



EUROPEAN COMMISSION  
Competition DG

## ***CASE AT.40182 - PIONEER***

(Only the English text is authentic)

### **ANTITRUST PROCEDURE**

### **Council Regulation (EC) 1/2003**

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Article 7 Regulation (EC) 1/2003

Date: 24.07.2018

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Brussels, 24.7.2018  
C(2018) 4790 final

**COMMISSION DECISION**

**of 24.7.2018**

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

**Case AT.40182 Pioneer**

(Text with EEA relevance)

(Only the English text is authentic)

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of 24.7.2018

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**Case AT.40182 Pioneer**

(Text with EEA relevance)

(Only the English text is authentic)

THE EUROPEAN COMMISSION,

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

Having regard to the Agreement on the European Economic Area,

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

Having regard to Commission Regulation (EC) No 773/2004 of 7 April 2004 relating to the conduct of proceedings by the Commission pursuant to Articles 81 and 82 of the EC Treaty<sup>2</sup>,

Having regard to the Commission Decision of 2 February 2017 to initiate proceedings in this case,

Having given the parties concerned the opportunity to make known their views on the objections raised on 24 May 2018 by the Commission pursuant to Article 27(1) of Regulation (EC) No 1/2003 and Article 12 of Regulation (EC) No 773/2004,

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

Having regard to the final report of the Hearing Officer in this case,

Whereas:

## **1. INTRODUCTION**

- (1) This Decision concerns Pioneer Europe N.V. ("Pioneer Europe"), Pioneer GB Ltd ("Pioneer Great Britain") and Pioneer Corporation.
- (2) Pioneer Europe, Pioneer Electronics Deutschland GmbH ("Pioneer Germany"), Pioneer France SAS ("Pioneer France"), Pioneer Italia ("Pioneer Italia"), Pioneer GB Ltd, Pioneer Electronics Iberica SA ("Pioneer Iberica"), Pioneer Scandinavia AB ("Pioneer Scandinavia"), Pioneer Danmark A/S ("Pioneer Denmark"), Pioneer

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<sup>1</sup> OJ C 115, 9/5/2008, p.47.

<sup>2</sup> OJ L 123, 27.4.2004, p. 18

Benelux BV<sup>3</sup> ("Pioneer Benelux") and Pioneer Norge A/S ("Pioneer Norway") implemented practices aimed at restricting the ability of retailers in Germany, France, Italy, the United Kingdom, Spain, Portugal, Sweden, Finland, Denmark, Belgium, the Netherlands and Norway to determine their resale prices independently and restricted the territories into which retailers could sell. Pioneer Europe, Pioneer GB Ltd, Pioneer Corporation and the legal entities listed in this paragraph are hereinafter together referred to as "Pioneer".

- (3) This Decision establishes that those practices constitute a single and continuous infringement of Article 101 of the Treaty on the Functioning of the European Union ("the Treaty") and Article 53 of the Agreement on the European Economic Area ("EEA Agreement").

## **2. THE PARTIES CONCERNED**

### **2.1. Undertakings subject to the proceedings**

- (4) Prior to 2 March 2015, the Pioneer Home Division business within the EEA was operated by two wholly-owned subsidiaries of Pioneer Corporation (Japan): the Belgium-based entity Pioneer Europe, and the Netherlands-based Pioneer Holding BV ("Pioneer Holding").
- (5) Since 2 March 2015, the Pioneer Home Division is operated by Pioneer & Onkyo Europe GmbH, part of the Japanese consumer electronics manufacturer Onkyo Corporation.<sup>4</sup>
- (6) The period covered by this Decision is from 20 January 2011 to 14 November 2013 ("the relevant period"), and thus precedes the transfer of Pioneer's Home Division to Onkyo Corporation.

### **2.2. Distribution of Pioneer's products in the relevant period in the EEA**

- (7) During the relevant period, Pioneer Home Division products were marketed and distributed in the EEA in two ways:<sup>5</sup>
- (a) Via the wholly-owned subsidiaries or branches of Pioneer Europe and Pioneer Holding in Germany, France, Italy, the United Kingdom, Spain, Portugal, Sweden, Finland, Denmark, Belgium, the Netherlands and Norway: (i) Pioneer Germany; (ii) Pioneer France; (iii) Pioneer Italia; (iv) Pioneer Great Britain; (v) Pioneer Iberica; (vi) Pioneer Scandinavia; (vii) Pioneer Denmark; (viii) Pioneer Benelux; and (ix) Pioneer Norway.<sup>6</sup>

Following an internal reorganisation during 2012, Pioneer Danmark became a representation office of Pioneer Scandinavia.<sup>7</sup>

Moreover, following an internal reorganisation during 2013, Pioneer Germany, Pioneer France, Pioneer Italia, Pioneer Iberica, Pioneer Scandinavia, Pioneer Benelux and Pioneer Norway became branches or representation offices of

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<sup>3</sup> In the course of 2013, Pioneer Benelux BV was reorganised into two separate branches (the "Belgian Division" and the "Dutch branch"), both wholly owned by Pioneer Europe. [...].

<sup>4</sup> Pursuant to an Asset Purchase Agreement in the context of the worldwide sale and transfer of Pioneer's Home audio and video business to Onkyo Corporation - [...] and [...].

<sup>5</sup> [...].

<sup>6</sup> [...].

<sup>7</sup> [...].

Pioneer Europe as of 1 January 2014.<sup>8</sup> Pioneer Great Britain remained, and still remains, however, a separate legal entity, wholly owned by Pioneer Europe.

As for Pioneer Holding, it remained a separate legal entity, wholly owned by Pioneer Corporation, but without any subsidiaries or branches following the above reorganisations.<sup>9</sup>

Pioneer Europe NV is wholly owned<sup>10</sup> by Pioneer Corporation.

- (b) Via independent distributors in Austria, the Czech Republic, Croatia, the Slovak Republic, Malta, Greece, Hungary, Romania and Poland.

### **3. THE GEOGRAPHIC AND PRODUCT AREAS CONCERNED**

- (8) The geographic area covered by this Decision is the 12 countries that are contracting parties to the EEA Agreement where Pioneer distributed its Home Division products via wholly-owned subsidiaries: Germany, France, Italy, the United Kingdom, Spain, Portugal, Sweden, Finland, Denmark, Belgium, the Netherlands and Norway ("the 12 EEA countries").<sup>11</sup>
- (9) The products concerned by this Decision are the consumer home electronic products of Pioneer's Home Division.
- (10) During the relevant period, Pioneer Home Division products in the EEA included compact disc ("CD") players, "blu-ray" players, "steez" audio players, audio-video ("AV") receivers, home theatre products, digital versatile disc ("DVD") players, iPod speakers, speaker sets, mini-systems, Hi-Fi products and "new style" audio products.<sup>12</sup>

### **4. PROCEDURE**

- (11) On 3 December 2013, the Commission carried out an unannounced inspection at the premises of Pioneer Europe in Belgium in relation to suspected resale price maintenance and parallel trade restrictions with regard to Pioneer's consumer electronics products.<sup>13</sup>
- (12) Shortly after the inspection, Pioneer indicated its interest in cooperating with the Commission. On [...], Pioneer submitted further evidence regarding the relevant conduct.
- (13) On 10 March 2015, the Commission carried out an unannounced inspection at the premises of retailer A in France.<sup>14</sup> Retailer A is an online retailer selling inter alia products of Pioneer. [...].

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<sup>8</sup> [...] and [...].

<sup>9</sup> [...].

<sup>10</sup> During the period between 2011 and the date of this Decision, Pioneer Corporation has been directly holding between 69.5% and 74.3% of the shares of Pioneer Europe. During that same period, Pioneer Corporation has been indirectly holding the remaining shares of Pioneer Europe via Pioneer Holding, a wholly owned subsidiary of Pioneer Corporation.

<sup>11</sup> [...].

<sup>12</sup> [...], as well as [...].

<sup>13</sup> Commission Decision C(2013) 8571 of 26 November 2013 ([...]).

<sup>14</sup> Commission Decision C(2015) 1327 of 20 February 2015 ([...]).

- (14) On 10 March 2015, the Commission carried out an unannounced inspection at the premises of retailer B in Germany.<sup>15</sup> Retailer B is an online retailer selling inter alia Pioneer products. On 23 September 2016, retailer B submitted further evidence regarding the relevant conduct.
- (15) On 2 February 2017, the Commission initiated proceedings within the meaning of Article 2(1) of Regulation 773/2004 against Pioneer Corporation, Pioneer Europe, and all legal entities directly or indirectly controlled by them.<sup>16</sup>
- (16) On 7 February 2017, the Commission addressed a request for information to Pioneer Europe under Article 18(2) of Regulation (EC) No 1/2003, to which Pioneer Europe replied on 27 February 2017<sup>17</sup>.
- (17) On [...], Pioneer Corporation and Pioneer Europe submitted a formal offer to cooperate in Case AT.40182 in view of the adoption of a decision pursuant to Article 7 and Article 23 of Council Regulation (EC) No 1/2003 ("settlement submission")<sup>18</sup>. The settlement submission contained:
- an acknowledgement in clear and unequivocal terms of Pioneer Corporation's and Pioneer Europe's joint and several liability for the infringement summarily described as regards its object, the main facts, their legal qualification, including their role and the duration of their participation in the infringement. Pioneer Europe also acknowledged liability on behalf of Pioneer GB Ltd;
  - an indication of the maximum amount of the fine Pioneer Corporation and Pioneer Europe expect to be imposed by the Commission and which they would accept in the context of a cooperation procedure;
  - the confirmation that Pioneer Corporation and Pioneer Europe have been sufficiently informed of the objections the Commission envisages raising against them and that they have been given sufficient opportunity to make their views known to the Commission;
  - the confirmation that Pioneer Corporation and Pioneer Europe do not envisage requesting further access to the file or requesting to be heard again in an oral hearing, unless the Commission does not reflect its settlement submission in the Statement of Objections and the decision;
  - the agreement to receive the Statement of Objections and the final decision pursuant to Articles 7 and 23 of Regulation (EC) No 1/2003 in English.
- (18) Pioneer Corporation and Pioneer Europe made the settlement submission conditional upon the imposition of a fine by the Commission which does not exceed the amount as specified in that submission.
- (19) On 7 June 2018, the Commission adopted a Statement of Objections addressed to Pioneer Europe, Pioneer GB Ltd and Pioneer Corporation.
- (20) On 14 June 2018, Pioneer Europe, Pioneer GB Ltd and Pioneer Corporation submitted their joint reply to the Statement of Objections. Pioneer Europe, Pioneer GB Ltd and Pioneer Corporation reiterated their commitment to follow the cooperation procedure and confirmed that the Statement of Objections reflected the

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<sup>15</sup> Commission Decision C(2015) 1326 of 20 February 2015 ([...]).

<sup>16</sup> Commission Decision C(2017) 546 of 2 February 2017 ([...]).

<sup>17</sup> [...].

<sup>18</sup> [...].

content of the settlement submission and that they did not wish to be heard again by the Commission.

## **5. FACTS**

### **5.1. Introduction**

- (21) During the relevant period, Pioneer Home Division products were distributed in the EEA under both selective distribution systems and open distribution.
- (22) During the relevant period, Pioneer Europe (also referred to as "PEE" in Pioneer internal documents) developed and implemented a pan-European strategy to encourage, coordinate and facilitate the close monitoring of the resale prices of its Home Division products.
- (23) In the context of this pan-European strategy, Pioneer's wholly-owned subsidiaries and branches in the 12 EEA countries took regular measures to monitor the resale prices of retailers and to request and obtain the agreement of retailers to increase resale prices. This was achieved by putting commercial pressure on lower-pricing retailers and, in some cases, by taking retaliatory measures against non-compliant retailers. In addition, Pioneer's subsidiaries in the 12 EEA countries took regular measures to restrict, discourage or prevent the parallel trade of Home Division products within the EEA.

### **5.2. The relevant conduct**

#### *5.2.1. Pioneer Europe's pan-European strategy*

- (24) During the relevant period, Pioneer Europe adopted growth targets for the Pioneer Home Division products. Pioneer's subsidiaries in the 12 EEA countries and their employees were expected to report on a regular basis to Pioneer Europe to demonstrate progress in achieving these targets.<sup>19</sup>
- (25) At the same time, lower online resale prices of Pioneer Home Division products by a few retailers could lead other retailers to adjust their prices downwards, jeopardising the achievement of those targets.<sup>20</sup> This was applicable both to online sales within one and the same of the 12 EEA countries and to cross-border online sales.<sup>21</sup>
- (26) Such lower online resale prices of Pioneer Home Division products led to tensions and complaints between, on the one hand, retailers and, on the other hand, Pioneer Europe and its subsidiaries in the 12 EEA countries.<sup>22</sup>
- (27) Pioneer tried to prevent lower online resale prices of Pioneer Home Division products by getting lower-pricing retailers to increase their resale prices and by preventing them from selling cross-border to other EEA countries. To that end, Pioneer Europe played a key role in encouraging and actively coordinating both the resale price maintenance and the restrictions of parallel trade.
- (28) Interventions by Pioneer were either prompted by complaints from retailers regarding their competitors' resale prices, or initiated "pro-actively" by Pioneer.<sup>23</sup>

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<sup>19</sup> [...].  
<sup>20</sup> [...].  
<sup>21</sup> [...].  
<sup>22</sup> [...]; [...]; [...].  
<sup>23</sup> [...].

The increase in resale prices and the prevention of cross-border online sales to other EEA countries was achieved via serial number tracking that allowed Pioneer Europe to identify the lower-pricing retailer / parallel trader.<sup>24</sup>

- (29) When a lower-pricing retailer was a retailer from the country where the product was sold, the relevant Pioneer subsidiary would directly contact that retailer to agree an increase in the price.<sup>25</sup> When the lower-pricing retailer was a retailer from outside the country where the product was sold, this was usually reported to Pioneer Europe.
- (30) The existence of such an overall strategy and Pioneer Europe's key role in that strategy is confirmed by a number of documents on the Commission's file.<sup>26</sup>
- (a) Pioneer's own description of Pioneer Europe's pan-European strategy<sup>27</sup>
- (31) Pioneer has confirmed the existence of Pioneer Europe's pan-European strategy and has described that strategy as follows.
- (32) First, retailers often complained about online retailers applying lower prices and put pressure on Pioneer Europe and its wholly-owned subsidiaries and branches to intervene and accommodate their concern. Pioneer Europe's subsidiaries and branches contacted the lower-pricing retailers directly and requested them to increase their resale price. Retailers regularly complied with such requests and occasionally asked Pioneer Europe to make sure that other retailers would also increase their resale price. Accordingly, Pioneer Europe also requested the other retailers to increase their price. Pioneer Europe however also approached retailers pro-actively, to prevent complaints from other retailers.
- (33) Second, Pioneer Europe's subsidiaries and branches tried to prevent retailers from selling cross-border in the EEA as this could have had a downward effect on price. Pioneer Europe and its subsidiaries and branches tried to discourage and prevent parallel trade of its Home Division products to avoid retailers selling at lower prices outside "their" territory in the EEA.<sup>28</sup>
- (34) Third, Pioneer Europe played a facilitating role between the Pioneer Europe subsidiaries and branches. It generally did not have direct contact with retailers because the direct arrangements with retailers were usually engaged in by the Pioneer subsidiaries and branches. Pioneer Europe, however, provided the tools (such as the serial number tracking system) for the implementation of these practices. Pioneer Europe, as acknowledged by the evidence it put forward, was thus aware of these practices and encouraged them.<sup>29</sup>
- (35) As explained by Pioneer, in reaction to pressure on its profit margins and pressure from retailers (including from large retail chains), Pioneer Europe took different measures to prevent or slow down the decrease in the resale prices.<sup>30</sup> As put in an internal document: "*Strict control is a must at PEE!*"<sup>31</sup>

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<sup>24</sup> [...]. See also [...].

<sup>25</sup> See the incidents referred to in 5.2.2.1 of this Decision.

<sup>26</sup> Beyond the quoted evidence, see also [...]; [...]; [...]; [...]; [...].

<sup>27</sup> [...].

<sup>28</sup> [...].

<sup>29</sup> [...].

<sup>30</sup> [...].

<sup>31</sup> [...].

- (36) Fourth, Pioneer Europe monitored the resale prices of online retailers, and where a significant price difference with the recommended resale price was identified, it liaised with the relevant subsidiary and branch to agree on the action to be taken against the concerned online retailers.<sup>32</sup>
- (37) Fifth, when the Pioneer Europe subsidiaries and branches identified in "their" countries online retailers selling at lower prices, the responsible employees were asked, often with Pioneer Europe's coordination, to discuss pricing with their contacts at the retailers and get the resale price increased.<sup>33</sup>
- (38) Sixth, with regard to such cross-border online sales, from 2011 to 2013, Pioneer Europe took several measures to discourage or prevent parallel trade of its Home products to avoid lower-pricing retailers selling outside "their territory" in the EEA thereby giving rise to "unstable market prices" in the targeted territories.<sup>34</sup> The retailers of the lower-priced products were identified through serial number tracking, leading mainly to direct contacts with the retailers that sold outside "their" territory and to instructions from Pioneer Europe to the Pioneer Europe subsidiaries and branches that they should prevent parallel trade of the products sold in their home country.<sup>35</sup>
- (b) An internal Pioneer document dated 15 October 2013
- (39) An internal Pioneer document dated 15 October 2013 confirms that for "*internet shop in region wide (two or more country)*", "*price control has to be done by PEE and Sub agreement*".<sup>36</sup> This document also explicitly identifies the responsible Pioneer subsidiary for the prices set by the French pure online retailer A, the German pure online retailer B, and retailer C.
- (c) Evidence [...] retailer A
- (40) Retailer A highlights that, contrary to the brands that are usually organised on a country-by-country basis, retailer A was based in France, made its purchases in France often under advantageous commercial conditions, but sold and shipped products to various Member States where market prices were higher. Due to this territorial organisation, retailer A was often seen by the brands as a maverick player undercutting market prices in various Member States, and often contacted by the brands with requests to increase its prices. Retailer A explicitly refers to Pioneer to illustrate brands with similar practices.<sup>37</sup>
- (d) Evidence [...] retailer B
- (41) Retailer B has confirmed the implementation of similar strategy in Germany and has described that strategy as follows.
- (42) First, Pioneer Germany frequently contacted retailer B Germany's product managers with requests to increase the resale prices of one or more Pioneer products at a particular date and time, and informed retailer B that the other retailers would all increase their resale prices together at the specified date and time. Retailer B generally adjusted its resale prices following such requests, to the price and at the

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<sup>32</sup> [...].

<sup>33</sup> [...].

<sup>34</sup> See the reference to "Unstable market price (parallel import)" in [...].

<sup>35</sup> [...] and [...].

<sup>36</sup> See also [...] and [...].

<sup>37</sup> [...].

time indicated by Pioneer, at least for a certain period of time. Retailer B's German product managers had the impression that other online retailers increased their resale prices as well, at the specified time.<sup>38</sup>

- (43) Second, Pioneer's price increase requests were not related specifically to retailer B's resale prices, but rather corresponded to Pioneer Germany's attempts to increase the resale prices of specific products throughout the market.<sup>39</sup>
- (44) Third, an employee of Pioneer Germany informed an employee of retailer B that he had also made similar price increase requests simultaneously to other retailers that were supposed to apply the same increased price at the same date and time as retailer B. Overall, retailer B had the impression that Pioneer Germany approached most, if not all of its online resale partners with similar requests.<sup>40</sup>

#### 5.2.2. *Specific examples of measures by Pioneer*

- (45) Section 5.2.2.1 provides examples of measures that Pioneer took to get retailers to increase their resale prices.
- (46) Section 5.2.2.2 provides examples of measures that Pioneer took to limit the territories where Pioneer Home Division products could be sold within the EEA.
- (47) Section 5.2.2.3 below provides examples of the role of Pioneer Europe in such measures.

##### 5.2.2.1. Resale price maintenance

###### France - Germany<sup>41</sup>

- (48) France and Germany were Pioneer Europe's largest markets for consumer electronics and were most affected by lower-price online resale prices.<sup>42</sup> In reaction to such lower prices, Pioneer France and Pioneer Germany actively took measures to prevent or slow down the decrease of resale prices charged by certain online retailers,<sup>43</sup> in particular by retailer A in France and retailer B in Germany.

- France

- (49) Pioneer France regularly contacted retailer A mostly over the phone, in order to get retailer A to increase its resale prices. Meetings were also organised between Pioneer France and retailer A on a monthly basis, to discuss new products and turnover figures, and such meetings also provided the opportunity to discuss retailer A's resale prices.<sup>44</sup>
- (50) This has been confirmed by both Pioneer<sup>45</sup> and retailer A,<sup>46</sup> which explained that Pioneer France was very active in requesting price increases, in particular in France, Germany and the United Kingdom. Retailer A also clarified that the price increase requests from Pioneer France were very frequent, i.e. at least every two weeks, and

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38 [...].

39 [...].

40 [...].

41 Beyond the instances set out in this section, various similar instances can be found with regard to resale price maintenance by Pioneer in France and Germany in the [...]; [...], and [...].

42 [...].

43 [...].

44 [...].

45 [...].

46 [...].

were typically made by phone. As a result, very few e-mails reflect those requests, as compared to the frequency of similar requests via phone calls or text messages to retailer A employees. Retailer A furthermore confirmed that, when retailer A received such requests, it understood that Pioneer France was unhappy with retailer A's resale prices and wanted retailer A to increase them.<sup>47</sup>

(51) Pioneer France also took actions that led to the requested price adjustments by several other (albeit not all) retailers.<sup>48</sup>

(52) This is confirmed by the following evidence.

(53) First, in an e-mail of 20 January 2011 by an employee of Pioneer France to two other employees of Pioneer France, the employee suggests in relation to a home cinema amplifier that *"everyone should adjust by Tuesday morning"* (*"on bouge tout le monde pour mardi matin"*). As regards [...] amplifier [...], the employee suggests that retailer D, retailer A and retailer E should be aligned at EUR 140, and concerning a [...] Hi-Fi system, he suggests that everyone should be aligned on retailer F by Tuesday morning (*"tout le monde comme [retailer F] pour mardi matin"*). He concludes by a call for action with no mistakes (*"merci de me confirmer vos actions, et pas de raté!"*) and reminds the recipients that his message should be deleted when settled (*"merci de détruire ce message quand réglé"*).<sup>49</sup>

(54) Second, in an e-mail of 31 January 2011, an employee of Pioneer France sends a screenshot to an employee of retailer A, showing that the [...] product [...] is being sold by all retailers at a price between EUR 490 and 499, with the exception of retailer G (EUR 412) and retailer A (EUR 406.99). The text of the message is: *"[retailer G] tomorrow morning"* (*"[retailer G] demain matin"*), informing retailer A that retailer G will align its price as of the next day and requesting retailer A to also increase its price.<sup>50</sup>

(55) A screenshot from 4 February 2011 indicates that following Pioneer's request, retailer A increased its price from EUR 406.99 to 483.99.

(56) Nevertheless, on 4 February 2011, an employee of Pioneer France sends a further warning to retailer A (*"[...]?"*) attaching a screenshot indicating that all retailers are now selling the concerned product at EUR 499 or more, with the exception of retailer A.<sup>51</sup>

- Germany

(57) Pioneer Germany regularly contacted retailer B, mostly over the phone, in order to get retailer B to increase its resale prices.<sup>52</sup>

(58) This is confirmed by the following evidence.

(59) First, on Wednesday 23 March 2011, an employee of Pioneer Germany sends an e-mail to a product manager at retailer B with a table that includes information on the recommended resale price and the so-called "market prices" ("Marktpreise") for a total of 20 Pioneer home audio/video products in several product sub-categories

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<sup>47</sup> [...].

<sup>48</sup> [...].

<sup>49</sup> [...].

<sup>50</sup> [...] and [...].

<sup>51</sup> [...] and [...].

<sup>52</sup> [...].

(AV- and stereo-receivers, home cinema packages, compact stereo systems, and DVD/Blu-ray-systems). This e-mail follows on from a previous phone call in which an employee of Pioneer Germany explains that retailer B – along with other retailers – should increase its resale prices according to the list by the morning of Friday 25 March 2011.<sup>53</sup>

- (60) Second, on Thursday 24 March 2011, a product manager at retailer B asks his colleague in an internal e-mail to adjust retailer B's resale prices according to the list, by the morning of Friday 25 March 2011 that is the “target date” for the price increase (“*kannst Du bitte die Preise, kurz bevor Du gehst, anpassen [sic]? Freitag früh ist Stichtag...* ”).<sup>54</sup>
- (61) Screenshots [...] <sup>55</sup> show that retailer B adjusted the resale prices of all products listed in the e-mail of 24 March 2011 from the employee of Pioneer Germany.
- (62) Third, retailer B acknowledges that it adhered to Pioneer's (mostly oral) requests and increased its resale prices according to the requests of Pioneer Germany, at the points in time indicated by Pioneer, “*in on average 90% of the cases*”.<sup>56</sup>
- Cross-border resale price maintenance between France and Germany
- (63) Pioneer also regularly simultaneously contacted French online retailers (mainly retailer A) in order to increase the price of Pioneer products sold in Germany, and German online retailers (mainly retailer B) in order to increase the price of Pioneer products sold in France.
- (64) This is confirmed by the following evidence.<sup>57</sup>
- (65) First, Pioneer has acknowledged that when Pioneer France asked retailer A to increase its prices in Germany, retailer A systematically reacted in a very cooperative manner, and confirmed that it would help and increase the prices, except if other retailers in Germany also applied lower prices. In such cases, retailer A only agreed to increase the price under the condition that Pioneer would ensure that other lower-pricing retailers in Germany equally increased their prices.<sup>58</sup> Also, retailer A normally accepted to increase its prices in Germany if, in return, Pioneer France made sure via Pioneer Germany that German online retailers would not undercut the prices in France.<sup>59</sup>
- (66) Second, on 22 February 2012, an employee of Pioneer Europe complains to an employee of Pioneer Germany that retailer A is again applying lower prices for a number of products in Germany (“*currently [retailer A] price is getting in below level*”) and asks him to contact Pioneer France to do the necessary to increase the prices for the relevant products (“*Could you request to PFS [Pioneer France] colleague?*”).<sup>60</sup>

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<sup>53</sup> [...].

<sup>54</sup> [...] and [...].

<sup>55</sup> Screenshots from retailer B's software programme, Navision, that registers all resale price movements, show all the movements in the resale prices applied by retailer B, throughout the relevant period. See [...].

<sup>56</sup> [...].

<sup>57</sup> Beyond the instances set out in this section, various similar instances can be found in [...]; [...]; [...], and in inspection documents, such as [...] and [...].

<sup>58</sup> [...].

<sup>59</sup> [...].

<sup>60</sup> [...].

(67) Third, on 29 February 2012, an employee of Pioneer France informs an employee of Pioneer Germany that he has called retailer A and that retailer A has modified the prices of seven different Home Division products (*"I called [...] and prices have been modified as follow"*), indicating the exact level of the new resale prices, as adjusted by retailer A. The employee of Pioneer France also asks to delete the message after reading (*"PLEASE DELETE AFTER READING"*).<sup>61</sup>

Fourth, on 19 September 2012, an employee of Pioneer France asks retailer B to increase the resale prices of a Hi-Fi product in France: *"I need your quick help with [retailer B] in France which is delivered by [retailer B].de. [...] Minimum price 199 (actual price on web site 167 euros). We currently move up the others retailers"*.<sup>62</sup> The e-mail is entitled *"delete after reading"*.

#### Belgium and the Netherlands<sup>63</sup>

(68) Pioneer Benelux also took a number of steps to prevent or slow down decreases in retail prices.

(69) First, Pioneer Benelux generated lists of resale prices set by retailers on a bi-weekly basis<sup>64</sup> and then contacted the lowest pricing retailers (in particular the "top 5" lowest pricing retailers) to request a price increase. If a retailer did not increase its price, Pioneer Benelux would contact it again with the same request, generally orally and occasionally by e-mail or text message. Each time the conversation with the retailer would become more unpleasant, and could lead to threats by Pioneer Netherlands that if the dealer did not increase the price, Pioneer Netherlands would not support its promotional or marketing campaigns anymore.<sup>65</sup>

(70) This is confirmed by the following evidence:

- resale prices of Pioneer products in Belgium and the Netherlands were frequently discussed between Pioneer Benelux and retailer B. In particular, employees of Pioneer Benelux frequently mentioned that they had also talked with other retailers and asked them to increase their resale prices.<sup>66</sup>
- in an e-mail of 20 September 2013 from an employee of Pioneer Benelux to an employee of retailer B, the employee of Pioneer Benelux sends a screenshot of a Dutch price comparison website and tells the employee of retailer B that other retailers will adjust their resale price for the receiver [...] to EUR 539 immediately (*'[...] passen nu direct aan naar € 539'*). The employee of retailer B responds that he has adjusted the products resale price accordingly and that the changes will be visible on price comparison websites soon (*'ik had al aangepast, zal zo wel zichtbaar zijn'*). As the screenshots of retailer B's Navision system show, retailer B indeed increased its resale price on 20 September 2013 from EUR 506 to EUR 530.02.<sup>67</sup>

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<sup>61</sup> [...]; [...].

<sup>62</sup> [...].

<sup>63</sup> Beyond the instances set out in this section, various similar instances can be found with regard to resale price maintenance by Pioneer in Belgium and the Netherlands in [...]; and in [...].

<sup>64</sup> [...].

<sup>65</sup> [...].

<sup>66</sup> [...].

<sup>67</sup> [...]; [...] and [...].

- (71) Second, Pioneer Benelux applied various forms of retaliatory measures to sanction non-compliant retailers.
- (72) In the first place, in relation to retailers that sold Pioneer products at a resale price more than 10% below the recommended resale price (i.e. below the "going -10%" or "going" price), Pioneer Benelux would not supply follow-up orders (the so-called "back-orders").
- (73) This is confirmed by the following evidence:
- a Pioneer Netherlands' sales report of March 2012 states that "In February we started with a stronger to look closer to internet prices. Helped by the many back-orders we could tell dealers that by the dividing of back-orders we would look to who is at the appointed price level (going -10%) and who is not. This new approach is successful and we will accept only going prices for the new models from April 1st".<sup>68</sup> This indicates that when supplying retailers with follow-up orders, Pioneer Netherlands gave priority to retailers that applied the "appointed" price, and that Pioneer Netherlands would not accept, or only with delay, to supply follow-up order to retailers that charge below the "going" prices.<sup>69</sup>
  - in an e-mail of 26 June 2013, an employee of Pioneer Benelux informs his colleague that a Belgian retailer is selling at a lower price on the Belgian website. The employee of Pioneer Benelux explains that the "going -10%" price is EUR 539 for online sales. ("*Anderen niet aanpassen? Hij is de enige die onder de € 539 - staat! € 539 is de on-line prijs voor de [...] zoals wij die in NLD hanteren*"). Another employee of Pioneer Benelux reports to him 40 minutes later that this has been fixed ("*Top gedaan!*"). On the same day, an e-mail from the same employee of Pioneer Benelux confirms that they agreed on the application of the "going -10%" price with retailers.<sup>70</sup>
  - in an e-mail of 15 October 2013, an employee of Pioneer Benelux informs retailer H that Dutch retailer I has adopted "going -10%" price for a [...] product and that retailer H shall also adjust.<sup>71</sup>
- (74) In the second place, Pioneer Benelux used rebates to "punish" or "reward" retailers depending on the retail price they charged. If retailers sold Pioneer products at a lower resale price, Pioneer Benelux would grant them a lower rebate.<sup>72</sup>
- (75) This is confirmed by the following evidence:
- an e-mail of 29 October 2012 in which an employee of Pioneer Benelux complains about the fact that many online retailers are still selling at lower prices: "We will only be really successful once we do not pay out the agreed criteria bonus and the dealer suffers the consequences of that" ("*We zullen pas echt succes boeken wanneer we de afgesproken criteriabonus niet uit keren en de dealer daar de gevolgen van ondervind*").<sup>73</sup>

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<sup>68</sup> [...].

<sup>69</sup> [...].

<sup>70</sup> [...].

<sup>71</sup> [...].

<sup>72</sup> [...].

<sup>73</sup> [...].

- an e-mail dated 15 August 2012 by retailer J where it confirms that "To qualify for the criteria bonus of 10%, the retailers are expected to ensure price stability" (*"Om aanspraak te kunnen maken op de criteriumbonus van 10%, wordt er prijsrust van de retailers verwacht"*).<sup>74</sup>
- an internal e-mail dated 19 July 2013 in which an employee of Pioneer Benelux confirms that "A bonus will not be paid or only partly if [...] the retailer offers our products at very low prices" (*"Wij behouden ons het recht voor een bonusvergoeding niet of slechts gedeeltelijk uit te keren, [...]doordat de wederpartij onze producten tegen zeer lage prijzen aanbiedt"*).<sup>75</sup>

(76) Third, Pioneer Benelux regularly contacted Pioneer Germany in order for the latter to get the resale prices of German retailers increased in Belgium and/or the Netherlands.

(77) This is confirmed by the following evidence.

(78) In the first place, in an exchange of e-mails of 24 October 2011,<sup>76</sup> Pioneer Benelux complains to Pioneer Germany about the German retailer B selling Pioneer products at a lower price to the Netherlands. On that same day, Pioneer Germany contacts retailer B to get it to increase its prices in the Netherlands (*"Können wir bis dann alles bitte online lassen. Ich werde der Preis ein bisschen erhöhen.. nicht mehr"*). On that same day, retailer B increases the resale prices of most of its top-selling products in the Netherlands. For example, the resale price of (i) the receiver [...] increases from EUR 386 to EUR 449; (ii) the amplifier [...] increases from EUR 125 to EUR 135; (iii) the receiver [...] increases from EUR 568 to EUR 579; (iv) the [...] adapter [...] increases from EUR 49 to EUR 59; (v) the receiver [...] increases from EUR 252 to EUR 274; and (vi) the [...] system [...] increases from EUR 382 to EUR 419.<sup>77</sup>

(79) In the second place, in an e-mail exchange on 14 November 2013, an employee of Pioneer Benelux requested retailer L to inform Pioneer Benelux in advance if it launches a promotional action *"so that it can inform other dealers allowing these dealers to anticipate and prevent an uncoordinated response that risks the price decreasing even more."*<sup>78</sup> Pioneer Benelux made such a request after receiving a complaint from retailer K.

#### Other Pioneer subsidiaries and branches

(80) While Pioneer engaged the most frequently in resale price maintenance in France, Germany, Belgium and the Netherlands, Pioneer's general approach to resale prices was similar in the other European Pioneer subsidiaries and branches.

- The United Kingdom<sup>79</sup>

(81) Pioneer Great Britain also monitored resale prices in the United Kingdom and requested and obtained resale price increases of particular Home Division products sold in the United Kingdom.

<sup>74</sup> [...].

<sup>75</sup> [...], [...] and [...].

<sup>76</sup> [...].

<sup>77</sup> [...].

<sup>78</sup> [...] and [...].

<sup>79</sup> Beyond the instances set out in this section, various similar instances can be found with regard to resale price maintenance by Pioneer in the United Kingdom in [...].

- (82) This is confirmed by the following evidence.
- (83) First, in an e-mail of 7 May 2012, an employee of Pioneer Great Britain requests that retailer A increase the resale price of a [...] portable music system product on retailer A's United Kingdom website from GBP 268 to GBP 299.<sup>80</sup> Instead of complying with that request, retailer A removes the product from its United Kingdom website.<sup>81</sup>
- (84) Second, a sales report by Pioneer Great Britain from November 2012 indicates that: (i) Pioneer Great Britain and retailer M have agreed on the resale price for a particular Hi-Fi product ("*price repositioning to £169.99*"); and (ii) Pioneer Great Britain and retailer N have agreed on the resale price of two other Home Division products ("*We have re-positioned the price to £349.99*").<sup>82</sup>
- (85) Third, Pioneer actively requested price increases from retailer A in specific territories, in particular France, Germany and the United Kingdom.<sup>83</sup>
- Italy<sup>84</sup>
- (86) Pioneer Italia also monitored resale prices in Italy and requested and obtained resale price increases of particular Home Division products sold in Italy and in other EEA territories.
- (87) This is confirmed by the following evidence.
- (88) First, on 20 November 2012, in reaction to an e-mail sent by an employee of Pioneer Italia concerning the price of a Pioneer [...] product by retailer A, an employee of Pioneer Europe sends the following message: "*We are going to ask [retailer A] (through PFS) to modify the price condition on the website. Which price should have be on [retailer A] Italy?*" An employee of Pioneer Italia answers: "*price should be € 499,00*". In a follow-up to this exchange, an employee of Pioneer Europe writes to an employee of Pioneer France: "*Italian market price is 499. [Retailer A] price is lower than this. So could you please negotiate with [retailer A] about this issue for Italian market?*" The employee of Pioneer France responds on 22 November 2012 indicating that retailer A has agreed to change the price for those Home Division products on its Italian website.<sup>85</sup>
- (89) Second, an exchange of e-mails on 5 November 2012 between an employee of Pioneer Italia and an employee of Pioneer France indicates that Pioneer Italia has contacted retailer O to get it to increase the prices on the latter's French website ("*I've just contacted [retailer O]... tomorrow the situation will be fixed. (Wednesday at worst situation)*").<sup>86</sup>
- Spain and Portugal<sup>87</sup>

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<sup>80</sup> [...].

<sup>81</sup> [...].

<sup>82</sup> [...].

<sup>83</sup> [...].

<sup>84</sup> Beyond the instances set out in this section, various similar instances can be found with regard to resale price maintenance by Pioneer in Italy in [...], as well as in inspection documents, such as [...].

<sup>85</sup> [...]; [...].

<sup>86</sup> [...].

<sup>87</sup> Beyond the instances set out in this section, various similar instances can be found with regard to resale price maintenance by Pioneer Iberica in [...]; [...].

- (90) Pioneer Iberica also monitored resale prices in Spain and Portugal and requested and obtained resale price increases of particular Home Division products sold in Spain and Portugal.
- (91) This is confirmed by the following evidence.
- (92) First, in July 2012, an employee of Pioneer Iberica writes to an employee of Pioneer France: *"In Spain retailer C and retailer A are fighting, so they are very aggressive in price. The rest of sites like retailer B and some locals are following. I know that for retailer A you are the contact but do you know who is the contact for retailer C? PED [Pioneer Germany]? By the way could you ask retailer A to increase prices? [...] should be 549€ [...] should be 399€."* The employee of Pioneer France responds on the same day indicating that retailer A has agreed to change the price for those Home Division products on its Spanish website (*"ok for [...], it will done in 1 hour at a maximum"*).<sup>88</sup>
- (93) Second, on 17 September 2012, an employee of Pioneer Iberica informs an employee of Pioneer France that *"Last week [retailer A] dropped [sic] prices of the [...] of course causing a "domino effect" to the rest of pure players"* and that *"The retail price in Spain for this product is 549 EUR"*. The employee of Pioneer Iberica therefore asks the employee of Pioneer France to *"Please ask your customer [retailer A] to be in line with the official price in Spain, we will ask the rest of sites to do the same"*<sup>89</sup>. The employee of Pioneer France responds on the same day indicating that another employee of Pioneer France has contacted an employee from [retailer A] to ask her to increase the price applied by retailer A in Spain for product [...] and that retailer A has responded that there is no problem to increase the price.<sup>90</sup>
- (94) Third, in November 2012,<sup>91</sup> Pioneer Europe writes to Pioneer France stating that *"We got email from [an employee of Pioneer Europe] about [retailer A] price infor in Spain. Many of [...] prices in [retailer A] Spain shows lower than [retailer A] France. Those prices affect Spain market price, push market price down. Could you control [retailer A] price higher than now, help Spain market healthier?"* An employee of Pioneer France responds on the same day that *"[Retailer A] is going to take action."*
- Scandinavia<sup>92</sup>
- (95) Pioneer Scandinavia, with the assistance of Pioneer subsidiaries and branches, also monitored resale prices in Denmark, Finland, Norway and Sweden and requested and obtained resale price increases of particular Home Division products sold in Denmark, Finland, Norway and Sweden.
- (96) This is confirmed by the following evidence.
- (97) First, on 11 February 2011, an employee of Pioneer France sends a screenshot of a price comparison website to retailer A for a Pioneer amplifier sold by retailer A in Sweden. Retailer A appears as the cheapest on the price comparison website. The

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<sup>88</sup> [...] and [...].

<sup>89</sup> [...].

<sup>90</sup> [...].

<sup>91</sup> [...], and [...]; [...].

<sup>92</sup> Beyond the instances set out in this section, reference is also made to [...] showing similar resale price maintenance measures by an employee of Pioneer Scandinavia, and to [...].

employee of Pioneer France asks whether retailer A's price included shipping fees,<sup>93</sup> which is an implicit request to retailer A to increase its resale price for the product in Sweden.<sup>94</sup>

- (98) Second, on December 2012, an employee of Pioneer France informs an employee of Pioneer Scandinavia concerning the price of a Home Division product that "[Retailer A] is going to modify his prices". The response of the employee of Pioneer Scandinavia is: "Thank you very much. It is really helpful. Everything is in line except the [...] exclusive model. Can you please follow up that issue," the issue being the downward effect of retailer A's prices on the prices of Scandinavian retailers, in particular retailer P. Two days later, the employee of Pioneer France writes again to the employee of Pioneer Scandinavia: "[...] tell me that it is done in Norway because [retailer P] is only in Norway." The employee of Pioneer Scandinavia however insists that as retailer P was covering all Nordic countries, prices need to be increased not just in Norway. The employee of Pioneer France responds less than two hours later that he agrees with retailer A that the latter will increase the prices of the relevant products in all mentioned Nordic countries ("Ok for IPM raftly").<sup>95</sup>

#### 5.2.2.2. Restrictions on parallel trade

- (99) There were close links between Pioneer Europe's recourse to resale price maintenance and to restrictions on parallel trade. The purpose of maintaining resale prices at a certain level in all 12 EEA countries led Pioneer to either obtain the agreement of the retailer selling cross-border to "respect" the market prices in those territories and not to undercut them, or to prevent the cross-border sales of the concerned Pioneer products by that retailer.
- (100) During the period 2011-2013, Pioneer Europe took measures to discourage or prevent parallel trade of its Home Division products to avoid lower-pricing retailers selling outside "their territory" in the EEA thereby giving rise to "unstable market prices".<sup>96</sup>
- (101) First, Pioneer Europe identified retailers of lower-priced products through serial number tracking, leading mainly to direct contacts with the retailers that sold outside "their" territory and to instructions from Pioneer Europe to the Pioneer Europe subsidiaries and branches that they should prevent parallel trade of the products sold in their home country.<sup>97</sup> Pioneer Europe also used serial number tracking as the main tool to identify the origin of lower-priced products.<sup>98</sup>
- (102) Second, Pioneer Europe established "blacklists" containing the lower-pricing retailers that were selling "outside their territory", to limit sales to such retailers.<sup>99</sup> Pioneer Europe charged a wholesale price to these "blacklist customers" above the wholesale price charged to other retailers with a view to sanctioning them and "reducing their commercial possibilities" to sell in other countries. Ultimately,

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<sup>93</sup> [...].

<sup>94</sup> [...].

<sup>95</sup> [...] and [...].

<sup>96</sup> See the reference to "Unstable market price (parallel import)" in [...].

<sup>97</sup> [...] and [...].

<sup>98</sup> See in this regard [...].

<sup>99</sup> See for example [...].

blacklisted retailers were "blocked", "meaning that Pioneer Europe did not accept orders from such customers".<sup>100</sup>

(103) This is confirmed by the following evidence.

- in an exchange of e-mails between Pioneer Europe and Pioneer France on 7 October 2011 concerning the launch of the [...] product line, an employee of Pioneer France states that: "*As I said in a previous mail, I consider the problem of parallel import & export as very serious and I fight every day for dealer obey the rules, and I am glad to see that it become a key issue for every subs and PEE also. [...]...*) *Even if this product couldn't be in SD [selective distribution], we really have to manage the sales, in term of price & origin. By origin I mean that every subs has to sell the product in his own country only. That why, to organize a good lunch and to put all the chances of success to our side, I ask officially to PEE [Pioneer Europe] to consider quickly the possibility to track the [...] range too.*" An employee of Pioneer Europe responds that: "*I fully support your request. As you might have seen my information that we will set up a WMNP [tracking system] on these models, it is extremely important to have such action taken in Europe to avoid problems anywhere. We will implement this before the shipment starts.*"<sup>101</sup>
- retailer A confirmed that Pioneer France strictly controlled the territories where Pioneer products could be sold, including products that were not under selective distribution.<sup>102</sup>

(104) Further examples of instances of restrictions on parallel trade from one EEA contracting party to another are set out below.

Restrictions on parallel trade to other EEA countries to and from Belgium and the Netherlands<sup>103</sup>

(105) The examples below confirm that Pioneer restricted parallel trade to other EEA countries to and from Belgium and the Netherlands.

(106) First, in an exchange of e-mails dated March 2013, an employee of Pioneer Europe refers to an important quantity ordered by the Dutch retailer Q and requests Pioneer Benelux (PEB) "*to reconfirm with PEB that [retailer Q] is taking care that those Receivers will not go to German Market. Because PED [Pioneer Germany] is worried about a lot of parallel import from the other country.*" In response, an employee of Pioneer Benelux reassures the employee of Pioneer Europe that retailer Q does not sell Pioneer products to any retailer if retailer Q knows "*that the products will be sold outside our territory*".<sup>104</sup>

(107) Second, e-mail correspondence dated 29 January 2013<sup>105</sup> refers to a mailing relating to the introduction of open product [...], that retailer L has sent out to potential customers both in Belgium and the Netherlands. Having seen that mailing, an employee of Pioneer Belgium complains to his colleague responsible for sales in the

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<sup>100</sup> [...] and [...].

<sup>101</sup> [...].

<sup>102</sup> [...].

<sup>103</sup> Beyond the instances set out in this section, reference is also made to [...], referring to further restrictions on parallel trade by Pioneer with regard to Belgium and the Netherlands.

<sup>104</sup> [...] and [...].

<sup>105</sup> [...]; [...].

Netherlands that he *"hopes that it is a mistake or whether it is the aim that [retailer L] also starts selling to Belgian dealers"* (*"Mag ik hopen dat het hier een vergissing betreft, of is het echt de bedoeling dat [retailer L] ook aan onze Belgische dealers gaat verkopen?"*). In response an employee of Pioneer Belgium contacts retailer L and complains that it is not the "agreement" that the mailing list will also be sent to customers from Belgium. An employee of retailer L apologises to Pioneer and promises *"to again check the mailing list in order to filter out all names of Belgian dealers"* (*"Oeps dat is niet de bedoeling geweest, onze excuses. (...) Ik zal die mailinglijst even goed doorspitten om eventuele Belgische dealers ertussenuit te filteren. Nogmaals onze excuses voor de eventuele verwarring die dit heeft gegeven"*).

Restrictions on parallel trade to other EEA countries to and from France<sup>106</sup>

(108) The examples below confirm that Pioneer restricted parallel trade to other EEA countries to and from France.

(109) First, on 10 April 2013,<sup>107</sup> an employee of Pioneer France complains to Pioneer Europe and Pioneer Scandinavia about Danish retailer R selling open products (products not covered by selective distribution) into France: *"this is the third time that we found product on RDC (Rue Du Commerce ) who come from [retailer R], and at each time, I just only imagine the total quantities that [retailer R] sell, I suppose that we are not talking about just 1 or 2 pieces. now it is enough, I need to know what is the situation and of course what strong action PEE will take against [retailer R]. Even if this product is not in SD, we have to manage that, I suppose that each country has to respect the good business practices, I keep french product in France, I expect the same from the other countries."*

(110) Second, on 11 April 2013,<sup>108</sup> an employee of Pioneer Europe responds by sending the following message to an employee at Pioneer Europe and an employee at Pioneer Scandinavia: *"Dear [employees at Pioneer Europe and Pioneer Scandinavia], Will you take necessary actions immediately"*. In reply, the employee at Pioneer Scandinavia apologises to the employee of Pioneer Europe: *"Dear [employee of Pioneer Europe], I am sorry for the inconvenience this obviously have caused to the french market. We have no intention to gain locally by doing so. [...] We have the commitment from the dealer to respect this and they have accepted. The product is only to be sold through their own shop network.[...] Please let me know immediately if they pop up somewhere again."*

Restrictions on parallel trade to other EEA countries to and from the United Kingdom<sup>109</sup>

(111) The example below confirms that Pioneer restricted parallel trade to other EEA countries to and from the United Kingdom.

(112) On 6 September 2012, an employee of retailer A asks an employee of Pioneer France if retailer A can sell various Home Division products in the United Kingdom (various mini Hi-Fi systems, Hi-Fi systems, receivers, DVD systems, Blu-Ray systems,

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<sup>106</sup> Beyond the instances set out in this section, reference is also made to [...] referring to further restrictions on parallel trade by Pioneer with regard to France and to [...].

<sup>107</sup> [...].

<sup>108</sup> [...].

<sup>109</sup> Beyond the instances set out in this section, reference is also made to [...] referring to further restrictions on parallel trade by Pioneer with regard to the United Kingdom.

turntables, dockings, DVDs). The employee of Pioneer France responds the same day that he will get back to her quickly.<sup>110</sup>

- (113) On 25 September 2012, an employee of Pioneer France sends by e-mail the list of Pioneer products that can be sold in the United Kingdom along with the recommended prices. He stresses in particular that the Pioneer receiver [...] must not be sold in the United Kingdom.<sup>111</sup> Retailer A has confirmed that it respected the prohibition not to sell the relevant products in the United Kingdom.<sup>112</sup>

Restrictions on parallel trade to other EEA countries to and from Germany<sup>113</sup>

- (114) The example below confirms that Pioneer restricted parallel trade to other EEA countries to and from Germany.

- (115) In an exchange of e-mails of 30 October 2012,<sup>114</sup> an employee of Pioneer Germany complains about sales of a home cinema product into Germany by Italian retailer S. In order to prevent such sales in the future, an employee of Pioneer Europe informs the Italian and German subsidiaries that an employee of Pioneer Italy (PEI) has contacted retailer S and that retailer S confirms that *"Re-selling products outside Italy is not his activities at all. [Retailer S] bought 18 pcs of [...] this fiscal year. He claims that, in this case of [...] found in Germany, there must be an incident from one of his customers. (One of his customer sell it beyond his territory). (...) this kind of issue should not be repeated, So PEE requested [...] to give caution to retailer S to say his customer not to sell our product to [...] (beyond the territory). And he agreed to do it and make an effort not to happen this case again. PEE apologize for this inconvenience caused in your country."*

Restrictions on parallel trade to other EEA countries to and from Italy<sup>115</sup>

- (116) The examples below confirm that Pioneer restricted parallel trade to other EEA countries to and from Italy.

- (117) First, Pioneer systematically tried to stop sales by Italian online retailer T to France, via French websites.<sup>116</sup>

- (118) Second, Pioneer Europe and Pioneer France intervened on 4 February 2011,<sup>117</sup> 13 April 2012,<sup>118</sup> 2 August 2012,<sup>119</sup> 10 October 2012<sup>120</sup> and 14 November 2012<sup>121</sup> to stop sales of both selective distribution and open products by Italian online retailer T into France.

- (119) Regarding in particular the intervention on 4 February 2011, an employee of Pioneer France gave a clear instruction to retailer A not to offer any Pioneer products by

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<sup>110</sup> [...].

<sup>111</sup> [...].

<sup>112</sup> [...].

<sup>113</sup> Beyond the instances set out in this section, reference is also made to [...] and [...], and to [...], referring to further restrictions on parallel trade by Pioneer with regard to Germany.

<sup>114</sup> [...]; [...].

<sup>115</sup> Beyond the instances set out in this section, reference is also made to [...], referring to further restrictions on parallel trade by Pioneer with regard to Italy.

<sup>116</sup> [...].

<sup>117</sup> [...].

<sup>118</sup> [...].

<sup>119</sup> [...].

<sup>120</sup> [...].

<sup>121</sup> [...].

online retailer T on its marketplace: *"il semble que vous hébergiez une boutique de [retailer T], site Italien je pense. Il propose en France par votre biais des produits Pioneer. Ils n'ont pas de contrat leur permettant de vendre sur le territoire français, merci de prendre des actions."*<sup>122</sup>

Restrictions on parallel trade to other EEA countries to and from Spain<sup>123</sup>

- (120) The example below confirms that Pioneer restricted parallel trade to other EEA countries to and from Spain.
- (121) In an e-mail on 27 September 2011,<sup>124</sup> Pioneer Germany requests Pioneer Europe to take action against a retailer in Spain that is selling into Germany (*"The dealer destroyed the whole stability on the german market by shipping big quantities to Germany"*).

Restrictions on parallel trade to other EEA countries to and from Denmark, Finland, Norway and Sweden

- (122) The example below confirms that Pioneer restricted parallel trade to other EEA countries to and from Denmark, Finland, Norway and Sweden.
- (123) In an e-mail exchange of 25 July 2012,<sup>125</sup> Pioneer Scandinavia (PES), in agreement with Pioneer Europe, limited the quantities of products sold to Danish retailer U active in Scandinavia: *"[retailer U] - They have received red card for SD products, so no sales for that. Although, the open products are still sold, and sometimes the shipment quantities are quite high considering his territory. I have discussed with PEE to close this account, though due to the fact that it is not legally possible to avoid selling open products, seems that PEE has decided to mention to PES to limit the selling quantities."*

5.2.2.3. Pioneer Europe's role in the implementation of above-mentioned practices<sup>126</sup>

- (124) Pioneer Europe played a key role in encouraging and actively coordinating both resale price maintenance and the restrictions of parallel trade.
- (125) First, Pioneer Europe established the "blacklist" of lower-pricing retailers selling outside *"their territory"*,<sup>127</sup> used for monitoring and retaliatory purposes by the Pioneer subsidiaries (see paragraph (100) above).
- (126) Second, Pioneer Europe managed the serial number tracking system, with a view to identifying the origin of lower-priced products.
- (127) Pioneer Europe's key role in encouraging and actively coordinating both the resale price maintenance and the restrictions of parallel trade is confirmed by the following evidence.
- (128) In the first place, Pioneer acknowledged that between 2011 and 2013, Pioneer Europe took several measures to discourage or prevent parallel trade of its Home

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<sup>122</sup> [...].

<sup>123</sup> Beyond the instances set out in this section, reference is also made to [...], and [...], referring to further restrictions on parallel trade by Pioneer with regard to Spain.

<sup>124</sup> [...]; [...].

<sup>125</sup> [...]; [...].

<sup>126</sup> Beyond the instances set out in this section, reference is also made in particular to [...] with regard to the role of Pioneer Europe in the relevant practices.

<sup>127</sup> [...].

Division products.<sup>128</sup> It further acknowledged that Pioneer Europe played a facilitating role between the Pioneer Europe subsidiaries and branches. Although it generally did not have direct contact with retailers, as the direct arrangements with retailers were usually engaged in by the Pioneer subsidiaries and branches, Pioneer Europe provided the tools (such as the serial number tracking system) for the implementation of these practices. Pioneer Europe was thus aware of these practices and encouraged them.<sup>129</sup>

- (129) Moreover, Pioneer Europe frequently coordinated the actions by various Pioneer subsidiaries and branches with large retailers that were operating in several countries.<sup>130</sup>
- (130) In the second place, in an exchange of e-mails between Pioneer France and Pioneer Europe on 10 October 2011, an employee of Pioneer Europe explicitly agrees to introduce a serial number tracking for the new [...] product line, to warrant the control *"in terms of price & origin"*.<sup>131</sup>
- (131) In the third place, in an e-mail of 6 April 2012, an employee of Pioneer France informs an employee of Pioneer Europe that he has concluded a big deal with retailer F for a product but that his *"biggest fear comes from import on pure internet player, because if we couldn't maintain the retail price, [retailer F] could cancel orders"*. The employee of Pioneer Europe reassures the employee of Pioneer France that *"the products are tracked"* and that Pioneer Europe *"will continue the scanning and also check of customers who is purchasing this model."*<sup>132</sup>
- (132) In the fourth place, in an exchange of e-mails between Pioneer France, Pioneer Iberica and Pioneer Europe on 13 and 14 November 2012, Pioneer Iberica asks for Pioneer Europe's help with regard to lower prices applied by retailer A in Spain (*"I appreciate if PEE can help us to solve the problem"*). Pioneer Europe intervenes directly with Pioneer France to *"control [retailer A] price higher than now, help Spain market healthier"*.<sup>133</sup>
- (133) In the fifth place, in an exchange of e-mails on 20 and 22 November 2012, Pioneer Europe intervenes directly with Pioneer Italy and Pioneer France to achieve the increase of the resale price of a product sold by retailer A in Italy.<sup>134</sup>

### 5.3. Online pricing

- (134) By closely monitoring the resale prices of its retailers, intervening with the lowest pricing retailers to get their prices increased and by preventing cross-border online sales, Pioneer sought to avoid or slow down online price "erosion" across its entire (online) retail network.<sup>135</sup>
- (135) This is confirmed by the following evidence.
- (136) First, Pioneer acknowledged that during the relevant period, all retailers closely monitored online resale prices and immediately lowered their price when they

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<sup>128</sup> [...].

<sup>129</sup> [...].

<sup>130</sup> [...].

<sup>131</sup> [...].

<sup>132</sup> [...].

<sup>133</sup> [...].

<sup>134</sup> [...]; [...]. See also paragraph 88 above.

<sup>135</sup> See for instance [...]; [...].

noticed that a retailer had decreased its online price. As a result, with only one retailer lowering its price, the entire market quickly followed. Every price decrease was followed, regardless of the size of the online retailer that first decreased its price and regardless of its service levels or delivery terms, and even of whether that retailer actually had the product in stock. Many dealers used so-called spiders that are software programmes that track the prices online and automatically adjust to match the lowest price available online, often even without the dealer being aware of that price adjustment.<sup>136</sup>

- (137) Second, Pioneer also explained that the way online pricing affected the price-setting of its products in the relevant period was the reason why it considered it necessary to take measures to prevent or slow down online price erosion by intervening with the lowest pricing retailers to get their prices increased and to prevent cross-border online sales by lower-pricing retailers.<sup>137</sup>
- (138) Third, Pioneer explained that had it not intervened with the lowest pricing retailers to get their prices increased and to prevent cross-border online sales, other retailers would have followed the lower prices of retailers selling via marketplaces or on their own website.<sup>138</sup> As online retailers competed fiercely on price and other retailers adjusted to their prices, retailers with lower prices had a significant impact on the overall level of resale prices, in particular in France, Germany, but also in other European countries.<sup>139</sup>
- (139) Fourth, internal Pioneer e-mails indicate that Pioneer took steps to identify the lower-price retailer that first set the lower price as the others were only following that price ("*who is the aggressor and who is the follower*"<sup>140</sup>). Once the price of the "aggressor" increased, the "followers" would subsequently adjust.

## **6. LEGAL ASSESSMENT**

- (140) Article 101(1) of the Treaty and Article 53(1) of the EEA Agreement (hereinafter "Article 101(1) of the Treaty") prohibit, as incompatible with the internal market, agreements between undertakings, decisions by associations of undertakings and concerted practices which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the internal market and within the territory covered by the EEA Agreement, unless they meet the conditions for an exemption pursuant to Article 101(3) of the Treaty and Article 53(3) of the EEA Agreement (hereinafter "Article 101(3) of the Treaty").

### **6.1. Agreements and concerted practices**

#### *6.1.1. Principles*

- (141) Article 101(1) of the Treaty prohibits agreements between undertakings, decisions by associations of undertakings and concerted practices.
- (142) For the purposes of Article 101(1) of the Treaty, in order for there to be an agreement between undertakings, it is sufficient that at least two undertakings have expressed

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<sup>136</sup> [...].

<sup>137</sup> [...]; [...].

<sup>138</sup> [...].

<sup>139</sup> [...].

<sup>140</sup> [...].

their joint intention to conduct themselves on the market in a specific way.<sup>141</sup> Although Article 101(1) draws a distinction between the concept of concerted practices and the concept of agreements between undertakings, the object is to bring within the prohibition established by that Article a form of co-ordination between undertakings by which, without having reached the stage where an agreement properly so-called has been concluded, they knowingly substitute practical co-operation between them for the risks of competition.<sup>142</sup>

#### 6.1.2. *Application to this case*

- (143) The conduct described in section 5 constitutes one or more agreements and/or concerted practices within the meaning of Article 101(1) of the Treaty. It presents all the characteristics of agreements and/or concerted practices entered into between Pioneer and a number of independent retailers in the 12 EEA countries.
- (144) Via that conduct, Pioneer expressed its intention to act with the retailers in such a way as to limit resale price competition and restrict parallel trade of Pioneer Home Division products.

### 6.2. **Single and continuous infringement**

#### 6.2.1. *Principles*

- (145) An infringement of Article 101 of the Treaty may consist not only in an isolated act but also in a series of acts or a course of conduct, even if one or more aspects of that series of acts or course of conduct could also, in itself and taken in isolation, constitute an infringement of that Article. Accordingly, if the different actions form part of an "overall plan", because their identical object distorts competition within the internal market, the Commission is entitled to impute responsibility for those actions on the basis of participation in the infringement considered as a whole.<sup>143</sup>

#### 6.2.2. *Application to this case*

- (146) The Commission concludes that the conduct described in section 5 constitutes a single and continuous infringement.
- (147) The agreements or concerted practices described in Section 5 were all in pursuit of an identical anti-competitive objective, namely to achieve an increase or avoid a decrease in the resale price of Pioneer Home Division products.
- (148) The evidence demonstrates that resale price maintenance and restrictions on parallel trade formed part of an overall business strategy implemented by Pioneer aimed at maintaining the resale price of Pioneer Home Division products above the price level that the retailers set independently, either by obtaining their agreement to increase the price or by limiting the territories where the retailers were able to sell. Beyond the individual agreements with particular retailers, via the continuous price monitoring, resale price maintenance and restrictions on parallel trade Pioneer had the objective of avoiding the possibility that, by (automatic) adjustments to the prices

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<sup>141</sup> Judgment of 11 January 1990, *Sandoz Prodotti Farmaceutici v Commission*, C-277/87, EU:C:1990:6, paragraph 13; Judgment of 26 October 2000, *Bayer v Commission*, T-41/96, EU:T:2000:242, paragraphs 67 and 173.

<sup>142</sup> Judgment of 14 July 1972, *ICI v Commission*, C-48/69, EU:C:1972:70, paragraph 64; Judgment of 4 June 2009, *T-Mobile Netherlands and Others*, C-8/08, EU:C:2009:343, paragraph 26.

<sup>143</sup> Judgment of 7 January 2004, *Aalborg Portland and Others v Commission*, Joined Cases C-204/00 P, C-205/00 P, C-211/00 P, C-217/00 P and C-219/00 P, EU:C:2004:6, paragraph 258; Judgment of 21 September 2006, *Technische Unie v Commission*, C-113/04 P, EU:C:2006:593, paragraph 178.

of the lowest pricing retailers, market prices of other retailers in the 12 EEA countries would also (automatically) fall, generating a wider price decrease in those countries.<sup>144</sup>

- (149) The existence of a single and continuous infringement is further supported by the fact that the conduct of Pioneer followed the same pattern throughout the relevant period and in each of the 12 EEA countries.

### **6.3. Restriction of competition**

#### *6.3.1. Principles*

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

- (151) Certain types of coordination between undertakings reveal a sufficient degree of harm to competition that it may be found that there is no need to examine their effects.<sup>145</sup> That case-law arises from the fact that certain types of coordination between undertakings can be regarded, by their very nature, as being harmful to the proper functioning of normal competition.<sup>146</sup>

- (152) Consequently, certain collusive behaviour, such as resale price maintenance<sup>147</sup>, may be considered so likely to have negative effects, in particular on the price, choice, quantity or quality of the goods and services, that it may be considered redundant, for the purposes of applying Article 101(1) of the Treaty, to prove that it has actual effects on the market.<sup>148</sup>

#### *6.3.2. Application to this case*

- (153) The Commission concludes that through the conduct described in section 5, Pioneer restricted the ability of retailers to determine independently their resale prices and restricted the territories into which retailers could sell Pioneer Home Division products.

- (154) Such conduct, by its very nature, restricts competition within the meaning of Article 101(1) of the Treaty.<sup>149</sup>

- (155) Price monitoring and adjustment software programmes multiply the impact of price interventions. Consequently, Pioneer, by closely monitoring the resale prices of its

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<sup>144</sup> See section 5.3. above on online pricing.

<sup>145</sup> Judgment of 11 September 2014, *CB v Commission*, C-67/13 P, EU:C:2014:2204, paragraph 49; Judgment of 19 March 2015, *Dole Food and Dole Fresh Fruit Europe v Commission*, C-286/13 P, EU:C:2015:184, paragraph 113.

<sup>146</sup> Judgment of 11 September 2014, *CB v Commission*, C-67/13 P, EU:C:2014:2204, paragraph 50; Judgment of 19 March 2015, *Dole Food and Dole Fresh Fruit Europe v Commission*, C-286/13 P, EU:C:2015:184, paragraph 114.

<sup>147</sup> Judgment of 3 July 1985, *Binon v AMP*, 243/83, EU:C:1985:284, paragraph 43; Judgment of 1 October 1987, *VVR v Sociale Dienst van de Plaatselijke en Gewestelijke Overheidsdiensten*, 311/8, EU:C:1987:418, paragraph 17; Judgment of 19 April 1988, *SPRL Louis Erauw-Jacquery v La Hesbignonne SC*, 27/87, EU:C:1988:183, paragraph 15.

<sup>148</sup> Judgment of 11 September 2014, *CB v Commission*, C-67/13 P, EU:C:2014:2204, paragraph 51; Judgment of 19 March 2015, *Dole Food and Dole Fresh Fruit Europe v Commission*, C-286/13 P, EU:C:2015:184, paragraph 115.

<sup>149</sup> See case law referred to in footnotes 147 and 148 above.

retailers and intervening with the few lowest pricing retailers to get their prices increased, could avoid online price erosion across its online retail network.

#### **6.4. Effect on trade between Member States**

##### *6.4.1. Principles*

(156) Article 101(1) of the Treaty is aimed at agreements and concerted practices which might harm the attainment of an internal market between the Member States, whether by partitioning national markets or by affecting the structure of competition within the internal market.<sup>150</sup>

##### *6.4.2. Application to this case*

(157) The Commission concludes that Pioneer's conduct described in Section 5 was capable of affecting trade between Member States and between contracting parties to the EEA Agreement.

(158) First, during the relevant period, Pioneer's conduct took place in twelve different EEA countries.

(159) Second, the retailers affected by Pioneer's conduct sold Pioneer Home Division products to customers in at least the twelve EEA countries.

(160) Third, Pioneer's conduct was aimed at partitioning national markets.

#### **6.5. Non-applicability of Article 101(3) of the Treaty**

##### *6.5.1. Principles*

(161) Pursuant to Article 4(a) of the Vertical Block Exemption Regulation ("VBER"),<sup>151</sup> the exemption provided for by the VBER does not apply to vertical agreements which, directly or indirectly, in isolation or in combination with other factors under the control of the parties, have as their object the restriction of the buyer's ability to determine its sale price, without prejudice to the possibility of the supplier to impose a maximum sale price or recommend a sale price, provided that they do not amount to a fixed or minimum sale price as a result of pressure from, or incentives offered by, any of the parties.

(162) Moreover, Article 101(1) of the Treaty may be declared inapplicable pursuant to Article 101(3) of the Treaty where an agreement or concerted practice contributes to improving the production or distribution of goods or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefit, and which does not (a) impose on the undertakings concerned restrictions which are not indispensable to the attainment of these objects; and (b) afford such undertakings the possibility of eliminating competition in respect of a substantial part of the products in question.

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<sup>150</sup> Judgment of 15 March 2000, *Cimentaries CBR and Others v Commission*, T-25/95, EU:T:2000:77, paragraph 3930; Judgment of 28 April 1998, *Javico International and Javico AG v Yves Saint Laurent Parfums SA*, C-306/96, EU:C:1998:173, paragraphs 16 and 17.

<sup>151</sup> Commission Regulation (EU) No 330/2010 of 20 April 2010 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to categories of vertical agreements and concerted practices, OJ L 102, 23.4.2010, p. 1.

### 6.5.2. *Application to this case*

- (163) The Commission concludes that Pioneer's conduct was neither exempted under the VBER nor met the conditions for exemption provided for in Article 101(3) of the Treaty.
- (164) Pioneer's conduct was not exempted under the VBER because that conduct had as its object to restrict the ability of retailers of Pioneer Home Division products in the EEA to independently determine their sale price and the territories into which they could sell.
- (165) Pioneer's conduct also did not meet the conditions for exemption provided for in Article 101(3) of the Treaty. In particular, there are no indications that the conduct of Pioneer was indispensable to alleviate the repercussions of free-riding between online and offline sales channels.<sup>152</sup>

## 7. DURATION OF THE INFRINGEMENT

- (166) The infringement started on 20 January 2011 and ended on 14 November 2013.<sup>153</sup>

## 8. LIABILITY

### 8.1. Principles

- (167) Union competition law refers to the activities of undertakings and the concept of an undertaking covers any entity engaged in an economic activity, irrespective of its legal status and the way in which it is financed.<sup>154</sup>
- (168) When an entity infringes Union competition rules, it falls, according to the principle of personal responsibility, to that entity to answer for that infringement. However, the infringement must be imputed unequivocally to a legal person on whom fines may be imposed, and the statement of objections must be addressed to that person. Where several legal persons may be held liable for an infringement committed by one and the same undertaking, they must be regarded as jointly and severally liable for the infringement.
- (169) The conduct of a subsidiary may be imputed to the parent company, even if the parent company does not participate directly in the infringement, where the parent company and the subsidiary form a "single economic unit" and therefore form a single "undertaking" for the purposes of Union competition law. In particular this may be the case where a subsidiary, despite having a separate legal personality, does not decide independently upon its own conduct on the market, but carries out, in all material respects, the instructions given to it by the parent company, regard being had in particular to the economic, organisational and legal links between those two legal entities.<sup>155</sup>
- (170) In the specific case in which a parent holds all or almost all of the capital in a subsidiary that has committed an infringement of Union competition rules, there is a rebuttable presumption that that parent company in fact exercises a decisive

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<sup>152</sup> See Guidelines on vertical restraints, OJ C 130, 19.5.2010, p.1, paragraph 225. See [...].

<sup>153</sup> See paragraphs 53 and 79 above.

<sup>154</sup> Judgment of 13 June 2013, *Versalis v Commission*, C-511/11 P, EU:C:2013:386, paragraph 51.

<sup>155</sup> Judgment of 29 September 2011, *Elf Aquitaine v Commission*, C-521/09 P, EU:C:2011:620, paragraph 54.

influence over its subsidiary. In such a situation, it is sufficient for the Commission to prove that all or almost all of the capital in the subsidiary is held by the parent company in order to take the view that that presumption applies.<sup>156</sup>

- (171) The principle of economic continuity means that liability can be attributed to the legal successor of the legal person responsible for the infringement of the competition rules.<sup>157</sup>

## **8.2. Application to this case**

- (172) The Commission concludes that, having regard to the body of evidence and the facts described in Section 5, and to the parties' clear and unequivocal acknowledgements of the facts and the legal qualification thereof, liability for the infringement should be imputed to the following legal entities:

- (i) Pioneer Europe N.V. for its direct participation in the infringement, as parent company of Pioneer GB Ltd and as legal successor of Pioneer Germany, Pioneer France, Pioneer Italia, Pioneer Iberica, Pioneer Scandinavia, Pioneer Benelux and Pioneer Norway;
- (ii) Pioneer GB Ltd for its direct participation in the infringement; and
- (iii) Pioneer Corporation as the ultimate parent company of Pioneer Europe N.V. and Pioneer GB Ltd.<sup>158</sup>

## **9. REMEDIES AND FINES**

### **9.1. Remedies under Article 7 of Regulation (EC) No 1/2003**

- (173) Where the Commission finds that there is an infringement of Article 101 of the Treaty it may by decision require the undertakings concerned to bring such infringement to an end in accordance with Article 7 of Regulation (EC) No 1/2003.
- (174) The Commission concludes that it is appropriate to require Pioneer Europe, Pioneer GB Ltd and Pioneer Corporation to bring the infringement to an end (if they have not already done so) and to refrain from any measure that has the same or a similar object or effect.

### **9.2. Fines under Article 23(2) of Regulation (EC) No 1/2003 - principles**

- (175) Under Article 23(2) of Regulation (EC) No 1/2003, the Commission may by decision impose on undertakings fines where, either intentionally or negligently, they infringe Article 101 of the Treaty. For each undertaking participating in the infringement, the fine cannot exceed 10% of its total turnover in the preceding business year.
- (176) Pursuant to Article 23(3) of Regulation (EC) No 1/2003, the Commission must, in fixing the amount of fine, have regard both to the gravity and to the duration of the infringement. In setting the fines to be imposed, the Commission will also refer to

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<sup>156</sup> Judgment of 10 September 2009, *Akzo Nobel and Others v Commission*, C-97/08 P, EU:C:2009:536, paragraph 60.

<sup>157</sup> Judgment of 5 December 2013, *SNIA v Commission*, C-448/11 P, EU:C:2013:801, paragraph 22.

<sup>158</sup> See paragraph (7)(a) above. The documents on the Commission's file do not show a direct participation of Pioneer Corporation in the infringement described above. Pioneer Corporation is therefore solely held liable as the parent company of Pioneer Europe N.V. and Pioneer GB Ltd.

the principles laid down in its Guidelines on the method of setting fines imposed pursuant to Article 23(2)(a) of Regulation (EC) No 1/2003<sup>159</sup> ("Guidelines on fines").

- (177) The basic amount of the fine is to be set by reference to the value of sales to which the infringement directly or indirectly relates in the relevant geographic area within the EEA.<sup>160</sup> The basic amount consists of a percentage of the value of sales of up to a maximum 30%<sup>161</sup>, depending on the degree of gravity of the infringement, multiplied by the number of years of the infringement.<sup>162</sup>
- (178) In calculating the value of sales, the Commission normally takes into account the sales made by the undertakings during the last full business year of their participation in the infringement.<sup>163</sup>
- (179) In assessing the gravity of the infringement, the Commission has regard to a number of factors, such as the nature of the infringement, the market shares of the undertaking concerned, the geographic scope of the infringement and whether or not the infringement has been implemented.
- (180) The Commission may take into account circumstances that result in an increase or decrease in the basic amount. It will do so on the basis of an overall assessment which takes account of all the relevant circumstances.<sup>164</sup>
- (181) The Commission pays particular attention to the need to ensure that fines have a sufficiently deterrent effect.<sup>165</sup>

### **9.3. The intentional or negligent nature of the infringement**

- (182) The Commission concludes that, based on the facts described in Section 5, the single and continuous infringement was committed intentionally.

### **9.4. Calculation of the fines**

#### *9.4.1. Value of sales*

- (183) Based on the principles outlined in Section 9.2 and on the information provided by Pioneer, the Commission takes into account, for the purposes of calculating the fine, the value of sales of the Pioneer Home Division in the twelve EEA countries in 2012, which is the last full business year of Pioneer's participation in the infringement.
- (184) Accordingly, the Commission takes into account a value of sales of EUR [80 000 000 – 100 000 000].

#### *9.4.2. Gravity*

- (185) Resale price maintenance and parallel trade restrictions, by their very nature, restrict competition within the meaning of Article 101(1) of the Treaty. However, vertical agreements and concerted practices are, by their nature, often less damaging to competition than horizontal agreements.<sup>166</sup> Taking account of these factors and in

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<sup>159</sup> OJ C 210, 1.9.2006, p. 2.

<sup>160</sup> Point 13 of the Guidelines on fines.

<sup>161</sup> Point 21 of the Guidelines on fines.

<sup>162</sup> Point 19 of the Guidelines on fines.

<sup>163</sup> Point 13 of the Guidelines on fines.

<sup>164</sup> Point 27 of the Guidelines on fines.

<sup>165</sup> Point 30 of the Guidelines on fines.

<sup>166</sup> Judgment of 14 March 2013, *Allianz Hungária Biztosító and Others*, C-32/11, EU:C:2013:160, paragraph 43.

light of the specific circumstances of the case, as described in Section 5, the proportion of the values of sales to be taken into account is set at 8%.

9.4.3. *Duration*

(186) The Commission takes into account the duration of the infringement as set out in Section 7 above.

9.4.4. *Calculation of the basic amount*

(187) Applying the criteria set out above, the basic amount of the fine to be imposed in relation to the single and continuous infringement amounts to EUR [15 000 000 – 25 000 000].

9.4.5. *Aggravating or mitigating factors*

(188) The Commission concludes that there are no aggravating or mitigating circumstances for the single and continuous infringement.

9.4.6. *Application of the 10% turnover limit*

(189) The fine for the infringement does not exceed 10% of Pioneer's total turnover relating to the business year preceding the date of adoption of this Decision pursuant to Article 23(2) of Regulation (EC) No 1/2003.

9.4.7. *Reduction of the fine in view of cooperation*

(190) In order to reflect that Pioneer Europe, Pioneer GB Ltd and Pioneer Corporation have effectively cooperated with the Commission beyond their legal obligation to do so, the fine that would otherwise have been imposed should, pursuant to point 37 of the Guidelines on fines, be reduced by 50%.

(191) Pioneer Europe, Pioneer GB Ltd and Pioneer Corporation have cooperated with the Commission beyond their legal obligation to do so by: (i) providing additional evidence representing significant added value with respect to the evidence already in the Commission's possession as that evidence strengthened to a very large extent the Commission's ability to prove the infringement; (ii) acknowledging the infringement of Article 101 of the Treaty and Article 53 of the EEA Agreement in relation to the conduct; and (iii) waiving certain procedural rights, resulting in administrative efficiencies.

9.4.8. *Conclusion: final amount of the fine*

(192) In conclusion, the final amount of the fine to be imposed for the infringement pursuant to Article 23(2)(a) of Regulation (EC) No 1/2003 for the infringement amounts to EUR 10 173 000.

HAS ADOPTED THIS DECISION:

*Article 1*

Pioneer Europe N.V., Pioneer GB Ltd and Pioneer Corporation infringed Article 101 of the Treaty and Article 53 of the EEA Agreement by participating from 20 January 2011 until 14 November 2013 in a single and continuous infringement aimed at restricting the ability of retailers to determine independently the resale prices of Pioneer Home Division products and restricting the territories into which retailers could sell Pioneer Home Division products.

## *Article 2*

For the infringement referred to in Article 1, a fine of EUR 10 173 000 is imposed on Pioneer Europe N.V., Pioneer GB Ltd and Pioneer Corporation, jointly and severally.

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

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

IBAN: LU02 0019 3155 9887 1000  
BIC: BCEELULL  
Ref.: European Commission – BUFI/AT.40182

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 by making a provisional payment of the fine in accordance with Article 90 of Commission Delegated Regulation (EU) No 1268/2012<sup>167</sup>.

## *Article 3*

Pioneer Europe N.V., Pioneer GB Ltd and Pioneer Corporation shall immediately bring to an end the infringement referred to in Article 1 insofar as they have not already done so.

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

## *Article 4*

This Decision is addressed to

Pioneer Europe N.V., Haven1087, Keetberglaan 1, 9120 Melsele, Belgium

Pioneer GB Ltd, Anteros Building, Odyssey Business Park, West End Road, South Ruislip, Middlesex HA4 6QQ, United Kingdom

Pioneer Corporation, 28-8, Honkomagome 2-chome, Bunkyo-ku, Tokyo 113-0021, Japan

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<sup>167</sup> OJ L 362, 31.12.2012, p. 1.

This Decision shall be enforceable pursuant to Article 299 of the Treaty.

Done at Brussels, 24.7.2018

*For the Commission*

*Margrethe VESTAGER*

*Member of the Commission*

