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Via Regulations.Gov

Ann Carlson
Acting Administrator
National Highway Traffic Safety Administration
1200 New Jersey Avenue SE
Washington, DC 20590

Re: Docket No. NHTSA-2023-0038

Dear Acting Administrator Carlson:

On behalf of Aptiv Services US, LLC (“Aptiv”), we appreciate the opportunity to submit comments concerning the above-referenced docket.

By way of background, Aptiv is a supplier to the automotive sector, but it does not design, manufacture, or sell airbag modules or inflators. It and/or its affiliates are part of a global technology organization that develops safer, greener, and more connected solutions to its customers, enabling a more sustainable future of mobility.

While NHTSA’s Recall Request Letter (“RRL”) and Initial Decision¹ are not directed to Aptiv, Aptiv offers these comments to clarify certain points in this proceeding.

I. Aptiv Is Not a “Manufacturer” Under the Safety Act for Purposes of This Proceeding, and NHTSA’s RRL and Initial Decision Are Not Directed to Aptiv.

First, Aptiv wants to make clear that it is not subject to any final decision, as it is not a “manufacturer” for purposes of this National Traffic and Motor Vehicle Safety Act (the “Safety Act” or the “Act”) proceeding. More specifically, the terms of the Safety Act do not permit a recall decision related to the subject airbag inflators to be directed to anyone other than “the manufacturer of the defective or noncomplying *motor vehicle or replacement equipment*,” neither of which designations applies to Aptiv.² Nor can Aptiv be compelled to file a Part 573 Report in

¹ Recall Request Letter (“RRL”) refers to the April 27, 2023 Recall Request Letter that NHTSA sent to ARC Automotive, Inc. “Initial Decision” refers to NHTSA’s September 5, 2023 Initial Decision in this matter.

² 49 U.S.C. §§ 30120, 30118(b)(2) (emphasis added).

connection with any final decision.³ Additionally, NHTSA communicates by letter to the manufacturers to which its rulings are directed.⁴ The fact that such communications concerning the RRL and Initial Decision were not made to Aptiv confirms the inapplicability of any final ruling to Aptiv.

II. Aptiv Is Not “Old Delphi,” the Entity NHTSA References in Its Initial Decision.

Next, Aptiv is not “Delphi Automotive Systems LLC” (“Old Delphi”)—the entity referenced by NHTSA in its Initial Decision. That entity no longer exists, having gone through bankruptcy proceedings that ended in 2009.

Aptiv provides additional information below concerning it and Old Delphi to further assist with this process and for the benefit of the docket.

Beginning in 2001, Old Delphi manufactured driver-side airbag modules with inflators that Old Delphi either purchased from ARC or made under a license agreement with ARC. Old Delphi was dissolved after the completion of its bankruptcy in 2009, and thereafter no longer made or purchased ARC inflators.

Those bankruptcy proceedings commenced almost 20 years ago, in October 2005, when Old Delphi and certain of its corporate affiliates filed voluntary court petitions under Chapter 11 of the U.S. Bankruptcy Code.⁵

In connection with the completion of Old Delphi’s bankruptcy, a different company—New Delphi⁶—purchased certain of Old Delphi’s assets, effective October 2009. Under the bankruptcy court’s Confirmation Order, New Delphi was separate and distinct from, and did not become a successor to, Old Delphi.⁷

³ See *Nat’l Ass’n of Mfrs. v. SEC*, 800 F.3d 518, 530 (D.C. Cir. 2015); see also *Nat’l Ass’n of Wheat Growers v. Bonta*, 85 F.4th 1263, 1283 (9th Cir. 2023).

⁴ 49 U.S.C. § 30118(a); 49 C.F.R. § 554.10(b).

⁵ See *In re Delphi Corp.*, Case No. 05-44481 (Bankr. S.D.N.Y.) (“Bankr. Dkt.”).

⁶ “New Delphi” refers to the company (and/or various of its affiliates) formed in 2009. New Delphi purchased certain of Old Delphi’s assets and submitted the responses to NHTSA’s information requests in 2015 and 2016 that are discussed in these comments. In November 2017, after New Delphi submitted those responses, the ultimate parent company of New Delphi spun off New Delphi’s Powertrain Systems segment into a new company, known as Delphi Technologies PLC. In connection with that transaction, New Delphi then became Aptiv.

⁷ See, e.g., Confirmation Order, Bankr. Dkt. No. 18707, ¶¶ H.2; see also *id.* ¶¶ H.4, 9, 10; Modified Plan, Exhibit A, Bankr. Dkt. No. 18707-1, § 7.6 at 38-39; Master Disposition Agreement, Exhibit A to Bankr. Dkt. No. 18760, §§ 2.2.2, 9.3. Although Aptiv is not a successor to Old Delphi, Aptiv notes that, as a matter of law, the definition of “manufacturer” in the Safety Act does not mention or encompass a “successor,” 49 U.S.C. § 30102(a)(6), and the term is absent from Part 573.

Approximately one month after the purchase of certain of Old Delphi's assets in 2009, New Delphi sold its North America airbag module business to an Autoliv entity ("Autoliv") via an asset sale. In March 2010, the Asia-Pacific airbag module business was sold to Autoliv.⁸ As a result, New Delphi manufactured or sold a limited quantity of airbag modules with ARC-manufactured or ARC-licensed inflators only for a brief time after the Confirmation Order.

III. NHTSA Has Not Shown an Adequate Basis for Finding a Purported Safety Defect, Particularly in the Sub-Population of Inflators Licensed but Not Made by ARC.

The Act generally requires a safety-related defect to be established through identification of a significant, non-de minimis number or rate of failures, with consideration of whether a common root cause exists.⁹ Aptiv agrees with the position in the comments being submitted by others in the industry regarding the lack of a showing by NHTSA of a defect across the 52 million subject inflators. In addition, Aptiv submits comments below concerning the sub-population of inflators licensed but not made by ARC.

A. NHTSA Has Not Shown a Sufficient Failure Rate in the Sub-Population of Inflators Licensed but Not Made by ARC, Reporting Zero Ruptures.

As with the ARC-manufactured inflators, NHTSA also has not found a failure rate sufficient to support a defect in the sub-population of inflators that were licensed but not made by ARC. In fact, NHTSA's investigation has reported *zero* ruptures of the inflators licensed but not made by ARC.

B. NHTSA Has Not Shown It Conducted Any Investigation of the Manufacturing Process for the Sub-Population of Inflators Licensed but Not Made by ARC.

The sub-population of inflators licensed but not made by ARC was not the focus of NHTSA's investigation or preliminary findings regarding an alleged defect. As a result, differences in their manufacture as compared to ARC's manufacturing process, including as to quality control and testing, were simply not part of the record or NHTSA's evaluation. This is particularly noteworthy as the Initial Decision is based on a purported *manufacturing* defect.¹⁰

⁸ As is true of New Delphi, NHTSA's Initial Decision is similarly not directed to the Korean affiliate that New Delphi identified in the 2015 and 2016 responses to NHTSA. That Korean entity was not subject to Old Delphi's bankruptcy, and as New Delphi advised NHTSA—without waiver of all defenses, including as to jurisdiction—the airbag module business in Korea was sold to Autoliv in 2010. Also as previously advised, the Korean affiliate is a separate company incorporated in Korea, which did not conduct business in the United States.

⁹ See *United States v. Gen. Motors Corp.*, 518 F.2d 420, 427, 438 n.84 (D.C. Cir. 1975); *United States v. Gen. Motors Corp.*, 841 F.2d 400, 401, 413 (D.C. Cir. 1988).

¹⁰ See, e.g., Initial Decision at 4 ("Based on its investigation, NHTSA believes that ruptures may result from the weld slag produced by the friction welding manufacturing process."); *id.* at 5, 13 (discussing ARC manufacturing process).

C. It Would Be Arbitrary and Capricious for NHTSA to Declare a Defect in the Sub-Population of Inflators Licensed but Not Made by ARC.

It would be arbitrary and capricious for NHTSA to declare a defect with respect to the sub-population of inflators not made by ARC, as NHTSA has reported no ruptures from this sub-population of inflators and has conducted no investigation into the manufacturing and control process for this sub-population of inflators.

* * *

In summary, Aptiv is not properly subject to any final decision in this matter, as supported by the fact that the RRL and Initial Decision were not directed to it. In addition, Aptiv is not Old Delphi. Nevertheless, for the benefit of the docket, Aptiv reiterates that, in addition to not providing a sufficient basis to show a safety defect across the 52 million subject inflators, NHTSA has not shown a sufficient basis for declaring a purported safety defect across the sub-population of inflators licensed but not made by ARC, for which NHTSA has reported no ruptures and conducted no investigation into the manufacturing process.

Aptiv appreciates the opportunity to submit these comments and have them considered by NHTSA.

Respectfully submitted,

A handwritten signature in black ink, appearing to be 'J. Savage', followed by a long horizontal line extending to the right.

Justin A. Savage
Partner