



EUROPEAN COMMISSION
DG Competition

CASE AT.39801 – Polyurethane foam

(Only the English text is authentic)

CARTEL PROCEDURE

Council Regulation (EC) 1/2003 and Commission Regulation (EC) 773/2004

Article 7 Regulation (EC) 1/2003

Date: 29/01/2014

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EUROPEAN
COMMISSION

Brussels, 29.1.2014
C(2014) 438 final

COMMISSION DECISION

of 29.1.2014

addressed to:

- Carpenter Co., Carpenter S.A.S., Carpenter GmbH, Carpenter Belgium NV and Carpenter Limited**
- Vita Cayman Limited, Caligen Europe BV, Draka Interfoam B.V., ICOA France S.A.S., Koepp Schaum GmbH, Metzeler Schaum GmbH, Tramico S.A.S., UAB Vita Baltic International, Vita Polymers Poland Sp. z o.o., Veenendaal Schaumstoffwerk GmbH, Vita Cellular Foams (UK) Limited and Vita Industrial (UK) Limited**
- Eurofoam GmbH, Eurofoam Deutschland GmbH Schaumstoffe, Eurofoam KFM GmbH, Eurofoam Hungary Kft, Eurofoam Polska Sp. z o.o. and S.C. Eurofoam S.r.l.**
- Recticel N.V./S.A., Recticel s.a.s., Recticel OÜ, Recticel Limited, Recticel Verwaltung GmbH & Co. KG and Recticel B.V.**
- Greiner Holding AG**

**relating to a proceeding under Article 101 of the Treaty on the Functioning of the
European Union
(AT.39801 – Polyurethane Foam)**

(Only the English text is authentic)

TABLE OF CONTENTS

1.	INTRODUCTION	4
2.	THE INDUSTRY SUBJECT TO THE PROCEEDINGS	4
2.1.	The product	4
2.2.	The undertakings subject to the proceedings	5
2.2.1.	Carpenter	5
2.2.2.	Vita.....	5
2.2.3.	Eurofoam.....	6
2.2.4.	Recticel	6
2.2.5.	Greiner	7
3.	PROCEDURE.....	7
4.	DESCRIPTION OF THE EVENTS	9
4.1.	Nature and scope of the infringement	9
4.2.	Geographic scope of the cartel.....	10
4.3.	Duration of the infringement	10
5.	LEGAL ASSESSMENT	10
5.1.	Application of Article 101 of the Treaty.....	10
5.1.1.	The nature of the infringement.....	10
5.1.1.1.	Agreements and concerted practices.....	10
5.1.1.2.	Single and continuous infringement	12
5.1.2.	Restriction of competition.....	13
5.1.3.	Effect upon trade between Member States	13
5.1.4.	Non-applicability of Article 101(3) of the Treaty.....	14
6.	DURATION OF THE INFRINGEMENT	14
7.	LIABILITY	14
7.1.	Principles.....	14
7.2.	Carpenter.....	15
7.2.1.	Nature of involvement and liability	15
7.2.2.	The product and geographic scope of Carpenter's involvement	16
7.2.3.	The duration of Carpenter's involvement.....	16

7.3.	Vita.....	16
7.3.1.	Nature of involvement and liability	16
7.3.2.	The product and geographic scope of Vita's involvement	16
7.3.3.	The duration of Vita's involvement.....	16
7.4.	Recticel	17
7.4.1.	Nature of involvement and liability	17
7.4.2.	The product and geographic scope of Recticel's involvement.....	17
7.4.3.	The duration of Recticel's involvement	17
7.5.	Eurofoam and its parents	17
7.5.1.	Nature of involvement and liability	17
7.5.2.	The product and geographic scope of Eurofoam's involvement.....	18
7.5.3.	The duration of Eurofoam's involvement	18
8.	REMEDIES.....	18
8.1.	Article 7 of Regulation (EC) No 1/2003	18
8.2.	Article 23(2) of Regulation (EC) No 1/2003 – Fines.....	18
8.3.	Calculation of the fines	19
8.3.1.	The value of sales.....	19
8.3.2.	Determination of the basic amount of the fines	21
8.3.2.1.	Gravity	21
8.3.2.2.	Duration	21
8.3.2.3.	Additional Amount	22
8.3.2.4.	Calculations and conclusions on basic amounts	22
8.3.3.	Adjustments to the basic amount: aggravating or mitigating factors.....	23
8.3.4.	Deterrence	23
8.4.	Application of the 10% turnover limit	23
8.5.	Discretionary limitation of the fine	24
8.6.	Application of the Leniency Notice	25
8.7.	Application of the Settlement Notice.....	25
8.8.	Conclusion: final amount of individual fines to be imposed in this Decision	25

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- Vita Cayman Limited, Caligen Europe BV, Draka Interfoam B.V., ICOA France S.A.S., Koepp Schaum GmbH, Metzeler Schaum GmbH, Tramico S.A.S., UAB Vita Baltic International, Vita Polymers Poland Sp. z o.o., Veenendaal Schaumstoffwerk GmbH, Vita Cellular Foams (UK) Limited and Vita Industrial (UK) Limited
- Eurofoam GmbH, Eurofoam Deutschland GmbH Schaumstoffe, Eurofoam KFM GmbH, Eurofoam Hungary Kft, Eurofoam Polska Sp. z o.o. and S.C. Eurofoam S.r.l.
- Recticel N.V./S.A., Recticel s.a.s., Recticel OÜ, Recticel Limited, Recticel Verwaltung GmbH & Co. KG and Recticel B.V.
- Greiner Holding AG

relating to a proceeding under Article 101 of the Treaty on the Functioning of the European Union
(AT.39801 – Polyurethane Foam)

(Only the English text is authentic)

THE EUROPEAN COMMISSION,

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

Having regard to Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty², and in particular Article 7 and Article 23(2) thereof,

Having regard to Commission Regulation (EC) No 773/2004 of 7 April 2004 relating to the conduct of proceedings by the Commission pursuant to Articles 81 and 82 of the EC Treaty³, and in particular Article 10a thereof,

Having regard to the Commission decision of 15 November 2012 to initiate proceedings in this case,

¹ OJ, C 115, 9/5/2008, p.47.

² OJ L 1, 4.1.2003, p.1. With effect from 1 December 2009, Articles 81 and 82 of the EC Treaty have become Articles 101 and 102, respectively, of the Treaty on the Functioning of the European Union ("TFEU"). The two sets of provisions are, in substance, identical. For the purposes of this Decision, references to Articles 101 and 102 of the TFEU should be understood as references to Articles 81 and 82, respectively, of the EC Treaty when where appropriate. The TFEU also introduced certain changes in terminology, such as the replacement of "Community" by "Union" and "common market" by "internal market".

³ OJ L 123, 27.4.2004, p. 18.

Having given the undertakings concerned the opportunity to make known their views on the objections raised by the Commission pursuant to Article 27(1) of Regulation (EC) No 1/2003 and Article 11(1) 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 case⁴,

Whereas:

1. INTRODUCTION

- (1) The addressees of this Decision are liable for a single and continuous infringement of Article 101 of the Treaty in the sector of flexible polyurethane foam. The infringement consisted in direct and indirect price coordination of flexible foam products and covered a total of 10 Member States. It lasted from 26 October 2005 until 27 July 2010.
- (2) This Decision is addressed to the following legal entities:
 - Carpenter Co., Carpenter S.A.S., Carpenter GmbH, Carpenter Belgium NV and Carpenter Limited. ("Carpenter")
 - Vita Cayman Limited, Caligen Europe BV, Draka Interfoam B.V., ICOA France S.A.S., Koepp Schaum GmbH, Metzeler Schaum GmbH, Tramico S.A.S., UAB Vita Baltic International, Vita Polymers Poland Sp. z o.o., Veenendaal Schaumstoffwerk GmbH, Vita Cellular Foams (UK) Limited and Vita Industrial (UK) Limited. ("Vita")
 - Eurofoam GmbH, Eurofoam Deutschland GmbH Schaumstoffe, Eurofoam KFM GmbH, Eurofoam Hungary Kft, Eurofoam Polska Sp. z o.o. and S.C. Eurofoam S.r.l. ("Eurofoam")
 - Recticel N.V./S.A., Recticel s.a.s., Recticel OÜ, Recticel Limited, Recticel Verwaltung GmbH & Co. KG and Recticel B.V. ("Recticel")
 - Greiner Holding AG ("Greiner")

2. THE INDUSTRY SUBJECT TO THE PROCEEDINGS

2.1. The product

- (3) The product concerned by the anticompetitive conduct is flexible polyurethane foam. Flexible polyurethane foam can be sub-divided according to two types of applications: comfort foam applications (foam used for example in upholstered furniture, beds, mattresses, pillows and mats) and technical foam applications (foam

⁴ Final report of the Hearing Officer of 17 January 2014.

used for example in automotive, aviation and medical product industries). The anticompetitive conduct identified in this case covers, on the one hand, polyurethane comfort foam and, on the other hand, basic polyurethane technical foam supplied in the form of rolls and blocks.

2.2. The undertakings subject to the proceedings

2.2.1. Carpenter

(4) The relevant legal entities within Carpenter undertaking are:

- (a) Carpenter Co., with registered offices at 5016 Monument Avenue, P.O. Box 27205, Richmond, Virginia 23261, USA;
- (b) Carpenter S.A.S. with registered offices at Z.I. Boulevard des Bretonnières, B.P. 10085, 49182 Saint-Barthélémy-d'Anjou Cedex, France;
- (c) Carpenter GmbH with registered offices at Industriestrasse 2, 99334 Amt Wachsenburg-Thörey, Germany;
- (d) Carpenter Belgium NV with registered offices at Wijnendalstraat 171, B-8800 Roeselare, Belgium; and
- (e) Carpenter Limited with registered offices at Dinting Lodge Industrial Estate, Glossop, Derbyshire, SK13 6LE, UK.

(5) The undertaking's world-wide turnover in 2012 was EUR [1-1.5 billion]. It is active in the foam, carpet and furniture cushioning, fibre, air filtration media and bedding and consumer products sectors.

2.2.2. Vita

(6) The relevant legal entities within Vita undertaking are:

- (a) Vita Cayman Limited with registered offices at (c/o Maples Corporate Services Limited) PO Box 309, Ugland House, South Church Street, George Town, Grand Cayman, KY1-1104, Cayman Islands;
- (b) Caligen Europe BV with registered offices at Konijnenberg 59, NL-4825 BC Breda, Netherlands;
- (c) Draka Interfoam B.V. with registered offices at Van den Endelaan 15, 2182 ES Hillegom, Netherlands;
- (d) ICOA France S.A.S. with registered offices at Zone Industrielle Sud, 10100, Crancey, France;
- (e) Koepp Schaum GmbH with registered offices at Rheingaustrasse 19, 65375 Oestrich-Winkel, Germany;
- (f) Metzeler Schaum GmbH with registered offices at Donaustrasse 51, 87700 Memmingen, Germany;

- (g) Tramico S.A.S. with registered offices at Zone Industrielle de l'Europe, 76220 Gournay-en-Bray, France;
 - (h) UAB Vita Baltic International with registered offices at Jurgiskiai, 62181 Alytus, Lithuania;
 - (i) Vita Polymers Poland Sp. z o.o. with registered offices at ul. Sienkiewicza 31/33, 56-120 Brzeg Dolny, Poland;
 - (j) Veenendaal Schaumstoffwerk GmbH with registered offices at Bamberger Strasse 58, 96215, Lichtenfels, Germany;
 - (k) Vita Cellular Foams (UK) Limited with registered offices at Times Place, 45 Pall Mall, London SW1Y 5JG, UK; and
 - (l) Vita Industrial (UK) Limited with registered offices at Times Place, 45 Pall Mall, London SW1Y 5JG, UK.
- (7) The undertaking's world-wide turnover in 2013 was EUR 617.3 million. It is active in the household and leisure, transportation, building and construction and industrial sectors.

2.2.3. *Eurofoam*

- (8) The relevant legal entities within Eurofoam are:
- (a) Eurofoam GmbH with registered offices at Greinerstrasse 70, 4550 Kremsmünster, Austria;
 - (b) Eurofoam Deutschland GmbH Schaumstoffe with registered offices at Hagenauer Strasse 42, 65203 Wiesbaden, Germany;
 - (c) Eurofoam KFM GmbH with registered offices at Rosenauer Strasse 28, 96487 Dörfles-Esbach, Germany;
 - (d) Eurofoam Hungary Kft with registered offices at 3792 Sajóbáony, Pf. 16, Hungary;
 - (e) Eurofoam Polska Sp. z o.o. with registered offices at 95-100 Zgierz, ul. Szczawińska 42, Poland; and
 - (f) S.C. Eurofoam S.r.l. with registered offices at Str. Gării, nr 13 557260 Selimbăr, Sibiu, Romania.
- (9) Eurofoam is a 50/50 Joint Venture between Recticel N.V./S.A. and Greiner Holding AG. Eurofoam produces and supplies polyurethane foam in particular in Central and Eastern Europe. Eurofoam's worldwide turnover in 2013 was EUR 370.4 million.

2.2.4. *Recticel*

- (10) The relevant legal entities within Recticel undertaking are:

- (a) Recticel N.V./S.A. with registered offices at Avenue des Olympiades 2, 1140 Evere, Belgium;
 - (b) Recticel s.a.s. with registered offices at 7 rue du Fossé Blanc, 92622 Gennevilliers CEDEX, France;
 - (c) Recticel OÜ with registered offices at Peterburi tee 48A, 11415 Tallinn, Estonia;
 - (d) Recticel Limited with registered offices at Bluebell Close, Clover Nook Industrial Park, Alfreton, Derbyshire DE55 4RD, UK;
 - (e) Recticel Verwaltung GmbH & Co. KG with registered offices at Rolandsecker Weg 30, 53619 Rheinbreitbach, Germany; and
 - (f) Recticel B.V. with registered offices at Spoorstr. 69, Kesteren 4041 CL, Netherlands.
- (11) The undertaking's world-wide turnover in 2013 was EUR 976.8 million. It is a producer and converter of polyurethane foams for the industrial, insulation and automotive industries and is a manufacturer of bedding products.

2.2.5. Greiner

- (12) The relevant legal entity is Greiner Holding AG with registered offices at Greinerstrasse 70, 4550 Kremsmünster, Austria. Greiner is a family owned company which is active in particular in the packaging, foam and tool industries. It withdrew from the flexible polyurethane foam business when Eurofoam became a full-function Joint Venture in 1997. Greiner's worldwide turnover in 2012 was EUR 604.5 million.

3. PROCEDURE

- (13) On 30 April 2010 Vita applied for immunity under the Commission Notice on Immunity from fines and reduction of fines in cartel cases⁵ ("the Leniency Notice"). Vita's immunity application [...]. On 19 July 2010, the Commission granted Vita conditional immunity from fines pursuant to point 8(a) of the Leniency Notice.
- (14) Between 27 and 31 July 2010, the Commission carried out unannounced inspections at the premises of Eurofoam, Recticel, Carpenter and another undertaking in [...].
- (15) On 1 August 2010, following the inspections, the Commission received a joint leniency application from Recticel, Greiner and their Joint Venture, Eurofoam.
- (16) The Commission also sent several requests for information under Article 18 of Regulation (EC) No 1/2003.
- (17) On 5 April 2011, the Commission carried out an unannounced inspection at the premises of Carpenter in [...]. On 15 November 2012, the Commission initiated

⁵ Commission notice on immunity from fines and reduction of fines in cartel cases, OJ C 298, 8.12.2006, p. 17.

proceedings pursuant to Article 11(6) of Regulation (EC) No 1/2003 against the addressees of this Decision (also referred to as "parties" or individually "party") with a view to engage in settlement discussions with the parties. After each party had confirmed its willingness to engage in settlement discussions, discussions were started between [...] and [...].

- (18) Settlement meetings between each party and the Commission took place between [...] and [...]. During those meetings, the Commission informed the parties of the objections that it intended to raise against them and disclosed the main pieces of evidence relied upon by the Commission. The parties were also given access to the relevant part of the Commission file at the Commission premises[...]. Later the parties were also given a copy of the relevant pieces of evidence which they had already had access to as well as a list of all the documents in the file and were also offered the opportunity to access all the documents listed. The Commission also provided the parties with an estimation of the range of fines it was likely to impose.
- (19) Each party expressed its view on the objections that the Commission intended to raise against them. The parties' comments were carefully considered by the Commission and, where appropriate, taken into account. At the end of the settlement discussions, all parties considered that there was a sufficient common understanding as regards the potential objections and the estimation of the range of likely fines to continue the settlement process.
- (20) Between [...] and [...], the parties submitted to the Commission their formal request to settle pursuant to Article 10a (2) of Regulation (EC) No 773/2004⁶ (the "settlement submissions"). Each party's settlement submission contained the following:
 - an acknowledgement in clear and unequivocal terms of the party's liability for an infringement of Article 101 of the Treaty summarily described as regards its object, the main facts, their legal qualification, including the party's role and the duration of its participation in the infringement in accordance with the results of the settlement discussions;
 - an indication of the maximum amount of the fine the party expected to be imposed by the Commission and which it would accept in the framework of a settlement procedure;
 - the party's confirmation that it had been sufficiently informed of the objections the Commission envisages raising against it and that it had been given sufficient opportunity to make its views known to the Commission;
 - the party's confirmation that it does not envisage requesting access to the file or requesting to be heard in an oral hearing, unless the Commission does not reflect its settlement submission in the Statement of Objections and the Decision;

⁶ Commission Regulation (EC) No 773/2004 of 7 April 2004 relating to the conduct of proceedings by the Commission pursuant to Articles 81 and 82 of the EC Treaty, OJ L 123, 27.4.2004, p. 18.

- the party's 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.

(21) On 23 October 2013 the Commission adopted a Statement of Objections addressed to Carpenter, Vita, Eurofoam, Recticel and Greiner. All the parties replied to the Statement of Objections by confirming that it reflected the contents of their settlement submissions and that they therefore remained committed to following the settlement procedure.

4. DESCRIPTION OF THE EVENTS

4.1. Nature and scope of the infringement

(22) The infringement concerned a cartel, the ultimate aim of which was to pass on raw material price increases to their customers and to avoid aggressive price competition between them with regard to customers. In order to achieve this aim, an overall European-wide understanding was in place between the cartel participants. In the framework of this overall understanding, the cartel participants engaged in anticompetitive behaviour at various management levels leading to price coordination in 10 Member States.

(23) In order to achieve the overall aim of passing on raw material price increases to customers and avoiding aggressive price competition⁷, the cartel participants engaged in anticompetitive practices in direct and indirect price coordination. These covered in particular:

(a) the coordination of :

- the timing and the magnitude of target price increases, and
- the prices to be charged to certain specific customers⁸; and

(b) at times refraining from poaching each other's customers during periods of price increases.⁹

(24) Within this overall European framework, price increases were discussed mainly in the margins of the meetings of their European Trade Association both between senior European managers as well as between regional and national managers. In addition to contacts on the side-lines of trade association meetings, there were also numerous telephone calls between representatives of the cartel members.¹⁰

(25) The respective price increases were subsequently implemented at regional and/or national level within the sphere of autonomy allocated to the regional and national managers within each undertaking. The coordination at regional and national levels took place within the framework of a wider European understanding leading to price

⁷ See for example [...].

⁸ See for example [...].

⁹ See, for example [...].

¹⁰ See for example [...].

coordination in 10 Member States. The behaviour at regional and national level was followed by senior European managers. Accordingly, disputes and complaints about aggressive price competition at the regional or national level could be referred back to the European level for resolution.¹¹

4.2. Geographic scope of the cartel

- (26) The overall geographic scope of the infringement concerned 10 EU Member States which are France, Belgium, the Netherlands, the UK, Germany, Austria, Hungary, Romania, Poland and Estonia.¹² While each of the undertakings was involved in the cartel contacts at European level, they did not all have an individual presence in all 10 affected Member States. This is reflected in their individual liabilities as defined in Section 7.

4.3. Duration of the infringement

- (27) The evidence demonstrates that the cartel contacts involving the undertakings concerned started at least on 26 October 2005. On that date a top-level meeting of the European Trade Association took place [...].¹³ The cartel covered Estonia from 9 July 2007, when Recticel acquired Espe Eesti OÜ.
- (28) Since 26 October 2005 there were regular contacts at various management levels between the cartel participants. There is no indication that the anticompetitive arrangements came to an end before the Commission inspections in this case. The infringement is therefore considered to have ended on 27 July 2010 which is the first day of the inspections.
- (29) On this basis, this infringement is considered to have started on 26 October 2005 and to have ended on 27 July 2010. As for Estonia, the cartel is considered to have started on 9 July 2007. For Vita the end date is considered to be 30 April 2010 when it applied for a marker.

5. LEGAL ASSESSMENT

- (30) The legal assessment, set out in this Section, takes into account the evidence, the parties' clear and unequivocal acknowledgement of the facts as described in Section 4 and the legal qualification thereof, and the parties' replies to the Statement of Objections.

5.1. Application of Article 101 of the Treaty

5.1.1. The nature of the infringement

5.1.1.1. Agreements and concerted practices

(a) Principles

¹¹ See for example [...].

¹² See for example [...].

¹³ See for example [...].

- (31) Article 101(1) of the Treaty prohibits anticompetitive *agreements between undertakings, decisions by associations of undertakings and concerted practices*¹⁴.
- (32) An *agreement* may be said to exist when the undertakings adhere to a common plan which limits or is likely to limit their individual commercial conduct by determining the lines of their mutual action or abstention from action in the market. Although Article 101(1) of the Treaty draws a distinction between the concept of “*concerted practices*” and that of “*agreements between undertakings*”, the object is to bring within the prohibition of those Articles 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 competition¹⁵. Thus, conduct may fall under Article 101 of the Treaty as a *concerted practice* even where the parties have not explicitly subscribed to a common plan defining their action in the market but knowingly adopt or adhere to collusive devices which facilitate the co-ordination of their commercial behaviour¹⁶.
- (33) In the case of a complex infringement of long duration, it is not necessary for the Commission to characterise the conduct as exclusively one or other of these forms of illegal behaviour. The concepts of *agreement* and *concerted practice* are fluid and may overlap. It would be artificial analytically to sub-divide what is clearly a continuing common enterprise having one and the same overall objective into several different forms of infringement. A cartel may therefore be an agreement and a concerted practice at the same time¹⁷.

(b) Application to this case

- (34) As it emerges from the facts described above under Section 4, the undertakings were involved in horizontal anticompetitive arrangements which formed part of an overall scheme pursuing a single anticompetitive object and single economic aim between the producers of polyurethane foam; namely that of passing on raw material prices increases to their customers, avoiding aggressive price competition and coordinating respectively their behaviour in the polyurethane foam market. To that end, they were jointly engaged in price coordination activities.
- (35) The behaviour of these undertakings concerned may be characterised as a complex infringement consisting of various actions which can be classified as an agreement and/or concerted practice, whereby competitors knowingly substituted practical co-operation between them for the risks of competition. In addition, the participating undertakings in such concertation may be considered to have used the information exchanged with competitors in determining their own conduct on the market, all the

¹⁴ The case-law of the Court of Justice and the General Court in relation to the interpretation of Article 101 of the Treaty applies equally to Article 53 of the EEA Agreement. See recitals (4) and (15) as well as Article 6 of the EEA Agreement and Article 3(2) of the Agreement between the EFTA States on the establishment of a Surveillance Authority and a Court of Justice.

¹⁵ Case 48/69 *Imperial Chemical Industries v Commission* [1972] ECR 619, paragraph 64.

¹⁶ See Case T-7/89 *Hercules v Commission* [1991] ECR II-1711, paragraph 256. See also Case 48/69 *Imperial Chemical Industries v Commission* [1972] ECR 619, at paragraph 64, and Joined Cases 40-48/73, 50/73, 54-56/73, 111/73 and 113-114/73 *Suiker Unie and Others v Commission* [1975] ECR 1663, at paragraphs 173-174.

¹⁷ See Case T-7/89 *Hercules v Commission* [1991] ECR II-1711, paragraph 264.

more so because the concertation occurred on a regular basis and over a long period of time.

- (36) The conduct covered by this Decision therefore presents all the characteristics of an agreement and/or concerted practice within the meaning of Article 101 of the Treaty.

5.1.1.2. Single and continuous infringement

(a) Principles

- (37) A complex cartel may properly be viewed as a single and continuous infringement for the timeframe in which it existed. The General Court has pointed out that the concept of ‘single agreement’ or ‘single infringement’ presupposes a complex of practices adopted by various undertakings in pursuit of a single anti-competitive economic aim¹⁸. The cartel may well be varied from time to time, or its mechanisms adapted or strengthened to take account of new developments. It would be artificial to split up such continuous conduct, characterised by a single purpose, by treating it as consisting of several separate infringements, when what was involved was a single infringement which progressively would manifest itself in both agreements and concerted practices.
- (38) The mere fact that each participant in a cartel may play the role which is appropriate to its own specific circumstances does not exclude its responsibility for the infringement as a whole, including acts committed by other participants but which share the same unlawful purpose and the same anticompetitive object or effect. An undertaking which takes part in the common unlawful enterprise by actions which contribute to the realisation of the shared objective is equally responsible, for the whole period of its adherence to the common scheme, for the acts of the other participants pursuant to the same infringement. This is certainly the case where it is established that the undertaking in question was aware of the unlawful behaviour of the other participants or could have reasonably foreseen or been aware of them and was prepared to take the risk¹⁹.

(b) Application to this case

- (39) The conduct as described in Section 4 constitutes a single and continuous infringement of Article 101 of the Treaty. The collusion was in pursuit of a single anticompetitive object and single economic aim between the producers of polyurethane foam, namely that of passing on raw material price increases to their customers, avoiding aggressive price competition and coordinating respectively their behaviour in the polyurethane foam market. To that end, they were jointly engaged in price coordination activities.
- (40) The evidence available shows that the conduct as described in Section 4 was an ongoing process and not an isolated or sporadic occurrence. Similar anticompetitive meetings and contacts took place between the cartel participants regularly. The aim of the anticompetitive conduct, the actions taken and the contacts followed the same

¹⁸ Joined Cases T-25/95 and others *Cimenteries CBR and Others v Commission*, [2000] ECR II-491, paragraph 369.

¹⁹ See Case C-49/92 P *Commission v Anic Partecipazioni*, [1999] ECR I-4125, paragraph 83.

pattern throughout the period of the infringement. The elements of the cartel are complementary in so far as they overlap temporally and they concern the same product (polyurethane foam) and the same forum (mainly the margins of trade association meetings).

- (41) Although, the available evidence in the form of corroborated statements shows that Carpenter's participation in the single and continuous infringement was limited to polyurethane comfort foam, it also shows that all the participants were aware or at least should have been reasonably aware of the existence of the overall aim of the agreement and/or concerted practice and participated in the single and continuous infringement.

5.1.2. *Restriction of competition*

(a) Principles

- (42) Article 101(1) of the Treaty expressly prohibits as incompatible with the internal market such agreements and concerted practices which have as their object or effect the restriction of competition by directly or indirectly fixing prices or any other trading conditions.
- (43) It is settled case-law that, for the purpose of the application of Article 101 of the Treaty, there is no need to take into account the actual effects of an agreement when it has as its object the prevention, restriction or distortion of competition within the common market²⁰. The same applies to concerted practices²¹.

(b) Application to this case

- (44) The participants of the cartel described in this Decision coordinated their behaviour to remove uncertainty between themselves in relation to pricing and ultimately to restrict competition in the polyurethane foam market. Therefore, the **object** of the behaviour of the cartel participants was to restrict competition within the meaning of Article 101 of the Treaty.

5.1.3. *Effect upon trade between Member States*

(a) Principles

- (45) Article 101 of the Treaty is aimed at agreements and concerted practices which might harm the attainment of a single market between the Member States, whether by partitioning national markets or by affecting the structure of competition within the internal market.
- (46) The application of Article 101 of the Treaty to a cartel is not, however, limited to that part of the cartel members' sales that actually involve the transfer of goods from one Member State to another. Nor is it necessary, in order for these provisions to apply, to show that the individual conduct of each participant, as opposed to the cartel as a whole, affected trade between Member States.

²⁰ See, for example, Case T-62/98 *Volkswagen AG v Commission* [2000] ECR II-2707, paragraph 178 and case-law cited therein.

²¹ See Case C-199/92 P *Hüls v Commission*, [1999] ECR I-4287, paragraphs 158-166.

(b) Application to this case

- (47) Most polyurethane foam products are standardized across the EEA and geographic markets in the industry are not constrained by national boundaries but by transport costs. The cartel participants are the four major producers of polyurethane foam in Europe. Large European furniture and bedding makers and car producers are amongst their main customers. The market is characterised by a substantial volume of trade between Member States.
- (48) In this case the cartel arrangements covered 10 Member States and related to trade within the Union. The infringement was therefore capable of having an appreciable effect upon trade between Member States.²²

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

- (49) On the basis of the facts before the Commission, there are **no indications** that the conditions for exemption provided for in Article 101(3) of the Treaty could be fulfilled with regard to this cartel.

6. DURATION OF THE INFRINGEMENT

- (50) The evidence demonstrates that the cartel contacts involving the undertakings concerned started at least on 26 October 2005. On that date a top-level meeting of the European Trade Association took place [...]. The cartel covered Estonia from 9 July 2007, when Recticel acquired Espe Eesti OÜ.
- (51) Since 26 October 2005 there were regular contacts at various management levels between all the cartel participants. There is no indication that the anticompetitive arrangements came to an end before the Commission inspections in this case. The infringement is therefore considered to have ended on 27 July 2010 which is the first day of the inspections.
- (52) On this basis, this infringement is considered to have started on 26 October 2005 and to have ended on 27 July 2010. For Vita the end date is considered to be 30 April 2010 when it applied for a marker.

7. LIABILITY

7.1. Principles

- (53) Article 101 of the Treaty applies to undertakings and associations of undertakings.²³ The notion “*undertaking*” covers any entity engaged in an economic activity, regardless of its legal status and the way in which it is financed.²⁴

²² See Case C-125/07P *Erste Bank der österreichischen Sparkassen v Commission* [2009] ECR I-08681, paragraph 39.

²³ Joined Cases C-204/00 P, C-205/00 P, C-211/00 P, C-213/00 P, C-217/00 P and C-219/00 P *Aalborg Portland and Others v Commission* [2004] ECR I-123, paragraph 59.

²⁴ Joined Cases C-189/02 P, C-202/02 P, C-205/02 P to C-208/02 P and C-213/02 P *Dansk Rørindustri and Others v Commission* [2005] ECR I-5425, paragraph 112; Case C-222/04 *Cassa di Risparmio di*

- (54) The term “*undertaking*” must be understood as designating an economic unit even if in law that economic unit consists of several natural or legal persons.²⁵ In order to determine whether separate legal entities form parts of the same undertaking, regard must be had especially to the economic, organisational and legal links between those entities.²⁶
- (55) Where several legal entities may be held liable for the participation in an infringement of one and the same undertaking, they must be regarded as jointly and severally liable for that infringement.²⁷ In the specific case where a parent company has a 100% shareholding in a subsidiary which has infringed Union competition rules, the parent company can exercise decisive influence over the conduct of the subsidiary and there is a rebuttable presumption that the parent company does in fact exercise decisive influence over the conduct of its subsidiary²⁸.
- (56) Having regard to the evidence and the facts described in Section 4, the parties’ clear and unequivocal acknowledgements of the facts and the legal qualification thereof, this Decision is addressed to the legal entities listed below in Sections 7.2 to 7.5.

7.2. Carpenter

7.2.1. Nature of involvement and liability

- (57) Carpenter Co.’s subsidiaries Carpenter S.A.S., Carpenter GmbH, Carpenter Belgium NV (formerly Dumo NV and Carpenter-Dumo NV) and Carpenter Limited have clearly and unequivocally acknowledged liability for their direct participation in the cartel. Carpenter Co. has clearly and unequivocally acknowledged that it is as parent liable for the single and continuous infringement for the behaviour of its wholly owned subsidiaries. The liability for the single and continuous infringement is therefore imputed jointly and severally to Carpenter Co., Carpenter S.A.S., Carpenter GmbH, Carpenter Belgium NV and Carpenter Limited.
- (58) However, the joint and several liability of Carpenter Co. for the conduct of Carpenter Belgium NV (formerly Dumo NV and Carpenter-Dumo NV) is limited to the period between 9 July 2007 and 27 July 2010. Dumo NV was wholly acquired by Carpenter Co. on 9 July 2007 and changed its name to Carpenter-Dumo NV on 10 August 2007 and then to Carpenter Belgium on 27 September 2010. Carpenter Belgium NV is therefore, as the successor company, liable for the participation of Dumo NV in the cartel between 26 October 2005 and 9 July 2007.

Firenze and Others [2006] ECR I-289, paragraph 107; and Case C-205/03 P *FENIN v Commission* [2006] ECR I-6295, paragraph 25.

²⁵ Joined Cases C-201/09 P and C-216/09 P *Arcelor v Mittal and Luxembourg v Commission and Others* [2011] ECR I, point 95.

²⁶ Case C-97/08 P *Akzo Nobel and Others v Commission* [2009] ECR I-8237, paragraph 58 and the case-law cited.

²⁷ See, to that effect, Joined Cases 6/73 and 7/73 *ICI and Commercial Solvents v Commission* [1974] ECR 223, paragraph 41.

²⁸ See Case C-97/08 P *Akzo Nobel and others v Commission* [2009] ECR I-08237, paragraph 60.

7.2.2. *The product and geographic scope of Carpenter's involvement*

- (59) Carpenter was directly involved in the cartel, which was operated at European level, in polyurethane comfort foam, in the following six Member States of the Union: France, Belgium, the Netherlands, the UK, Germany and Austria. Carpenter is therefore liable for anticompetitive conduct in polyurethane comfort foam in these Member States.

7.2.3. *The duration of Carpenter's involvement*

- (60) Carpenter participated in the cartel between 26 October 2005 and 27 July 2010.

7.3. **Vita**

7.3.1. *Nature of involvement and liability*

- (61) Vita Cayman Limited (as successor to British Vita Group S.à.r.l and British Vita plc) and its wholly owned subsidiaries Caligen Europe BV, Draka Interfoam B.V., ICOA France S.A.S., Koepp Schaum GmbH, Metzeler Schaum GmbH, Tramico S.A.S., UAB Vita Baltic international, Vita Polymers Poland Sp. z o.o., Veenendaal Schaumstoffwerk GmbH, Vita Cellular Foams (UK) Limited (including as successor to the PU foam business previously owned by Ball & Young Limited (formerly Vitafoam Limited), Vita Industrial (UK) Limited (formerly Vita Services Limited) have clearly and unequivocally acknowledged liability for their direct participation in the cartel. In addition, Vita Cayman Limited has clearly and unequivocally acknowledged that it is as parent jointly liable for the single and continuous infringement for the behaviour of its wholly owned subsidiaries. The liability for the single and continuous infringement is therefore imputed jointly and severally to Vita Cayman Limited (as successor to British Vita Group S.à.r.l and British Vita plc) and its wholly owned subsidiaries Caligen Europe BV, Draka Interfoam B.V., ICOA France S.A.S., Koepp Schaum GmbH, Metzeler Schaum GmbH, Tramico S.A.S., UAB Vita Baltic International, Vita Polymers Poland Sp. z o.o., Veenendaal Schaumstoffwerk GmbH, Vita Cellular Foams (UK) Limited and Vita Industrial (UK) Limited (formerly Vita Services Limited).

7.3.2. *The product and geographic scope of Vita's involvement*

- (62) Vita was involved in the cartel, which was operated at European level, in polyurethane comfort foam and basic polyurethane technical foam in the following ten Member States: France, Belgium, the Netherlands, the UK, Germany, Austria, Hungary, Romania, Poland and Estonia. Vita is liable for anticompetitive conduct in polyurethane comfort foam and basic polyurethane technical foam in these Member States.

7.3.3. *The duration of Vita's involvement*

- (63) Due to the marker application of 30 April 2010, the duration of the infringement is limited with regard to Vita. Vita participated in the cartel between 26 October 2005 and 30 April 2010. As for Estonia, Vita participated in the cartel between 9 July 2007 and 30 April 2010. Liability for Vita's conduct with regard to Romania is limited to the period between 1 January 2007 (when Romania acceded to the Union) and 30 April 2010.

7.4. Recticel

7.4.1. Nature of involvement and liability

- (64) Recticel N.V./S.A. as well as its wholly owned subsidiaries Recticel s.a.s., Recticel OÜ, Recticel Limited and Recticel B.V. have clearly and unequivocally acknowledged liability for their direct participation in the cartel. In addition, Recticel N.V./S.A. has clearly and unequivocally acknowledged that it is as parent jointly liable for the single and continuous infringement for the behaviour of its wholly owned subsidiaries. The liability for the single and continuous infringement is therefore imputed jointly and severally to Recticel N.V./S.A., Recticel s.a.s., Recticel OÜ, Recticel Limited and Recticel B.V. Moreover, as explained in recital (68), Recticel is liable as joint parent for the conduct of Eurofoam.

7.4.2. The product and geographic scope of Recticel's involvement

- (65) Recticel was involved in the cartel, which was operated at European level, in polyurethane comfort foam and basic polyurethane technical foam in the following five Member States: France, Belgium, the Netherlands, the UK and Estonia. Recticel is liable for anticompetitive conduct in polyurethane comfort foam and basic polyurethane technical foam in these Member States.

7.4.3. The duration of Recticel's involvement

- (66) Recticel participated in the cartel between 26 October 2005 and 27 July 2010. As regards Estonia, Recticel participated in the cartel between 9 July 2007 and 27 July 2010.

7.5. Eurofoam and its parents

7.5.1. Nature of involvement and liability

- (67) Eurofoam GmbH, Eurofoam Deutschland GmbH Schaumstoffe, Eurofoam KFM GmbH (formerly KFM Schaumstoffe GmbH), Eurofoam Hungary Kft, Eurofoam Polska Sp. z o.o. and S.C. Eurofoam S.r.l. have clearly and unequivocally acknowledged liability for their direct participation in the cartel.
- (68) Greiner Holding AG and Recticel N.V./S.A. (via its wholly owned subsidiary Recticel Verwaltung GmbH & Co KG) have admitted to have exercised decisive influence over their Joint Venture Eurofoam such that Eurofoam did not determine its own conduct in the market independently, as defined in settled case-law²⁹. They therefore constitute one single "undertaking" as defined by European competition law³⁰. Both Greiner Holding AG and Recticel N.V./S.A. have clearly and unequivocally acknowledged that they are jointly and severally liable as parents for

²⁹ See in particular cases T-314/01 *Avebe/Commission*, paragraph 135 et seq.; T-77/08 *Dow/Commission*, paragraph 94; C-628/10 *Alliance One/Commission*, paragraphs 101-103; T-343/06 *Shell Petroleum/Commission*, paragraphs 45-46 and 51; T-141/07; *General Technic-Otis and others/Commission*, paragraph 91 et seq. and 106 et seq.; C-494/11P *Otis Luxembourg and others/Commission*, paragraphs 43 and 39.

³⁰ See Case C-179/12 *Dow Chemical company v Commission* [2013], not yet reported, paragraph 57 and the case law referred in that paragraph.

the single and continuous infringement for the conduct of Eurofoam. The liability for the single and continuous infringement is therefore imputed jointly and severally to Recticel N.V./S.A. (via its wholly owned subsidiary Recticel Verwaltung GmbH & Co KG), Greiner Holding AG, Eurofoam GmbH, Eurofoam Deutschland GmbH Schaumstoffe, Eurofoam KFM GmbH, Eurofoam Hungary Kft, Eurofoam Polska Sp. z o.o. and S.C. Eurofoam S.r.l.

7.5.2. The product and geographic scope of Eurofoam's involvement

- (69) Eurofoam was involved in the cartel, which was operated at European level, in polyurethane comfort foam and basic polyurethane technical foam in the following five Member States: Germany, Austria, Hungary, Romania and Poland. Eurofoam is liable for anticompetitive conduct in polyurethane comfort foam and basic polyurethane technical foam in these Member States.

7.5.3. The duration of Eurofoam's involvement

- (70) Eurofoam and its parents were involved in the cartel between 26 October 2005 and 27 July 2010. Liability for Eurofoam's and its parents' involvements with regard to Romania is limited to the period between 1 January 2007 (when Romania acceded to the Union) and 27 July 2010.

8. REMEDIES

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

- (71) 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.
- (72) Given the secrecy in which the cartel arrangements were carried out, in this case it is not possible to declare with absolute certainty that the infringement has ceased. It is therefore necessary for the Commission to require the undertakings to which this Decision is addressed to bring the infringement to an end (if they have not already done so) and to refrain from any agreement or concerted practice which may have the same or a similar object or effect.

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

- (73) Under Article 23(2) of Regulation (EC) No 1/2003, the Commission may by decision impose fines on undertakings where, either intentionally or negligently, they infringe Article 101 of the Treaty.³¹ For each undertaking participating in the infringement, the fine must not exceed 10% of its total turnover in the preceding business year.
- (74) In this case, the Commission considers that, based on the facts described in this Decision, the infringement was committed intentionally.

³¹ According to Article 5 of Council Regulation (EC) No 2894/94 of 28 November 1994 concerning arrangements for implementing the Agreement on the European Economic Area, “the Community rules giving effect to the principles set out in Articles 85 and 86 [now Articles 101 and 102 of the Treaty] of the EC Treaty [...] shall apply *mutatis mutandis*” (OJ L 305, 30.11.1994, p.6.).

- (75) The Commission therefore imposes fines on the undertakings to which this Decision is addressed.
- (76) Pursuant to Article 23(3) of Regulation (EC) No 1/2003, the Commission must, in fixing the amount of fine, have regard to all relevant circumstances and in particular the gravity and duration of the infringement. In doing so, the Commission sets the fines at a level sufficient to ensure deterrence. Moreover, the role played by each undertaking party to the infringement is assessed on an individual basis. The fine imposed must reflect any aggravating and attenuating circumstances pertaining to each undertaking.
- (77) In setting the fines to be imposed, the Commission refers to the principles laid down in its Guidelines on the method of setting fines imposed pursuant to Article 23(2)(a) of Regulation (EC) No 1/2003³² (the “Guidelines on fines”). Finally, the Commission applies, as appropriate, the provisions of the Leniency Notice and the Commission Notice on the conduct of settlement procedures in view of the adoption of Decisions pursuant to Article 7 and Article 23 of Regulation (EC) No 1/2003 in cartel cases (“the Settlement Notice”)³³.

8.3. Calculation of the fines

- (78) In applying the Guidelines on fines, the basic amounts for the undertakings concerned result from the addition of a variable amount and an additional amount. The variable amount results from a percentage of up to 30% of the value of sales of goods or services to which the infringement relates in a given year (normally, the last full business year of the infringement) multiplied by the number of years of the undertaking’s participation in that infringement. The additional amount (“entry fee”) is calculated as a percentage between 15% and 25% of the value of sales. The resulting basic amount can then be increased or reduced for each undertaking if aggravating or mitigating circumstances are retained.

8.3.1. The value of sales

- (79) The basic amount of the fine to be imposed on the undertakings concerned is to be set by reference to the value of their sales³⁴, that is, the value of the undertakings’ sales of goods or services to which the infringement directly or indirectly related in the relevant geographic area within the EEA. In this case the relevant value of sales is the undertaking’s sales of polyurethane comfort foam and basic polyurethane technical foam in the affected 10 Member States. As noted above, whilst each of the undertakings was involved in the cartel contacts at European level, they were not all individually present in all the 10 affected Member States. This is reflected in their liabilities.
- (80) Accordingly, the sales of polyurethane comfort foam and basic polyurethane technical foam will be taken into account for:

³² OJ C 210, 1.09.2006, p. 2.

³³ OJ C 167, 2.7.2008, p. 1–6.

³⁴ Point 12 of the Guidelines on fines.

- **Vita** in the following ten Member States: France, Belgium, the Netherlands, the UK, Germany, Austria, Hungary, Romania, Poland and Estonia.
- **Recticel** in the following five Member States: France, Belgium, the Netherlands, the UK, and Estonia.
- **Eurofoam** in the following five Member States; Germany, Austria, Hungary, Romania and Poland.

(81) Only the sales of polyurethane comfort foam will be taken into account for:

- **Carpenter** in the following six Member States: France, Belgium, the Netherlands, the UK, Germany and Austria.

(82) The Commission normally takes into account the sales made by the undertakings during the last full business year of their participation in the infringement³⁵. If the last year is not sufficiently representative, the Commission may take into account another year and/or other years for the determination of the value of sales. Based on the foregoing and on the information provided by the parties, the Commission is using the parties' sales during the 2009 business year.

(83) Accordingly, the Commission takes into account the following value of sales for each undertaking:

Table 1

Undertaking	Value of Sales (EUR)
Carpenter (excluding Belgium)	[...]
Carpenter Belgium NV	[...]
Vita (excluding Romania and Estonia)	[...]
Vita for sales in Romania	[...]
Vita for sales in Estonia	[...]
Eurofoam (excluding Romania)	[...]
Eurofoam for sales in Romania	[...]

³⁵

Point 13 of the Guidelines on fines.

Recticel (excluding Estonia)	[...]
Recticel for sales in Estonia	[...]

8.3.2. *Determination of the basic amount of the fines*

8.3.2.1. Gravity

- (84) The gravity of the infringement determines the percentage of the value of sales taken into account in setting the fine. In assessing the gravity of the infringement, the Commission has regard to a number of factors, such as the nature of the infringement, the combined market share of all the undertakings concerned, the geographic scope of the infringement and whether or not the infringement has been implemented³⁶.
- (85) In this case, the Commission takes into account in particular the fact that price coordination arrangements are, by their very nature, among the most harmful restrictions of competition. Therefore, the proportion of the value of sales taken into account for such infringements will generally be set at the higher end of the scale of the value of sales³⁷.
- (86) Given the specific circumstances of this case and taking into account the nature of the infringement, the proportion of the value of sales to be taken into account is 15%.

8.3.2.2. Duration

- (87) According to point 24 of the Guidelines on fines, the amount determined on the basis of the value of sales is multiplied by the number of years of participation in the infringement in order to take fully into account the duration of the participation of each undertaking in the infringement individually³⁸.
- (88) The duration to be taken into account for the purposes of calculating the fine per addressee, rounded down to the month, and the resulting multipliers for duration set out in Table 2.

Table 2. Duration

Entity	Duration	Multipliers
Carpenter (excluding Belgium)	26 October 2005 – 27 July 2010	4.75

³⁶ Points 21-22 of the Guidelines on fines.

³⁷ Point 23 of the Guidelines on fines.

³⁸ Point 24 of the Guidelines on fines.

Carpenter Belgium NV	26 October 2005 – 27 July 2010	4.75
Vita (excluding Romania and Estonia)	26 October 2005 – 30 April 2010	4.5
Vita for sales in Romania	1 January 2007 – 30 April 2010	3.33
Vita for sales in Estonia	9 July 2007 – 30 April 2010	2.75
Eurofoam (excluding Romania)	26 October 2005 – 27 July 2010	4.75
Eurofoam for sales in Romania	1 January 2007 – 27 July 2010	3.5
Recticel (excluding Estonia)	26 October 2005 – 27 July 2010	4.75
Recitcel for sales in Estonia	9 July 2007 – 27 July 2010	3

8.3.2.3. Additional Amount

- (89) The infringement concerns a price coordination cartel. Therefore, the Commission intends to include in the basic amount a sum of between 15% and 25% of the value of sales to deter undertakings from even entering into such illegal practices on the basis of the criteria listed above with respect to the variable amount³⁹.
- (90) Taking into account the factor described in Section 8.3.2.1 relating to the nature of the infringement, the percentage to be applied for the purposes of calculating the additional amount is 15%.

8.3.2.4. Calculations and conclusions on basic amounts

- (91) Based on the criteria explained in recitals (79)-(90), the basic amount of the fine per undertaking is set out in Table 3.

Table 3. Basic amounts of the fine

³⁹ Point 25 of the Guidelines on fines.

Undertaking	Basic Amount in EUR
Carpenter (excluding Belgium)	[...]
Carpenter Belgium NV	[...]
Vita (excluding Romania and Estonia)	[...]
Vita for Romania	[...]
Vita for sales in Estonia	[...]
Eurofoam (excluding Romania)	[...]
Eurofoam (for sales in Romania)	[...]
Recticel (excluding Estonia)	[...]
Recticel for sales in Estonia	[...]

8.3.3. *Adjustments to the basic amount: aggravating or mitigating factors*

- (92) The Commission may consider aggravating or mitigating circumstances resulting in an increase or decrease of the basic amount⁴⁰. Those circumstances are listed in a non-exhaustive way in points 28 and 29 of the Guidelines on fines.
- (93) The Commission does not apply in this case any aggravating or mitigating circumstances.

8.3.4. *Deterrence*

- (94) The Commission pays particular attention to the need to ensure that fines have a sufficiently deterrent effect. To that end, the fine to be imposed on undertakings which have a particularly large turnover beyond the sales of goods or services to which the infringement relates may be increased⁴¹.
- (95) In this particular case, the Commission has decided not to apply any increase for deterrence.

8.4. **Application of the 10% turnover limit**

- (96) The fine imposed on each undertaking participating in the infringement shall not exceed 10% of its total turnover relating to the business year preceding the date of the Commission decision.⁴² In the present case the latest available turnover figures for Greiner and Carpenter are those of 2012 and for Vita, Eurofoam and Recticel

⁴⁰ Points 28-29 of the Guidelines on fines.

⁴¹ Point 30 of the Guidelines on fines.

⁴² Article 23(2) of Regulation No 1/2003.

those of 2013. The adjusted basic amount of Vita exceeds 10% of the total turnover of that undertaking in that business year. Therefore, Vita's fine is capped to EUR 61.7 million, that is to say 10% of its total turnover in 2013.

8.5. Discretionary limitation of the fine

- (97) The 10% cap laid down in Article 23(2) of Regulation (EC) No 1/2003 is calculated on the basis of the total turnover of all the entities constituting an 'undertaking' in accordance with the approach adopted by the Court of Justice, the General Court and the Commission.⁴³ This applies equally to legal entities that have become part of the undertaking during the course of the infringement and this is why for the fines of Carpenter Belgium NV and Carpenter Co. the same 10% cap is used, based on the worldwide turnover of the undertaking headed by Carpenter Co. However, the legal entity Carpenter Belgium NV became a subsidiary of Carpenter Co. as of 9 July 2007 and so cannot be held jointly and severally liable with its current parent company Carpenter Co. for the period preceding the acquisition. Therefore, given the specific circumstances of Carpenter Belgium NV in this particular case, it is appropriate for the Commission to exercise its margin of appreciation, as reflected in point 37 of the Guidelines on fines, to reduce the parts of the fine for which Carpenter Belgium NV is solely liable to a level not exceeding 10% of Carpenter Belgium NV's own turnover in the latest year for which figures are available, which is 2012.
- (98) Therefore, the basic amount corresponding to the period for which Carpenter Belgium NV is solely liable, will be capped to EUR 3.5 million, that is to say 10% of Carpenter Belgium NV's total turnover in 2012, which is EUR 35.6 million.
- (99) As regards the impact of the 10% turnover ceiling on Eurofoam and its parents Recticel N.V./S.A. and Greiner Holding AG, as well as the separate fine for Recticel's own involvement in the infringement the Commission will use its discretion to limit the maximum fine of Eurofoam, Greiner Holding AG and Recticel N.V./S.A. to the level of 10% of their respective total turnovers in the latest year for which figures are available, which is 2012 in the case of Greiner and 2013 in the case of Eurofoam and Recticel.
- (100) Therefore, the adjusted basic amount of Eurofoam, Greiner and Recticel's respective fines will be capped to EUR 37.0 million, EUR 60.4 million and EUR 97.6 million, that is to say 10% of Eurofoam's, Greiner's and Recticel's total turnover in the latest year for which figures are available.

⁴³ See e.g. Joined Cases T-204/08 and T-212/08 Team Relocations and Others v Commission [2011] ECR II-3569, paragraphs 154; upheld on this point on appeal in the judgment of 11 July 2013 in Case C-444/11 P Team Relocations and Others v Commission, nyr, paragraphs 170-179, Judgment of 16 September 2013 in Case T-411/10 Laufen Austria v Commission, nyr, paragraph 150, Judgment of 17 May 2013 in Case T-146/09 Parker ITR and Parker-Hannifin v Commission, nyr, paragraphs 226-230, Judgment of 27 June 2012, Case T-448/07, YKK e.a. v Commission, nyr, paragraphs 192-195, Case T-384/06 IBP Limited and International Building Products France SA v Commission [2011] ECR II-1177, paragraph 101, Joined Cases T-122/07 to T-124/07 Siemens Österreich and VA Tech Transmission & Distribution v Commission [2011] ECR II-793, paragraphs 189-192, Case T-79/06 Sachsa Verpackung v Commission [2011] ECR II-406*, Summ.pub., paragraph 108, Case T-26/06 Trioplast Wittenheim v Commission [2010] ECR II-188*, Summ.pub., paragraph 114, Judgment of 12 October 2011, Case T-38/05 Agroexpansión v Commission [2011] ECR II-7005 paragraphs 109-111, 175.

8.6. Application of the Leniency Notice

- (101) Vita submitted an application for marker on 30 April 2010. Vita was granted conditional immunity from fines on 19 July 2010. Given that Vita's co-operation fulfilled the requirements of the Leniency Notice, Vita is therefore granted immunity from fines for the infringement in this Decision.
- (102) Recticel, Greiner and Eurofoam submitted a joint application for leniency to the Commission and were notified on 19 November 2012 of the Commission decision to grant a reduction of fines within the range of 30-50%. The evidence provided by Recticel, Greiner and Eurofoam to the Commission represented significant added value with respect to the evidence already in the Commission's possession at the time. In view of this, Recticel, Greiner and Eurofoam are granted 50% reduction of the fine that would otherwise have been imposed in this Decision.

8.7. Application of the Settlement Notice

- (103) In accordance with point 32 of the Settlement Notice, the reward for settlement results in a reduction of 10% of the amount of the fine to be imposed on a party after the 10% turnover cap has been applied having regard to the Guidelines on fines. Pursuant to point 33 of the Settlement Notice, when settled cases involve leniency applicants, the reduction of the fine granted to them for settlement will be added to their leniency reward.
- (104) As a result of the application of the Settlement Notice, the amount of the fine to be imposed on Carpenter, Recticel, Greiner and Eurofoam is reduced by 10%. This reduction is added to Recticel's, Greiner's and Eurofoam's Leniency reward.

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

- (105) The fines imposed pursuant to Article 23(2) of Regulation (EC) No 1/2003 are set out in Table 4.

Table 4. Fines

Undertaking	Fines (in EUR)
Carpenter (excluding sales in Belgium)	58 944 000
Carpenter Belgium NV (jointly and severally liable with Carpenter)	12 856 000
Carpenter Belgium NV (sole liability)	3 209 000
Vita (excluding sales in Estonia)	0
Vita for sales in Estonia	0
Recticel/Greiner/Eurofoam (jointly and severally liable for the conduct of Eurofoam ⁴⁴)	14 819 000
Recticel/Greiner (jointly and severally liable for the conduct of Eurofoam ⁴⁵)	9 364 000
Recticel liable for the conduct of Eurofoam ⁴⁶	7 443 000
Recticel (other than for sales in Estonia and those made through Eurofoam)	7 116 000
Recticel for sales in Estonia	326 000

⁴⁴ Including sales in Romania.

⁴⁵ Including sales in Romania.

⁴⁶ Including sales in Romania.

HAS ADOPTED THIS DECISION:

Article 1

The following undertakings have infringed Article 101 of the Treaty by participating, during the periods indicated below, in a European agreement and/or concerted practice covering a total of 10 Member States as indicated below, consisting in the co-ordination of their pricing behaviour in the flexible polyurethane foam sector.

- (a) Carpenter Co., Carpenter S.A.S., Carpenter GmbH, Carpenter Belgium NV and Carpenter Limited from 26 October 2005 to 27 July 2010 in France, the Netherlands, the UK, Germany, Austria and from 9 July 2007 to 27 July 2010 in Belgium, and Carpenter Belgium NV from 26 October 2005 to 9 July 2007 in Belgium.
- (b) Vita Cayman Limited, Caligen Europe BV, Draka Interfoam B.V., ICOA France S.A.S., Koepp Schaum GmbH, Metzeler Schaum GmbH, Tramico S.A.S., Vita Polymers Poland Sp. z o.o., Veenendaal Schaumstoffwerk GmbH, Vita Cellular Foams (UK) Limited, Vita Industrial (UK) Limited and UAB Vita Baltic International from 26 October 2005 to 30 April 2010 in France, Belgium, the Netherlands, the UK, Germany, Austria, Hungary, Poland and from 1 January 2007 to 30 April 2010 in Romania, and from 9 July 2007 to 30 April 2010 in Estonia;
- (c) Recticel N.V./S.A., Recticel Verwaltung GmbH & Co. KG, Greiner Holding AG, Eurofoam GmbH, Eurofoam Deutschland GmbH Schaumstoffe, Eurofoam KFM GmbH, Eurofoam Hungary Kft, Eurofoam Polska Sp. z o.o. and S.C. Eurofoam S.r.l. from 26 October 2005 to 27 July 2010 in Germany, Austria, Hungary, Poland and from 1 January 2007 to 27 July 2010 in Romania;
- (d) Recticel N.V./S.A., Recticel s.a.s., Recticel Limited and Recticel B.V. from 26 October 2005 to 27 July 2010 in France, Belgium, the Netherlands, the UK and Recticel N.V./S.A. and Recticel OÜ from 9 July 2007 to 27 July 2010 in Estonia.

Article 2

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

- (a) Vita Cayman Limited, Caligen Europe BV, Draka Interfoam B.V., ICOA France S.A.S., Koepp Schaum GmbH, Metzeler Schaum GmbH, Tramico S.A.S., Vita Polymers Poland Sp. z o.o., Veenendaal Schaumstoffwerk GmbH, Vita Cellular Foams (UK) Limited, Vita Industrial (UK) Limited and UAB Vita Baltic International jointly and severally liable for EUR 0
- (b) Carpenter Co., Carpenter S.A.S., Carpenter GmbH, Carpenter Belgium NV and Carpenter Limited jointly and severally liable for EUR 71 800 000
- (c) Carpenter Belgium NV liable for EUR 3 209 000

- (d) Eurofoam GmbH, Eurofoam Deutschland GmbH Schaumstoffe, Eurofoam KFM GmbH, Eurofoam Hungary Kft, Eurofoam Polska Sp. z o.o. and S.C. Eurofoam S.r.l. jointly and severally liable with Recticel N.V./S.A., Recticel Verwaltung GmbH & Co. KG and Greiner Holding AG for EUR 14 819 000
- (e) Recticel N.V./S.A., Recticel Verwaltung GmbH & Co. KG and Greiner Holding AG jointly and severally liable for 9 364 000
- (f) Recticel N.V./S.A. and Recticel Verwaltung GmbH & Co. KG jointly and severally liable for EUR 7 443 000
- (g) Recticel N.V./S.A., Recticel s.a.s., Recticel Limited and Recticel B.V. jointly and severally liable for EUR 7 116 000
- (h) Recticel N.V./S.A. and Recticel OÜ jointly and severally liable for EUR 326 000

The fines shall be paid in euro within three months of the date of notification of this Decision to the following 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 / COMP/39.801

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 by either providing an acceptable bank guarantee or making a provisional payment of the fine in accordance with Article 90 of Commission Delegated Regulation (EU) No 1268/2012.⁴⁷

Article 3

The undertakings listed in Article 1 shall immediately bring to an end the infringements referred to in that Article 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.

⁴⁷ OJ L 362, 31.12.2012, p. 1.

Article 4

This Decision is addressed to

- (a) Carpenter Co., with registered offices at 5016 Monument Avenue, P.O. Box 27205, Richmond, Virginia 23261, USA;
- (b) Carpenter S.A.S. with registered offices at Z.I. Boulevard des Bretonnières, B.P. 10085, 49182 Saint-Barthélémy-d'Anjou Cedex, France;
- (c) Carpenter GmbH with registered offices at Industriestrasse 2, 99334 Amt Wachsenburg-Thörey, Germany;
- (d) Carpenter Belgium NV with registered offices at Wijnendalstraat 171, B-8800 Roeselare, Belgium;
- (e) Carpenter Limited with registered offices at Dinting Lodge Industrial Estate, Glossop, Derbyshire, SK13 6LE, UK;
- (f) Vita Cayman Limited with registered offices at (c/o Maples Corporate Services Limited) PO Box 309, Ugland House, South Church Street, George Town, Grand Cayman, KY1-1104, Cayman Islands;
- (g) Caligen Europe BV with registered offices at Konijnenberg 59, NL-4825 BC Breda, Netherlands;
- (h) Draka Interfoam B.V. with registered offices at Van den Endelaan 15, 2182 ES Hillegom, Netherlands;
- (i) ICOA France S.A.S. with registered offices at Zone Industrielle Sud, 10100, Crancey, France;
- (j) Koepp Schaum GmbH with registered offices at Rheingaustrasse 19, 65375 Oestrich-Winkel, Germany;
- (k) Metzeler Schaum GmbH with registered offices at Donaustrasse 51, 87700 Memmingen, Germany;
- (l) Tramico S.A.S. with registered offices at Zone Industrielle de l'Europe, 76220 Gournay-en-Bray, France;
- (m) UAB Vita Baltic International with registered offices at Jurgiskiai, 62181 Alytus, Lithuania;
- (n) Vita Polymers Poland Sp. z o.o. with registered offices at ul. Sienkiewicza 31/33, 56-120 Brzeg Dolny, Poland;
- (o) Veenendaal Schaumstoffwerk GmbH with registered offices at Bamberger Strasse 58, 96215, Lichtenfels, Germany;

- (p) Vita Cellular Foams (UK) Limited with registered offices at Times Place, 45 Pall Mall, London SW1Y 5JG, UK;
- (q) Vita Industrial (UK) Limited with registered offices at Times Place, 45 Pall Mall, London SW1Y 5JG, UK;
- (r) Eurofoam GmbH with registered offices at Greinerstrasse 70, 4550 Kremsmünster, Austria;
- (s) Eurofoam Deutschland GmbH Schaumstoffe with registered offices at Hagenauer Strasse 42, 65203 Wiesbaden, Germany;
- (t) Eurofoam KFM GmbH with registered offices at Rosenauer Strasse 28, 96487 Dörfles-Esbach, Germany;
- (u) Eurofoam Hungary Kft with registered offices at 3792 Sajóbáony, Pf. 16, Hungary;
- (v) Eurofoam Polska Sp. z o.o. with registered offices at 95-100 Zgierz, ul. Szczawińska 42, Poland;
- (w) S.C. Eurofoam S.r.l. with registered offices at Str. Gării, nr 13 557260 Selimbăr, Sibiu, Romania;
- (x) Recticel N.V./S.A. with registered offices at Avenue des Olympiades 2, 1140 Evere, Belgium;
- (y) Recticel s.a.s. with registered offices at 7 rue du Fossé Blanc, 92622 Gennevilliers CEDEX, France;
- (z) Recticel OÜ with registered offices at Peterburi tee 48A, 11415 Tallinn, Estonia;
- (aa) Recticel Limited with registered offices at Bluebell Close, Clover Nook Industrial Park, Alfreton, Derbyshire DE55 4RD, UK;
- (bb) Recticel Verwaltung GmbH & Co. KG with registered offices at Rolandsecker Weg 30, 53619 Rheinbreitbach, Germany;
- (cc) Recticel B.V. with registered offices at Spoorstr. 69, Kesteren 4041 CL, Netherlands;
- (dd) Greiner Holding AG with registered offices at Greinerstrasse 70, 4550 Kremsmünster, Austria.

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

Done at Brussels,

For the Commission
Joaquín ALMUNIA
Vice-President

