EUROPEAN COMMISSION
Competition DG

CASE AT.40636 - SNBB

(Only the English text is authentic)

CARTEL PROCEDURE

Council Regulation (EC) No 1/2003

Article 7 Regulation (EC) 1/2003

Date: 19/10/2023

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EUROPEAN
COMMISSION

Brussels, 19.10.2023
C(2023) 6863 final

COMMISSION DECISION

of 19.10.2023

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

AT.40636 - SNBB

(Text with EEA relevance)

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AT.40636 - SNBB

(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[1], 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 Treaty[2], and in particular Article 10a thereof,

Having regard to the Commission decision of 20 October 2021 to initiate proceedings in this case,

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 case,

Whereas:

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[1] 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 (the "Treaty"). The two sets of provisions are, in substance, identical. Pursuant to Article 5(3) of the Treaty of Lisbon, references in legal acts to Articles 81 and 82 of the EC Treaty are to be understood as references to Articles 101 and 102 of the Treaty when appropriate.

[2] OJ L 123, 27.4.2004, p. 18.

1. INTRODUCTION

(1) This Decision (the "Decision") relates to a single and continuous infringement of Article 101 of the Treaty and Article 53(1) of the Agreement on the European Economic Area (the "EEA Agreement"). The infringement consisted of bilateral and multilateral contacts regarding sales prices and the allocation of quotas on the worldwide merchant market for N-Butylbromide Scopolamine/Hyoscine ("SNBB")[3], including the EEA. Overall, the infringement lasted from 1 November 2005 to 17 September 2019.

(2) This Decision is addressed to the following legal entities (together referred to as the "Addressees" or individually as the "Addressee"):

(a) Alkaloids of Australia Pty. Limited;

(b) Alkaloids Corporation;

(c) Boehringer Ingelheim Pharma GmbH & Co. KG, Boehringer Ingelheim GmbH and C.H. Boehringer Sohn AG & Co. KG;

(d) C-squared PHARMA S.à r.l.;

(e) Linnea SA, Ipsen S.A. and Schwabe Extracta GmbH & Co. KG; and

(f) Transo-Pharm Handels-GmbH and Transo-Pharm Holding-AG.

(3) The description of the events set out in Section 4 of this Decision, including facts relating to the conduct of any other undertaking that is not an Addressee of this Decision, is made exclusively for the purpose of establishing the liability of the Addressees of this Decision for an infringement of Article 101 of the Treaty. The Decision does not make any findings and does not include any legal assessment concerning the potential liability of any undertaking that is not an Addressee of this Decision.

2. THE RELEVANT INDUSTRY

2.1. The product

(4) The product concerned by the conduct is SNBB for sale on the merchant market.

(5) SNBB is an Active Pharmaceutical Ingredient ("API") and an important input material for the production of the drug Buscopan and its generic versions.[4] These are medications used in the treatment of motion sickness, abdominal cramps, and post-operative nausea and vomiting. SNBB is commonly extracted from the leaves of Duboisia trees, which are a natural source of SNBB.[5] These trees are cultivated on plantations, mainly in Australia and Brazil. The harvest, occurring once a year, depends on the weather conditions, and the volumes of leaves available for SNBB production vary considerably from year to year.[6]

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3 SNBB is the acronym often used in the industry. The product is also known as Butylscopolamine bromide, Scopolamine butylbromide and Hyoscine butylbromide.

4 […].

5 […].

6 […].

2.2. The market

(6) Currently, all member countries of the EEA require a prior marketing authorisation for supplies of SNBB to drug manufacturers on their territory.[7] Typically, SNBB suppliers must be registered in regulated markets in order to be considered as a source of supply in that country. In this context, the supplier has to provide a drug master file directly to the regulatory authority.[8] Such regulatory and registration requirements do not concern the regulation of SNBB prices.

(7) The SNBB market is characterised by the fact that only a few SNBB suppliers are active on the market. There is no typical distribution structure for SNBB. SNBB suppliers either distribute SNBB directly or through distributors.[9]

(8) Most SNBB quantities supplied to the merchant market are bought by generic drug manufacturers outside the EEA which typically do not enter into long-term supply contracts, but rather cover their needs from the SNBB suppliers or their distributors through "spot deals", i.e. tenders issued by the generic drug manufacturers to SNBB suppliers or distributors.[10] The preference for "spot deals" may be linked to the unpredictable nature of the market.

(9) SNBB is traded worldwide and transported over long distances. During the conduct described in this Decision, which took place between 2005-2019, the annual worldwide SNBB market volume supplied to the merchant market amounted to approximately 22-26 tons[11]. The available figures show that the worldwide merchant market value was approximately EUR 40-80 million between 2015 and 2018.[12] While the overall volume changed at a relatively moderate rate, the market value per year fluctuated significantly throughout the relevant period.

2.3. The undertakings subject to the proceedings

(10) The undertakings mentioned in Sections 2.3.1 - 2.3.3 and 2.3.5 together are referred to as "SNBB producers" and the undertakings in Sections 2.3.4 and 2.3.6 as "SNBB distributors".

2.3.1. Alkaloids of Australia

(11) Alkaloids of Australia is an undertaking active in producing APIs from Duboisia. The undertaking is headquartered in Kingaroy, Australia. Alkaloids of Australia had a worldwide turnover of EUR [7.5-9.5] million in the business year 2020/2021.

(12) The relevant legal entity of the Alkaloids of Australia undertaking for the purpose of this case is Alkaloids of Australia Pty. Limited, headquartered at McConachie Stedman, 619 Ruthven Street, Toowoomba QLD 4350, Australia.

2.3.2. Alkaloids Corporation

(13) Alkaloids Corporation is an undertaking active in the identification, development, production and distribution of potent phytochemicals and botanical extracts,

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7 […].
8 […].
9 […].
10 […].
11 […].
12 […]. The yearly volumes may vary given the significant fluctuation in the harvesting of Duboisia leaves.

including SNBB. A number of phytochemicals manufactured by Alkaloids Corporation are used as APIs by major drug formulators worldwide. Alkaloids Corporation is headquartered in Kolkata, India and had a worldwide turnover of EUR [12-16] million in the business year 2021/2022.

(14) The relevant legal entity of the Alkaloids Corporation undertaking for the purpose of this case is Alkaloids Corporation, headquartered at 8 Bentinck Street, Kolkata – 700001, India.

2.3.3. Boehringer

(15) Boehringer is an undertaking mainly active in the production of pharmaceuticals, animal health products and biopharmaceuticals, including SNBB. It is one of the world's largest privately owned pharmaceutical companies and consists of more than 140 affiliated companies with more than 50,000 employees worldwide. A large part of its activities is focused on research and development activities in the pharmaceutical sector. It is headquartered in Ingelheim, Germany. Boehringer had a worldwide turnover of approximately EUR 20.6 billion in 2021.

(16) Boehringer used large parts of its SNBB production captively to produce its own brand Buscopan.

(17) The relevant legal entities of the Boehringer undertaking for the purpose of this case are the following:

(a) C.H. Boehringer Sohn AG & Co. KG, headquartered at Binger Str. 173, 55216 Ingelheim am Rhein, Germany, the group's ultimate parent company;

(b) Boehringer Ingelheim Pharma GmbH & Co. KG, headquartered at Binger Str. 173, 55216 Ingelheim am Rhein, Germany, a 100% indirectly owned subsidiary of the ultimate parent company C.H. Boehringer Sohn AG & Co. KG;

(c) Boehringer Ingelheim GmbH, headquartered at Binger Str. 173, 55216 Ingelheim am Rhein, Germany, a 100% indirectly owned subsidiary of the ultimate parent company C.H. Boehringer Sohn AG & Co. KG.

2.3.4. C2 PHARMA

(18) C2 PHARMA is an undertaking that manufactures and distributes APIs and complex chemical compounds obtained from natural and synthetic origins. Its current API product portfolio includes atropine, digoxin, homatropine, pilocarpine and SNBB. It was established in 2014 and supplies more than 100 pharmaceutical companies across the United States, Europe, South America, Asia, the Middle-East and Africa. It is headquartered in Luxembourg, Grand Duchy of Luxembourg. […] Based on a cooperation agreement with Boehringer, C2 PHARMA had been its exclusive distributor since 1 January 2015. C2 PHARMA had a worldwide turnover of approximately EUR 19.6 million in 2022.

(19) The relevant legal entity of the C2 PHARMA undertaking for the purpose of this case is C-squared PHARMA S.à r.l., headquartered at 270 Rue de Neudorf, 2222 Luxembourg, Grand Duchy of Luxembourg.

2.3.5. Linnea

(20) Linnea SA is an undertaking manufacturing APIs, purified ingredients and herbal extracts, including SNBB for use in pharmaceutical, cosmetic and dietary

supplement products. It is headquartered in Riazzino, Switzerland, where it has all its manufacturing operations. It currently has approximately 100 employees. It sells its products globally including in the EEA, Asia-Pacific region and the Americas. The turnovers of the parent companies, jointly controlling Linnea SA, are as follows: Schwabe Extracta GmbH & Co. KG had a worldwide turnover of EUR [330-400] million in 2021 […]; Ipsen S.A.'s worldwide turnover was approximately EUR 2.9 billion in 2021.

(21) The relevant legal entities of the Linnea undertaking for the purpose of this case are the following:

(a) Linnea SA, headquartered at Via Cantonale, 6595 Riazzino (TI), Switzerland;

(b) Ipsen S.A., headquartered at 65 Quai Georges Gorse, 92100 Boulogne-Billancourt, France, which owns 50% of the shares of Linnea SA;

(c) Schwabe Extracta GmbH & Co. KG, headquartered at Willmar-Schwabe-Strasse 4, 76227 Karlsruhe, Germany, which owns 50% of the shares of Linnea SA.

2.3.6. Transo-Pharm

(22) Transo-Pharm is an undertaking that is a fully licensed and certified distributor of pharmaceutical components, including SNBB for the health and veterinary industries worldwide. It is headquartered in Siek, Germany. It currently has approximately 50 employees and sales representations in the United States, Hong-Kong and Singapore. Transo-Pharm had a worldwide turnover of EUR [37-45] million in 2022.

(23) The relevant legal entities of the Transo-Pharm undertaking for the purpose of this case are the following:

(a) Transo-Pharm Holding-AG, headquartered at Bültbek 5, 22962 Siek, Germany, the group's ultimate parent company;

(b) Transo-Pharm Handels-GmbH, headquartered at Bültbek 5, 22962 Siek, Germany, a 100% owned subsidiary of the ultimate parent company Transo-Pharm Holding-AG.

3. PROCEDURE

(24) On 15 April 2019, C2 PHARMA applied for immunity from fines under points (14) and (15) of the Commission notice on Immunity from fines and reduction of fines in cartel cases[13] ("the Leniency Notice"). On 5 September 2019, the Commission granted C2 PHARMA conditional immunity from fines under point (18) of the Leniency Notice.

(25) Between 17 and 20 September 2019, the Commission carried out unannounced inspections at the premises of Transo-Pharm, Boehringer and another undertaking, which is not an Addressee of this Decision and not a party to the proceedings initiated by the Commission in relation to this case.

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[13] Commission notice on Immunity from fines and reduction of fines in cartel cases, OJ C 298, 8.12.2006, p. 17.

(26) On 19 September 2019, Transo-Pharm applied for immunity from fines under point (14) of the Leniency Notice or, in the alternative, for a reduction of fines under point (27) of the Leniency Notice.

(27) On 29 October 2019, Linnea applied for immunity from fines under point (14) of the Leniency Notice or, in the alternative, for a reduction of fines under point (27) of the Leniency Notice.

(28) On 20 October 2021, the Commission initiated proceedings pursuant to Article 11(6) of Regulation (EC) No 1/2003[14] against the Addressees and an additional undertaking with a view to engage in settlement discussions with all of them. After all the Addressees and the additional undertaking had confirmed their willingness to engage in settlement discussions, these started in December 2021.

(29) Between December 2021 and May 2023, settlement meetings took place between the Commission and the Addressees and the additional undertaking. During those meetings, the Commission informed the Addressees and the additional undertaking of the objections it envisaged raising against them and disclosed the main pieces of evidence in the file[15] on which the Commission intended to rely to establish these objections. The Addressees and the additional undertaking were given copies of these pieces of evidence, as well as a list of all the documents in the Commission's file. They were also granted access to the corporate leniency statements via eLeniency[16]. The Commission also provided the Addressees and the additional undertaking with an estimation of the range of fines likely to be imposed by the Commission for their participation in the conduct described in this Decision.

(30) Each of the Addressees and the additional undertaking expressed their views on the objections which the Commission envisaged to raise against them. The Addressees' and the additional undertaking's comments were carefully considered by the Commission and, where appropriate, taken into account. At the end of the settlement discussions, the Addressees 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.

(31) Between […], the Addressees submitted to the Commission their formal request to settle pursuant to Article 10a(2) of Regulation (EC) No 773/2004[17] (the "settlement submissions"). The settlement submission of each Addressee contained:

– an acknowledgement in clear and unequivocal terms of the Addressee's liability for the infringement summarily described as regards its object, its possible implementation, the main facts, their legal qualification, including the Addressee's role and the duration of its participation in the infringement;

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14 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 (OJ L 1, 4.1.2003, p. 1).

15 […].

16 eLeniency is an online IT tool which enables the submission of statements and documents to the Commission.

17 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, as amended by Commission Regulation (EC) No 622/2008 (OJ L 171, 1.7.2008, p. 3) and Commission Regulation (EU) 2015/1348 (OJ L 208, 5.8.2015, p.3).

– an indication of the maximum amount of the fine the Addressee expects to be imposed by the Commission and which it would accept in the framework of a settlement procedure;

– the Addressee's confirmation that it has been sufficiently informed of the objections the Commission envisages raising against it and that it has been given sufficient opportunity to make its views known to the Commission;

– the Addressee'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;

– the Addressee'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 only.

(32) The additional undertaking did not submit a formal request to settle pursuant to Article 10a(2) of Regulation (EC) No 773/2004[18].

(33) On 17 July 2023, the Commission adopted a Statement of Objections addressed to the Addressees. All Addressees replied to the Statement of Objections by confirming that it corresponded to the contents of their settlement submissions and that they therefore remained committed to following the settlement procedure.

4. DESCRIPTION OF THE EVENTS

(34) The conduct that is the subject of these proceedings consisted of bilateral and multilateral contacts involving the Addressees regarding sales prices and the allocation of quotas[19] on the worldwide merchant market for SNBB.

4.1. Objective

(35) The objective of the conduct was to coordinate and agree on the level of the minimum sales price of SNBB for customers (i.e. distributors and generic drug manufacturers) worldwide and on the allocation of quotas among the Addressees to stabilise the world market price and to prevent it from falling.[20]

4.2. Scope of the conduct

(36) The Addressees coordinated their future pricing and market behaviour through multilateral and bilateral contacts. The contacts concerned: (i) the fixing of the level of the minimum sales price of SNBB charged to customers (i.e. distributors and generic drug manufacturers); (ii) the allocation of yearly quotas among the SNBB producers, as well as (iii) the exchange of commercially sensitive information on the SNBB sales prices and of information about the following factors influencing the sales prices of SNBB: the evaluation of market trends based on the expected harvest

18 Concerning the additional undertaking, the Commission has reverted to the standard procedure for the adoption of a possible decision pursuant to Articles 7 and 23 of Regulation (EC) No 1/2003.

19 The quotas were allocated per SNBB producer.

20 […].

of leaves from the Duboisia trees, the supply situation and the development of production volumes of the SNBB producers.[21]

4.3. Nature of the conduct

(37) From 2005[22], the Addressees, or at times a subset of them, met physically at multilateral meetings (called "Club meetings") once or twice per year.[23] Typically, they discussed the situation on the Duboisia plantations.

(38) The Addressees informed each other about their SNBB supply situation (shortage or overcapacity) and the development of their production volumes. Further, the Addressees agreed or attempted to agree[24] on the minimum sales price of SNBB they should offer to generic drug manufacturers directly or through distributors in order to stabilise the world market price and to prevent it from falling.[25] The SNBB producers also agreed or attempted to agree on the yearly quotas[26] (tons per SNBB producer), which each of them should produce and supply on the SNBB market worldwide.[27] Additional exchanges via telephone and emails about those topics also took place.[28]

(39) From mid 2011, bilateral and multilateral email exchanges and occasional bilateral and multilateral physical meetings gradually replaced the formalised Club meetings without, however, changing the objective of the conduct. The frequency of contacts was reduced and they were less organised. This was a result of many factors such as the increase in SNBB prices due to the shortage of Duboisia leaves[29] and later on Boehringer's preparation of its exit from the merchant market starting in the course of 2014 and taking effect at the end of 2014. The Addressees continued to exchange commercially sensitive information on their intended individual sales prices and their supply situation as well as on the quantities they would be able to produce and sell worldwide.[30] Occasionally[31], the Addressees attempted to again reach agreements on the minimum sales prices of SNBB and the quotas[32], to which each of them would adhere on a worldwide basis.[33]

(40) Throughout the entire duration of the conduct, the Addressees, as the situation arose and in varying constellations (the contacts did not always include all the Addressees or concern all of the following at all times):

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21 The information relating to market trends generally originated from public sources. Thus, the Addressees used data provided by the official statistics offices in Australia, India, Brazil and Mexico, including the Australian export statistics of the Australian Department of Foreign Trade, www.abs.gov.au/ausstats, […].

22 The respective established duration of participation of the Addressees is indicated at recital (72) below.

23 […].

24 Despite the Addressees' attempt to agree on minimum sales prices for SNBB, they often fought about price levels and customer requests in various markets (cf. recital (42) below).

25 […].

26 On the occasions when SNBB distributors participated in the discussions, SNBB distributors were not in a position to enter into agreements on quotas.

27 […].

28 […].

29 […].

30 […].

31 […] through bilateral and multilateral email exchanges, taking place during autumn 2017, […].

32 See footnote 19.

33 […].

(a) made and discussed complaints about SNBB sales by one or more of the Addressees below the agreed minimum price and about SNBB sales exceeding the assigned quotas or not reaching the assigned quotas;[34]

(b) exchanged information on offers discussed with customers in different countries and monitored that discipline was maintained worldwide to ensure that the SNBB price remained stable overall;[35]

(c) attempted to exercise control over their distributors' sales policy to end-customers to ensure respect of the price arrangements, where the Addressees used distributors;[36]

(d) discussed additional measures in case of a risk of new potential suppliers entering the SNBB merchant market.[37]

(41) The above-described contacts occurred via telephone calls[38] and emails[39] and bilateral and multilateral physical meetings. These meetings took place on the margins of trade fairs, pharmaceutical events and conferences […] as well as at airports and hotels[40].

(42) The frequency of the contacts increased in situations where a drop in the SNBB price could be expected, for example because of oversupply or in the event a new market entrant appeared. Contacts were less frequent and less organised when the SNBB price rose in times of supply shortages, for example due to a bad harvest (e.g. due to floods), in particular after 2013, or when all the Addressees adhered to the agreed prices and quotas (see recital (40) above).[41] From 2014 onwards, the Addressees were no longer successful in renewing price fixing and sales quota agreements, although information exchanges on pricing and supply did continue.

4.4. Geographic scope of the conduct

(43) The geographic scope of the conduct was worldwide, including the entire EEA, throughout its duration.

4.5. Duration

(44) Overall, the conduct lasted from 1 November 2005[42] to 17 September 2019[43].[44]

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34 […].

35 […].

36 […].

37 […].

38 […].

39 […].

40 […] since mid 2011, Club meetings were gradually replaced by multilateral and bilateral email exchanges and phone calls […].

41 […].

42 A Club meeting, in which i.a. Boehringer, Alkaloids Corporation and Alkaloids of Australia participated, […].

43 This is the first day of the Commission inspection carried out between 17 and 20 September 2019.

44 The participation of the respective Addressees in the conduct is established as follows: Alkaloids of Australia - 1 November 2005 to 17 September 2019; Alkaloids Corporation - 1 November 2005 to 17 September 2019; Boehringer - 1 November 2005 to 31 December 2014; C2 PHARMA - 22 January 2015 to 4 February 2016; Linnea - 2 October 2006 to 17 September 2019; and Transo-Pharm - 21 June 2011 to 17 September 2019.

5. LEGAL ASSESSMENT

(45) Having regard to the body of evidence in the Commission's file and the facts as described in Section 4, the Addressees' clear and unequivocal acknowledgements in their settlement submissions of these facts and of the legal qualification thereof, and their replies to the Statement of Objections containing their explicit confirmation that the Statement of Objections reflects the contents of their settlement submissions, the legal assessment is set out as follows.

5.1. Jurisdiction

(46) In this case, the Commission is competent to apply Article 101 of the Treaty and, on the basis of Article 56 of the EEA Agreement, also Article 53 of the EEA Agreement, since the Addressees sold SNBB within the EEA and thereby implemented the cartel in the EEA.

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

5.2.1. Agreements and concerted practices

5.2.1.1. Principles

(47) Article 101(1) of the Treaty and Article 53(1) of the EEA Agreement prohibit agreements between undertakings, decisions by associations of undertakings and concerted practices which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the internal market or the territory covered by the EEA Agreement.

(48) An agreement may be said to exist when the parties adhere to a common plan which limits or is likely to limit their individual commercial conduct by determining 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 practice and that of agreements between undertakings, the object is to bring within the prohibition of Article 101(1) of the Treaty a form of coordination between undertakings by which, without having reached the stage where an agreement properly so-called has been concluded, they knowingly substitute practical cooperation between them for the risks of competition. Thus, conduct may fall under Article 101(1) of the Treaty as a concerted practice even where the parties have not explicitly subscribed to a common plan defining their action in the market but knowingly adopt or adhere to collusive devices which facilitate the coordination of their commercial behaviour.[45]

(49) The concepts of agreement and concerted practice are fluid and may overlap. Indeed, it may not even be possible to distinguish between them, as an infringement may present simultaneously the characteristics of each form of prohibited conduct, while when considered in isolation some of its manifestations could accurately be described as one rather than the other.

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[45] See Case T-7/89 *Hercules* v *Commission* EU:T:1991:75, paragraph 256. See also Case 48/69, *Imperial Chemical Industries* v *Commission* EU:C:1972:70, paragraph 64; and Joined Cases 40-48, 50, 54, 55, 56, 111, 113 and 114/73, *Suiker Unie and others* v *Commission* EU:C:1975:174, paragraphs 173-174.

5.2.1.2. Application to this case

(50) As it emerges from the facts described in recitals (34) to (42), the Addressees discussed and sometimes agreed on the minimum SNBB price. They also discussed and sometimes agreed on yearly quota allocations per SNBB producer worldwide.[46] Furthermore, the Addressees also regularly exchanged commercially sensitive information concerning in particular the SNBB sales price, their SNBB quantities available for supply, quantities produced and sold on the SNBB merchant market, expected harvests of Duboisia leaves and market developments and trends.

(51) The Commission thus concludes that such conduct constitutes an "agreement" and/or a "concerted practice" within the meaning of Article 101(1) of the Treaty and that the Addressees knowingly substituted the risks of competition with practical co-ordination between them.

5.2.2. Restriction of competition

5.2.2.1. Principles

(52) 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.

(53) In that regard, it is apparent from the Court's case-law that 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 and thus that they constitute restrictions of competition by object.[47]

5.2.2.2. Application to this case

(54) The Addressees refrained from determining independently their commercial and pricing policy for their sales of SNBB. Instead, they coordinated their behaviour related to the sales prices of SNBB and the SNBB quantities placed on the merchant market on a worldwide basis through direct multilateral and bilateral contacts. They also exchanged commercially sensitive information concerning the SNBB sales prices, their SNBB quantities available for supply, quantities produced and sold on the SNBB market and concerning expected harvests of Duboisia leaves and market developments and trends.

(55) The Commission therefore concludes that the conduct amounted to agreements and/or concerted practices, which included the fixing of a minimum sales price of SNBB at the worldwide level, the allocation of sales quotas on a yearly basis at the worldwide level, and the exchange of sensitive commercial and price-related information (recitals (34) to (42)). The conduct ultimately aimed at restricting competition among the Addressees on the SNBB sales price on a worldwide basis including the EEA, and on quantities of SNBB to be sold on a worldwide basis including the EEA, as well as at reducing or eliminating uncertainty as to the future pricing behaviour of the Addressees for SNBB on a worldwide basis, including the EEA.

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46 See footnote 19.

47 Case C-67/13 P, *Groupement des Cartes Bancaires* v *Commission*, EU:C:2014:2204, paragraph 49; Case C-286/13 P, *Dole Food and Dole Fresh Fruit Europe* v *Commission*, EU:C:2015:184, paragraph 113.

(56) The Commission finds that the Addressees engaged in price fixing, discussing and sometimes agreeing on SNBB minimum sales prices and in market sharing, by allocating quotas[48] on a worldwide basis between each other. Furthermore, the Addressees exchanged commercially sensitive information regarding SNBB pricing and market conditions.

(57) Such conduct is regarded, by its nature, as being harmful to the proper functioning of normal competition and as presenting, by itself, a sufficient degree of harm to competition such that it is not necessary to assess its effects.[49] Accordingly, in line with established case-law, the Commission concludes that the conduct described in this Decision must be considered as having as its object the restriction of competition in the EEA as regards SNBB within the meaning of Article 101(1) of the Treaty and Article 53(1) of the EEA Agreement. There is no need to consider whether or not the Addressees ultimately kept and succeeded in implementing their anti-competitive conduct.[50]

5.2.3. Single and continuous infringement

5.2.3.1. Principles

(58) An infringement of Article 101(1) of the Treaty can result not only from an isolated act, but also from a series of acts or from continuous conduct, even if one or more aspects of that series of acts or continuous conduct could also, in themselves and taken in isolation, constitute an infringement of that provision. 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[51].

(59) An undertaking that has participated in such a single and continuous infringement through its own conduct, which forms an agreement or a concerted practice having an anti-competitive object for the purposes of Article 101(1) of the Treaty and was intended to help bring about the infringement as a whole, may accordingly be liable also in respect of the conduct of other undertakings in the context of the same infringement throughout the period of its participation in the infringement. That is the position where it is shown that the undertaking intended, through its own conduct, to contribute to the common objectives pursued by all the participating undertakings and that it was aware of the anti-competitive conduct planned or put into effect by other undertakings in pursuit of the same objectives or that it could reasonably have foreseen it and was prepared to take the risk.[52]

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48 See footnote 19.

49 See Case C-286/13 P *Dole Food and Dole Fresh Fruit Europe* v *Commission*, EU:T:2013:130, paragraph 134.

50 See Cases T-62/98, *Volkswagen* v *Commission*, EU:T:200:180, paragraph 178; T-264/12 *UTi Worldwide and Others* v *Commission*, EU:T:2016:112, paragraph 118.

51 Joined cases C-204/00 etc., *Aalborg Portland et al.* v *Commission*, EU:C:2004:6, paragraph 258.

52 Case C-49/92 P, *Commission* v *Anic Partecipazioni*, EU:C:1999:356, paragraph 83. See to this effect Cases C-293/13 P and C-294/13 P, *Fresh Del Monte Produce* v *Commission*, EU:C:2015:416, paragraphs 156-157; Joined cases C-239/11 P, C-489/11 P and C-498/11 P *Siemens and others* v *Commission*, EU:C:2013:866, paragraphs 242-243.

5.2.3.2. Application to this case

(60) In this case, the Commission considers that the contacts described in recitals (37) to (42) were part of an overall plan pursuing a common objective, namely to maintain a minimum worldwide sales price for SNBB and to allocate SNBB sales quotas per SNBB producer. They related to a single product – SNBB – and to the same geographical scope – i.e. worldwide including the EEA – throughout the duration of such contacts. The conduct involved the same undertakings for the period of their respective participation as described in recital (72). The conduct initially involved, inter alia, Boehringer, Alkaloids of Australia and Alkaloids Corporation, with Linnea joining the arrangements from October 2006, Transo-Pharm from June 2011 and C2 PHARMA from January 2015.

(61) As described at recitals (36) to (40), the contacts among the Addressees evolved in their structure and intensity but continued on a regular basis without interruption. Throughout the infringement period, both the multilateral and bilateral contacts pursued the same common objective as described in recital (60). The contacts between the Addressees were taking place in the same or similar manner (via multilateral Club meetings, other physical meetings, exchanges via email and telephone exchanges in particular), as described in recital (41), mostly involving the same individuals (or their successors as the case may be) at the various employment levels within each respective undertaking and covering identical or largely similar topics (SNBB sales prices and quantities and the supply/production situation) described in recital (36).

(62) Each Addressee contributed to the realisation of this common objective. All Addressees participated directly in multilateral Club meetings, other meetings and email exchanges (see recitals (36) to (39) above).[53] At times, they were also informed indirectly of the conduct or of the outcome of discussions they had not attended.[54] On that basis, the Commission concludes that all Addressees were either aware of the actual conduct planned or put into effect by the other Addressees in pursuit of the same objective or, at the very least, could reasonably have foreseen that conduct and were prepared to take the risk.

(63) The Commission considers that the conduct as described above in recitals (35) to (42) constitutes a single and continuous infringement of Article 101 of the Treaty and Article 53(1) of the EEA Agreement lasting, overall, from 1 November 2005 until 17 September 2019. The Commission also concludes that the Addressees engaged in anti-competitive practices which formed part of an overall plan pursuing the common objective of maintaining the minimum sales price for SNBB and of allocating SNBB yearly sales quotas per SNBB producer to ensure that the worldwide price for SNBB remained stable and to prevent it from falling.

(64) The Commission considers that the infringement concerns conduct that was worldwide in scope and thus covered the entire EEA. Furthermore, the infringement

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53 The Addressees participated in multilateral Club meetings and other meetings and engaged in multilateral email exchanges, […].

54 E.g. information on the agreed arrangements provided to the new entrant C2 PHARMA, […]. Following the internal compliance investigation within Boehringer, in 2009/2010, at some occasions, Boehringer received information on the arrangements from Linnea and Transo-Pharm […] but ceased its direct participation in meetings and direct correspondence with the other Addressees with some limited exceptions […].

was committed intentionally, as the Addressees actively engaged in collusive exchanges related to SNBB production and sales.

(65) On the basis of all these elements and of the Addressees' clear and unequivocal acknowledgements of the single and continuous nature of the infringement, the Commission concludes that the Addressees participated in a single and continuous infringement of Article 101(1) of the Treaty and Article 53(1) of the EEA Agreement and that all Addressees are liable for the entire single and continuous infringement for the period of their respective participation in it.

5.2.4. Effect upon trade between Member States and between EEA Contracting Parties

5.2.4.1. Principles

(66) Article 101(1) of the Treaty and Article 53(1) of the EEA Agreement are aimed at agreements and concerted practices which might harm the attainment of an internal market between the Member States and between the EEA Contracting Parties, whether by partitioning national markets or by affecting the structure of competition within the internal market.

5.2.4.2. Application to this case

(67) During the period of the infringement, the Addressees sold SNBB within the EEA and beyond. SNBB is an important API substance for drugs production of Buscopan and its generic versions, of which there is a substantial cross-border trade within the EEA.

(68) The collusive contacts took place both in the EEA and outside the EEA. They concerned the maintenance of a minimum sales price for SNBB and the allocation of SNBB yearly sales quotas per SNBB producer to ensure that the worldwide price for SNBB remained stable and to prevent it from falling. This conduct relating to the supply of SNBB on a worldwide basis also related to the pricing of SNBB sold into the EEA. The Addressees also discussed and agreed their pricing and quota allocation arrangements concerning SNBB within the EEA.

(69) The Commission therefore concludes that the infringement was capable of having an appreciable effect upon trade between Member States and between the Contracting Parties to the EEA Agreement within the meaning of Article 101(1) of the Treaty and of Article 53 of the EEA Agreement.[55]

5.2.5. Non-applicability of Article 101(3) of the Treaty and Article 53(3) of the EEA Agreement

5.2.5.1. Principles

(70) The provisions of 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, provided that it allows consumers a fair share of the resulting benefit, does not impose restrictions that are not indispensable to the attainment of those objectives and does not afford the undertakings concerned the possibility of

[55] Given the high estimated market shares of the Addressees in the relevant market in the EEA […], the conditions for the non-applicability of Article 101 of the Treaty stipulated in the Commission Notice on the effect on trade concept contained in Articles 81 and 82 of the Treaty (OJ C 101, 27.4.2004, p. 81), paragraphs 51 and 52, are not met.

eliminating competition in respect of a substantial part of the products in question. The undertaking bears the burden of proving that those conditions are fulfilled.

5.2.5.2. Application in this case

(71) On the basis of the evidence in the Commission's file, and in view of the fact that the Addressees did not advance any arguments in this respect, there are no indications that the conditions for exemption provided for in Article 101(3) of the Treaty and Article 53(3) of the EEA Agreement are fulfilled with regard to this case.

6. DURATION OF THE INFRINGEMENT

(72) The Commission finds that the participation of the respective Addressees in the infringement is as follows:

Table 1 - Duration

Undertaking	Starting date	End date
Alkaloids of Australia	1 November 2005	17 September 2019
Alkaloids Corporation	1 November 2005	17 September 2019
Boehringer	1 November 2005	31 December 2014[56]
C2 PHARMA	22 January 2015[57]	4 February 2016[58]
Linnea	2 October 2006[59]	17 September 2019
Transo-Pharm	21 June 2011[60]	17 September 2019

7. LIABILITY

7.1. Principles

(73) Article 101(1) of the Treaty refers to the activities of undertakings. The concept of an undertaking covers any entity engaged in an economic activity, regardless of its legal status and the way in which it is financed. The concept of an undertaking, in that

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56 Boehringer continued to be involved in relevant contacts until it assigned its SNBB business to its exclusive distributor C2 PHARMA on 31 December 2014, and it did not publicly distance itself from the arrangements at any point prior to this. The evidence on the file does not point to any interruption in Boehringer´s participation prior to 31 December 2014. […]. As regards the consequences of absence of distancing, see Case C-440/19 P, *Pometon* v *Commission*, EU:C:2021:2014, paragraph 113.

57 […].

58 […]. Following this contact, C2 PHARMA was not involved in anti-competitive meetings with competitors, was not considered by the other Addressees to be part of the arrangements, distanced itself fully and expressly during the contacts with other Addressees from the conduct and consistently sold SNBB at prices below agreed levels. […].

59 Linnea´s first participation in a Club meeting occurred on 2 October 2006 […].

60 […] confirming the first attendance of an employee of Transo-Pharm at the Club meeting on 21 June 2011 […].

same context, must be understood as designating an economic unit even if in law that economic unit consists of several persons, natural or legal.

(74) When such an economic entity infringes Article 101(1) of the Treaty, it falls, according to the principle of personal responsibility, to that entity to answer for that infringement.

(75) The conduct of a subsidiary may be imputed to its parent company in particular where, although having a separate legal personality, that subsidiary 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, having regard in particular to the economic, organisational and legal links between those two legal entities. That is the case because, in such a situation, the parent company and its subsidiary form a single economic unit and therefore form a single undertaking within the meaning of Article 101(1) of the Treaty. This enables the Commission to address a decision imposing fines on the parent company, without having to establish the personal involvement of the latter in the infringement.[61]

(76) In those cases where a parent company holds all or almost all of the capital in a subsidiary which has committed an infringement of Article 101(1) of the Treaty, there is a rebuttable presumption that the parent company does in fact exercise a decisive influence over the conduct of its subsidiary. In those circumstances, it is sufficient for the Commission to demonstrate that the subsidiary is wholly owned by the parent company in order to presume that the parent company exercises a decisive influence over the commercial policy of the subsidiary. The Commission will then be able to regard the parent company as jointly and severally liable for the payment of the fine imposed on its subsidiary.[62]

(77) Where several legal entities may be held liable for participation in an infringement of one and the same undertaking, they must be regarded as jointly and severally liable for that infringement.

(78) For the purposes of imposing fines, the infringement must be imputed unequivocally to a legal person on which fines may be imposed and the statement of objections must be addressed to that person.

7.2. Application to this case

(79) Having regard to the body of evidence and the facts described in recitals (34) to (44), the clear and unequivocal acknowledgements by the Addressees in their settlement submissions of these facts and the legal qualification thereof, the Commission imputes liability to the following legal entities for the above described single and continuous infringement of Article 101(1) of the Treaty and Article 53(1) of the EEA Agreement.

7.2.1. Alkaloids of Australia

(80) For Alkaloids of Australia's participation in the infringement, the Commission holds **Alkaloids of Australia Pty. Limited** liable.

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61 See Case C-97/08 P, *Akzo Nobel NV and others* v *Commission*, EU:C:2009:536, paragraphs 58 and 59; Case T-455/14, *Pirelli & C.SpA* v *Commission*, EU:T:2018:450, paragraphs 66 and 67.

62 Case C-595/18 P, *The Goldman Sachs Group Inc* v *Commission*, EU:C:2021:73, esp. paragraphs 31 and 32.

(81) Alkaloids of Australia Pty. Limited has clearly and unequivocally acknowledged liability for its direct participation in the infringement from 1 November 2005 to 17 September 2019.

(82) The Commission, therefore, holds Alkaloids of Australia Pty. Limited liable for its direct participation in the infringement from 1 November 2005 to 17 September 2019.

7.2.2. Alkaloids Corporation

(83) For Alkaloids Corporation's participation in the infringement, the Commission holds **Alkaloids Corporation** liable.

(84) Alkaloids Corporation has clearly and unequivocally acknowledged liability for its direct participation in the infringement from 1 November 2005 to 17 September 2019.

(85) The Commission, therefore, holds Alkaloids Corporation liable for its direct participation in the infringement from 1 November 2005 to 17 September 2019.

7.2.3. Boehringer

(86) For Boehringer's participation in the infringement, the Commission holds liable:

(a) Boehringer Ingelheim Pharma GmbH & Co. KG;

(b) Boehringer Ingelheim GmbH; and

(c) C.H. Boehringer Sohn AG & Co. KG.

(87) Boehringer Ingelheim Pharma GmbH & Co. KG and Boehringer Ingelheim GmbH have clearly and unequivocally acknowledged liability for their direct participation in the infringement from 1 November 2005 to 31 December 2014.

(88) C.H. Boehringer Sohn AG & Co. KG has clearly and unequivocally acknowledged that it is jointly and severally liable for Boehringer Ingelheim Pharma GmbH & Co. KG's and Boehringer Ingelheim GmbH's direct participation in the infringement from 1 November 2005 to 31 December 2014, as the ultimate parent company indirectly holding 100% of the shares in Boehringer Ingelheim Pharma GmbH & Co. KG and Boehringer Ingelheim GmbH.

(89) The Commission, therefore, holds Boehringer Ingelheim Pharma GmbH & Co. KG, Boehringer Ingelheim GmbH and C.H. Boehringer Sohn AG & Co. KG jointly and severally liable for the infringement as follows:

– **Boehringer Ingelheim Pharma GmbH & Co. KG** and **Boehringer Ingelheim GmbH** for their direct participation from 1 November 2005 to 31 December 2014, and

– **C.H. Boehringer Sohn AG & Co. KG**, from 1 November 2005 to 31 December 2014, as the parent company of Boehringer Ingelheim Pharma GmbH & Co. KG and Boehringer Ingelheim GmbH.

7.2.4. C2 PHARMA

(90) For C2 PHARMA's participation in the infringement, the Commission holds **C-squared PHARMA S.à r.l.** liable.

(91) C-squared PHARMA S.à r.l. has clearly and unequivocally acknowledged liability for its direct participation in the infringement from 22 January 2015 to 4 February 2016.

(92) The Commission, therefore, holds C-squared PHARMA S.à r.l. liable for its direct participation in the infringement from 22 January 2015 to 4 February 2016.

7.2.5. Linnea

(93) For Linnea's participation in the infringement, the Commission holds liable:

(a) Linnea SA;

(b) Schwabe Extracta GmbH & Co. KG; and

(c) Ipsen S.A.

(94) Linnea SA has clearly and unequivocally acknowledged liability for its direct participation in the infringement from 2 October 2006 to 17 September 2019.

(95) Schwabe Extracta GmbH & Co. KG and Ipsen S.A. have clearly and unequivocally acknowledged that they are liable for Linnea SA's direct participation in the infringement from 2 October 2006 to 17 September 2019, as the parent companies holding each 50% of the shares in Linnea SA.

(96) The Commission, therefore, holds Linnea SA, Schwabe Extracta GmbH & Co. KG and Ipsen S.A. jointly and severally liable for the infringement as follows:

– **Linnea SA** for its direct participation from 2 October 2006 to 17 September 2019, and

– **Schwabe Extracta GmbH & Co. KG** and **Ipsen S.A.**, from 2 October 2006 to 17 September 2019, as the joint parent companies of Linnea SA

7.2.6. Transo-Pharm

(97) For Transo-Pharm's participation in the infringement, the Commission holds liable:

(a) Transo-Pharm Handels-GmbH; and

(b) Transo-Pharm Holding-AG.

(98) Transo-Pharm Handels-GmbH has clearly and unequivocally acknowledged liability for its direct participation in the infringement from 21 June 2011 to 17 September 2019.

(99) Transo-Pharm Holding-AG has clearly and unequivocally acknowledged that it is jointly and severally liable for Transo-Pharm Handels-GmbH's direct participation in the infringement from 21 June 2011 to 17 September 2019 as the parent company directly holding 100% of the shares in Transo-Pharm Handels-GmbH.

(100) The Commission, therefore, holds Transo-Pharm Handels-GmbH and Transo-Pharm Holding-AG jointly and severally liable for the infringement as follows:

– **Transo-Pharm Handels-GmbH** for its direct participation from 21 June 2011 to 17 September 2019, and

– **Transo-Pharm Holding-AG**, from 21 June 2011 to 17 September 2019, as the parent company of Transo-Pharm Handels-GmbH.

8. REMEDIES

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

(101) Where the Commission finds that there is an infringement of Article 101 of the Treaty and Article 53(3) of the EEA Agreement, it may, by means of a decision,

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

(102) Given the gravity of the infringement which is the object of this Decision, the Commission requires the Addressees to bring the infringement to an end in so far as they have not already done so and to refrain from any agreement, concerted practice or decision of an association which may have the same or a similar object or effect.

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

(103) Pursuant to Article 23(2), point (a), of Regulation No 1/2003 and Article 5 of Council Regulation (EC) No 2894/94[63], the Commission may, by means of a decision, impose on undertakings fines where, either intentionally or negligently, such undertaking infringes Article 101 of the Treaty and/or Article 53 of the EEA Agreement. For each undertaking participating in the infringement, the fine is not to exceed 10% of its total turnover in the preceding business year.

(104) In this case, the Commission considers that, based on the facts described in this Decision and the assessment contained above, the infringement has been committed intentionally or at least negligently.

(105) It is therefore appropriate for the Commission to impose fines on the Addressees.

(106) Pursuant to Article 23(3) of Regulation No 1/2003, in fixing the amount of any fine, regard is to be had both to the gravity and to the duration of the infringement. 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 No 1/2003[64] ("the Guidelines on fines").

(107) In assessing the gravity of the infringement, the Commission has regard to a number of factors, such as the nature of the infringement, the combined market share of all the undertakings concerned, the geographic scope of the infringement and/or whether or not the infringement has been implemented.

(108) In assessing the fines to be imposed on each undertaking, the Commission will also take account of the respective duration of each undertaking's participation in the infringement.

(109) Finally, the Commission will apply, as appropriate, the provisions of the Leniency Notice and the Settlement Notice.[65]

8.3. Calculation of the fines

(110) In accordance with the Guidelines on fines, the basic amount of the fine for each undertaking is calculated based on the addition of a variable amount and an additional amount. The variable amount is calculated based on 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

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63 Council Regulation (EC) No 2894/94 of 28 November 1994 concerning arrangements for implementing the Agreement on the European Economic Area (OJ L 305, 30.11.1994, p. 6).

64 Guidelines on the method of setting fines imposed pursuant to Article 23(2)(a) of Regulation No 1/2003 (OJ C 210, 1.9.2006, p. 2).

65 Commission Notice on the conduct of settlement procedures in view of the adoption of Decisions pursuant to Article 7 and Article 23 of Council Regulation (EC) No 1/2003 in cartel cases (OJ C 167, 2.7.2008, p. 1).

the number of years of the undertaking's participation in the infringement. The additional amount ("entry fee") is calculated as a percentage between 15% and 25% of the value of sales, irrespective of the duration of the infringement. The resulting basic amount can then be increased or reduced for each undertaking if either aggravating or mitigating circumstances are retained.

8.3.1. Value of sales

(111) The basic amount of the fine to be imposed on the undertakings concerned is to be set by reference to the value of their sales[66], 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 in the EEA. In this case, the relevant goods and the relevant geographic area to which the infringement related are the sales of SNBB delivered in the EEA (see also recitals (4) and (5)). The Commission includes intragroup sales to the extent that such sales are captive sales in the EEA[67].

(112) As regards captive sales, the Commission calculates the value of sales based on the average sales price per unit of SNBB applied to independent third customers in the EEA.

(113) Moreover, in light of the specific business model pursued by SNBB distributors, the Commission calculates their value of sales based on the difference between the purchasing price of SNBB paid by SNBB distributors to SNBB producers and the selling price of SNBB delivered by the respective SNBB distributor to independent third customers in the EEA. This calculation method ensures that there is no risk of double-counting of the sales made by SNBB producers to SNBB distributors involved in the cartel.

(114) Finally, the Commission normally takes the sales made by the undertakings during the last full business year of their participation in the infringement.[68] If the last year is not sufficiently representative, the Commission may consider another time period for the determination of the value of sales. In this case, in view of the long duration of the infringement and the fact that the sales fluctuated considerably during the infringement period, the Commission takes the annual average of the Addressees' sales during the full calendar/financial years of their respective participation in the infringement (as defined in recital (72) above).

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

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66 Point 12 of the Guidelines on fines.

67 Captive sales for the purposes of the fine calculation are intragroup sales of SNBB where the acquiring entity within the same undertaking uses SNBB as an input in production of another product, such as Buscopan, which is then sold in the EEA.

68 Point 13 of the Guidelines on fines.

Table 2 - The value of sales

Undertaking	Value of sales (EUR)
Alkaloids of Australia	[341 952 – 420 561] For the actual amount, please refer to the annex addressed to Alkaloids of Australia
Alkaloids Corporation	[226 790 – 245 680] For the actual amount, please refer to the annex addressed to Alkaloids Corporation
Boehringer	6 691 602
C2 PHARMA	[2 200 000 – 2 600 000] For the actual amount, please refer to the annex addressed to C2 PHARMA
Linnea	[1 250 000 – 1 500 000]
Transo-Pharm	156 329

8.3.2. Determination of the basic amount of the fine

(116) The basic amount consists of an amount of up to 30% of an undertaking's value of sales, depending on the degree of gravity of the infringement and multiplied by the number of years of the undertaking's participation in the infringement, and an additional amount of between 15% and 25% of the undertaking's value of sales, irrespective of duration.[69]

8.3.2.1. Gravity

(117) 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 will have regard to a number of factors, such as the nature of the infringement, the combined market share of all the undertakings concerned, the geographic scope of the infringement and/or whether or not the infringement has been implemented.

(118) In its assessment, the Commission considers the facts described in this Decision, and in particular the fact that cartels are, by their very nature, among the most harmful restrictions of competition. Therefore, the proportion of the value of sales taken into

[69] Points 19-26 of the Guidelines on fines.

account for such infringements will be set at the higher end of the scale of the value of sales.[70]

(119) The Commission also takes into account the multi-faceted nature of the infringement (price fixing and quota sharing), as well as the fact that it related to the whole territory of the EEA.

(120) Given the specific circumstances of this case, taking into account the abovementioned elements, the proportion of the value of sales to be taken into account should be 17%.

8.3.2.2. Duration

(121) In assessing the fine to be imposed on each Addressee, the Commission takes into consideration the respective duration of their participation in the infringement, as described in recital (72) above. The increase for duration is calculated on the basis of each Addressee's exact number of days of participation in the infringement as presented in Table 3.

Table 3 - Duration

Undertaking	**Duration**	**Duration (days)**	**Multipliers**
Alkaloids of Australia	01.11.2005 - 17.09.2019	5 069	13.87
Alkaloids Corporation	01.11.2005 - 17.09.2019	5 069	13.87
Boehringer	01.11.2005 - 31.12.2014	3 348	9.16
C2 PHARMA	22.01.2015 - 04.02.2016	379	1.03
Linnea	02.10.2006 - 17.09.2019	4 734	12.96
Transo-Pharm	21.06.2011 - 17.09.2019	3 011	8.24

8.3.2.3. Additional amount

(122) Point 25 of the Guidelines on fines provides that, irrespective of the duration of the undertakings' participation in the infringement, the basic amount may include a sum of between 15% and 25% of the value of sales in order to deter undertakings from

[70] Point 23 of the Guidelines on fines.

even entering into horizontal price-fixing, market-sharing and output-limitation agreements.

(123) For the purpose of determining the proportion of the value of sales to be taken into account for the infringement, the Commission considers the same factors as those that are taken into account to set the gravity percentage, namely its nature, the multi-faceted aspect and the geographical scope. Given the specific circumstances of this case, the proportion of the value of sales to be taken into account for the purpose of setting the additional amount should be set at 17%.

8.3.2.4. Calculation of the basic amounts

(124) Based on the criteria set out in recitals (111) to (123), the basic amount of the fine for each Addressee is presented in Table 4.

Table 4 - Basic amounts of the fine

Undertaking	Basic Amount (in EUR)
Alkaloids of Australia	[864 000 - 1 063 000]
Alkaloids Corporation	[573 000 - 621 000]
Boehringer	11 557 000
C2 PHARMA	[759 000 - 897 000]
Linnea	[2 585 000 – 3 185 000]
Transo-Pharm	245 000

8.3.3. Adjustments to the basic amount of the fine - aggravating and mitigating circumstances

(125) The Commission may consider aggravating circumstances, which could lead to an increase of the basic amount of the fine. These circumstances are listed in a non-exhaustive way in point 28 of the Guidelines on fines. The Commission may also consider mitigating circumstances that could result in a reduction of the basic amount. Such circumstances are listed in a non-exhaustive manner in point 29 of the Guidelines on fines.

(126) In light of the above, the Commission does not consider that either aggravating or mitigating circumstances are applicable to any of the Addressees.

8.3.4. Application of the 10% turnover limit

(127) The fine imposed on each Addressee is not to exceed 10% of its total turnover relating to the business year preceding the date of the Commission's decision.[71] The

[71] Article 23(2) of Regulation No 1/2003.

10% of turnover limit is applied before any reduction that may be granted for leniency and/or for settlement.[72]

(128) The 10% turnover limit applies to Alkaloids of Australia, whose fine (before applying the settlement reduction) will be reduced accordingly.

8.3.5. Application of the Leniency Notice

8.3.5.1. Immunity from fines

(129) On 5 September 2019, the Commission granted C2 PHARMA conditional immunity from fines under point (18) of the Leniency Notice (see recital (24)). C2 PHARMA's cooperation fulfilled the requirements under the Leniency Notice. C2 PHARMA is, therefore, granted immunity from fines in this case.

8.3.5.2. Reduction of fines

8.3.5.2.1. Transo-Pharm

(130) On 19 September 2019, shortly after the inspections conducted in this case, Transo-Pharm applied for a reduction of any fine under point (27) of the Leniency Notice (see recital (26)). On 20 October 2021, the Commission informed Transo-Pharm of its intention to grant Transo-Pharm a leniency reduction within the range of 30% to 50% of any fine that would otherwise have been imposed for the infringement.

(131) Firstly, the information submitted by Transo-Pharm confirmed […] and further corroborated the evidence available to the Commission at that time. […]. They provided information about […]. They described and provided further corroborating evidence regarding […].

(132) Secondly, the information submitted by Transo-Pharm confirmed and further strengthened the evidence on […]. Transo-Pharm also explained and corroborated the evidence found at its premises during the inspection.

(133) The significant added value of Transo-Pharm's submissions justifies a reduction of its fine of 50%.

8.3.5.2.2. Linnea

(134) On 29 October 2019, Linnea applied for a reduction of any fine under point (27) of the Leniency Notice (see recital (27)). On 20 October 2021, the Commission informed Linnea of its intention to grant Linnea a leniency reduction within the range of 20% to 30% of any fine that would otherwise have been imposed for the infringement.

(135) Firstly, Linnea provided evidence previously not known to the Commission, in particular regarding […]. Linnea provided further detailed information on […]. It provided further explanation […] and corroborated information received by the Commission from other sources.

(136) Secondly, […] further strengthened the evidence on the Commission file about […]. Linnea also provided additional evidence, that was previously not known to the Commission about […]. The information submitted by Linnea further confirmed and further supplemented the evidence available to the Commission at the time of Linnea's leniency application.

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[72] See points 32 and 34 of the Guidelines on fines and points 32 and 33 of the Settlement Notice.

(137) The significant added value of Linnea's submissions justifies a reduction of its fine of 30%.

8.3.6. Application of the Settlement Notice

(138) As provided for in point 32 of the Settlement Notice, the reward for settlement leads to 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.

(139) Consequently, in view of point 32 of the Settlement Notice, the amount of the fines to be imposed on the Addressees should be further reduced by 10%.

8.4. Conclusion: final amount of the fines

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

Table 5 - Fines

Undertaking	Fines (in EUR)
Alkaloids of Australia	559 000
Alkaloids Corporation	537 000
Boehringer	10 401 000
C2 PHARMA	0
Linnea	1 791 000
Transo-Pharm	98 000

HAS ADOPTED THIS DECISION:

Article 1

The following undertakings infringed Article 101 of the Treaty and Article 53 of the EEA Agreement by participating, during the periods indicated, in a single and continuous infringement consisting of bilateral and multilateral contacts regarding sales prices and the allocation of quotas on the worldwide merchant market for SNBB, including the EEA:

(a) Alkaloids of Australia Pty. Limited, from 1 November 2005 until 17 September 2019

(b) Alkaloids Corporation, from 1 November 2005 until 17 September 2019

(c) Boehringer Ingelheim Pharma GmbH & Co. KG, Boehringer Ingelheim GmbH and C.H. Boehringer Sohn AG & Co. KG, from 1 November 2005 until 31 December 2014

(d) C-squared PHARMA S.à r.l., from 22 January 2015 until 4 February 2016

(e) Linnea SA, Schwabe Extracta GmbH & Co. KG and Ipsen S.A., from 2 October 2006 until 17 September 2019

(f) Transo-Pharm Handels-GmbH and Transo-Pharm Holding-AG, from 21 June 2011 until 17 September 2019.

Article 2

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

(a) Alkaloids of Australia Pty. Limited: EUR 559 000

(b) Alkaloids Corporation: EUR 537 000

(c) Boehringer Ingelheim Pharma GmbH & Co. KG, Boehringer Ingelheim GmbH and C.H. Boehringer Sohn AG & Co. KG, jointly and severally liable: EUR 10 401 000

(d) C-squared PHARMA S.à r.l.: EUR 0

(e) Linnea SA, Schwabe Extracta GmbH & Co. KG and Ipsen S.A., jointly and severally liable: EUR 1 791 000

(f) Transo-Pharm Handels-GmbH and Transo-Pharm Holding-AG, jointly and severally liable: EUR 98 000.

The fines 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 CENTRALE DU LUXEMBOURG
2, Boulevard Royal
L-2983 Luxembourg

IBAN: LU27 9990 0001 1400 100E
BIC: BCLXLULL
Ref.: EC/BUFI/AT.40636

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 application for annulment pursuant to Article 263(4) of the Treaty, that undertaking shall cover the fines by the due date, by either providing an acceptable financial guarantee or by making a provisional payment of the fines in accordance with Article 108 of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council[73].

[73] Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the European Union (OJ L 193, 30.7.2018, p. 80).

Article 3

The undertakings listed in Article 1 shall immediately bring to an end the infringement 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.

Article 4

This Decision is addressed to:

(a) Alkaloids of Australia Pty. Limited, C/- McConachie Stedman 619 Ruthven Street, Toowoomba QLD 4350, Australia

(b) Alkaloids Corporation, 8 Bentinck Street, Kolkata - 700 001, India

(c) Boehringer Ingelheim Pharma GmbH & Co. KG, Binger Strasse 173, 55216 Ingelheim am Rhein, Germany

(d) Boehringer Ingelheim GmbH, Binger Strasse 173, 55216 Ingelheim am Rhein, Germany

(e) C.H. Boehringer Sohn AG & Co. KG, Binger Strasse 173, 55216 Ingelheim am Rhein, Germany

(f) C-squared PHARMA S.à r.l., 270 rue de Neudorf, L-2222 Luxembourg, Grand Duchy of Luxembourg

(g) Linnea SA, Via Cantonale, 6595 Riazzino (TI), Switzerland

(h) Schwabe Extracta GmbH & Co. KG, Willmar-Schwabe-Strasse 4, 76227 Karlsruhe, Germany

(i) Ipsen S.A., 65 Quai Georges Gorse, 92100 Boulogne-Billancourt, France

(j) Transo-Pharm Handels-GmbH, Bültbek 5, 22962 Siek, Germany

(k) Transo-Pharm Holding-AG, Bültbek 5, 22962 Siek, Germany

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

Done at Brussels, 19.10.2023

For the Commission

(Signed)

Didier REYNDERS
Member of the Commission