Summary of Commission Decision

of 3 September 2014

relating to a proceeding under Article 101 of the TFEU and Article 53 of the EEA Agreement

(Case AT.39574 — Smart Card Chips)

(notified under document C(2014) 6250)

(Only the Dutch, German, English and French language texts are authentic)

(2017/C 27/12)

On 3 September 2014, the Commission adopted a decision relating to a proceeding under Article 101 of the Treaty on the Functioning of the European Union. In accordance with the provisions of Article 30 of Council Regulation (EC) No 1/2003 [1], the Commission herewith publishes the names of the parties and the main content of the decision, including any penalties imposed, having regard to the legitimate interest of undertakings in the protection of their business secrets. A non-confidential version of the decision is available on the Competition Directorate-General website at the following address:

http://ec.europa.eu/competition/antitrust/cases/

1. INTRODUCTION

The Decision establishes an infringement of Article 101 TFEU and Article 53 of the EEA Agreement and imposes a fine on the following undertakings: Infineon (Infineon Technologies AG), Philips (Koninklijke Philips NV and Philips France SAS), Samsung (Samsung Electronics Co Ltd and Samsung Semiconductor Europe GmbH) and Renesas (Renesas Electronics Corporation and Renesas Electronics Europe Ltd). Renesas is a joint venture of Hitachi (Hitachi Ltd) and Mitsubishi (Mitsubishi Electric Corporation). The said companies took part in a cartel concerning Smart Card Chips.

Smart Card Chips (hereinafter SCC) are used in different smart card applications such as SIM cards for mobile phones, bank cards, pay TV cards, identity cards, biometric passports and transport cards.

2. PROCEDURE

The case started with an application for immunity by Renesas in 2008. Following inspections, the undertaking that has pursued the SCC business of Philips and Samsung also applied for leniency and submitted relevant evidence to the Commission.

The Commission initiated proceedings in 2011 and launched a settlement procedure with Philips, Renesas and Samsung. The settlement discussions were however terminated in 2012 and eventually, proceedings were also initiated against Infineon. A Statement of Objections was sent to Renesas (and its parents Hitachi and Mitsubishi), Samsung, Philips and Infineon on 18 April 2013.

The parties received access to the file and were given the possibility to defend themselves against the preliminary view of the Commission in writing and during an oral hearing that took place on 20 November 2013. All addressees of the Statement of Objections participated in this oral hearing.

The Advisory Committee on Restrictive Agreements and Dominant Positions issued a favourable opinion on 1 September 2014 and the Hearing Officer issued his final report on 2 September 2014 and the Commission adopted the Decision on 3 September 2014.

3. FACTS

The decision concerns a cartel by the four main suppliers of SCC (Renesas, Samsung, Infineon and Philips) in the EEA through a network of bilateral contacts which took place between 2003 and 2005. Against the background of the aggressive market entry of Samsung and Atmel in 2003 and of the price pressure from the two main customers Axalto and Gemplus, competing smart card suppliers chose to collude and coordinate their market behavior. The four companies bilaterally discussed pricing and pre-pricing components such as production capacity and capacity utilisation, future market conduct, as well as on contract negotiations vis-à-vis common customers and exchanged competitively sensitive information.

The cartel existed between 24 September 2003 and 8 September 2005, but the individual duration of each party can be shorter due to a later entrance or earlier exit from this network of bilateral contacts. The duration of the infringement in the draft decision is 23 months for Renesas and Samsung, 18 months for Infineon and 11 months for Philips.

[1] OJ L 1, 4.1.2003, p. 1.

Each addressee is held liable according to its own involvement in the anticompetitive contacts and arrangements, i.e. either as a direct participant, or, in the case of a parent company, because the behaviour of the subsidiary is imputed to the parent given that the parent exercised decisive influence over the conduct of subsidiaries during the period of the infringement.

The decision is addressed to the following undertakings and entities and for the following individual duration: Infineon (Infineon Technologies AG) from 24 September 2003 until 31 March 2005, for its coordination with Samsung and Renesas; Philips (Koninklijke Philips NV and Philips France SAS) from 26 September 2003 until 9 September 2004; Renesas (Renesas Electronics Corporation, Renesas Electronics Europe Limited and Hitachi, Ltd and Mitsubishi Electric Corporation) from 7 October 2003 until 8 September 2005; Samsung (Samsung Electronics Co., Ltd and Samsung Semiconductor Europe GmbH) from 24 September 2003 until 8 September 2005.

4. **LEGAL ASSESSMENT**

The Decision establishes that Renesas, Samsung, Infineon and Philips participated in a single and continuous infringement of Article 101 of the TFEU and Article 53 of the EEA Agreement.

The infringement concerns the SCC business (both SIM and non-SIM chips) within the whole of the EEA.

The parties pursued a single objective which was to limit and control the impact of the aggressive entry of Samsung in the market and downwards price pressure from the two main customers. The parties adopted also a common pattern of behaviour (same type of exchanges, same individuals involved and timing of contacts explained by the cycle business and the presence of Samsung in Europe). For these reasons, although the infringement consisted on bilateral contacts between the parties, these contacts constitute a single and continuous infringement.

The Commission considers that the documents provided by the various leniency applicants have sufficient probative value, but decided not to use one document provided by Samsung at a relatively late stage because a translation was added to this document and the circumstances of this alteration could not be sufficiently explained.

5. **FINES**

In setting the fines to be imposed, the Decision employs the Guidelines on Fines 2006 as well as the provisions of the 2006 Leniency Notice.

The basic amount of the fines is set as a proportion of the undertaking's sales of goods or services to which the infringement directly or indirectly related in the relevant geographic area and in function of the duration of the individual participation. Another proportion of the relevant value of sales is added in order to deter the undertakings from even entering into cartel behaviour.

There are no aggravating circumstances, but there is a differentiation in the degree of the individual parties' involvement in the infringement that is recognised in the level of the individual fines. Infineon is granted a reduction of the fine for mitigating circumstances. In addition, all parties receive a reduction of the fine for the length of the procedure, which lasted 6 1/2 years.

A deterrence multiplier is imposed on Hitachi, Mitsubishi and Samsung, because these undertakings have a particularly large turnover beyond the sales of goods or services to which the infringement relates.

For their cooperation under the 2006 Leniency Notice, the Decision grants immunity from fines to Renesas and a reduction of 30 % to Samsung.

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

(a) Infineon Technologies AG: EUR 82 874 000;

(b) Koninklijke Philips N.V. and Philips France S.A.S., jointly and severally: EUR 20 148 000;

(c) Hitachi, Ltd, Mitsubishi Electric Corporation, Renesas Electronics Corporation and Renesas Electronics Europe Limited, jointly and severally: EUR 0;

Hitachi, Ltd, solely (in the light of the deterrence multiplier applied): EUR 0;

Mitsubishi Electric Corporation, solely (in the light of the deterrence multiplier applied): EUR 0;

(d) Samsung Electronics Co., Ltd and Samsung Semiconductor Europe GmbH, jointly and severally: EUR 35 116 000.