement between undertakings may affect trade between Member States, it must be possible to foresee with a sufficient degree of probability on the basis of a set of objective factors of law or fact that it may have an influence, direct or indirect, actual or potential, on the pattern of trade between Member States*".⁶¹⁴ In any event, whilst Article 101 of the Treaty does not require that agreements referred to in that provision have actually affected trade between Member States, it does require that it be established that the agreements are capable of having that effect.⁶¹⁵

(353) The application of Article 101 of the Treaty and Article 53 of the EEA Agreement to a cartel is not, however, limited to that part of the members' sales that actually involve the transfer of goods from one State to another. Nor is it necessary, in order for those provisions to apply, to show that the individual conduct of each participant, as opposed to the cartel as a whole, affected trade between Member States.⁶¹⁶

(354) Agreements and practices covering or implemented in several Member States are in almost all cases by their very nature capable of affecting trade between Member States.⁶¹⁷ Cartel agreements such as those involving price fixing and market sharing covering several Member States are by their very nature capable of affecting trade between Member States.⁶¹⁸

⁶¹⁴ See Case 56/65 *Société Technique Minière*, ECLI:EU:C:1966:38, at paragraph 7; Case 42/84 *Remia* and Others [1985] ECR 2545, paragraph 22 and Joined Cases T-25/95; others, *Cimenteries CBR* [2002] ECR II-491; Case C-306/96 *Javico*, [1998] ECR I-1983, paragraph 16.

⁶¹⁵ See Case C-219/95 *P Ferriere Nord SpA v Commission*, [1997] ECR I-4411, paragraph 19.

⁶¹⁶ See Case T-13/89 *Imperial Chemical Industries v Commission* [1992] ECR II-1021, paragraph 304.

⁶¹⁷ Commission Notice - Guidelines on the effect on trade concept contained in Articles 81 and 82 of the Treaty, OJ C 101, 27.04.2004, p. 81-96 (the "Guidelines on the effect on trade"), paragraph 61.

⁶¹⁸ Guidelines on the effect on trade, paragraph 64; Judgment of the General Court of 6 April 1995, *Usines Gustave Boël v Commission*, T-142/89, ECLI:EU:T:1995:63, paragraph 102.

7.2.5.2. Application to this case

- (355) As demonstrated in Section 3.4, the trucks market is characterised by a substantial volume of trade between Member States as well as between the Union and the EFTA countries of the EEA.
- (356) In this case, on the basis of the market share and turnover of the participants within the EEA (see recitals (22), (25) and (26)), it can be presumed that the anti-competitive conduct affected trade between Member States.⁶¹⁹ Furthermore, the [confidentiality claim pending] collusion in respect of gross prices and gross price increases applicable for trucks sold across the EEA and for the timing of, and price increases in respect of, the launch of trucks in the EEA complying with new environmental standards, covered [...] the territory of the EEA. As such, the existence of the collusive arrangements that are described in section 6 were, at the very least, capable of resulting, in the diversion of trade patterns from the course they would otherwise have followed.⁶²⁰
- (357) After the accession of Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia and Slovenia to the Union on 1 May 2004 and Romania and Bulgaria on 1 January 2007, Article 101 of the Treaty and Article 53 of the EEA Agreement became applicable [confidentiality claim pending] in those Member [confidentiality claim pending].
- (358) [confidentiality claim pending].

7.3. Application of Article 101(3) of the Treaty

- (359) The provisions of Article 101(1) of the Treaty may be declared inapplicable under Article 101(3) of the Treaty in the case of an agreement or concerted practice which 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.
- (360) On the basis of the facts before the Commission, there are no indications that suggest that the conditions of Article 101(3) of the Treaty could be fulfilled in this case.

7.4. Arguments concerning Scania's procedural rights

7.4.1. *The Decision of 19 July 2016 addressed to the settling parties*

7.4.1.1. Scania's position

- (361) In its response to the Statement of Objections, Scania claims that the Commission is biased in this procedure as a result of the adoption of a decision in the settlement

⁶¹⁹ Commission Notice - Guidelines on the effect on trade concept contained in Articles 81 and 82 of the Treaty, OJ C 101, 27.04.2004, p. 81-96, point 53.

⁶²⁰ See Joined Cases 209/78 to 215/78 and 218/78 *Van Landewyck and others v Commission* ECLI:EU:C:1980:248, at paragraph 170.

procedure and that this has led the Commission to violate the presumption of innocence and Scania's rights of defence throughout these proceedings.⁶²¹

- (362) Scania claims that a proceeding against Scania can no longer be fair as the Commission is "bound - in practice, if not legally - by the settlement decision, which will necessarily inform the reasoning that the Commission would follow if it decided to adopt a decision against Scania."⁶²² The Commission rejects those claims, which are examined below in recitals (363) to (385).

7.4.1.2. Assessment of the Commission

- (363) The Commission considers that it is possible to continue the proceedings against parties that did not agree to settle their case, following a settlement decision, and also to fully respect the principle of the presumption of innocence.
- (364) Firstly, the possibility of conducting separate procedures in the case of a settlement is expressly envisaged by Article 10a paragraph 4 of Regulation (EC) No 773/2004, which explicitly provides that the Commission may decide at any time during the settlement procedure to discontinue settlement discussions with one or more of the parties.⁶²³ When one or more parties fail to introduce a settlement submission, the Settlement Notice⁶²⁴ provides that the procedure leading to the final decision in their regard will follow the general provisions, instead of those regulating the settlement procedure.⁶²⁵ Article 10a paragraph 4 of Regulation (EC) No 773/2004 does not require that, in the event of discontinuation of the settlement procedure with respect to one or more parties that the settlement procedure should be stayed or delayed for the remaining parties pending the outcome of the procedure concerning those parties with respect to whom the settlement procedure has been discontinued.
- (365) Furthermore a fundamental aim of the settlement procedure is to expedite administrative procedures in order to foster the timely adjudication of cases and application of sanctions as provided for the relevant Union legislation.⁶²⁶ Those parties which have submitted a proposal for settlement can reasonably expect a relatively concise administrative procedure followed by a timely decision. They would clearly lose this advantage if parties which exercised their right to withdraw from the settlement procedure were allowed to determine the timing of all procedures relating to a particular investigation.
- (366) Secondly, the case law clarifies that the situation in respect of non-settling parties is that of a 'tabula rasa', in which the liabilities are yet to be determined in a standard

⁶²¹ This procedure is often referred to as a "staggered hybrid settlement procedure": hybrid because it combines the settlement and standard procedure, staggered because the standard procedure is applied after the settlement procedure. Some parties refer to this procedure as a "twin-track" hybrid procedure. The staggered adoption of the decisions of the procedures (settlement and non-settlement) is difficult to avoid when a party withdraws from the settlement procedure at a very late stage of the process, which is what has occurred in the present case for the non-settling party.

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⁶²³ Commission Regulation (EC)- No 622/2008 of 30.6.2008 amending Regulation (EC) No 773/2004, as regards the conduct of settlement procedures in cartel cases, OJ, 1.7.2008, L171/3.

⁶²⁴ 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 (2008/ C 167/01).

⁶²⁵ Point 19 of the Settlement Notice.

⁶²⁶ Recital (4) of Regulation (EC) No 622/200; point 1 of the Settlement Notice; and Case T-456/10, *Timab Industries and CFPR v Commission*, ECLI:EU:T:2015:296 paragraph 60.

procedure.⁶²⁷ Thus, contrary to Scania's allegation the Commission is therefore not bound, either in practice or legally, to follow the reasoning that it followed in the settlement decision against the settling parties.

- (367) Thirdly, the fact that the settling parties have accepted liability for their role in an infringement that has been the subject of an investigation by the Commission does not have any bearing on the status of those parties which have chosen not to settle. A settlement decision is a document, based on the common understanding of the settling parties and the Commission concerning the scope of the objections and their legal characterisation. As made clear in its recital (6), the Decision of 19 July 2016 does not make any findings concerning Scania with respect to an infringement of Union competition law, nor does it serve to establish the liability of Scania in this Decision. In the legal assessment of the Settlement Decision no individual reference was made to Scania at all and it has been made clear that the various instances of collusive behaviour were agreements and/or concerted practices within the meaning of Article 101(1) of the Treaty and Article 53(1) of the EEA Agreements in relation to the settling parties.
- (368) This approach is consistent with the position, confirmed by the Court of Justice of the European Union, that where the settlement does not involve all the participants in an infringement the Commission is entitled to adopt "*on the one hand, following a simplified procedure (the settlement procedure), a decision addressed to the participants in the infringement who have decided to enter into a settlement and reflecting the commitment of each of them and, on the other hand, according to the standard procedure, a decision addressed to participants in the infringement who have decided not to enter into a settlement*".⁶²⁸
- (369) Consequently, and contrary to Scania's claims, the Commission is entitled to conduct its investigation under the settlement procedure with respect to certain parties and under the standard procedure with respect to others, and there is no restriction on the individual timing of each procedure or a requirement that the relevant decisions be adopted simultaneously. Rather, it is sufficient that all non-settling parties are heard with respect to the Statement of Objections addressed to them and that a decision is adopted and addressed to them individually. In this respect, as described further in sections 7.4.2 and 7.4.3, the rights of defence of the Addressees of this Decision have been fully respected. In particular, they have been given an opportunity to express their views on the objections raised against them in the Statement of Objections adopted on 20 November 2014, just as in any standard procedure where a party or parties might seek to demonstrate their lack of involvement in an infringement in which others participated.

7.4.2. *The right to be heard*

7.4.2.1. Scania's position

- (370) Scania claims that its rights of defence have been breached as the Commission adopted the Settlement Decision on 19 July 2016, before Scania was afforded the opportunity to be formally heard, and that the Settlement Decision is based on the

⁶²⁷ See Judgment of the General Court of 20 May 2015, *Timab v Commission*, T-456/10, ECLI:EU:T:2015:296, paragraphs 73, 104.

⁶²⁸ See Case T-456/10, *Timab Industries and CFPR v Commission*, ECLI:EU:T:2015:296, at paragraph 71.

same Statement of Objections to which Scania was entitled to reply by 23 September 2016.⁶²⁹

- (371) Scania claims that its right to be heard has been held to comprise, specifically:⁶³⁰
- (a) the right to obtain a precise and complete statement of objections containing all necessary information to defend itself before the Commission adopts a final decision;
 - (b) the opportunity for the party to submit its observations on the documents and information on which the Commission bases its objections and arguments to reach a decision;
 - (c) the right to be generally allowed the same case knowledge used by the Commission in the proceedings, which implies access to the Commission's file on the same terms as the latter, including access to certain categories of documents that were added to the Commission's file after the Statement of Objections was issued, which Scania considers could potentially be exculpatory.

7.4.2.2. Assessment of the Commission

- (372) As demonstrated in section 7.4.1.2 the Settlement Decision made no finding against Scania and had no legal effect with respect to Scania. Scania cannot claim, therefore, a right to be heard in the context of the adoption of a decision that was not addressed to it and has no legal effect on it.
- (373) With respect to the standard procedure that has culminated in the adoption of this Decision, Scania's right to be heard has been fully respected.
- (374) On 20 November 2014, the Commission addressed a Statement of Objections to Scania, in which it set out in precise terms all of the Commission's allegations with respect to Scania.
- (375) Subsequent to the adoption and notification of the Statement of Objections of 20 November 2014, Scania had further access to the investigative file of the Commission. Scania requested additional access to the documents which had been added to the case file after the adoption of the Statement of Objections. Following the decision of the Hearing Officer of 10 October 2016, on 12 October 2016 the Commission granted access to the parts of the documents which, according to the Hearing Officer's decision, could contain potentially exculpatory evidence.
- (376) Scania submitted its written reply to the Statement of Objections on 23 September 2016 and submitted further comments after having been granted additional access to the Commission's file in accordance with the decision of the Hearing Officer of 10 October 2016. Scania has provided further written comments on those documents (see recital (70)). Therefore not only has access to the full accessible file of the Commission been granted, but the decision on the accessibility of the file has also been subject to the independent judgment of the Hearing Officer.

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(377) Additional access to the file was also granted on 10 May 2017 with regard to documents that subsequently became part of the file, on which Scania also provided written comments (see recital (73)).

7.4.2.3. Conclusion

(378) Scania's rights of defence were respected during the standard procedure. As the Settlement Decision against five settling parties to the procedure has no legal effects for Scania, Scania could at all times during this procedure, including after the adoption of the settlement decision against five settling parties, effectively exercise its rights of defence.

(379) In particular, after the Statement of Objections was adopted, Scania: was granted access to all of the necessary information for it to defend itself; was given the opportunity, which it exercised, to reply to the Commission's objections both in writing and orally; has been allowed to comment on the fining methodology and on the letters of facts, and has the right to challenge this Decision in Court.

7.4.3. Press release of 19 July 2016

7.4.3.1. Scania's position

(380) The Commission's press release of 19 July 2016 reporting on the adoption of the decision against the settling parties states that: "*Today's decision follows the sending of a Statement of Objections to the trucks producers in November 2014. In the context of this investigation, proceedings were also opened with regard to Scania. Scania is not covered by this settlement decision and therefore the investigation will continue under the standard (non-settlement) cartel procedure for this company.*" Scania claims that the public disclosure "that the investigation – based on the same Statement of Objections – continues against Scania amounts to an unacceptable allusion to Scania's liability linked to the Commission's decision to adopt a settlement decision before Scania exercised its rights of defence".⁶³¹

7.4.3.2. Assessment of the Commission

(381) The Commission considers that its press release of 19 July 2016 reporting on the adoption of the decision against the settling parties has no effect on Scania's ability to effectively exercise its rights of defence.

(382) As set out at recital (372) of this Decision, the Settlement Decision made no finding against Scania and had no legal effect with respect to Scania. Scania cannot claim, therefore, a right to be heard in the context of the adoption of a decision that was not addressed to it and has no legal effects on it.

(383) Regarding the claimed "*allusion to Scania's liability*", firstly the press release explicitly states that "*Scania is not covered by this settlement decision and therefore the investigation will continue under the standard (non-settlement) cartel procedure for this company*". Secondly, the fact that Scania was being investigated by the Commission along with other truck manufacturers was already publicly known. In its own press release issued on 18 January 2011, Scania confirmed that it had "*become subject of an investigation initiated by the European Commission regarding inappropriate exchange of information.*"⁶³² Further Scania's Annual reports inform

⁶³¹ [...]

⁶³² [...]

the public about the ongoing procedure. In Scania's 2015 Annual report, published in March 2016, Scania explains: "*Scania became the subject of an investigation conducted by the European Commission concerning inappropriate cooperation. Scania received a statement of objections in the investigation in November 2014, which Scania can now reply to before the EU Commission reaches its decision.*"⁶³³

- (384) Accordingly the public was fully aware of the ongoing procedure against Scania at the moment of the Commission's press release of 19 July 2016. In its statement the Commission simply set out the principal steps of the procedure and stated that the Settlement Decision did not concern Scania and had no effect on the investigation against Scania, which would continue. A confirmation that a publicly known investigation continues, does not allude to any liability of Scania. It serves solely to correctly distinguish, in Scania's interest, the legal scope of the Settlement Decision from the ongoing investigation against Scania.

7.4.3.3. Conclusion

- (385) The Commission's press release of 19 July 2016 had no legal effect on Scania and did not disclose information beyond to the already publicly known facts. Therefore Scania's rights were not affected by the press release.

7.5. Geographic scope of the infringement

- (386) The geographic scope of the infringement was EEA-wide for the entire period of the infringement.
- (387) In this case, [*confidentiality claim pending*] covered collusion with respect to pricing and gross price increases in the EEA for medium and heavy trucks and the timing and the passing on of costs for the introduction of emission technologies for medium and heavy trucks required by EURO 3 to 6 standards.
- (388) Scania and [...] have European wide gross prices and gross price lists. The evidence shows that before and after the introduction of European wide [...] price lists, [...] had anti-competitive discussions that covered Contracting Parties to the EEA Agreement [*confidentiality claim pending*], [*confidentiality claim pending*], [*confidentiality claim pending*] [...] [*confidentiality claim pending*].
- (389) They also [*confidentiality claim pending*] coordinated the timing and the passing on of costs for the introduction of emission technologies for medium and heavy trucks required by EURO 3 to 6 standards, standards that were applicable EEA-wide. The exchanges on the introduction dates of new technology standards (for example EURO 3) and the connected price increases were not limited to specific countries, but covered the entire EEA [*confidentiality claim pending*].

7.5.1. Scania's position

- (390) Scania alleges that Scania DE did not participate in an EEA-wide infringement.⁶³⁴
- (391) Scania argues that it did not have a European wide price list⁶³⁵ and the other competitors did not have European-wide prices or price lists either during the time of exchanges between the German subsidiaries⁶³⁶. Scania claims that, "*had the*

⁶³³ P. 70 of Scania's 2015 Annualreport.

⁶³⁴ [...]

⁶³⁵ [...]

⁶³⁶ [...]

Commission asked Scania at the point in time of the RFI [request for information] whether the Factory Gross Price List was a European or EEA wide applicable price list which determined prices at factory, distributor and dealer level, Scania's answer would have been a firm "no".⁶³⁷

- (392) Scania claims that Scania DE did not know that other producers' prices may have applied in multiple European countries⁶³⁸ and the prices provided by Scania DE were only applicable in Germany and any pricing information shared by Scania DE with other truck manufacturers related to "distributor-to-dealer prices".⁶³⁹
- (393) Scania claims that via the exchanges on the German level the participants could not have learnt about competitors' Europe-wide pricing strategy through German prices⁶⁴⁰ since prices in Germany were considerably higher than in France and Belgium and the prices vary significantly not only between countries but also for each type of engine separately.⁶⁴¹ Scania also argues that the geographic scope of the trucks markets is national.

7.5.2. *Assessment of the Commission*

- (394) Firstly, even if it were true that Scania's Factory gross price lists and the gross price increases were not applicable EEA-wide, this is insufficient to undermine the Commission's conclusion that the scope of the infringement was EEA-wide. The coordination between the parties took place on the basis of European-wide gross price increases decided by the headquarters (except for [...]) (see recital (40)). Regardless of the geographic scope of the information that Scania provided to the settling parties, therefore, Scania received EEA-wide applicable gross price lists and EEA-wide price increases, as well as configurators from [...] (see recital (388)). Receipt of such information reduced the level of Scania's uncertainty as to its competitors' pricing strategies and the likely evolution of their prices for trucks on an EEA-wide level. The same applies equally with respect to exchanges concerning the first launch of new trucks in the EEA complying with new emissions standards and competitors' intentions as to whether to pass on costs related to the introduction of such technology (see recital (389)).
- (395) Furthermore, the Commission notes that other competitors understood that Scania had a European-wide gross price list and that the information that it exchanged related to gross prices applicable across Europe.⁶⁴² At the very least, therefore, even if the information that Scania provided to its competitors did not apply across the EEA (which for the reasons set out below in recitals (396) to (400), the Commission does not believe to be the case), Scania gave its competitors the impression that it intended to further the aims [*confidentiality claim pending*] providing [*confidentiality claim pending*] EEA-wide gross prices and price increases in exchange for receiving equivalent information [*confidentiality claim pending*].

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- (396) In any event, the Commission considers that Scania's claim that the prices that it exchanged were not relevant for calculating the prices of its trucks on an EEA-wide basis is not credible.
- (397) Firstly, in response to the Commission's requests for information,⁶⁴³ Scania indicated the scope of the Factory Gross Price List [*confidentiality claim pending*] encompassing the whole of the EEA.⁶⁴⁴ The Commission has analysed the price setting mechanism explained by Scania [*confidentiality claim pending*].
- (398) Secondly, in its submissions Scania notes that "a general price increase envisaged by Scania's headquarter (for instance, to increase factory prices by 2%), such envisaged price increase does not necessarily result in a general, European wide increase of prices charged to distributors, dealers or end-users" [emphasis added].⁶⁴⁵ Scania's statement demonstrates that while price increases envisaged at the headquarter level may not result in identical increases on the national level across the EEA, they form a common and fundamental component of the price calculations applicable in the different national distribution chains across Europe. [*confidentiality claim pending*].
- (399) In this regard, the Commission notes that Scania DE communicated general price increases set by the Scania headquarters to the Dealers [*confidentiality claim pending*].⁶⁴⁶ The same pricing information has been found in competitors' internal reports,⁶⁴⁷ thereby indicating that Scania exchanged the same EEA-wide applicable price increase information with its competitors as it exchanged with its Dealers. For example, on 28 January 2008 [...] (Scania DE) sent an e-mail to [...] (Scania DE), [...] (Scania DE) who were active in the anti-competitive exchange with the settling parties and other colleagues at Scania DE indicating that the attached letter would be sent the next day to Scania's Dealers. The letter to which she referred reads: "*due to increased costs Scania has increased the prices for production as of 1st September 2008 by 2.5%.*"⁶⁴⁸ Only Scania headquarters produces trucks. Scania DE acts exclusively as a distributor for the headquarters, therefore it could not be at the origin of the price increase related to an increase in costs. If the reason for the price increase related to an increase in production costs, that price increase must have applied to all trucks produced by Scania headquarters as of 1 September 2008 and not exclusively to the trucks sold in Germany but in all markets where the trucks were sold after that date.

7.5.3. Conclusion

- (400) On the basis of the above the Commission concludes that [*confidentiality claim pending*] concerned the parties' pricing and gross price increases in the EEA for medium and heavy trucks and the Europe-wide timing and the passing on of costs for the introduction of emission technologies for medium and heavy trucks required by EURO 3 to 6 standards.

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⁶⁴⁶ On 14 December 2014 [...] (Scania DE) sent an e-mail to Scania's Dealers indicating "*The price list No. 45 is applicable as of delivery date 02.03.2005. The price list contains the following changes: - General price increase of 1.5% (newsletter of 20.10.2004).*" [...].

⁶⁴⁷ See the internal report of [...] of 20 January 2005.

⁶⁴⁸ [...]

8. ADDRESSEES

8.1. Principles

- (401) The subjects of Union and EEA competition rules are undertakings, a concept which is not identical with that of corporate legal personality for the purposes of national commercial or fiscal law. The undertaking that participated in the infringement is therefore not necessarily identical with the precise legal entity within the group of companies whose representatives actually took part in the cartel meetings. The term 'undertaking' is not defined in the Treaty. The case law has confirmed that Article 101 of the Treaty is aimed at economic units which consist of a unitary organisation of personal, tangible and intangible elements which pursue a specific economic aim on a long-term basis and can contribute to the commission of an infringement of the kind referred to in that provision.⁶⁴⁹
- (402) As regards the question of the existence of an economic unit, it is settled case-law that the competition law of the Union covers the activities of undertakings and that the concept of an undertaking covers any entity engaged in an economic activity, regardless of its legal status and the way in which it is financed. The existence of an economic unit may thus be inferred from a body of consistent evidence, even if some of that evidence, taken in isolation, is insufficient to establish the existence of an economic unit. Elements to establish an economic unit between sister companies may be, amongst others, common ownership, overlaps in management positions, a common strategy and that the infringing behaviour relates to the turnover/activities of both entities.⁶⁵⁰
- (403) Despite the fact that Article 101 of the Treaty and Article 53 of the EEA Agreement are applicable to undertakings and that the concept of undertaking is of an economic nature, only entities with legal personality can be held liable for infringements.⁶⁵¹
- (404) Concerning the principle of personal liability, Article 101 of the Treaty applies to 'undertakings' which may comprise several legal entities. The principle of personal liability is not breached as long as different legal entities are held liable on the basis of their own behaviour and their conduct within the same undertaking.
- (405) It is accordingly necessary to define the undertaking or undertakings that should be held accountable for the infringement of Article 101 of the Treaty by identifying one or more legal persons to represent the undertaking. According to case law, Union competition law recognises that different companies belonging to the same group form an economic unit and therefore an undertaking within the meaning of Articles 101 of the Treaty if the companies concerned do not determine independently their

⁶⁴⁹ Case T-11/89, *Shell International Chemical Company Ltd v. Commission*, ECLI:EU:T:1992:33, Recital 311 and Case T-352/94 *Mo Och Domsjö v. Commission*, ECLI:EU:T:1998:103, Recitals 87-96.

⁶⁵⁰ See in particular Case C-407/08 *Knauf Gips v. Commission*, ECLI:EU:C:2010:389, paragraphs 63, 66 to 86 and 95 to 110 and Joined Cases C-189/02 P, C-202/02 P, C-205/02 P to C-208/02 P and C-213/02 P *Dansk Rørindustri and others v Commission*, ECLI:EU:C:2005:408, paragraph 120.

⁶⁵¹ Although an 'undertaking' within the meaning of Article 81 (now Article 101 TFEU) is not necessarily the same as a company having legal personality, it is necessary for the purposes of applying and enforcing decisions to identify an entity possessing legal or natural personality to be the addressee of the measure. Case T-305/94 *Limburgse Vinyl Maatschappij NV, Elf Atochem SA, BASF AG, Shell International Chemical Company Ltd, DSM NV, DSM Kunststoffen BV, Wacker-Chemie GmbH, Hoechst AG, Société artésienne de vinyle, Montedison SpA, Imperial Chemical Industries plc, Hüls AG and Enichem SpA v. Commissions (PVC II)*, ECLI:EU:T:1999:80, paragraph 978.

own conduct on the market'.⁶⁵² If a subsidiary does not determine its own conduct on the market independently, the company which directed its commercial policy (that is to say, which exercised decisive influence)⁶⁵³ forms a single economic entity with the subsidiary on the grounds that it forms part of the same undertaking (so-called parental liability) and may thus be held liable for an infringement committed by its subsidiary.

- (406) According to settled case-law of the Union Courts, a parent company that owns 100% (or almost 100%) of a subsidiary has the ability to exercise decisive control over such subsidiary. In such a case, there exists a rebuttable presumption that the parent also in fact exercises that control without the need for the Commission to adduce further evidence on the actual exercise of control (the parental liability presumption).⁶⁵⁴ When the Commission, in a decision relies on the parental liability presumption and declares its intention to hold a parent company liable for an infringement committed by its wholly owned subsidiary, it is for that parent company, when it considers that - despite the shareholding - the subsidiary determines its conduct independently on the market, to rebut the presumption by adducing sufficient evidence in this regard during the administrative procedure.⁶⁵⁵ Evidence that the parent company was not aware of the participation of its subsidiary

⁶⁵² See Case T-203/01 *Manufacture française des pneumatiques Michelin v. Commission*, ECLI:EU:T:2003:250, paragraph 290.

⁶⁵³ Case C-286/98 P, *Stora Kopparbergs Bergslags AB v. Commission*, ECLI:EU:C:2000:630, paragraph 37.

⁶⁵⁴ Case T-405/06, *ArcelorMittal Luxembourg and Others v. Commission*, ECLI:EU:T:2009:90, paragraphs 89-92; Case T-85/06, *General Química and Others v. Commission*, ECLI:EU:T:2008:598, paragraph 60; Case T-354/94 *Stora Kopparbergs Bergslags v. Commission*, ECLI:EU:T:1998:104, paragraph 80, upheld by the Court of Justice on appeal in Case C-286/98 P, *Stora Kopparbergs Bergslags v. Commission*, ECLI:EU:C:2000:630, paragraphs 27-29; and Case 107/82 *AEG v. Commission*, ECLI:EU:C:1983:293, paragraph 50; Case T-112/05 *Akzo Nobel NV and Others v. Commission* ECLI:EU:T:2007:381, paragraphs 60-62; Case C-97/08 P *Akzo Nobel NV and Others v. Commission*, ECLI:EU:C:2009:536, paragraphs 60-61; Case C-521/09 P *Elf Aquitaine v. Commission*, ECLI:EU:C:2011:620, paragraphs 56-57; Case C-201/09, *ArcelorMittal Luxembourg v Commission and Commission / ArcelorMittal Luxembourg and Others*, ECLI:EU:C:2011:190, paragraphs 97-100; Case C-495/11 P, *Total SA and Elf Aquitaine SA v. Commission*, ECLI:EU:C:2012:571, paragraph 28; Case C-310/93 P - *BPB Industries and British Gypsum v. Commission* ECLI:EU:C:1995:101, paragraph 11; Joined Cases T-305/94, T-306/94, T-307/94, T-313/94 to T-316/94, T-318/94, T-325/94, T-328/94, T-329/94 and T-335/94 *Limburgse Vinyl Maatschappij NV, Elf Atochem SA, BASF AG, Shell International Chemical Company Ltd, DSM NV, DSM Kunststoffen BV, Wacker-Chemie GmbH, Hoechst AG, Société artésienne de vinyle, Montedison SpA, Imperial Chemical Industries plc, Hüls AG and Enichem SpA v. Commissions (PVC II)*, ECLI:EU:T:1999:80, paragraphs 961 and 984; Case T-203/01 *Manufacture française des pneumatiques Michelin v. Commission*, ECLI:EU:T:2003:250, paragraph 290; Joined Cases T-71/03, T-74/03, T-87/03 and T-91/03 *Tokai Carbon Co. Ltd, Intech EDM BV, Intech EDM AG and SGL Carbon AG v. Commission* ECLI:EU:T:2005:220, paragraphs 59-60; Case T-325/01, *DaimlerChrysler v. Commission* ECLI:EU:T:2005:322, paragraph 219; Case T-30/05 *William Prym GmbH & Co. KG and Prym Consumer GmbH & Co. KG v. Commission* ECLI:EU:T:2007:267, paragraph 146; Case T-112/05, *Akzo Nobel a.o. v. Commission* ECLI:EU:T:2007:381. See also Case C-97/08 *Akzo Nobel NV and Others v. Commission*: opinion of advocate general Kokott of 23.04.2009 and judgment of 10.09.2009, ECLI:EU:C:2009:262; Case T-85/06 *General Química v. Commission*, judgment of 18.12.2008, ECLI:EU:T:2008:598.

⁶⁵⁵ Case T-330/01, *Akzo Nobel NV v. Commission*, ECLI:EU:T:2006:269, paragraph 83. Joint Cases T-71/03, T-74/03, T-87/03 and T-91/03, *Tokai Carbon Co. Ltd, Intech EDM BV, Intech EDM AG and SGL Carbon AG v. Commission* ECLI:EU:T:2005:220, paragraph 61. Case T-30/05 *Prym and Prym Consumer v. Commission*, ECLI:EU:T:2007:267, paragraphs 146-147.

in a cartel does not amount to proving that the subsidiary acted autonomously with respect to its overall commercial policy.⁶⁵⁶

8.2. Application to this case

- (407) In application of the above principles, it is established by the facts as described in this Decision that the following entities were involved in, or should bear liability for, the infringement within their respective undertaking.
- (408) From 17 January 1997 until 27 February 2009 employees of Scania CV AB ("Scania HQ") directly participated in the anti-competitive contacts. This involved mainly [...] and [...].
- (409) From 20 January 2004 until 18 January 2011 employees of Scania Deutschland GmbH ("Scania DE") directly participated in the anti-competitive contacts. This involved mainly [...] and [...].
- (410) Consequently, the Commission addresses this Decision to the following legal entities, which should be held directly liable for their illicit activities:
- (a) Scania CV AB (publ) from 17 January 1997 until 27 February 2009
 - (b) Scania Deutschland GmbH from 20 January 2004 until 18 January 2011
- (411) From 17 January 1997 until 18 January 2011 Scania AB (publ) directly or indirectly held all shares in Scania CV AB (publ), which in turn in this period directly or indirectly held all shares in Scania Deutschland GmbH (see recital (8)).
- (412) In addition the Commission addresses this Decision to the following entities as parent companies, applying the presumption of exercise of decisive influence because of a 100% shareholding, and those entities should be jointly and severally liable for the illicit activities held in their capacity as parent companies:
- (a) Scania AB (publ) for the conduct of Scania CV AB (publ) from 17 January 1997 until 27 February 2009 and the conduct of Scania Deutschland GmbH from 20 January 2004 until 18 January 2011.
 - (b) Scania CV AB (publ) for the conduct of Scania Deutschland GmbH from 20 January 2004 until 18 January 2011.

8.3. Conclusion

- (413) Consequently, the Commission addresses this Decision to the following legal entities:

Scania AB (publ)

Scania CVAB (publ)

Scania Deutschland GmbH.

⁶⁵⁶ See Judgment of the General Court of 15 June 2005, *Tokai Carbon Ltd, Intech EDM BV, Intech EDM AG and SGL Carbon AG v Commission*, Joined Cases T-71/03, T-74/03, T-87/03 and T-91/03, ECLI:EU:T:2005:220, paragraph 54.

9. DURATION OF THE INFRINGEMENT

- (414) As set out in recital (98) Scania CV AB (publ), represented by [...], participated in a competitor meeting on 17 January 1997 in which future price increases were exchanged with the settling parties. As regards Scania Deutschland GmbH, as set out in recital (132), [...] and [...] of Scania Deutschland GmbH participated in a competitor meeting on 20 January 2004 in which future price increases were exchanged with the settling parties.
- (415) On this basis, the respective dates on which the Addressees started their participation in the infringement are considered to be:
- (a) Scania CV AB (publ): 17 January 1997;
 - (b) Scania Deutschland GmbH: 20 January 2004.
- (416) As regards Scania CV AB (publ), as set out in recital (173) [...] of Scania CV AB (publ) participated in a telephone conference of 27 February 2009 with the headquarters of [...], during which they informed each other in detail about their stock figures per key market. Between 17 January 1997 and 27 February 2009 employees of Scania CV AB (publ) regularly participated in the anti-competitive exchanges (see also section 7.2.4.3).
- (417) On 14 October 2010 [...] of Scania Deutschland GmbH received a list of future price increases of the settling parties collected directly from competitors which affected pricing in 2011. Therefore, the Commission considers that the participation of Scania Deutschland GmbH continued until 18 January 2011, the date on which the Commission started its inspections at the premises of Scania (see recital (61)). Between 20 January 2004 and 18 January 2011 employees of Scania Deutschland GmbH regularly participated in the anti-competitive exchanges.
- (418) Consequently, the respective dates on which the Addressees terminated their direct participation in the infringement are considered to be:
- (a) Scania CV AB (publ): 27 February 2009;
 - (b) Scania Deutschland GmbH: 18 January 2011.
- (419) The duration taken into account for each respective legal entity directly involved in the infringement should therefore be as follows:
- (a) Scania CV AB (publ), from 17 January 1997 to 27 February 2009;
 - (b) Scania Deutschland GmbH, from 20 January 2004 to 18 January 2011.
- (420) Scania AB (publ) held directly or indirectly 100% of the shares in Scania CV AB (publ) and Scania Deutschland GmbH from 17 January 1997 until 18 January 2011. Scania AB (publ) is held liable in its capacity as parent from 17 January 1997 until 18 January 2011. Scania CV AB (publ) held directly or indirectly 100% of the share in Scania Deutschland GmbH from 20 January 2004 until 18 January 2011. Scania CV AB (publ) is, therefore, held liable in its capacity as parent from 20 January 2004 until 18 January 2011.

10. REMEDIES

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

- (421) 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

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

- (422) Given the secrecy in which the arrangements of the infringement were carried out, in this case it is not possible to declare with absolute certainty that the infringement has ceased. It is therefore necessary for the Commission to require the undertaking to which this Decision is addressed to bring the infringement to an end (if it has not already done so) and to refrain from any agreement or concerted practice which may have the same or a similar object or effect.

10.2. Article 23(2) of Regulation (EC) No 1/2003 – Fines

- (423) Under Article 23(2) of Regulation (EC) No 1/2003, the Commission may by decision impose fines on undertakings and associations of undertakings where, either intentionally or negligently, they infringe Article 101 of the Treaty and Article 53 of the EEA Agreement.⁶⁵⁷ The fine must not exceed 10% of the total turnover of the undertaking participating in the infringement in the preceding business year.
- (424) In this case, based on the facts described in this decision, the Commission considers that the infringement was committed intentionally.
- (425) The Commission imposes fines in this case on the undertaking to which this decision is addressed.
- (426) Pursuant to Article 23(3) of Regulation (EC) No 1/2003, the Commission must, in fixing the amount of the fine to be imposed, have regard to all relevant circumstances and particularly the gravity and duration of the infringement, which are the two criteria explicitly referred to in that Regulation. In doing so, the Commission sets the fines at a level sufficient to ensure deterrence. In setting the fines to be imposed, the Commission refers to the principles laid down in its Guidelines on fines.⁶⁵⁸

10.2.1. Calculation of the fines

- (427) According to the Guidelines on fines, the basic amount of the fine to be imposed on the undertaking concerned results from the addition of a variable amount and an additional amount. The variable amount results from a percentage of up to 30% of the value of sales of goods or services to which the infringement relates in a given year (normally, the last full business year of the infringement) multiplied by the number of years of the undertaking's participation in that infringement. The additional amount ("entry fee") is calculated as a percentage between 15% and 25% of the value of sales.⁶⁵⁹ The resulting basic amount can then be increased or reduced for each undertaking if aggravating or mitigating circumstances are found to be present.

⁶⁵⁷ According to Article 5 of Council Regulation (EC) No 2894/94 of 28 November 1994 concerning arrangements for 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 Treaty] of the EC Treaty [...] shall apply *mutatis mutandis*" (OJ L 305, 30.11.1994, p.6).

⁶⁵⁸ Guidelines on the method of setting fines imposed pursuant to Article 23(2)(a) of Regulation (EC) No 1/2003 (OJ C 210, 1.09.2006, p. 2).

⁶⁵⁹ Points 19-26 of the Guidelines on fines.

10.2.2. *The value of sales*

- (428) The basic amount of the fine to be imposed on the undertaking concerned is to be set by reference to the value of sales,⁶⁶⁰ that is to say, the value of the undertaking's sales of goods or services to which the infringement directly or indirectly related in the relevant geographic area in the EEA.
- (429) In this case, the relevant value of sales is the undertaking's sales of heavy trucks both rigid trucks and tractor trucks (as defined in Section 2.1 above) in the EEA. The case does not concern aftersales, other services and warranties for trucks, the sale of used trucks or any other goods or services sold by the undertaking.
- (430) The Commission normally takes the sales made by the undertaking during the last full business year of its participation in the infringement.⁶⁶¹ If the last year is not sufficiently representative, the Commission may take into account one or more other years for the determination of the value of sales. Based on the foregoing, and on the information provided by the undertaking, the Commission used the undertaking's sales in the last full business year of their participation in the infringement, namely 2010.
- (431) The Commission also takes into account the evolution of the EEA territory during the infringement period following the accessions of new Member States to the Union in 2004 and 2007. Regarding the assessment of the fine for the infringement before 1 May 2004, only the proxy for the value of sales within the then 18 Contracting Parties to the EEA agreement is taken into account. From 1 May 2004 until 31 December 2006 the proxy for the value of sales within the then 28 Contracting Parties to the EEA agreement is taken into account. From 1 January 2007 until the end of the infringement the proxy for the value of sales within the then 30 Contracting Parties to the EEA agreement will be taken into account.

Table 1: The value of sales

Undertaking	Value of sales (adjusted for evolution of the EEA territory)
Scania	[...]

- (432) When determining the appropriate level of the fines to be imposed on undertakings that have infringed Article 101 of the Treaty and Article 53 of the EEA Agreement, the Commission must ensure, in light of the specificities of the case before it, that its action has the necessary deterrent effect, while, at the same time, respecting the general Union law principle of proportionality. In order to achieve those objectives, it is appropriate for the Commission to refer to the value of sales of goods or services to which the infringement relates as a basis of setting the fine, as well as the duration and gravity of the infringement. However, while reference to those factors provides a good indication of the order of magnitude of the fine, they should not be regarded as the basis for an automatic and arithmetical calculation method. In line with the principle of proportionality, it is considered that a sufficiently deterrent effect can be achieved in this case without having recourse to the full value of the undertaking's sales of trucks in the EEA in 2010. Therefore, the Commission deems it appropriate

⁶⁶⁰ Point 12 of the Guidelines on fines.

⁶⁶¹ Point 13 of the Guidelines on fines.

to apply point 37 of the Guidelines on fines, which allows it to depart from the methodology of the Guidelines on fines, to only take a proportion of Scania's value of sales into account for the purposes of calculating the variable and additional amounts of the fines. For the purposes of this Decision, the Commission has retained the same proportion of Scania's value of sales as it retained for the settling parties in the Settlement Decision.

- (433) In light of the foregoing, the Commission has used the value of sales set out in Table 2 below for the purposes of calculating the variable and additional amounts of the basic amount of the fines.

Table 2: Retained value of sales for fines calculation

Undertaking	Retained value of sales (after application of point 37 of the Guidelines on Fines)
Scania	[...]

10.2.3. Gravity

- (434) The gravity of the infringement determines the percentage of the retained 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/or whether or not the infringement has been implemented.⁶⁶²
- (435) Price coordination arrangements such as those described in this Decision are, by their very nature, among the most harmful restrictions of competition. The proportion of the value of sales taken into account for such infringements will, therefore, generally be set at the higher end of the scale of the value of sales.⁶⁶³
- (436) The Commission also takes into account the combined market share of the parties in the European Economic Area (EEA), which is above 90 % and the fact that the infringement covered the entire EEA.
- (437) Given the specific circumstances of this case, in particular taking into account the nature, the geographic scope of the infringement as well as the combined market share of the undertakings, the proportion of the retained value of sales to be taken into account is (17%).

10.2.4. Duration

- (438) In calculating the fine to be imposed on each undertaking, the Commission also takes into consideration the duration of the infringement as set out in Section 9.⁶⁶⁴
- (439) The duration to be taken into account for the purposes of calculating the fine to be imposed on the undertaking and the resulting multiplier for duration is set out in Table 3.

Table 3: Duration

⁶⁶² Points 21 and 22 of the Guidelines on fines.

⁶⁶³ Point 23 of the Guidelines on fines.

⁶⁶⁴ Point 24 of the Guidelines on fines.

Undertaking	Duration	Multiplier
Scania	17 January 1997 – 18 January 2011	14

10.2.5. Determination of the additional amount

- (440) The infringement committed by the Addressees involves horizontal price collusion within the meaning of point 25 of the Guidelines on fines. The basic amount should, therefore, include a sum of between 15% and 25% of the retained value of sales to deter the Addressees from entering into such illegal practices in the future.⁶⁶⁵
- (441) For the purposes of deciding the proportion of the retained value of sales to be taken into account, the Commission took into consideration the factors set out in recitals (435) to (436). The proportion of the retained value of sales to be taken into account for the purposes of calculating the additional amount is, therefore, also 17%.

10.2.6. Calculation of the basic amount

- (442) Based on the criteria explained in recitals (427)-(441), the basic amount of the fine to be imposed on Scania is set out in Table 4.

Table 4: Basic amounts of the fine

Undertaking	Basic amount in EUR
Scania	880 523 000

10.2.7. Adjustments to the basic amount of the fine: aggravating or mitigating factors

- (443) The Commission may increase the basic amount where it finds 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 also reduce the basic amount where it considers that mitigating circumstances exist. Those circumstances are listed in a non-exhaustive way in point 29 of the Guidelines on fines.
- (444) The Commission does not consider that there are any aggravating or mitigating circumstances in this case.

10.2.8. Application of the 10% of turnover limit

- (445) Article 23(2) of Regulation (EC) No 1/2003 provides that for the undertaking participating in the infringement, the fine imposed is not to exceed 10% of its total turnover in the preceding business year.
- (446) In this case, the fine calculated (see Table 5) does not exceed 10% of Scania's total turnover in 2016.

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

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

Table 5: Individual fines

⁶⁶⁵ Point 25 of the Guidelines on fines.

Undertaking	Fines (in EUR)
Scania	880 523 000

HAS ADOPTED THIS DECISION:

Article 1

By colluding on pricing and gross price increases in the EEA for medium and heavy trucks; and the timing and the passing on of costs for the introduction of emission technologies for medium and heavy trucks required by EURO 3 to 6 standards, the following legal entities of Scania infringed Article 101 of the Treaty and Article 53 of the EEA Agreement during the periods indicated:

- (a) Scania AB (publ) from 17 January 1997 until 18 January 2011;
- (b) Scania CV AB (publ) from 17 January 1997 until 18 January 2011;
- (c) Scania Deutschland GmbH from 20 January 2004 until 18 January 2011.

Article 2

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

EUR 880 523 000 jointly and severally on Scania AB (publ) and Scania CV AB (publ) of which Scania Deutschland GmbH is held jointly and severally responsible for the amount of EUR 440 003 282.

The fines shall be credited, in euros, within 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.39824

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

Where an undertaking referred to in Article 1 lodges an appeal, that undertaking shall cover the fine by the due date, either by providing an acceptable financial guarantee or making a

provisional payment of the fine in accordance with Article 90 of Commission Delegated Regulation (EU) No 1268/2012.⁶⁶⁶

Article 3

The undertaking comprising the legal entities listed in Article 1 shall immediately bring to an end the infringement referred to in that Article insofar as it has not already done so.

The undertaking comprising the legal entities listed in Article 1 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

Scania AB (publ), Vagnmakarvägen 1, CK3 Reception, 15 187 Södertälje, Sweden

Scania CV AB (publ), Vagnmakarvägen 1, CK3 Reception, 15 187 Södertälje, Sweden

Scania Deutschland GmbH, August-Horch-Straße 10, 56070 Koblenz, Germany

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

Done at Brussels, 27.9.2017

For the Commission

Margrethe VESTAGER

Member of the Commission

⁶⁶⁶ OJ L 362, 31.12.2012, p. 1.