



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: 04/07/2025

This text is made available for information purposes only. A summary of this decision is published in all EU languages in the Official Journal of the European Union.

Parts of this text have been edited to ensure that confidential information is not disclosed. Those parts are replaced by a non-confidential summary in square brackets or are shown as [...].



Brussels, 4.7.2025  
C(2025) 4363 final

**COMMISSION DECISION**

**of 4.7.2025**

**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**

(Only the English text is authentic)

(Text with EEA relevance)

## TABLE OF CONTENTS

|        |   |    |
|--------|---|----|
| 1.     | Introduction .....  | 4  |
| 2.     | The relevant industry.....  | 5  |
| 2.1.   | The product .....   | 5  |
| 2.2.   | The market .....  | 5  |
| 2.3.   | The undertakings subject to the present proceedings.....  | 6  |
| 2.3.1. | Alchem .....  | 6  |
| 2.3.2. | Other undertakings subject to Commission proceedings that were also involved in the conduct, but which are not addressees of this Decision..... | 6  |
| 3.     | Procedure.....  | 7  |
| 4.     | Description of the events.....  | 9  |
| 4.1.   | The main evidence relied on .....   | 9  |
| 4.2.   | Objective .....   | 9  |
| 4.3.   | Scope of the conduct .....  | 9  |
| 4.4.   | Nature of the conduct .....   | 9  |
| 4.5.   | Geographic scope of the conduct .....   | 11 |
| 4.6.   | Duration.....   | 11 |
| 4.7.   | Alchem’s representatives at the cartel meetings and other collusive contacts.....   | 11 |
| 5.     | Chronology of relevant contacts and meetings .....  | 12 |
| 5.1.   | Events in 2005 .....  | 12 |
| 5.2.   | Events in 2006.....   | 15 |
| 5.3.   | Events in 2007.....   | 17 |
| 5.4.   | Events in 2008.....   | 19 |
| 5.5.   | Events in 2009.....   | 21 |
| 5.6.   | Events in 2010.....   | 24 |
| 5.7.   | Events in 2009/2010 – [...] .....   | 30 |
| 5.8.   | Events in 2011 .....  | 31 |
| 5.9.   | Events in 2012.....   | 37 |
| 5.10.  | Events in 2013.....   | 40 |
| 5.11.  | Events in 2014.....   | 42 |
| 5.12.  | Events in 2015.....   | 44 |
| 5.13.  | Events in 2016.....   | 46 |
| 5.14.  | Events in 2017.....   | 48 |
| 5.15.  | Events in 2018.....   | 58 |
| 6.     | Application of Article 101(1) of the Treaty and Article 53(1) of the EEA Agreement .....  | 59 |

|          |  |    |
|----------|--|----|
| 6.1.     | Relationship between the Treaty and the EEA Agreement.....                                     | 59 |
| 6.2.     | Jurisdiction .....   | 60 |
| 6.2.1.   | Article 101 TFEU applies to this infringement.....   | 60 |
| 6.2.2.   | Arguments of Alchem .....  | 62 |
| 6.2.2.1. | Implementation of the agreement in the EEA .....   | 62 |
| 6.2.2.2. | Relevance of the sales figures provided by the Parties .....                                   | 65 |
| 6.2.2.3. | Qualified effects of the agreement in the EEA .....  | 65 |
| 6.2.2.4. | Shifting of volumes from non-EEA countries to the EEA.....                                     | 68 |
| 6.3.     | Application of Article 101(1) of the Treaty and Article 53(1) of the EEA Agreement .....       | 68 |
| 6.3.1.   | Agreements and concerted practices .....   | 69 |
| 6.3.1.1. | Principles.....  | 69 |
| 6.3.1.2. | Application in the present case .....  | 71 |
| 6.3.1.3. | Arguments of Alchem .....  | 73 |
| 6.3.2.   | Restriction of competition.....  | 75 |
| 6.3.2.1. | Principles.....  | 75 |
| 6.3.2.2. | Application in this case .....   | 76 |
| 6.3.2.3. | Arguments of Alchem .....  | 77 |
| 6.3.3.   | Single and continuous infringement.....  | 80 |
| 6.3.3.1. | Principles.....  | 80 |
| 6.3.3.2. | Application in the present case .....  | 81 |
| 6.3.3.3. | Conclusion.....  | 84 |
| 6.3.3.4. | Arguments of Alchem .....  | 84 |
| 6.3.4.   | Effect upon trade between EU Member States and between EEA Contracting Parties .....           | 86 |
| 6.3.4.1. | Principles.....  | 86 |
| 6.3.4.2. | Application to this case .....   | 87 |
| 6.3.4.3. | Arguments of Alchem .....  | 87 |
| 6.3.5.   | Non-applicability of Article 101(3) of the Treaty and Article 53(3) of the EEA Agreement ..... | 89 |
| 6.3.5.1. | Principles.....  | 89 |
| 6.3.5.2. | Arguments of Alchem .....  | 89 |
| 7.       | Duration of the infringement.....  | 90 |
| 8.       | Liability.....   | 91 |
| 8.1.     | Principles.....  | 91 |
| 8.2.     | Application to this case .....   | 93 |
| 9.       | Remedies .....   | 93 |

|          |  |    |
|----------|--|----|
| 9.1.     | Article 7 of Regulation (EC) No 1/2003 .....         | 93 |
| 9.2.     | Article 23(2) of Regulation (EC) No 1/2003 .....     | 94 |
| 9.3.     | Calculation of the fine .....                        | 94 |
| 9.3.1.   | Value of sales .....                                 | 95 |
| 9.3.2.   | Determination of the basic amount of the fine .....  | 95 |
| 9.3.2.1. | Gravity.....   | 95 |
| 9.3.2.2. | Duration.....  | 96 |
| 9.3.2.3. | Additional amount.....                               | 96 |
| 9.3.2.4. | Calculation and conclusion on the basic amount ..... | 96 |
| 9.3.3.   | Adjustments to the basic amount .....                | 96 |
| 9.3.3.1. | Aggravating circumstances .....                      | 96 |
| 9.3.3.2. | Mitigating circumstances .....                       | 96 |
| 9.3.4.   | Deterrence .....                                     | 99 |
| 9.3.5.   | Application of the 10% turnover limit .....          | 99 |
| 9.3.6.   | Application of the Leniency Notice .....             | 99 |
| 9.3.7.   | Conclusion: final amount of individual fines.....    | 99 |

# COMMISSION DECISION

of 4.7.2025

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**

(Only the English text is authentic)

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union<sup>1</sup>,

Having regard to the Agreement on the European Economic Area,

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

Having regard to the Commission decision of 13 June 2024 to initiate proceedings in this case,

Having given the addressees 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 12 of 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 Treaty<sup>3</sup>,

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

Having regard to the final report of the hearing officer in this case,

Whereas:

## 1. INTRODUCTION

- (1) The addressees of this Decision participated from 1 November 2005 to 12 February 2018 ('the relevant period') in agreements or concerted practices amounting to a single and continuous infringement of Article 101(1) of the Treaty and Article 53(1) of the Agreement on the European Economic Area ('the EEA Agreement').

---

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

<sup>2</sup> 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 ('Treaty'). The two sets of provisions are, in substance, identical. For the purposes of this Decision, references to Articles 101 and 102 of the Treaty should be understood as references to Articles 81 and 82, respectively, of the EC Treaty when where appropriate. The Treaty also introduced certain changes in terminology, such as the replacement of "Community" by "Union" and "common market" by "internal market".

<sup>3</sup> OJ L 123, 27.4.2004, p. 18.

- (2) The infringement had as its object the prevention, restriction or distortion of competition for the supply of N-Butylbromide Scopolamine/Hyoscine ('SNBB')<sup>4</sup> and consisted of bilateral and multilateral contacts regarding sales prices and the allocation of quotas on the worldwide merchant market for SNBB, including the European Economic Area (the 'EEA'). Such behaviour affected trade between Member States and Contracting Parties to the EEA Agreement.
- (3) This Decision is addressed to the following legal entities (together referred to as 'Alchem'):
- (a) Alchem International Pvt. Ltd., headquartered at 201, Empire Plaza, Mehrauli – Gurgaon Road, Sultanpur New Delhi-110 030, India;
  - (b) Alchem International (H.K.) Limited, headquartered at Rm 1705-06 The L. Plaza. 367-375 Queen's Rd Central, Hong Kong.

## 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.<sup>5</sup> 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.<sup>6</sup> 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.<sup>7</sup> Alchem processes the plant material in India.<sup>8</sup>

### 2.2. The market

- (6) All member countries of the EEA require a prior marketing authorisation for supplies of SNBB to drug manufacturers on their territory.<sup>9</sup> 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.<sup>10</sup> 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.<sup>11</sup>
- (8) [*Alchem's distribution structure*].<sup>12</sup>

---

<sup>4</sup> SNBB is the acronym often used in the industry. The product is also known as Butylscopolamine bromide, Scopolamine butylbromide and Hyoscine butylbromide.

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

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

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

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

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

<sup>10</sup> [...].

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

<sup>12</sup> Alchem has had a national authorisation in Cyprus even before the accession of Cyprus to the EU. [...].

- (9) 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.<sup>13</sup> The preference for ‘spot deals’ may be linked to the unpredictable nature of the market.
- (10) SNBB is traded worldwide and transported over long distances. During the conduct described in this Decision, which took place between 2005-2018, the annual worldwide SNBB market volume supplied to the merchant market amounted to approximately 22-26 metric tons. The total demand for the merchant market of SNBB increased since 2006.<sup>14</sup> The available figures show that the worldwide merchant market value was approximately EUR 40-80 million between 2015 and 2018.<sup>15</sup> 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 present proceedings**

#### *2.3.1. Alchem*

- (11) Alchem is active in the field of phytochemicals and supplies plant-derived active ingredients, including SNBB, to the pharmaceutical, cosmetic and nutraceutical industries across 35 countries globally including in the EEA. Alchem has developed and manufactures AlchemLife™ products, on which its business activities focuses, and is developing herbal formulations based on traditional medicines.
- (12) Alchem is headquartered in India and employs over 1,000 employees worldwide, with three manufacturing sites across India and four international divisions with offices in India, Europe, Hong Kong and the United States. Alchem International Pvt. Ltd. handles sales of SNBB with its wholly owned subsidiary Alchem International (H.K.) Limited. To support its worldwide activities, Alchem also uses the services of *[information on corporate structure]*.<sup>16</sup> *[information on corporate structure]*.<sup>17</sup> Alchem had a worldwide turnover of EUR [35 – 42] million in 2023.

#### *2.3.2. Other undertakings subject to Commission proceedings that were also involved in the conduct, but which are not addressees of this Decision*

- (13) Besides Alchem, the following legal entities (referred to collectively as the ‘Settling Parties’ and, with Alchem, the ‘Parties’) were also involved in the conduct described in this Decision, but are not addressees of this Decision:
- (a) [...];
  - (b) [...];
  - (c) [...];
  - (d) [...];
  - (e) [...]; and

---

<sup>13</sup> [...].

<sup>14</sup> [...].

<sup>15</sup> [...]. The yearly volumes may vary given the significant fluctuation in the harvesting of Duboisia leaves.

<sup>16</sup> Throughout the duration of the infringement, Alchem International Pvt. Ltd. and *[information on corporate structure]*.

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

(f) [...].

- (14) As described in Section 3 of this Decision, on the basis of the settlement procedure under Article 10a of Regulation (EC) No 773/2004<sup>18</sup>, on 19 October 2023, the Commission, with regard to the Settling Parties, adopted the decision C(2023) 6863 final (the ‘Settlement Decision’) by which it found that the Settling Parties had infringed the provisions of Article 101 of the Treaty and Article 53 of the EEA Agreement by participating, overall from 1 November 2005 to 17 September 2019<sup>19</sup>, 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.
- (15) The description of the events set out in Section 5 of this Decision, including facts relating to the conduct of the Settling Parties or any other undertaking that is not an addressee of this Decision, is made exclusively for the purpose of establishing the liability of Alchem for an infringement of Article 101 of the Treaty and Article 53 of the EEA Agreement. The Decision does not make any findings and does not include any legal assessment concerning the potential liability of any undertaking that is not the addressee of this Decision.

### 3. PROCEDURE

- (16) On 15 April 2019, [...] 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<sup>20</sup> (‘the Leniency Notice’). On 5 September 2019, the Commission granted [...] conditional immunity from fines under point (18) of the Leniency Notice.
- (17) Between 17 and 20 September 2019, the Commission carried out unannounced inspections at the premises of [...], [...] and another undertaking, which is not a party to the proceedings initiated by the Commission in relation to this case.
- (18) On 19 September 2019, [...] 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.
- (19) On 29 October 2019, [...] 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.
- (20) On 20 October 2021, the Commission initiated proceedings pursuant to Article 2(1) of Regulation (EC) No 773/2004 against Alchem International Pvt. Ltd. and the Settling Parties with a view to engaging in settlement discussions with all of them. After all the Settling Parties and Alchem International Pvt. Ltd. had confirmed their willingness to engage in settlement discussions, these started in December 2021.
- (21) Between December 2021 and May 2023, settlement meetings took place between the Commission and the Parties. During those meetings, the Commission informed the Parties of the objections it envisaged raising against them and disclosed the main

---

<sup>18</sup> 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). Regulation 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).

<sup>19</sup> The participation of the respective Settling Party in the conduct is established as follows: [...].

<sup>20</sup> Commission Notice on Immunity from fines and reduction of fines in cartel cases (OJ C 298, 8.12.2006, p. 17).

pieces of evidence in the file<sup>21</sup> on which the Commission intended to rely to establish these objections. The Parties 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<sup>22</sup>. The Commission also provided the Parties with an estimation of the range of fines likely to be imposed by the Commission for their participation in the conduct.

- (22) All Parties expressed their views on the objections which the Commission envisaged 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, the Settling 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.
- (23) Between [...], each Settling Party submitted to the Commission their formal request to settle pursuant to Article 10a(2) of Regulation (EC) No 773/2004 in the form of a settlement submission.
- (24) On [...], Alchem International Pvt. Ltd. informed the Commission<sup>23</sup> that it would not submit a formal request to settle pursuant to Article 10a(2) of Regulation (EC) No 773/2004. The Commission has therefore continued the investigation into Alchem's conduct under the standard procedure in view of the adoption of a decision pursuant to Articles 7(1) and 23(2) of Regulation (EC) No 1/2003<sup>24</sup>.
- (25) On 19 October 2023, the Commission adopted the Settlement Decision pursuant to Article 7(1) and Article 23(2) of Regulation (EC) No 1/2003 addressed to the Settling Parties and finding them liable for an infringement of Article 101(1) of the Treaty and Article 53(1) of the EEA Agreement. The Settlement Decision was based on matters of fact and law accepted by the Settling Parties and did not address the question of the liability of Alchem in respect of any infringement of Article 101(1) of the Treaty and Article 53(1) of the EEA Agreement.
- (26) On 13 June 2024, the Commission initiated proceedings pursuant to 2(1) of Regulation (EC) No 773/2004 against Alchem International (H.K.) Limited and adopted a Statement of Objections ('SO') addressed to Alchem. The Commission offered Alchem the possibility to provide observations on the SO.
- (27) On 23 August 2024, Alchem received access to the Commission's investigation file via a confidentiality ring and made use of its right to access corporate leniency statements via eLeniency. On 19 September 2024, Alchem's lawyer submitted a reasoned request for client access to selected documents accessed during the confidentiality ring, which was granted on 10 October 2024.
- (28) On 26 August 2024, the Commission informed Alchem about some clerical errors identified in the SO (concerning notably certain cross-references to the Commission's investigation file). On 4 November 2024, Alchem submitted its

---

<sup>21</sup> [...].

<sup>22</sup> eLeniency is an online IT tool which enables the submission of statements and documents to the Commission.

<sup>23</sup> [...].

<sup>24</sup> 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).

observations on the SO<sup>25</sup>. Alchem did not request an oral hearing to develop its arguments.

- (29) On 16 May 2025, the Commission sent a Letter of Facts to Alchem<sup>26</sup>. On 30 May 2025, Alchem submitted its observations on the Letter of Facts. On 16 June 2025, a state of play meeting was held with Alchem.

#### **4. DESCRIPTION OF THE EVENTS**

- (30) The conduct that is the subject of these proceedings consisted of bilateral and multilateral contacts involving Alchem regarding sales prices and the allocation of quotas<sup>27</sup> on the worldwide merchant market for SNBB.

##### **4.1. The main evidence relied on**

- (31) The principal evidence relied upon for the purposes of this Decision consists of the corporate statements and documents submitted by [...], as leniency applicants, documents copied by the Commission during the inspections and the replies to the Commission's requests for information. [...].

##### **4.2. Objective**

- (32) 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 Parties to stabilise the world market price and to prevent it from falling.<sup>28</sup>

##### **4.3. Scope of the conduct**

- (33) The Parties 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 of leaves from the Duboisia trees, the supply situation and the development of production volumes of the SNBB producers.<sup>29</sup>

##### **4.4. Nature of the conduct**

- (34) The Parties, or at times a subset of them, met physically at multilateral meetings (called 'Club meetings') once or twice per year.<sup>30</sup> The Club meetings officially started in 2005. The first participants were [...] ([...]), [...] ([...]), [...] ([...]) and [...] (Alchem).<sup>31</sup> Typically, they discussed the situation on the Duboisia plantations. As indicated by [...], at the majority of the Club meetings, the Parties agreed on quotas and minimum selling prices. According to [...], the Parties knew that the

---

<sup>25</sup> [...].

<sup>26</sup> [...].

<sup>27</sup> The quotas were allocated per SNBB producer.

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

<sup>29</sup> The information relating to market trends generally originated from public sources. Thus, the Parties used data provided by the official statistics offices in Australia, India, Brazil and Mexico, including the export statistics of the Australian Department of Foreign Trade, [www.abs.gov.au/ausstats](http://www.abs.gov.au/ausstats). The Brazilian import statistics were usually provided by [...] (Alchem) - [...].

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

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

fixing of the level of the minimum sales price of SNBB would only work if certain quotas were also allocated.<sup>32</sup> However, there were several instances where the agreed quotas and prices were not respected which led to discontent between the Parties.<sup>33</sup>

- (35) The Parties informed each other about their SNBB supply situation (shortage or overcapacity) and the development of their production volumes. Further, the Parties agreed or attempted to agree<sup>34</sup> 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.<sup>35</sup> The SNBB producers also agreed or attempted to agree on the yearly quotas<sup>36</sup> (metric tons per SNBB producer), which each of them should produce and supply on the SNBB market worldwide.<sup>37</sup> Additional exchanges via telephone and emails about those topics also took place.<sup>38</sup>
- (36) 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<sup>39</sup> and, later on, [...] preparation of its exit from the merchant market starting in the course of 2014 and taking effect at the end of 2014. The Parties 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.<sup>40</sup> Occasionally<sup>41</sup>, the Parties attempted to again reach agreements on the minimum sales prices of SNBB and quotas<sup>42</sup>, to which each of them would adhere on a worldwide basis.<sup>43</sup>
- (37) Throughout the entire duration of the conduct, the Parties, as the situation arose and in varying constellations (the contacts did not always include all the Parties or concern all of the following at all times):
- (a) made and discussed complaints about SNBB sales by one or more of the Parties below the agreed minimum price and about SNBB sales exceeding the assigned quotas or not reaching the assigned quotas;<sup>44</sup>
  - (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;<sup>45</sup>

---

32 [...].

33 [...].

34 Despite the Parties' attempt to agree on minimum sales prices for SNBB, they often fought about price levels and customer requests in various markets (cf. recital (39) below).

35 [...].

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

37 [...].

38 [...].

39 [...].

40 [...].

41 E.g. through bilateral and multilateral email exchanges, taking place during autumn 2017, [...].

42 The quotas were allocated per SNBB producer.

43 [...].

44 [...].

45 [...].

- (c) attempted to exercise control over their distributors' sales policy to end-customers to ensure respect of the price arrangements, where the Parties used distributors;<sup>46</sup>
  - (d) discussed additional measures in case of a risk of potential new suppliers entering the SNBB merchant market.<sup>47</sup>
- (38) The above-described contacts occurred via telephone calls<sup>48</sup> and emails<sup>49</sup> 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, restaurants and hotels<sup>50</sup>. For example, [...] (when at [...]) regularly used to meet [...] and [...] (both Alchem) when they transited at Frankfurt airport.<sup>51</sup> As regards the meetings in the framework of the [*trade fair*], [...] confirmed that SNBB suppliers all attended the [*trade fair*] events and had been following the same "routine" for years. They typically met at the end of the afternoon on the second day of the [*trade fair*] in a private meeting room in a hotel or one of their respective booths (often Alchem's).<sup>52</sup>
- (39) 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 (e.g. when Alchem tried to establish contact with [...], another SNBB producer, see recital (114)). 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 Parties adhered to the agreed prices and quotas.<sup>53</sup> From 2014 onwards, the Parties were no longer successful in renewing price fixing and sales quota agreements, although information exchanges on pricing and supply did continue.

#### 4.5. Geographic scope of the conduct

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

#### 4.6. Duration

- (41) Overall, the conduct lasted from 1 November 2005 to 17 September 2019. Alchem's participation in the conduct lasted from 1 November 2005 to 12 February 2018.

#### 4.7. Alchem's representatives at the cartel meetings and other collusive contacts

- (42) The individuals who participated in the relevant contacts and meetings on behalf of Alchem are listed in Table 1<sup>54</sup>.

---

<sup>46</sup> [...].

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

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

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

<sup>50</sup> [...]; since mid 2011, Club meetings were gradually replaced by multilateral and bilateral email exchanges and phone calls, [...].

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

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

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

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

**Table 1: Representatives of Alchem in the relevant contacts and meetings**

| <b>Name</b> | <b>Position</b>   | <b>Period</b>                    | <b>Direct Superior</b> |
|-------------|---|----------------------------------|------------------------|
| [...]       | [...]<br>[...] Alchem International Pvt. Ltd.<br>[...]<br>[...] Alchem International (H.K.) Limited | [...]<br>[...]<br>[...]<br>[...] |                        |
| [...]       | [...] Alchem International Pvt. Ltd.  | [...]                            | [...]                  |
| [...]       | [...]<br>[...] Alchem International Pvt. Ltd.   | [...]<br>[...]                   |                        |
| [...]       | [...] Alchem International Pvt. Ltd.  | [...]                            | [...]                  |
| [...]       | [...]   | [...]                            | [...]                  |

**5. CHRONOLOGY OF RELEVANT CONTACTS AND MEETINGS**

**5.1. Events in 2005**

(43) On **1 November 2005**, a Club meeting was held at the [...] trade fair in Madrid (Spain)<sup>55</sup>. Participants to this meeting were representatives of [...] ([...]), Alchem ([...])<sup>56</sup>, [...] and [...]. According to [...], the participants discussed worldwide price levels of SNBB<sup>57</sup> and the following allocation of quota of the total global market was at least discussed if not agreed:

- [...]: 7 tonnes
- [...]: 5 tonnes
- [...]: 4 tonnes
- [...]: 2.5 tonnes
- [...]: 2 tonnes
- [...]: 1 tonne.<sup>58</sup>

<sup>55</sup> [...].

<sup>56</sup> Alchem confirmed its attendance at the [...] trade fair in Madrid in 2005. [...].

<sup>57</sup> [...].

<sup>58</sup> [...]. [...] is an Indian SNBB producer, not subject of the proceedings.

- (44) The price discussion is also confirmed by an internal [...] (a [...] distributor) memo titled: ‘SNBB – Discussion with [...] Price increase’ and dated 2 November 2005, which mentions the following:<sup>59</sup>

*[...] has met with Indian and [...] producers during the [trade fair] in Madrid and agreed on the following new prices*

*1) [...] for sales to merchants, who buy in their own capacity.*

*2) [...] to final consumers’.*<sup>60</sup>

- (45) Contrary to Alchem’s claims<sup>61</sup>, it is evident that the term “Indian producers” includes Alchem, as it was the largest Indian producer of SNBB and itself acknowledges its presence at the trade fair.<sup>62</sup> Alchem’s attendance at the anti-competitive meeting is further confirmed by [...] which explains that the meeting may have taken place at the Alchem booth. In addition, Alchem’s attendance is confirmed by the fact that one of the issues discussed was the pricing of Alchem (see recital (43)). Furthermore, the term ‘*the Indians*’ is used to refer to or to include Alchem at various other instances in the Commission file<sup>63</sup>. For example, concerning the Paris Club meeting of 2 October 2006, at which Alchem’s presence is established and undisputed, subsequent correspondence connected to this meeting indicates that ‘*the Indians*’ would have reduced volumes (see recital (56)). In addition, a so called ‘*Indian tea party*’ was organized, with the presence of Alchem (see recital (174)). Equally, an internal e-mail from [...] ([...]) reports on a conversation with [...] ([...]) who had spoken to [...] and ‘*the Indians*’. Two lines later Alchem is directly identified (see recital (202) and Footnote (338)).

- (46) To the extent that Alchem questioned the content of the meeting, this is established by direct, contemporaneous evidence in the form of the internal memo of a third party ([...]), where the price fixing arrangements are clearly outlined. As indicated by [...], it is possible that some of the participants to the Club meeting wanted to prevent prices from falling below [...].<sup>64</sup> Furthermore, [...] clearly indicates that quotas were discussed at the meeting.

- (47) Alchem further questioned the reliability of the evidence provided by [...]. Given the long duration of the cartel, it is normal that the recollections of the direct participants cannot be absolutely precise on each and every factual element. Even if [...] cannot recollect if a concrete agreement was reached at this time, [...] evidence shows that an anti-competitive meeting took place in the margins of the [...] trade fair in Madrid and that Alchem was present. This is corroborated by the internal [...] note, which in itself shows the conclusion of an anti-competitive agreement. Furthermore, this follows the general pattern of the cartel with Club meetings taking place in the margins of trade fairs with Alchem being in attendance (see for example recitals (54), (60), (67), (77), (105), (140), (174) and (180)). Contrary to Alchem’s claims

---

<sup>59</sup> [...], original quote in German: ‘SNBB – Gespräch mit [...] Preiserhöhung’.

<sup>60</sup> Original quote in German: ‘[...] hat während der [trade fair] in Madrid mit den indischen und [...]. Herstellern gesprochen und folgende neue Preise verabredet  
1) [...] für Verkäufe an Händler, welche im eig. Namen kaufen.  
2) [...] an Endverbraucher’.

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

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

<sup>63</sup> See for example [...] where it is clear from the correspondence between the SNBB producers that the term ‘*Indians*’ includes Alchem.

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

that there is no direct evidence of its participation in such discussions<sup>65</sup>, the Commission notes that such meetings in the margins of the [trade fairs] occurred even prior to the meeting of 1 November 2005<sup>66</sup> in reaction to among other, Alchem's emergence onto the worldwide market as SNBB supplier.<sup>67</sup>

- (48) One to one meetings between [...] ([...]) and [...] (Alchem) took place on unidentified dates in 2005 at the [...] Hotel and in the [...] restaurant in Mainz (Germany).<sup>68</sup> As indicated by [...], [...] and [Alchem] discussed both private and business-related issues during these meetings. In its reply to the SO,<sup>69</sup> Alchem argues that these meetings have no relevance because there is no evidence of the anticompetitive nature of these meetings. The Commission considers that these meetings nevertheless show an ongoing close relationship between the two individuals.<sup>70</sup>
- (49) In its reply to the SO<sup>71</sup>, Alchem claimed that there is no direct evidence of Alchem's participation in the discussions on prices and quotas, and in any case these discussions did not result in the conclusion of an agreement.
- (50) However, contrary to what is argued by Alchem the evidence in the Commission's file (the leniency statements, RFI replies and corroborating evidence)<sup>72</sup> concerning 2005 supports the Commission's finding that at the Club meeting in Madrid on 1 November 2005 Alchem, the largest Indian SNBB producer, entered into an anti-competitive agreement, whose objective was to fix prices and allocate quotas. The internal memo of a third party further shows that the participants agreed to fix global prices [...] (see recital (44) above). Moreover, as [...] indicated a quota of 4 metric tons was at least discussed if not agreed on the SNBB worldwide market for Alchem.<sup>73</sup> This marked the start of the cartel. As [...] indicated, the SNBB producers were aware that any price fixing would only operate if certain quotas were also respected. Therefore, the basis of the price agreement was the prior agreement of the parties on the size of the overall market and their respective quotas.<sup>74</sup> Contrary to Alchem's claims,<sup>75</sup> the link between the agreements on prices and the agreement on quotas is also shown by an internal email of [...] of 7 October 2005 when [...] ([...]) reported that he had exchanged information with [...] ([...]) about the [...] market

---

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

<sup>66</sup> [...], where it states that Alchem had already met in May 2003 with other SNBB producers ([...], [...]) and [...] in a hotel conference room during the [...] Fair in Geneva (Switzerland). All the arrangements about the meeting at the hotel and its payment were made by [...] (Alchem).

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

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

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

<sup>70</sup> See also recitals (82), (171) and (257).

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

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

<sup>73</sup> The term 'worldwide market' used in this Decision is an untechnical term that does not correspond to a market definition under the Commission Notice on the definition of the relevant market for the purposes of Union competition law (C(2023) 6789 final). It rather refers to the total market volume sold in the merchant SNBB market worldwide. Equally references to local, national and regional markets do not constitute definitions of a relevant market but refer to sales of SNBB made at that territorial level. The largest local or national markets for SNBB sales were the following (in descending order): [...], Germany, Poland, Romania and Bulgaria. [...].

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

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

and it was agreed that the quotas of the Indians (including Alchem) should not be challenged by offering lower prices.<sup>76</sup>

## 5.2. Events in 2006

- (51) On **24 April 2006**, [...] ([...]) created an excel-sheet providing a global market overview, indicating the main competitors for the respective markets. [...] confirmed that these sheets served as basis for agreeing on worldwide quota allocations among the Parties during the Club meetings. He used different inputs for setting up these tables, including information from competitors.<sup>77</sup> The excel sheet showed Alchem's sales to Germany and Poland. Alchem was considered as the main competitor of [...].<sup>78</sup>
- (52) In its reply to the SO,<sup>79</sup> Alchem denied that it contributed to the drafting of the excel-sheet and stated that the spreadsheet was the result of market research carried out by [...], that used to collect market intelligence from a multitude of sources. However, contrary to Alchem's claims, first, as mentioned above [...] ([...]) himself, i.e. the drafter of the document, confirmed that he used amongst other information from competitors to set up these excel-sheets. Second, as can be seen from recital (59) below, there is direct evidence that he consulted [...] (Alchem) to complete the excel-sheet at least in one instance. The Commission has already acknowledged that [...] used different inputs for setting up these tables, but what was just reported shows that information from competitors, including Alchem, was one of the inputs used.
- (53) On **2 October 2006**, [...] ([...]) took handwritten notes of a conversation with [...] ([...]) about prices in [...] and [...], who prompted amongst others a '*review of prices*' in December 2006 with a minimum sales price [...].<sup>80</sup> In its reply to the SO,<sup>81</sup> Alchem claimed that the evidence presented in this recital is not relevant from an EEA competition law perspective. The Commission disagrees with this interpretation and replies to these claims in particular in Section 6.2.2.1.
- (54) On **2 October 2006**, a multilateral meeting took also place between [...] and [...] (both Alchem), [...] ([...]), [...] ([...]), [...] ([...]) and [...] ([...]) in [...] apartment in downtown Paris (France) (i.e. '*meeting of the Club*')<sup>82</sup>. The meeting took place one day before the [*trade fair*] in Paris (France) which took place from 3 until 5 October 2006. The participants discussed the status of the crop (given its key importance to forecast the market supply of SNBB)<sup>83</sup> the expectations as to the global volume of SNBB as well as the resulting future level of the SNBB price. Due to the drop of SNBB prices at that time, the participants aimed to agree on a price increase [...].<sup>84</sup> <sup>85</sup> In its reply to the SO,<sup>86</sup> Alchem claimed that the evidence presented in this recital is not relevant from an EEA competition law perspective and that the

---

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

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

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

<sup>79</sup> [...].

<sup>80</sup> [...]. [...] mentioned in this regard that the multilateral meetings among Parties were frequently preceded by bilateral quota-setting discussions between [...] and each of [...], [...] and Alchem ([...]).

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

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

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

<sup>84</sup> This corresponds to [...] after deduction of approx. [...] % agent commission.

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

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

information discussed about weather conditions and the state of the crop, and the impact of these elements on price levels was in the public domain. The Commission replies to each of these and similar claims in particular in Section 6.2.2.1.

- (55) On **9 October 2006**, an email conversation between [...] ([...]), [...] ([...]) and [...] ([...]) took place, in which [...] refers to the Paris (France) meeting of 2 October 2006: *‘as already assumed, [...] in Paris (France) set a new vk price with the other manufacturers: [...]!!!!!!! (my presumption was [...] – around 4-5to would be missing from the other manufacturers and [...] would like to fill this gap).’*<sup>87</sup> In its reply to the SO,<sup>88</sup> Alchem again claimed that there is no mention of the EEA. The Commission replies to this general claim in particular in Section 6.2.2.1.
- (56) On **6 November 2006**, a meeting took place between [...] ([...]) and [...] ([...]) in Hamburg (Germany). [...] explained the results of the discussions that took place during the *[trade fair]* in Paris (France) and [...] prepared an internal note (with the subject *‘Results of the discussions during the [trade fair]’*) summarizing their meeting. Besides the agreed price, the note further mentions that *‘3) [...] will produce only 30-40 % of the usual volumes in 2007, Indians<sup>89</sup> will have 50 % less. [...] expects a gap of 4-5 mt that he would like to fill.’*<sup>90</sup> It also mentions that [...] wanted to allocate fixed annual quantities for 2007.<sup>91</sup>
- (57) In its reply to the SO,<sup>92</sup> Alchem claimed (i) that the term Indians might not refer to Alchem and (ii) that the information contained in the email might be the result of [...] estimates based on the information in the public domain. Moreover, Alchem argued that the internal note shows [...] leading role. Alchem further claimed that [...] would not have made this announcement if an annual quota allocation system had already been in place. The Commission disagrees with Alchem’s views. The very subject of the email (*‘Results of the discussions during the [trade fair]’*) shows unequivocally that these arrangements were the results of the discussions held between competitors during the trade fair, to which Alchem participated. This means that the term “Indians” includes Alchem, as also explained in recital (45)). Regarding the quota allocations, as already explained in recital (49) the principle behind the cartel arrangements was that price fixing would only operate if certain quotas were also respected<sup>93</sup>. Quotas were fixed or revised on an annual basis (see recital (50)) so the fact of discussing a quota for 2007 can in no way imply that a quota system was not already in operation. Moreover, Alchem’s comments on the alleged leading role of [...] is irrelevant for the purpose of establishing Alchem’s involvement in this exchange.

---

<sup>87</sup> [...]. Original quote in German: *‘wie bereits vermutet hat [...] in parismit den anderen herstellerneinen neuen vk-preis festgelegt:[...]!!!!!!! (meine vermutung war [...] - es werden ca. 4-5to ware fehlenvon den anderen herstellern und [...] moechte diese luecke ausfuellen)‘.*

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

<sup>89</sup> It can be inferred from the use of plural that both Indian producers were involved, meaning Alchem and [...].

<sup>90</sup> [...], original quote in German: *‘3) [...] wird 2007 nur 30-40% der üblichen Mengen produzieren, die Inder werden um 50% weniger haben, [...] erwartet eine Lücke von 4-5 mt, welche er gern schließen möchte.’*

<sup>91</sup> [...], original quote in German: *‘4) Mengen 2007 Die Gespräche mit der Pharmaabteilung von [...] finden in einer Woche statt, dann kann [...] über Mengen reden. Er möchte dann allen Beteiligten feste Jahresmengen zuteilen.’*

<sup>92</sup> [...].

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

- (58) The evidence in the Commission's file relating to 2006 supports the Commission's finding that the arrangement set up in Madrid on 1 November 2005 continued with Alchem attending a subsequent Club meeting in Paris, where pricing and volumes were discussed. Other bilateral meetings and email correspondence between the SNBB suppliers took also place in 2006.

### 5.3. Events in 2007

- (59) On **6 March 2007**, [...] ([...]) completed the excel sheet he created on 24 April 2006.<sup>94</sup> The first row of the excel sheet reads: '*world market situation – as of: April 2006*'.<sup>95</sup> The excel sheet has columns regarding the various markets in Europe and worldwide, the approximate volume destined for these markets, the [...] sales channels, the customers, [...] main competitors in these markets and other information. It shows that Alchem was active in Germany and Poland in the EEA, among others. To complete the excel sheet, [...] used the information available to him and obtained during his discussions with other agents and representatives of competing SNBB suppliers. For example, under the excel sheet, there are handwritten notes by [...] dated 6 March 2007 where he noted down information concerning the SNBB market (including notes for specific countries outside EEA, but also Poland with the specific note of '*not much*', as also noted by Alchem in its Reply to the SO<sup>96</sup>) received via a call with [...] (Alchem).<sup>97</sup> [...] used this document as supporting document for the discussions among the Parties at the Club meetings regarding the volumes sold.<sup>98</sup> In its reply to the SO,<sup>99</sup> Alchem claimed that the comments of [...] cannot be considered reliable given that he himself admitted to having no precise recollection of past events. The Commission notes that the fact that a person does not have a precise recollection of all past events, does not undermine the relevance of his recollection of some, specific circumstances, in particular when, as in the present case, there are elements such as contemporaneous handwritten notes that can assist in the same recollection.
- (60) On **9 May 2007**, a meeting took place between [...] ([...]), [...] (Alchem) and [...] ([...]) at [...] Fair that was held from 8 to 10 May 2007 in Geneva (Switzerland)<sup>100</sup>. According to the handwritten notes of [...] <sup>101</sup>, the parties discussed market data with volumes (including Alchem's volumes of SNBB in stock for the rest of the year), weather conditions and specific markets (such as [...]). Additionally, [...] presented a proposal for a staged worldwide price increase, according to which the price would be [...]. [...] also recalled that he might have presented a proposal [...]. A common justification for the increase was supposed to be the shortage of Duboisia, the cost increase and weakness of the dollar. [...] also wanted to discuss the implementation of complete pricing transparency in the SNBB worldwide market for 2009 ('*total transparency or violation means = NO DEAL everyone suffers*'). He noted that a

---

<sup>94</sup> See also recital (51).

<sup>95</sup> Original quote in German: '*Weltmarktsituation – Stand: April 2006*'.

<sup>96</sup> [...].

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

<sup>98</sup> [...].

<sup>99</sup> [...].

<sup>100</sup> Alchem confirmed its attendance at [...] Fair, [...].

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

further price adjustment could be discussed at a [*trade fair*] meeting held later in 2007.<sup>102</sup>

- (61) In its reply to the SO,<sup>103</sup> Alchem claimed that information on market volumes and the weather was in public domain and information about Alchem's stocks had no relevance for the EEA. Moreover, the reference to specific markets outside the EEA would demonstrate that the Commission's theory of a SNBB worldwide market would be wrong. Finally, there would be no evidence that the proposal presented by [...] was endorsed by the parties. With respect to the question of publicly available information and the relevance for the EEA, the Commission replies to each of these and similar claims in Section 6.3.2. Moreover, the fact that the Parties discussed specific national markets does not disprove the fact that the same Parties engaged in a restrictive agreement at worldwide level<sup>104</sup>, to allocate quotas and fix prices generally applicable to all customers around the world. As for the fact that there would not be evidence that the proposal for a staged worldwide price increase was accepted by the Parties, it has to be taken into account that the proposal was just a specific episode in a series of meetings and contacts where the Parties exchanged competitive sensitive information and discussed price fixing and quota allocation. The fact that not all Parties agreed completely on a specific proposal, if even true, is therefore irrelevant. Moreover, the exchanges between the Parties in the months following the meeting confirm that at least some Parties agreed on the price fixing. In this respect, according to settled case-law, it is sufficient for the Commission to show that the undertaking concerned participated in meetings at which anti-competitive agreements were concluded, without manifestly opposing them, to prove to the requisite standard that the undertaking participated in the cartel. Where participation in such meetings has been established, it is for that undertaking to put forward evidence to establish that its participation in those meetings was without any anti-competitive intention by demonstrating that it had indicated to its competitors that it was participating in those meetings in a spirit that was different from theirs.<sup>105</sup>
- (62) On **18 September 2007**, [...] ([...]) sent an email to [...] ([...]) complaining over low prices by competing SNBB suppliers in a tender in Egypt. Among the competing suppliers was also Alchem with an [...].<sup>106</sup> Subsequently, on 19 September 2007, [...] called [...] ([...]) which [...] in the tender and they agreed that [...] was not to offer [...] in the future.<sup>107</sup> In its reply to the SO,<sup>108</sup> Alchem questions the relevance of these exchanges and states that the actual results of the tender would show that Alchem competed on price. However, the exchange confirms that a price understanding was in place to which the Parties should adhere, even if some of them could sometimes try to act opportunistically.
- (63) Also, on **an undetermined date in autumn 2007**, a call between [...] ([...]) and [...] ([...]) took place. [...] handwritten notes show that among others, [...] also complained to [...] about [...] (Alchem) undercutting the agreed prices by offering

---

<sup>102</sup> [...]. [...] had prepared his notes in pencil before the meeting and the corrections made during the meeting were made in red ink.

<sup>103</sup> [...].

<sup>104</sup> See also fn 73.

<sup>105</sup> Judgement of 7 January 2004, *Aalborg Portland and Others v Commission*, C-204/00 P (EU:C:2004:6, p. 81).

<sup>106</sup> [...].

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

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

SNBB [...].<sup>109</sup> In its reply to the SO, Alchem claimed that there were no price agreements with Alchem, that engaged in aggressive competition and that in any event this instance is irrelevant as it does not involve the EEA. The Commission notes that in May 2007 the Parties agreed to a worldwide increase ([...] as from July 2007 (see recital (60)) and this was the reason why [...] complained about Alchem's level [...]. If the prices had not been agreed with Alchem as well, [...] would not have had any reason to complain with [...], that was the author of the proposal of price fixing. The fact that Alchem was not respecting the agreement in this specific case is irrelevant. Furthermore, regarding the EEA argument the Commission replied to each of these and similar claims in particular in Section 6.2.2.1.

- (64) The evidence in the Commission's file relating to 2007 supports the Commission's finding that the cartel agreement between the Parties remained in place and Alchem continued to attend multilateral meetings where prices and volumes were discussed, notably at [...] trade fair, and was also involved in bilateral contacts concerning the same subject matter.

#### 5.4. Events in 2008

- (65) On **8 and 9 April 2008**, [...] ([...]) discussed SNBB sales prices with [...] ([...]) who referred amongst other to low prices offered by Alchem in India. Following this exchange, [...] ([...]) sent an email to [...] (Alchem), in which he indirectly accused Alchem of selling below [...] stating: *'Hence I wonder why some people seem to be selling [...]. Unless there is some cheap seller, we are achieving [...], now with little argument.'* He pointed to the upcoming shortage of SNBB in the market, which would enable to ask for higher SNBB prices.<sup>110</sup> [...] then made copies of both email chains and submitted them to [...] ([...]) via fax.
- (66) In its reply to the SO,<sup>111</sup> Alchem claimed that the exchange between [...] and [...] would confirm that there would be regional markets and not a worldwide one, and that Alchem was stimulating price competition as it had no interest in aligning itself to an artificial price. The question of the dimension of the SNBB market(s) and of the interrelations between different areas is dealt with in Section 6.2 below. As for the alleged role of Alchem in stimulating competition, what is relevant is that the e-mail from [...] to [Alchem] shows that there was an agreement to sell at a certain price level, since otherwise, [...] would have had no reason to complain about low pricing.
- (67) **From 30 September to 2 October 2008** the [trade fair] in Frankfurt (Germany) took place during which a 'Club' meeting was held. The participants were [...] ([...]), [...] ([...]), [...] (Alchem), [...] ([...]), [...] and [...] ([...]). As indicated by [...], the venue of the 'Club' meeting was very likely the hotel suite of [Alchem]. The participants discussed binding minimum prices, maximum quotas and market share allocation.<sup>112</sup> [...] prepared handwritten notes in preparation of the meeting which clarify that the agenda topics discussed included the overall situation for duboisia, sales volumes, market shares and sales prices. It is obvious from the notes that the overall market was growing and Alchem had increased its market share in 2008 from 1.4 metric tons in 2007 to 3.7 metric tons of SNBB. During the meeting Alchem informed the other Parties that it was already harvesting.

---

<sup>109</sup> [...].

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

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

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

- (68) In its Reply to the SO, Alchem states that the notes do not confirm who exactly attended the meeting and that the Commission relies in this context on the faded memories of [...], who initially assumed that the meeting took place in Hong Kong.<sup>113</sup> The Commission notes that Alchem does not deny its presence at the meeting. As for the alleged vague memories, the combination of [...] notes prepared prior to and during the meeting and his recollections as set out in the [...] provide a coherent description of the events.<sup>114</sup> Given the long duration of the cartel, it is normal that the recollections of the direct participants cannot be absolutely precise on each and every factual element. In some instances, the recollections of the direct participants could be corroborated by other contemporaneous evidence such in this case by the notes which were prepared before the meeting in black pen and were complemented during the meeting in blue pen. The Commission further notes that [...] submitted [...] corroborated by the inspection documents and leniency annexes and provided a correction of two pages relating to the meeting in Frankfurt in 2008. Although [...] initially thought this meeting took place in Hong Kong, it was clear from cross-checking documents (the stamps in [...] passport) that the Hong Kong meeting took place in February 2009 (see also recitals (72) and (73)). Furthermore, [...] handwritten notes prepared for the Club meeting in Hong Kong refer to the agreed level of prices reached at the previous Club meeting in Frankfurt (see recital (67)).
- (69) On **7 November 2008**, [...] (Alchem) forwarded to [...] ([...]) an email with information on Alchem's quote to a customer outside the EEA. Alchem lost the contract to [...], which offered a lower price. [*Alchem*] therefore asked [...] to call [...] (Alchem) to discuss the issue. Before doing so, [...] forwarded this email to [...] to find out more information. [...] replied stating that this is an old customer of theirs and they speculated that they lost their previous order to Alchem, so this time they were pricing more aggressively.<sup>115</sup> On **25 November 2008**, [...] (Alchem) continued the email thread of 7 November 2008 by sending another email to [...] ([...]). In the email thread, a message from [...] (Alchem) was copied who complained about a low-price offer made by [...] and asked [...] to call him in order to coordinate on some offers. [...] ([...]) forwarded the email to [...] ([...]) asking how to respond. An internal email of [...] shows that they finally discussed the reply on the phone with the result that '[...] *will indicate* [to Alchem] *that a corrective action will be taken.*'<sup>116</sup> In its Reply to the SO,<sup>117</sup> Alchem claims that the comment of [...] shows that no agreement on prices was reached. However, this evidence shows that Alchem complained about [...] low prices, which clearly implies the existence of an understanding on price levels, and that subsequent corrective actions would be taken.
- (70) The evidence in the Commission's file supports the Commission's finding that in 2008 the cartel agreement between the Parties remained in place and Alchem attended a multilateral meeting at the [...] trade fair in Frankfurt where binding minimum prices, maximum volumes and market allocation were discussed. Alchem was also involved in bilateral contacts and exchanges of information. In addition, Alchem complained about SNBB sales below agreed minimum prices.

---

<sup>113</sup> [...].

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

<sup>115</sup> [...].

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

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

## 5.5. Events in 2009

- (71) On **12 January 2009**, [...] ([...]) forwarded his email discussion with an agent in [...] to [...] and [...] ([...]). In the discussion, [...] stresses to the agent that he is not allowed to resell [...] SNBB destined for [...]. When forwarding the email to [...], [...] asked him to ‘*stop Indians from offering for [...] as [...] <sup>118</sup> likely to make the same for [...] after this order and not sure we can fight there (see [...])*’.<sup>119</sup> In its reply to the SO<sup>120</sup>, Alchem claimed that the email correspondence above shows the contractual obligations between [...] and [...], that was [...] distributor in these markets, and not a market sharing arrangement relating to [...], as [...] did not have the necessary registration for marketing SNBB in [...]. However, a contractual relationship between [...] and [...] would not explain why [...] would be in a position to stop a supplier, i.e. Alchem, from offering in a specific market, if there were not anti-competitive arrangements in place.
- (72) On **14 February 2009**, a meeting took place between [...] ([...]), [...] ([...]), [...] (Alchem) and [...] (Alchem), and [...] and [...] ([...]).<sup>121</sup> The meeting was organised by [...], and it took place at [Alchem] suite at a hotel in Kowloon (Hong Kong, China). [...] confirmed that the main reason for organising the meeting was a concern that, with the expected good harvest, Alchem could start selling SNBB at aggressive prices (see also recital (77)) and the intention of the participants was therefore to discipline Alchem. According to [...] recollection, when [...] ([...]) argued that an increase in supply would decrease the SNBB prices, [...] further asked if the decrease in prices was what [Alchem] wanted, to which he replied in the negative. With this statement the meeting was concluded.<sup>122</sup>
- (73) The more detailed content of the meeting is evidenced by [...] handwritten notes prepared for the meeting which he updated during the discussions<sup>123</sup>. The participants discussed maximum quotas and a binding minimum price effective immediately and to be followed until the next meeting in May, as well as the storyline to tell customers when negotiating prices. Specifically he wrote, ‘*Before: we need to trust each other => the basis !*

*14.2.09 – HK need a commitment.*

*Don't want to talk about how and why the prices started to slide below our in Frankfurt agreed level. I expect today that we stop this decline and come up w/ [...] a floor price effective NOW. In addition we should agree on max. volume levels that will help stabilize market prices. I have spoken w/ [...] – we [he] will follow whatever we agree on. Before we fix a price level we should agree on the volumes →*

*1. [...] : [...]*

*2. [...] : [...]*

*3. Alchem: [...]*

*4. [...] : [...]*

---

<sup>118</sup> [...] was an ad hoc distributor of [...].

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

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

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

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

<sup>123</sup> Contrary to Alchem's claims that these handwritten notes of [...] were just speaking points, the updates during the discussions reflect the content of these. [...].

5. [...]: [...]

6. [...]: [...]

[...] is willing to give up more vol. to stabilize price

2. Prologue: Prices are only in certain markets [...]

Price [...] now until next mtg in May

[...]

It is Key that we have a consistent Story

Next mtg: June Dubai (?) Singapore / KL Bangkok'.<sup>124</sup>

- (74) In its reply to the SO,<sup>125</sup> Alchem argued that the above handwritten notes reflect the wishful thinking of [...] and do not confirm that an agreement was reached. Moreover, there would be no evidence of a reference to a global market and [Alchem] reply to the question on his intention of lowering prices was simply a non-committal and innocuous statement. In this regard, the Commission notes that it is obvious from the evidence described in recital (76) below that an agreement was indeed reached during the meeting: the email mentioned that any deviations of prices by Alchem must have happened before the meeting (i.e. 'before he got religion'). In any event, it is clear that Alchem attended a meeting with competitors, from which it never distanced itself, where the object was to discuss an anticompetitive agreement and where prices and quotas were discussed. There is no indication that the discussion was limited to specific areas, on the contrary the reference to the fact that "Prices are only in certain markets [...]" indicates that the discussion was on pricing in general, in all markets. Finally, Alchem's reply was clear in indicating its intention on future pricing.
- (75) An email exchange of **19 February 2009** between [...] ([...]) and [...] ([...]) confirms the implementation of the price increase agreed at the meeting in Hong Kong (China), including the storyline to explain the price rise to customers.<sup>126</sup>
- (76) On **25 February 2009**, [...] ([...]) sent an email to [...] ([...]) discussing the prices offered in several markets. Referring to an alleged low price quoted in [...], [...] said in reference to the Hong Kong (China) meeting: 'I am trying to find out which Indian. If it was Alchem, it would have been offered before our meeting, i.e., before he got religion. If it was [...], it could be serious trouble as Alchem will react.'<sup>127</sup> Contrary to Alchem's argument<sup>128</sup>, this actually shows that an agreement was in place and demonstrates that the Parties complained when there was departure from the agreed conditions.
- (77) On **7 May 2009**, a meeting took place between [...] ([...]), [...] ([...]), [...] ([...]) and [...] (Alchem) during [...] Fair that was held in Geneva (Switzerland).<sup>129</sup> This meeting is also confirmed by an email exchange concerning the booking of a meeting room for 8 people in Geneva, between [...] ([...]) and [...] ([...]), in which [...] wrote: 'Confirming meeting room booked from 16.00 till 20.00 on May 7<sup>th</sup> under my

---

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

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

<sup>126</sup> [...].

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

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

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

*name at Intercontinental Geneva*'.<sup>130</sup> At the time of the meeting, the harvest had completed and none of the suppliers had been too aggressive in terms of pricing. [...] ([...]) nevertheless underlined the importance of maintaining the prices at a certain level. Handwritten notes by [...] <sup>131</sup> confirm that, from [...] point of view, the Hong Kong agreement was implemented successfully, and the price erosion had in principle stopped (*'We think that generally the HK strat. was successfully implemented – we see no major deviations – the price erosion was stopped – even despite the difficult economic climate. Our position: we should continue holding the price levels.'*). He reemphasised that, regardless of the economic crisis and the strong dollar, there would be no decrease of prices if one remained disciplined (*'if we continue to be disciplined we won't have to worry'*). [Alchem] informed the Parties that they did not receive any new SNBB orders. Finally, specific problems in certain markets were discussed. It was also agreed that the next meeting should be organised in July/August 2009.<sup>132</sup>

- (78) In **June 2009**, another meeting took place between [...] ([...]), [...] ([...]) and [...] (Alchem) in Shanghai (China). In an email dated **1 July 2009** with the subject *'Meeting with [...]*', [...] ([...]) informed [...] and [...] (both [...]) about the meeting, emphasising that *'Was in Shanghai last week and met with [...] and [Alchem]. [...] is rather upset with present level of sales of [Alchem] [...]. [...] [Alchem] when facing question about his present price is vague, un-precise and changing subject'*.<sup>133</sup> Contrary to Alchem's argument<sup>134</sup>, this does not constitute active price competition but rather [Alchem] being evasive during the meeting with competitors about deviations from the price arrangements in force. As explained in recitals (319) and (382) below, cheating may occur during a long life-span of a cartel such as in this case, but does not deprive the arrangement from its anticompetitive character.
- (79) On **21 September 2009**, [...] ([...]) sent an email to [...] ([...]) to ask about the situation of the harvest and to double check whether *'the expected volume enable us to maintain present market price?'*. [...] informed [...] about Alchem's harvest by stating *'The late harvested trees (up till June by Alchem & [...]) have not start regrowth'*.<sup>135</sup>
- (80) **Between 13 and 15 October 2009**, another multilateral Club meeting took place during the [trade fair] in Madrid (Spain).<sup>136</sup> Contrary to Alchem's claim,<sup>137</sup> Alchem confirmed its attendance at the [...] trade fair but there is no concrete list of attendees for the particular meeting. On **10 November 2009**, [...] ([...]) sent an email to [...] ([...]) which confirms that the meeting took place and clarifies that the *'Madrid numbers'* were discussed.<sup>138</sup> The evidence in the Commission's file indicates that the participants also discussed the expected volumes of SNBB (*'You [...] ([...]) indicated during [trade fair] that if there would be no rain till the end of October the crop would be extremely limited.'*). In view of the sales predictions, while they did

---

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

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

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

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

<sup>134</sup> [...].

<sup>135</sup> [...].

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

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

<sup>138</sup> [...]. The *'Madrid numbers'* referred to the agreement on the allocation of individual quotas among the SNBB producers.

not set a specific price level, they agreed that the price target that could be realistically achieved under the current market conditions could be around [...] and overall pricing trend seemed to move towards this price level.<sup>139</sup>

- (81) On **11 November 2009**, [...] ([...]) sent another email to [...] ([...]) asking for an update on the harvest situation. [...] stated: *‘Everyone harvested early (Sept/Oct) as the trees were dropping leaves from the zero rain since June. We and [...] did well from this early harvest as we both did little late harvest in 2008/09. Alchem was OK but [...] has mainly late harvested 2008/09 trees as they did not get their drier going until late last season.’*<sup>140</sup>
- (82) On **30 December 2009**, [...] ([...]) sent an email to [...] ([...]) saying *‘Let’s plan on having dinner or drink at the bar on Jan 26. O. K.? All the other ‘guests’ are available...’*<sup>141</sup> Subsequently, he also forwarded the conversation to [...] ([...]) saying *‘meeting is set for Jan 27. [Alchem] is on board too...I will inform [...]’*<sup>142</sup> Contrary to Alchem’s claims,<sup>143</sup> whilst there is no evidence of the anticompetitive nature of this meeting, it nevertheless shows a close relationship between Alchem and the other SNBB producers and that Alchem was generally involved in these multilateral meetings. Moreover, it has to be read in conjunction with all the other contacts between the Parties.
- (83) The evidence in the Commission’s file supports the Commission’s finding that in 2009 the cartel agreement between the Parties remained in place and Alchem attended several multilateral meetings (Hong Kong and Shanghai (China), Madrid (Spain)) where the parties fixed and/or discussed the level of the minimum sales prices of SNBB and allocated yearly quotas worldwide among the SNBB producers. In the February meeting in Hong Kong (China) Alchem was allocated a minimum volume of 3.5 metric tons as it is evident from [...] handwritten notes prepared for the meeting which he updated during the discussions (see recitals (72) and (73)) for the global market and prices were discussed and agreed.

## 5.6. Events in 2010

- (84) On **8 February 2010**, [...] ([...]) forwarded to [...] (Alchem) his exchange with his agent in [...] regarding a low price quoted by Alchem. [Alchem] responded to [...] **on 10 February 2010** that [...] was a low-priced country and expressed the need to coordinate against customers.<sup>144</sup>
- (85) On **1 March 2010**, [...] ([...]) sent an email to [...] ([...]) indicating that lower prices were offered by Alchem in [...] and asked for corrective action to be taken to avoid a price collapse. **On 2 March 2010** [...] responded to [...] expressing his concern about the pricing situation in [...] and the need to contact Alchem in this regard. Concerns were also raised about the possibility of new entry in the market and was recognised that a teleconference/meeting was needed soon.<sup>145</sup>

---

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

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

<sup>141</sup> [...].

<sup>142</sup> [...].

<sup>143</sup> [...].

<sup>144</sup> [...].

<sup>145</sup> [...].

- (86) On **16 March 2010**, [...] ([...]) and [...] ([...]) complained about Alchem's pricing policy. As reported by [...], [Alchem] '*...defended himself by claiming that he was slowly getting the price back up following the price war of early 2009.*'<sup>146</sup>
- (87) On **16 March 2010**, [...] ([...]) intervened and sent an email to [...] (Alchem) saying that '*Over the past weeks we have been confronted with information as to numerous underselling of the normal price level by Alchem [...] This is not acceptable furthermore. We seriously would like to ask you to abandon your current price policy with immediate effect and go back to normal. Otherwise we have to react in order to protect our position as well as the overall balance.*'<sup>147</sup>
- (88) On **17 March 2010**, [...] ([...]) after consulting [...] ([...])<sup>148</sup> sent to [...] (Alchem) an email regarding Alchem's pricing and asked for a meeting during [trade fair] in Geneva (Switzerland) on May 17<sup>th</sup> late afternoon.<sup>149</sup>
- (89) On **25 March 2010**, [...] (Alchem) defended Alchem's prices by saying that they were '*heading towards [...] after being at a low of [...] which was basically due to the import Statistics [...] from Switzerland last year*' and explained that he had a meeting '*scheduled with [...] [[...]] ([...]) next month.*'<sup>150</sup>
- (90) On **25 March 2010**, [...] ([...]) confronted [...] (Alchem) about contradictory information regarding Alchem's prices in non-EEA countries and stressed that '*We all agree that any unrealistic decision from anyone will destroy the business. This why I thought you should be advised of our knowledge of regular deviations for which we expect corrective actions to be immediately taken*'<sup>151</sup>
- (91) On **26 March 2010**, [Alchem] denied the allegations citing examples of low prices that were not offered by Alchem.<sup>152</sup>
- (92) In its reply to the SO,<sup>153</sup> Alchem claimed that the above email correspondence in recitals (90) and (91) proves that Alchem did not engage in coordination with other SNBB producers. Contrary to what Alchem argues, it is evident that the correspondence demonstrates that there was an understanding on prices and any deviation of the agreed prices in any market was followed by complaints and corrective actions. The evidence also shows that Alchem did not distance itself from any alleged anticompetitive agreement, but defended itself against the allegations that it was pricing too low, which confirms the existence of the coordination with other SNBB suppliers.
- (93) On **13 April 2010**, [...] ([...]) sent an email with the subject '*meeting in Geneva*' to [...] ([...]) saying that the meeting was scheduled on the 18<sup>th</sup> (April) in Geneva during the [...] trade fair and [...] (Alchem) should be invited.<sup>154</sup> Contrary to Alchem's claim concerning the unknown subject of the meeting<sup>155</sup>, the evidence

---

146 [...].

147 [...].

148 [...].

149 [...].

150 [...].

151 [...].

152 [...].

153 [...].

154 [...].

155 [...].

shows that the planned meeting was a follow-up to the discussion between [...] ([...]) and [...] (Alchem) about Alchem's prices<sup>156</sup> (see recitals (89) and (91)).

- (94) On **2 July 2010**, [...] (Alchem) sent an email with the subject '*FW: Price strategy for Hyoscine*' to [...] ([...]) and [...] ([...]) in which he sent a copy of an Invoice from [...], saying '*await your comments*' implying that he was not happy about the price offer.<sup>157</sup> The enclosed invoice is based on a delivery of goods in [...] from [...] to [...], which acted as a distributor for [...].<sup>158</sup>
- (95) On **13 August 2010**, [...] ([...]) planned with [...] ([...]) the next meeting in Delhi (India) at [...] hotel where among others the following subjects should be discussed: '*Possible collaboration with [...]; -Supply of leaves and consequences of the left over quantities from last crop as well as consequences and rumors with possible impacts on prices.*'<sup>159</sup> [Alchem] indicated that he planned not to attend the meeting. [...] ([...]) expressed his concern that the meeting in Delhi '*will not be that effective without [Alchem]. Also he understands the [...] issue better than [than] us as both of them are involved in sales in the [...] market.*'<sup>160</sup>
- (96) On **26 August 2010**, [...] ([...]) asked [...] (Alchem) via email to reconsider and finally attend the meeting as '*we all feel your attendance would be very useful*'. In the same email thread, he further referred to price deviations that had to be clarified.<sup>161</sup> On **27 August 2010**, [Alchem] replied by saying that '*I do not think a meeting will help until we resolve the basic problem that [...] is not selling his targets*'.<sup>162</sup> Alchem claims that there is no indication that [Alchem] agreed to the topics to be discussed<sup>163</sup>. However, the evidence above shows that the real issue for [...] (Alchem) was not the agenda of the meeting but that [...] did not manage to sell the quota allocated.
- (97) On **31 August 2010**, a meeting between [...] ([...]), [...] ([...]), ([...]) and [...] ([...]) took place at the [...] Hotel in Delhi (India). The agenda for the meeting had already been outlined by [...] in an email to [...] from 13 August 2010. The main motivation for calling the meeting was to deal with new entrants – [...] and [...] – that were pushing into the established circle of SNBB suppliers. The current suppliers feared that this could lead to a risk of oversupply and the ensuing price collapse in the market.<sup>164</sup>
- (98) At the meeting, [...] and [...] argued for the so-called '*nuclear option*', bringing prices [...].<sup>165</sup> They believed this could convince potential new entrants to stay away, while demonstrating to [...] that their expansionary policy could be unprofitable.<sup>166</sup> On the other hand, [...] believed that [...] should be let into the Club meetings, and force [...] out of the market.<sup>167</sup> Finally, [...] and [...] get asked to on-board [...]

---

<sup>156</sup> [...] with the subject '*Hyoscine prices and meeting - [trade fair]-Geneva meeting*' referring to the need to discuss the question of pricing during [trade fair] in Geneva.

<sup>157</sup> [...].

<sup>158</sup> [...].

<sup>159</sup> [...].

<sup>160</sup> [...].

<sup>161</sup> [...].

<sup>162</sup> [...].

<sup>163</sup> [...].

<sup>164</sup> [...].

<sup>165</sup> [...].

<sup>166</sup> [...].

<sup>167</sup> [...].

(Alchem) as far as [...] and [...] are concerned. That outreach happened on the next day (see next recital).

(99) On **1 September 2010**, [...] ([...]) wrote to [...] ([...]) describing the teleconference he had with [...] (Alchem) to inform him about the discussions that took place in India. [Alchem] had already had some input from [...] ([...]). [...] stated that [Alchem] would have a meeting in Australia this week and he would ‘*give the entire matter a serious thought*’.<sup>168</sup>

(100) On **13 September 2010**, [...] ([...]) sent an email to [...] ([...]), [...] (Alchem), and [...] ([...]), reporting on the meeting with [Alchem] on 5 September 2010 and attaching the minutes of the meeting. [...] stated: ‘*He agreed that the situation with [...] and [...] was most serious and immediate action was required... [...] Alchem and [...] are to aggressively pursue agreement with [...]*<sup>169</sup> *to exclusively supply Alchem/[...]. [...] has to be convinced to stick to the agreed quantities. [...] [Alchem] believes that [...] must be convinced to market all of its exports exclusively through [...]. [Alchem] believes that [...] can be convinced to a fair share of the [...] domestic market by Alchem. [Alchem] believes that the best person, and perhaps only person, to convince [...] of these arrangements is [...] [[...]] ([...]). [Alchem] was to contact [...] during week commencing 6th September to immediately commence discussions with [...]. [...] I agreed with [Alchem] that if the above could be achieved then it clearly would be preferably to the nuclear solution. I stressed that whatever is done, it must be done quickly. If agreement for the above could be put in place at least an in principle agreement needed to be reached well before [trade fair] and preferably before about 20th September.*’<sup>170</sup> In its Reply to the SO, Alchem maintained that at that stage their bilateral proposal of dealing with [...] was not yet endorsed by the other Parties.<sup>171</sup> It is nevertheless evident that the bilateral discussion between [...] and Alchem was held in accordance with the conclusions agreed at the multilateral meeting of 31 August 2010 and that the bilateral proposal was in line with the course of action suggested by [...] ([...]), *i.e.* to involve [...] in the agreement and to force [...] out of the market, in order to avoid the other, more disruptive solution discussed at the meeting (the “nuclear option” of low pricing to discourage new entrants).

(101) On **14 September 2010**, [...] ([...]) wrote to [...] ([...]) and copied also [...] (Alchem) and [...] ([...]): ‘*Noted about the rains in Kingaroy area and this in the present circumstances is not a good news.*

[...][...]’<sup>172</sup>.

[...]

*However, if [...], Alchem and [...] together formulate a policy [...] I can conditionally hold him against supplying his leaf elsewhere for at least two years.*

*Other Growers*

*During the visit we had indicated to the growers to cut-back on production as our leaf supply is grossly unproportionate to the Hyoscine we market. [...] From our side in order to prove there is excess stock (it is a fact) we have to decided to store our*

---

<sup>168</sup> [...].

<sup>169</sup> [...].

<sup>170</sup> [...].

<sup>171</sup> [...].

<sup>172</sup> [...].

entire coming seasons leaf supply in our shed in Australia. Feel a discussion between [Alchem] and [...] may be a big help in finding out a solution.’

- (102) On **19 September 2010** [...] ([...]) replied to [...] ([...]) and copied [...] (Alchem) and [...] ([...]): ‘We would agree with your assessment of [...]/[...]. It is quite likely that these players can be managed by the actions of [...] and Alchem securing their supply. [...] However, it is essential that arrangements be concluded with these two as quickly as possible. The further [...] and [...] invest in these projects, the more likely it becomes that they will be the seventh player.

[...] We confirm that [...] is prepared to accept its share of surplus duboisia obtained from [...] by Alchem/[...].

[...] [Alchem] was also to speak to [...] after our meeting in Sydney on 5th September – I have not heard from [Alchem] since. Hopefully [Alchem] can provide us with an update.

Our position remains that unless [...] is brought into line very quickly, we should proceed with the Delhi plan.<sup>173</sup>

- (103) On **22 September 2010**, [...] ([...]) asked [...] ([...]) whether he was able to get in touch with [...] ([...]). [...] reply confirms that [...] intended to call Alchem: ‘[...]...Spoke with [...]. He will not be at [trade fair]... He promised [promised] me to call [...] [[...] (Alchem)] and [...].’<sup>174</sup>

- (104) On **2 October 2010**, [...] ([...]) sent an email to [...] ([...]) stating among others that Alchem would meet [...]. Specifically, he wrote: ‘I received an email from [...] [[...] (Alchem)] last night. He says he is meeting [...] [[...] ([...])] today, 2<sup>nd</sup>.’<sup>175</sup>

- (105) On **4 October 2010**, a meeting between [...] ([...]), [...] (Alchem), [...] ([...]), [...] ([...]) and probably [...] ([...]) took place at the Alchem booth at 15.30 during the [trade fair] in Paris (France). [Alchem] exchanged several emails with the other producers in order to fix the date and the venue.<sup>176</sup> [...] ([...]) was not able to attend. However, he had previously met with [Alchem] on **2 October 2010** when the importance of adhering to the allocation quotas was re-iterated<sup>177</sup>. The meeting in Paris focused on [...] and [...] (see also recital (98)). [...] clarified that he had no interest in becoming an add-on to [...]/[...], as initially planned by the Club members, but to become a full Club member with his own quota.<sup>178</sup>

- (106) **Between 1 and 3 December 2010**, a meeting between [...] ([...]), [...] (Alchem) and [...] ([...]) took place during the [trade fair] in Mumbai (India) (for more details, see recital (108)).

- (107) On **2 December 2010**, [...] ([...]) sent an email to [...] (Alchem), [...] ([...]) and [...] ([...]) asking for their views on the level of ‘strange’ prices in certain markets.<sup>179</sup>

---

173 [...].

174 [...].

175 [...].

176 [...].

177 [...].

178 [...].

179 [...].

- (108) On **7 December 2010**, [...] ([...]) sent an email to [...] ([...]), [...] ([...]) and [...] (Alchem) where he informed them that the negotiations concerning [...] broke down as [...] declined to sign the [...] agreement.<sup>180</sup>
- (109) In an email dated **9 December 2010**, although [...] ([...]) was in favour of the ‘nuclear’ solution, he recognised that there was a willingness to accommodate [...]. He explained that ‘*We have agreed to reduce our volumes by about 30% from our levels 3-4 years ago. [...] We reaffirm our commitment to the current arrangement. We reaffirm our commitment to continuing to work together, even we happen to be in the minority of the group in on a particular issue.*’<sup>181</sup>
- (110) [...] replied the same day to the email adding [...], [...] and [Alchem] informing them that along with [Alchem] they had a good meeting with a representative of [...] during the [...] trade fair in Mumbai (India).<sup>182</sup> In its reply to the SO<sup>183</sup>, Alchem argued that there is no information regarding the subject matter of the meeting. This is however not correct. [Alchem] wrote to other SNBB producers on 9 December 2010 the following: ‘*During our discussions with [...], I did advise him that he was sending the wrong message by saying that he could sell as much Hysocine depending on the leaf he could get. He was also advised that both Alchem and [...] were carrying 2 years stocks and he had agreed to change his tone especially considering the fact that both Alchem and [...] have unshipped stocks in Australia.*’<sup>184</sup>
- (111) In the same email chain, the same day [...] (Alchem) gave his opinion about [...] situation and [...] and stated the following in general: ‘*I had discussions with [...] today regarding [...] email and was advised by him that everything is in control and things are proceeding as per his plans. Frankly considering the situation, I think we have been able to achieve a lot especially considering the fact that we were ready to make nuclear option in September and now we don’t need to consider it till next January. [...] I think we should wait and let the situation stabilize for another month or so and then hold meeting either in the middle of January or in February whenever it is convenient for everyone.*’<sup>185</sup> [Alchem] reminded the others that [...] was here to stay and stated that [...] would be able to ‘*sustain losses for the next few years if the nuclear option is taken.*’<sup>186</sup>
- (112) [...] ([...]) manifested his disagreement to [...] (Alchem) about the situation with [...] ‘*We have known each other for long enough to agree to disagree whilst continuing our successful working relationship.*’<sup>187</sup> In the same email chain, [...] ([...]) tried to organise a meeting on 25-26 January 2011, suggesting Bangkok (Thailand) as possible location, and he wrote: ‘*I think we should invite [...] at this occasion and accept to leave [spelling mistake meant live] with him, though continue to limit him in the frame work of a quota*’.<sup>188</sup>
- (113) In an unidentified date **in 2010**, a dinner was organised probably in Geneva (Switzerland) between [...] ([...]), [...] and [...] (both Alchem), [...] ([...]) and [...] ([...]). The Indian producers informed the rest of the group that they managed to

---

180 [...].

181 [...].

182 [...].

183 [...].

184 [...].

185 [...].

186 [...].

187 [...].

188 [...].

eliminate a new Indian entry as they had prevented it to have access to [material]. The name of the new competitor was [...].<sup>189</sup> Contrary to Alchem's claims that it does not necessarily follow that the Indian producers behaves in an anti-competitive manner and the actions of the Indian producers were not the result of an agreement with the other SNBB suppliers<sup>190</sup>, the evidence shows that Alchem and another SNBB producer took coordinated action in order to eliminate the additional competition from India.

- (114) The evidence in the Commission's file supports the Commission's finding that, in 2010, the cartel agreement between the Parties remained in place and Alchem continued to participate. Furthermore, Alchem was accused of selling below the agreed minimum prices. The problem of new entrants (in particular [...]) was discussed and Alchem was involved in discussions, to ensure a coordinated approach towards the new entrants to prevent the oversupply of SNBB worldwide. Also in order to prevent new players from entering the market, Alchem coordinated with other SNBB producers in order to acquire [...] material and the [...] crop. Contrary to Alchem's claims<sup>191</sup>, [...] (Alchem) was seen as key to these discussions to bring [...] into line and engaged in direct contacts with them to resolve the matter. A nuclear option of dropping prices significantly to drive the new entrants out of the market was discussed but did not materialise as arrangements were made to accommodate [...].

#### 5.7. Events in 2009/2010 – [...]<sup>192</sup>

- (115) [...].<sup>193</sup>

- (116) The other Parties were informed about the changes within [...]. For example, **on 14 August 2010**, [...] ([...]) sent an email to [...] ([...]) highlighting that '*[...] ([...]) cannot communicate anymore using traditionnal channels*'<sup>194</sup>. Furthermore, **on 19 September 2010** (see above recital (101)), [...] clarified to [...] ([...]) and [...] (Alchem) that, as explained to him by [...], [...] was moved away from the SNBB business and therefore '*any discussions with [...] are now most delicate*'<sup>195</sup> [...].

- (117) In its reply to the SO,<sup>196</sup> Alchem claimed that as of 14 December 2009 [...] concluded an agency/distributor agreement with [...] for selected countries outside the EEA and this fact should be borne in mind when assessing the contacts of [...] with other Parties. However, as indicated in recitals (115) and (116) [...] received information on the cartel arrangements from [...]. Even to the extent that [...] contacts were for specific markets outside the EEA, these contributed to the aim of maintaining the worldwide cartel arrangements. In addition, [...] nevertheless had sales in the EEA throughout its participation in the cartel conduct.<sup>197</sup>

---

189 [...].

190 [...].

191 [...].

192 [...].

193 [...].

194 [...].

195 [...].

196 [...].

197 [...].

## 5.8. Events in 2011

- (118) On **7 January 2011**, [...] ([...]) sent an email with the subject ‘*Hyoscine meeting*’ to [...] ([...]) to propose a meeting on 20 January.<sup>198</sup> After [...] confirmation, [...] replied in an email that ‘*Meeting is confirmed with a [...] Friend and [...] from Alchem. Regretfully the others cannot attend but are and will be informed.*’<sup>199</sup> On **20 January 2011**, the meeting took place between [...] ([...]), [...] (Alchem), [...] ([...]) and [...] ([...]) at the lobby of the Hotel [...] in Geneva (Switzerland). The meeting is further confirmed by [...] memo of 6 January 2011 according to which the purpose of the meeting was to discuss the Duboisia situation and behaviour towards the new producer [...].<sup>200</sup> [...] confirmed that [...] was brought into the Club at the meeting with an actual quota allocated to it.<sup>201</sup>
- (119) On **21 January 2011**, [...] ([...]) sent an email to [...] ([...]) [...], copying [...] (Alchem), informing them of the discussion that took place in Geneva (Switzerland): ‘*[t]he estimation of the consequences of the floods are confirmed by all parties present. It was clearly emphasized the limitation of the cultivated surfaces should remain maximum at present level though preferably reduced but considering the profitability. [...] came especially from India for this meeting. He emphasized that his presence is a clear indication of common feelings and interest. He also now considers himself a part of the strategy.*’<sup>202</sup>
- (120) In his reply to the above email, on **24 January 2011**, [...] (Alchem) thanked [...] ([...]) and he stressed three points. Firstly, that the Parties should meet few times a year, secondly that they should advise customers about the situation in Queensland and its possible effect on prices and thirdly he emphasised ‘*that it is very important that quantities be respected*’.<sup>203</sup> In its reply to the SO<sup>204</sup>, Alchem claimed that this reference to quantities to be respected was due to the necessity to avoid speculation during shortages created by *force majeure* circumstances, when stability in terms of product prices and supply is critical. This explanation fails to consider that this reference to quantities to be respected was used in a communication sent by Alchem to its competitors after a meeting with a new entrant in the agreement, to which a quota was allocated.
- (121) On **28 February 2011**, [...] ([...]) sent an email to [...] ([...]), who had inherited the chair of the group, and complained about decreasing prices, while emphasising that ‘*...Without this tender business, we will not make 2011 quota...*’. He continued to refer to the latest Indian export statistics, raising concerns about discounting and concluded by stating that ‘*We ALL follow the agreed prices or there will be difficulties.*’ [...] subsequently forwarded the email to [...] ([...]).<sup>205</sup> Contrary to Alchem’s arguments<sup>206</sup>, despite these figures being public, the exchanges show that prices were monitored in light of the existing agreement and that the participants intended to ensure the observance of the agreed prices.

---

198 [...].  
199 [...].  
200 [...].  
201 [...].  
202 [...].  
203 [...].  
204 [...].  
205 [...].  
206 [...].

- (122) On **22 Mars 2011**, [...] ([...]) wrote an email regarding future meetings to [...] (Alchem), [...] ([...]), [...] ([...]) and [...] ([...]). These included the upcoming [...] trade fair in Geneva. [...] suggested meeting once a year during [*trade fair*] Europe and once in Bangkok or at the [*trade fair*] China. He concluded that *'This will make it more or less Permanent. All my Indian friends will agree'*. On **28 March 2011**, in response to this suggestion, [...] ([...]) sent an email to [...] ([...]), [...] (Alchem), [...] ([...]) and [...] ([...]) in which he emphasised that it is a good idea to meet at [*trade fair*] in China and the details can be fixed at a later stage.<sup>207</sup> Contrary to Alchem's claims that this correspondence did not concern any material issues,<sup>208</sup> the above correspondence shows the parties putting in place the logistical arrangements of the cartel going forward and thus their continued adherence to it.
- (123) On **14 April 2011**, [...] (Alchem) sent an email to [...] ([...]): *'I think customers in [...] are playing games and reporting to have offers from [...]. I am maintaining my [...]. and have refused to reduce the prices.'*<sup>209</sup> [...] replied and included [...] ([...]) and representatives of [...] reassuring [*Alchem*] that there was no reason to decrease prices. A representative from [...] then wrote: *'It is good that the position is clear and all of us are maintaining rate.'* He also informed that the equipment from [...] have since been received at their facility. On the same day, [...] (Alchem) replied to all *'This is good news now that everyone's moral is up we have to settle with [...] for his efforts any suggestions.'* The next day (**15 April 2011**), [...] ([...]) replied to all agreeing with the need that the parties compensate [...] for his efforts. He further added that *'I am not concerned with the [...] market except for its potential to flow into other markets.'* He further noted that he understood that the SNBB price should be [...].<sup>210</sup>
- (124) In **May 2011**, a meeting between [...] ([...]), [...] (Alchem), [*Alchem*] and [...] ([...]) and [...] ([...]) took place at the [*trade fair*] exhibition in Geneva (Switzerland). The participants of that meeting discussed the worldwide price level for SNBB which should not be [...]. They also discussed the integration of [...] into the group.<sup>211</sup> Alchem maintained that no worldwide prices were discussed<sup>212</sup>. However, it did not bring any evidence in support of this allegation: there is no element in the file suggesting that the discussion was confined to specific areas and that the purpose of the meeting was not to keep the price discipline in general.
- (125) On **5 May 2011**, [...] ([...]) sent an email to [...] (Alchem), [...] ([...]) and [...] ([...]) by reporting the following: *'I am advised that 'an Indian supplier' has offered [...]. Please comment'*. On the same day, [...] and [*Alchem*] denied the allegations.<sup>213</sup>
- (126) On **11 May 2011**, [...] ([...]) responded to everyone the following: *'Dear Friends, We quoted [...] for this Business & we do seven products with The buyer around the world. This does not include any commission & LC sight payment terms.'* [...] ([...]) reacted in the following email *'Thank you for your frank and open reply. This is a similarly frank and open response. Selling at net prices direct to consumers has the same effect of cutting the prices for all. When we sell direct we pocket the commission to cover the direct selling costs and to avoid price wars. That you choose*

---

207 [...].  
 208 [...].  
 209 [...].  
 210 [...].  
 211 [...].  
 212 [...].  
 213 [...].

*to discount the commission to the consumer is a matter for yourself, but, the flow on effects are inevitable. [...] We each need to decide if we wish to maintain the international price level for hyoscine or do a few favours on hyoscine to gain some other business. We will now be forced to follow the silly prices to maintain our core business in [...].*<sup>214</sup>

- (127) On **13 May 2011**, [...] ([...]) also expressed his disappointment to all addressees by saying ‘*We are all very sensitive in the present situation. As indicated previously our main objective is to maintain the levels and volumes at present levels in particular considering the actual inventory we all have. Any deviation is potentially creating unnecessarily fears and nervousness. In the future please follow the rules. Should you have any problem please do not hesitate to contact one of us and will do our best to assist*’.<sup>215</sup>
- (128) On **1 June 2011**, [...] ([...]) wrote an email to [...] (Alchem), [...] ([...]), [...] ([...]) and [...] ([...]) to arrange a meeting in Shanghai (China) during [*trade fair*]. Following some exchanges in order to find the date for the meeting [...] (Alchem) reacted by asking [...]: ‘[...] *any comments !!! Are you coming? 20th evening ok with me pl suggest time and place in shanghai*’. [...] confirmed. Then [*Alchem*] asked [...] whether he has ‘*any comments on [...]*’<sup>216</sup>. In this context, [...] responded to everyone regarding leaf growth.<sup>217</sup>
- (129) On **19 June 2011**, [...] ([...]) sent an email to [...] (Alchem). He introduced himself, informed [*Alchem*] when he was arriving and where he was staying in Shanghai (China). He asked also for an introduction meeting before the Club meeting on 21 June 2011 and sent to [*Alchem*] his contact details. [*Alchem*] proposed a lunch at one of the restaurants near his hotel for 20 June 2011. He also shared his phone number.<sup>218</sup> Alchem argued that this contact was not anticompetitive.<sup>219</sup> It is however relevant as it shows that an employee of a competitor contacted [*Alchem*] before the “official” introduction to the group, where he then played a relevant role.
- (130) On **21 June 2011**, a meeting between [...] ([...]), [...] ([...]), [...] ([...]), [...] (Alchem) and [...] ([...]) took place at Alchem’s booth during [*trade fair*] in Shanghai (China).<sup>220</sup> The participants discussed the individual annual quotas to be followed (for example, Alchem’s quota was set to [...]) and there were a lot of accusations between them that there was no price discipline and some players offered too low prices to certain customers.<sup>221</sup> As indicated by the subsequent email exchange between the meeting participants, the Parties agreed on a minimum sales price [...].<sup>222</sup> In its reply to the SO<sup>223</sup>, Alchem argued that the quota allocations and price fixing discussions always reflected the wishful thinking of [...]. Furthermore, [...] did not directly participate in this specific meeting, but this did not prevent the remaining Parties from agreeing on quotas and prices.

---

214 [...].

215 [...].

216 [...] delivers Duboisia to [...]. [...].

217 [...].

218 [...].

219 [...].

220 Alchem confirmed its attendance at [*tradefair*], [...].

221 [...].

222 [...].

223 [...].

- (131) On **19 September 2011**, [...] ([...]) sent an email to [...] ([...]) and copied [...] ([...]), [...] (Alchem), [...] ([...]) and [...] ([...]), complaining about prices below agreed levels in [...], as was also discussed during the meeting in Shanghai (China), stating his intention to protect what was seen as a ‘*traditional market*’ for [...] but underlining his commitment to honour ‘[...], *which could be discussed again in Frankfurt.*’<sup>224</sup>
- (132) Following [...] ([...]) email the same day where he stressed the importance of ‘*plan to keep our market share and now price is the only criteria*’ to achieve this aim, [...] ([...]) responded to everyone to underline the need to ‘*agree to share the business in a sensible manner at sensible prices*’ and *not to undercut in traditional markets of others.*’
- (133) On **20 September 2011**, [...] ([...]) wrote to everyone including [...] (Alchem) by saying that ‘*If all members of the Group are able to agree on reasonable shares of the [...] market, then we can easily move prices back to the current agreed levels.*’<sup>225</sup>
- (134) On **25 September 2011**, [...] ([...]) replied to [...] ([...]) and copied [...] (Alchem), [...] ([...]), [...] ([...]) and [...] ([...]), informing them of a new enquiry he had received from [...] suggesting a discussion of the price and sharing arrangements by email.<sup>226</sup>
- (135) On **26 September 2011**, [...] ([...]) continued the discussion mentioned in recital (134) above and replied to [...] ([...]) and copied [...] (Alchem), [...] ([...]), [...] ([...]) and [...] ([...]) the following: ‘*I would propose the following*  
*Agreed prices for:*  
*The majors, the [...] buyers, I would suggest [...]*  
*the medium buyers, the [...] buyers, I would suggest [...]*  
*the small buyers, the [...] buyers, I would suggest [...]*’
- The prices were to be CFC with no discounting allowed by the agent. He continued by stating that the Parties ‘*Agree upon fair shares of the market between the suppliers. All quote the agreed prices*’. He explained that if this arrangement did not result in the ‘*agreed shares*’ in the first six months of the year then those not achieving them could quote lower by [...] in order to achieve their allotted quota.<sup>227</sup>
- (136) On **28 September 2011**, [...] ([...]) replied on this proposal to [...] ([...]), copying amongst other [...] (Alchem), suggesting using the proposed scale for all markets.<sup>228</sup>
- (137) On **29 September 2011**, [...] ([...]) replied to [...] ([...]) while copying amongst other [...] (Alchem): ‘*What a good idea !! Just to repeat: a) the majors, the [...] buyers, I would suggest [...]* b) *the medium buyers, the [...] buyers, I would suggest [...]* c) *the small buyers, the [...] buyers, I would suggest [...]. The prices are CFC with no discounting allowed by the agent.*’<sup>229</sup>

---

224 [...].  
225 [...].  
226 [...].  
227 [...].  
228 [...].  
229 [...].

- (138) On **21 October 2011**, [...] ([...]) confirmed the meeting in Frankfurt (Germany) with [...] ([...]), [...] (Alchem) and [...] ([...]).<sup>230</sup> Contrary to Alchem's claim that the subject of the meeting is unknown and therefore its relevance unclear,<sup>231</sup> this contact shows the preparation for the Frankfurt meeting that took place on 25 October 2011 (see recital (140)).
- (139) On **24 October 2011**, [...] ([...]) sent an email to [...] ([...]), copying [...] (Alchem) and [...] ([...]), stating that [...] had an enquiry from a customer but refrained from offering until the upcoming meeting of the Parties on Tuesday. In addition, he asked those who would not be able to attend the meeting on Tuesday to make their views known by email or phone. He concluded that [...] position remains unchanged.<sup>232</sup> To this, [...] ([...]) replied to all that he would not attend the meeting in Frankfurt and that he was sure, their *'view will be properly considered at the meeting and decision'*.<sup>233</sup> On **25 October 2011**, [...] ([...]) replied to [...] ([...]) saying: *'we had quoted [...],- yesterday and as you suggest lets discuss tonight.'*<sup>234</sup>
- (140) On **25 October 2011**, a meeting took place between [...] ([...]), [...] ([...]), [...] (Alchem)<sup>235</sup> and [...] ([...]) during the [*trade fair*] at the restaurant [...] at 19:30 in Frankfurt (Germany). The correspondence indicates that during the dinner the participants discussed the agreed price and prices offers to an individual customer ([...]).<sup>236</sup>
- (141) In **November 2011**, [...] ([...]), [...] ([...]), [...] ([...]) and [...] (Alchem), discussed the need to provide sales support to [...], which could not sell 750 kg of SNBB due to the need to stick to the agreed prices.<sup>237</sup> On **2 November 2011**, [...] ([...]) wrote an email to [...] ([...]), [...] (Alchem) and [...] ([...]) explaining that after [*trade fair*], he spoke with [...] ([...]) and agreed that the Parties need to provide [...] assistance in selling a minimum of 750 kg. [...] (Alchem) replied to that email, copying [...] ([...]) and [...] ([...]): *'Thanks I am really impressed with your constructive approach.'*<sup>238</sup>
- (142) On **3 November 2011**, [...] ([...]) sent an email to [...] ([...]) copying [...] ([...]) and [...] (Alchem) about the quote of [...]. [...] expressed his view that from the discussion in Frankfurt he understood that the quantity missing to fulfil [...] allocated quota was *'a few hundreds of kg estimated 300 to 400 kg'*.<sup>239</sup> [...] replied, copying [...] and [*Alchem*], expressing [...] surprise with the 750kg and explaining that in June he understood that [...] was 20% behind its quota (additional 300 kg), and asked for additional information.<sup>240</sup>
- (143) On **16 November 2011**, [...] (Alchem) sent an email to [...] ([...]) and [...] ([...]) complaining that: *'Just got a up date on [...] from my [...] agent he [...] is still playing games in [...] markets and prices are at about [...] i probably will meet him Next week in [*trade fair*] mumbai and would like to tell him that if he contiues [sic] to*

---

230 [...].

231 [...].

232 [...].

233 [...].

234 [...].

235 Alchem confirmed its attendance at [*trade fair*], [...].

236 [...].

237 [...].

238 [...].

239 [...].

240 [...].

*misbehave i will reduce my price to [...] levels (obviously not for large qty ) please give me your comments ,i donot know [...] what you said to him but If you are coming to mumbai it will help’.*

- (144) On **17 November 2011**, [...] ([...]) responded that given the high production cost, reducing the price to [...] might be considered from [...] as a bluff, as it is too low. To the contrary, he proposed that Alchem reduces its price to [...] in order to be considered serious threat. However, he suggested that this reduction of the price should be used as *‘the atomic solution as the last one and start, by may be, threatening him to be expelled.....with all the consequences. Please consider’*. [...] (Alchem) concluded on the same day with the following: *‘Thanks will use ammunition [sic] with discretion’*.<sup>241</sup>
- (145) On **22 November 2011**, [...] (Alchem) sent an email to [...] ([...]) and [...] ([...]) with the Indian export statistics for Calcutta and Mumbai of the year 2011, saying *‘I am forwarding you the export statistics of calcutta ([...]) and mumbai ([...]) for your assessment.’* [...] replied that [...] exceeded its quota and expressed doubts whether sales support was required (see also recital (142)) stating that [...] sold [...] and if this calculation was extrapolated for a year, it was above expected figures of [...]. He finally expressed his concerns about the [...] for which assistance is requested.<sup>242</sup>
- (146) A meeting took place between [...] ([...]), [...] ([...]) and [...] ([...]) at the [...] Hotel in Zürich (Switzerland) on **8 December 2011**. As [...] indicated, the participants discussed [...] purchase of [equipment]. This purchase was agreed with Alchem, [...], [...] and [...] to prevent new competitors from starting to produce SNBB. The price of the [equipment] was around [...] and each of the producers participating in the meeting was to pay its share of around 1/5 of the price.<sup>243</sup> In its reply to the SO,<sup>244</sup> Alchem argued that EU competition law does not prevent companies from jointly purchasing equipment. In this case, Alchem claimed that five companies would be part owners and would be able to use the equipment when needed in competition with each other. Alchem added that any newcomer could have ordered [equipment] from any of the manufacturers or dealers offering [equipment]. The Commission notes that the joint purchase of [equipment] was in this case a concrete measure to prevent new competitors from entering the SNBB global market. In this respect, contrary to Alchem’s claims<sup>245</sup>, already on **14 December 2010** [...] (Alchem) himself wrote to the other SNBB producers stating that no action had been taken to prevent the (new) entry of [...] when it should have been taken three years earlier, and now it was important *‘not make the same mistakes made earlier.’* i.e. to take timely action against potential new entrants.<sup>246</sup>
- (147) On **13 December 2011**, [...] ([...]) sent an e-mail to [...] (Alchem), [...] ([...]), [...] ([...]), [...] ([...]), and [...] ([...]), asking whether anyone from them received an order from a customer ([...]) at [...]. [Alchem] replied on **14 December 2011** that they did not receive any enquiry.<sup>247</sup>

---

241 [...].

242 [...].

243 [...].

244 [...].

245 [...].

246 [...].

247 [...].

- (148) On **14 December 2011**, [...] ([...]) sent an email to [...] (Alchem) and copied [...] ([...]), [...] ([...]), [...] ([...]), and [...] ([...]), confronting him with a low offer in [...] for [...] from Alchem's agent.<sup>248</sup>
- (149) On **22 December 2011**, [...] (Alchem) sent an email to [...] ([...]) stating that he was facing lower prices and losing quantities in [...] from [...] lower offers and he could substitute these quantities by entering into [...], a non-traditional market for Alchem<sup>249</sup>, showing how interconnected the local markets were, stressing that '*I am off target by 10% of last year in [...] and I do intend to make it up this year even if it means entering the [...] market at low prices*'. [...] responded on the same day asking for patience to avoid dropping prices even if this meant losing quantities before they were able to meet in January as organised. He underlined that the matter would be appropriately addressed.<sup>250</sup>
- (150) On **23 December 2011**, [...] (Alchem) replied agreeing to hold off until they could meet but complained again about [...] preaching the agreed price of [...]. [...] ([...]) reacted by saying that '*[...] had been allowed to move down in price in [...] due to lost quantities, but [...] had no such approval for lower prices. If this was the case [...] would have to pay for it in 2012*'. [Alchem] responded with the following: '*I don't think it will be fair to expect me to hold back without asking for a similar action from [...] and [...]. I do understand what you are saying but please realize that I cannot be the only one to exercise constraints*'.<sup>251</sup> According to [...] recollections, in an unidentified date in 2011, probably [...] (Alchem) informed him that besides [...] and [...], Alchem had the largest quota of SNBB of 3 metric tons per year.<sup>252</sup>
- (151) The evidence in the Commission's file supports the Commission's finding that, in 2011, the cartel agreement between the Parties remained in place and Alchem continued to participate. There were numerous multilateral meetings (*[trade fair]* exhibition in Geneva (Switzerland), *[trade fair]* in Shanghai (China), Frankfurt (Germany)), which were attended by Alchem, at which minimum prices and occasionally volumes and prices to individual customers were discussed. E-mail exchanges (in September) demonstrate agreed worldwide prices for different categories of customers (majors, medium buyers, small buyers). Monitoring of the agreed prices and complaints about selling below minimum prices continued with Alchem being both subject to complaints and also complaining about others. The importance of maintaining agreed prices worldwide and following the cartel rules was underlined. Alchem was directly involved in exchanges about the approach to take to [...] regarding its pricing. Alchem was also involved in the agreement to provide sales support to [...], which could not sell 750 kg of SNBB due to the need to stick to the agreed prices. In addition, [...] in coordination with Alchem and others purchased *[equipment]* to prevent new competitors to enter SNBB production.

## 5.9. Events in 2012

- (152) On **5 January 2012**, [...] ([...]) sent an email to [...] ([...]) saying that the parties had agreed to pay compensation to [...] for his purchase of *[material and equipment]* and the individual share of each company was [...].<sup>253</sup>

---

<sup>248</sup> [...].

<sup>249</sup> [...].

<sup>250</sup> [...].

<sup>251</sup> [...].

<sup>252</sup> [...].

<sup>253</sup> [...].

- (153) On **12 January 2012**, [...] ([...]) met [...] (Alchem) at Alchem's production site in Delhi (India) (see also recital (149)) as regards the planning of the meeting). In this context, on 15 December 2011, [...] wrote to [...] ([...]): *'The trip is meant to: ensure stability, properly distribute the costs arisen out of the 750 kg, ensure proper future handling of quantities, reassure cost coverage of the action in Australia (if not covered by then)'*.<sup>254</sup> In the meeting on 12 January 2012, [...] and [Alchem] discussed the supplies of [...] in [...], which were too large according to [Alchem]. [...] reported to [Alchem] that [...] and [...] were of the opinion that Alchem was too aggressive in [...]. [Alchem] proposed to go down with prices to [...] (use the so called *'nuclear solution'*) in order to eliminate [...] from the market. [...] was not sure to support this idea, but he said that he would try to get [...] integrated in the group.<sup>255</sup>
- (154) On **7 May 2012**, [...] ([...]) sent an email to [...] ([...]), copying [...] ([...]) explaining that he would meet him and other parties during [trade fair] in Geneva.<sup>256</sup> The same day [...] ([...]) sent an email to [...] (Alchem) and [...] ([...]) in copy to ask for a meeting during the [...] trade fair in Geneva (Switzerland) to discuss low prices offers in [...].<sup>257</sup>
- (155) **Between 21 and 23 May 2012**, meetings between [...] ([...]) and each of [...] ([...]), [...] (Alchem) and [...] ([...]) took place during the [...] trade fair<sup>258</sup> in Geneva (Switzerland). The topics of discussions as indicated by [...] <sup>259</sup> and demonstrated by the email to Alchem preceding the meetings (see recital (154)) were the market developments in different countries and the level of prices. The meeting with Alchem is further confirmed by an email of 14 June 2012 in which [...] (Alchem) wrote to [...] that he was pleased to see him again in Geneva.<sup>260</sup>
- (156) On **13 June 2012**, [...] ([...]) sent an email to [...] ([...]) confirming that he would be at [trade fair] in Shanghai (China) between 25-27 June 2012. The email contained the information about the share of the [equipment] (see also recital (146)) and specified that *'[t]he agreement was [...] per party'*. He further mentioned the issue of pricing and stated that *'Due to the lines set by [...] and Alchem we will be out at [...]*.<sup>261</sup>
- (157) On **14 June 2012** [...] (Alchem) sent an email to [...] ([...]) attaching sales export figures for the first 6 months of 2012. He added that he looked forward to discussing this further in Shanghai (China) at [trade fair].<sup>262</sup>
- (158) **Between 25 and 27 June 2012**, a short meeting took place between [...] (Alchem) and [...] ([...]) at Alchem's booth during the [trade fair] in Shanghai (China). They discussed [...] aggressive approach in certain markets and the conflict of Alchem and [...] on supplies to [...].<sup>263</sup>
- (159) In **summer 2012**, there were the first signs of SNBB supply shortage as many Duboisia trees died following a devastating flood in Australia at the beginning of the

---

254 [...].

255 [...].

256 [...].

257 [...].

258 Alchem confirmed its attendance at the [trade fair] conference, [...].

259 [...].

260 [...].

261 [...].

262 [...].

263 [...].

year.<sup>264</sup> This is confirmed by an email of **24 July 2012** that [...] ([...]) sent to [...] ([...]) reporting on a conversation with [...] ([...]) regarding the market situation. He reported that the floods in 2011 dramatically reduced the content of Hyoscine in the leaves from the last harvest, which should continue to last and a possible shortage of raw materials from the beginning of 2013 was therefore expected. He concluded stating that: *‘if the stock of Indian leaves does not weigh more about the situation of our competitors, everyone’s interest is to keep prices at their current levels and even to return to [...]’*.<sup>265</sup>

- (160) On **25 August 2012**, [...] ([...]) forwarded to his email account an email from [...] ([...]) (the original email has no date) reporting information about a customer order by [...] at [...]. [...] specifically stated: *‘We really need to stop these silly prices in [...]. Sooner or later, they will spill into other markets.’*<sup>266</sup>
- (161) On **5 October 2012**, [...] ([...]) sent an email to [...] (Alchem), [...] (presumably [...]) and [...] ([...]) asking to meet all on Thursday 11<sup>th</sup> October at 12.00 at the stand of Alchem.<sup>267</sup>
- (162) On **8 October 2012**, [...] ([...]) continued to ask for a suitable date and time of their meeting at [trade fair] in Madrid (Spain) and proposed to meet at Alchem stand on Tuesday 9<sup>th</sup> October at 5.30 pm<sup>268</sup> As indicated by [...], during the [trade fair] in Madrid, there was no Club meeting set but individual meetings between the Parties were organised.<sup>269</sup> Alchem argues<sup>270</sup> that the content of the meetings were not known. While it is correct that the specific content is not known for these meetings, they are nevertheless relevant as they confirm that the Parties continued their usual trend of contacts.
- (163) On **22 October 2012**, [...] ([...]) forwarded to [...] ([...]) a draft email that he wanted to send to [...] (Alchem) regarding the late payment of Alchem’s share [...] for the purchase of [equipment] (see also recitals (146) and (156)).<sup>271</sup>
- (164) On **28 November 2012**, [...] ([...]) forwarded to [...] the tentative reply of [...] (Alchem) to a reminder of the payment of Alchem’s share in the purchase of [equipment].<sup>272</sup>
- (165) In its reply to the SO, Alchem argued that there is no binding involvement of Alchem in this purchase and the relevance of the purchase to this investigation is unclear.<sup>273</sup> According to the evidence in the Commission’s file, it is apparent that all parties decided to purchase the [equipment], to split the cost equally and Alchem paid its share (see (167) below). As explained, the purpose of the transaction was to collectively prevent a new entry to the SNBB market.

---

<sup>264</sup> [...].

<sup>265</sup> [...], original quote in French: *‘si le stock de feuilles des Indiens ne pèse plus sur la situation des nos concurrents, l’intérêt de tous est de maintenir les prix a leur niveaux actuels et meme de retourner vers [...]...’*.

<sup>266</sup> [...].

<sup>267</sup> [...].

<sup>268</sup> [...].

<sup>269</sup> [...].

<sup>270</sup> [...].

<sup>271</sup> [...].

<sup>272</sup> [...].

<sup>273</sup> [...].

(166) The evidence in the Commission’s file supports the Commission’s finding that, in 2012, the cartel agreement between the Parties remained in place and that Alchem attended a meeting at the [...] trade fair in Geneva (Switzerland) where market developments and prices were discussed. E-mail exchanges on prices continued. Alchem was also involved in coordination to avoid the entry of a new market player. Exchanges also took place regarding Alchem’s share in the payment for [equipment] to prevent a new player from entering the market.

#### 5.10. Events in 2013

(167) At the end of **January 2013**, it appears that Alchem paid its share relating to the purchase of [equipment] (see also recitals (146), (156) and (163)), as [...] ([...]) forwarded to [...] ([...]) on **29 January 2013** the invoice addressed to Alchem in this respect.<sup>274</sup>

(168) On **5 February 2013**, [...] ([...]) sent an email to [...] ([...]) asking why he deviated from the agreed price in [...] and further stated that [...] declined to compete at [...] and would remain at the agreed level of [...].<sup>275</sup> [...] confirmed the accuracy of the information. He then explained that he spoke with [...] (Alchem) about Alchem’s low offer. [Alchem] explained that this was due to the exchange rate IND/USD and agreed to completely withdraw from [...]. In addition, [Alchem] suggested to meet in Geneva.<sup>276</sup>

(169) On **31 January 2013**, [...] ([...]) forwarded his email correspondence with [...] SNBB distributor in [...] to [...] ([...]). The correspondence concerned Alchem’s low price offer to a customer. When forwarding the correspondence, [...] mentioned in relation to Alchem’s price ‘*I know the buyer is not reliable. But thought we had an agreement*’. [...] replied on **13 February 2013** indicating his knowledge of Alchem’s price policy: ‘*In any case this price is certainly very wrong, Alchem is definitely [...]*’.<sup>277</sup>

(170) On **20 February 2013**, [...] ([...]) sent an email to [...] ([...]), [...] ([...]) and [...] (Alchem) informing that he would try to be in Geneva (Switzerland) for the [...] fair, but he ‘*would prefer a full house*’.<sup>278</sup> Therefore, after [...] ([...]) declined his participation at the [trade fair] in Geneva, [...] sent another email on **28 February 2013** to [...], [...], [Alchem] and [...] ([...]) emphasising that with [...] not attending, a trip to Geneva may not be needed as ‘*I suspect that the four of us can agree and follow a sensible policy, probably without any meeting. I think having [...] involved is critical to any serious agreement*’.<sup>279</sup> The meeting took place in the end without the participation of [...] (see recital (174)). Although there is no reference of the subject of the meeting<sup>280</sup>, it was designed to ensure that a ‘*sensible policy*’ was followed and shows continuous contacts among the Parties.

(171) Between **4 and 6 March 2013**, [...] ([...]) and [...] (Alchem) exchanged a few messages to agree on a place and on a time for their meeting in New York (USA). Finally, they agreed to meet on **12 March 2013** in the lobby of a ‘*hotel [...]*’. During

---

<sup>274</sup> [...].  
<sup>275</sup> [...].  
<sup>276</sup> [...].  
<sup>277</sup> [...].  
<sup>278</sup> [...].  
<sup>279</sup> [...].  
<sup>280</sup> [...].

the meeting, they shortly discussed the situation on the SNBB market in general.<sup>281</sup> In its Reply to the SO,<sup>282</sup> Alchem argues that these meetings were very general and no details were discussed. Whilst there is no direct evidence of the anticompetitive nature of this meeting, it nevertheless shows a close relationship between the two individuals.

- (172) On **25 March 2013**, [...] ([...]) wrote to [...] (Alchem) the following: *'We are moving up a bit in price as we don't want to sell the limited quantities cheaply fyi'*. [Alchem] responded on the same day that it is *'great to know that you're also planning on moving up as well!! I believe the real point to discuss, once you're back, is by how much'*. [Alchem] followed up on this in his email of **8 April 2013**, in which he stated that *'setting up a meeting during [trade fair] seems to be becoming critical'* (see also recital (174)). They agreed to continue this conversation over a phone call on **9 April 2013**.<sup>283</sup>
- (173) On **1 April 2013**, [...] ([...]) sent an email to [...] ([...]) discussing the proposal of [...] [typo '[...]' ] [...] (Alchem) to increase the SNBB prices from the agreed [...]: *'Has there been any progress on [Alchem] idea to push prices [...]? He rang me whilst in Sydney two weeks ago concerned about the leaf supply position and the state of the duboisia orchards. I agreed that if everyone else went up, we would follow. There is a genuine problem with leaf and the orchards.'* He further expressed his concerns about [Alchem] proposal explaining that on the one hand the customers will be upset, on the other hand the SNBB business would appear more attractive to new entrants. He concluded stating that *'My personal view is that we all should actually stick to the last agreed price - [...]*'.<sup>284</sup>
- (174) On **15 May 2013**, a so-called *'Indian Tea party'* meeting took place between [...] ([...]) and the Indian SNBB producers [...] ([...]) and [...] (Alchem) during the [...] fair in Geneva (Switzerland). The participants had *'a discussion on pricing'* with a view to coordinate an increase of the minimum sales price worldwide.<sup>285</sup> In its Reply to the SO,<sup>286</sup> Alchem argued that according to [...] no important topics were discussed during this meeting. In this regard, the Commission notes that [...] stated that the SNBB market was in restricted supply, meaning that the SNBB suppliers were in a good position to increase prices. Accordingly, there were only minor concerns and limited discussions were required.<sup>287</sup>
- (175) On **24 May 2013**, [...] ([...]) sent an email to [...] ([...]), which followed up on the price changes agreed during the meeting in Geneva (Switzerland) of 15 May 2013. The email stated: *'[...] [[...] ([...])] rang me yesterday and advised that following Geneva that [...] was [...], [...], Alchem & [...] and [...]*'.<sup>288</sup>
- (176) On **1 July 2013**, following a common meeting during the [trade fair] in Shanghai (China), [...] ([...]) confirmed in his email to [...] ([...]) that [...] would increase the prices but raised a concern about the approach of the other two Indian competitors. [...] replied by saying: *'Alchem is currently [...]*'.<sup>289</sup> In its reply to the SO,<sup>290</sup>

---

281 [...].

282 [...].

283 [...].

284 [...].

285 [...]. Alchem confirmed its attendance at the [...] fair, [...].

286 [...].

287 [...].

288 [...].

289 [...].

Alchem claimed that its price could be deduced from the official export statistics, without providing any additional evidence in this regard. However, even assuming that this was true, the exchange shows that the Parties monitored the arrangements to ensure that the agreed prices were respected.

- (177) On **26 September 2013**, [...] ([...]) sent an email to [...] ([...]), [...] ([...]), [...] (Alchem), [...] ([...]) and [...] ([...]) proposing to organise a meeting during [*trade fair*] in Frankfurt (Germany) on 22 October 2013, without additional information about the subject matter.<sup>291</sup>
- (178) Subsequently, on **11 October 2013**, [...] ([...]) sent an email to [...] ([...]) asking him to confirm the meeting on 22 October 2013 and expressing concerns over the harvest.<sup>292</sup> [...] replied that, given the circumstances, he expected that the price would remain at the present level until the end of 2014. This was to be discussed at the [...] trade fair on 22 October 2013 at Alchem booth.<sup>293</sup>
- (179) On **16 October 2013**, [...] ([...]) sent an email to [...] ([...]) confirming his presence at the [*trade fair*], while [...] informed him that he tried to be in touch with him to propose a meeting together with [...] ([...]) on 22 October 2013 at Alchem's stand without providing information about the subject matter.<sup>294</sup>
- (180) On **22 October 2013**, a meeting at Alchem's booth took place between [...] ([...]), [...] ([...]), [...] (Alchem), [...] ([...]) and [...] ([...]) during the [*trade fair*]<sup>295</sup> in Frankfurt (Germany)<sup>296</sup>. The discussion was about the SNBB situation and avoiding raising the SNBB prices too much in general.<sup>297</sup>
- (181) The evidence in the Commission's file supports the Commission's finding that, in 2013, the cartel agreement between the Parties remained in place. The Parties, including Alchem, continued coordination on worldwide prices for SNBB. In spring, the SNBB market changed significantly due to reduced product availability, which allowed further price increases. Alchem notably proposed to increase the price from [...]. Alchem was involved in subsequent discussions about the appropriate level of price increases, notably at multilateral meetings at the [...] fair in Geneva (Switzerland) and at Alchem's booth at the [*trade fair*] in Frankfurt (Germany).

#### 5.11. Events in 2014

- (182) On **1 April 2014**, several emails were exchanged between [...] ([...]), [...] ([...]), [...] (Alchem), [...] ([...]) and [...] (Alchem) about the impact of the weather on the harvest conditions.<sup>298</sup> In its reply to the SO,<sup>299</sup> Alchem admits that the Parties indicated that the prices would go up in case of a poor harvest. The Commission considers that this exchange formed the context for fixing the level of prices between the Parties. In April 2014, [...] left [...] and moved to [...], taking over the responsibility for the SNBB business.<sup>300</sup>

---

290 [...].

291 [...].

292 [...].

293 [...].

294 [...].

295 Alchem confirmed its attendance at [*trade fair*], [...].

296 [...].

297 [...].

298 [...].

299 [...].

300 [...].

- (183) On **16 June 2014**, [...] ([...]) wrote to [...] ([...]) that he received information that a customer in Mexico purchased [...] from Alchem at [...] on 8<sup>th</sup> of April 2014 and asked [...] to check with Alchem in Shanghai next week. [...] replied that this was hard to believe as everyone was currently selling well above [...]. He speculated that either this was an old commitment or a trick to keep the import duties down. He confirmed that he would check with [...] (Alchem) in Shanghai.<sup>301</sup> In its reply to the SO,<sup>302</sup> Alchem claimed that this was just a suggestion to verify market intelligence, moreover about publicly available information. The Commission considers that this exchange confirms the contacts between the different competitors and the monitoring of the prices.
- (184) On **8 August 2014**, [...] ([...]) sent an email to [...] (Alchem) stating that an Alchem's client was offered prices [...] and asked him if he was expecting a good crop. [Alchem] replied: *'Bullshit, I am [...] shortage will be at least till 16 they're expecting a dry 2014.'* [Alchem] further confirmed that he had quoted [...] for similar recent inquiries. Contrary to Alchem's claims,<sup>303</sup> the above exchange cannot be considered of historic nature without competitive relevance, as it involves exchanges on current customers prices and a clear indication of Alchem adherence to a specific level of pricing.<sup>304</sup>
- (185) On **10 September 2014**, [...] ([...]) sent an email to [...] ([...]) stating that he would again coordinate the contacts among the SNBB suppliers. He further made a reference to [...] (Alchem): *'As you probably expected I will be taking over the responsibility of coordinating...again...back to the roots...For me personally it would be nice to have a chance to meet up with [...] [[...]] ([...])...and if it can't be helped, [...] [[...]] (Alchem)]... would be available in the evening of October 6th (after our meeting).'*<sup>305</sup>
- (186) On **12 September 2014**, (as well as on subsequent dates), [...] ([...]) sent emails to [...] and [...] (both Alchem), [...] ([...]), [...] ([...]), copying [...] ([...]) to organise a meeting in *'the downtown area'* of Paris (France) on **6 October 2014**. He further specified that he and [...] were confirmed and proposed the apartment of [...] as the meeting location.<sup>306</sup> In its Reply to SO<sup>307</sup>, Alchem claimed that there is no indication what this meeting is about. However, the content of the meeting is described in the next recital.
- (187) On **6 October 2014**, a meeting took place as planned between [...] ([...]), [...] ([...]), [...] ([...]), [...] ([...]), [...] and [...] (both working for Alchem) during the *[trade fair]* in Paris (France)<sup>308</sup> at [...] apartment, as a more discrete place. Discussions focused on acknowledging that, due to bad weather conditions that affected the crop, participants struggled with the shortage of supply.<sup>309</sup>
- (188) In **2014**, due to a continuing drought in Australia, SNBB supply decreased while prices increased. As some suppliers were not capable to deliver the SNBB due to the

---

301 [...].

302 [...].

303 [...].

304 [...].

305 [...].

306 [...].

307 [...].

308 Alchem confirmed its attendance at *[trade fair]*, [...].

309 [...].

shortage, they retracted from the SNBB market for some period.<sup>310</sup> Although in times of increasing prices the need to coordinate was less, the evidence on the file supports the Commission's finding that, in 2014, there continued to be exchanges on prices and on the supply situation between the Parties.

## 5.12. Events in 2015

- (189) On **22 January 2015**, a meeting was held at a café called Le Fix in Geneva (Switzerland) between [...] ([...]) and [...] (Alchem)<sup>311</sup>. This was their first contact following the signature of the purchase and distribution agreement by [...] to be an exclusive distributor for [...]. At this meeting, [Alchem] informed [...] about the details of the existing agreements between SNBB suppliers and the benefits of these agreements and advised on how to keep them in place. According to [...], [Alchem] made great efforts to convince [...] to participate in the 'status quo'. [Alchem] explained that this system was primarily run by the respective CEOs of the various companies and/or its senior staff, i.e. [...] was the participant for Alchem.<sup>312</sup> [Alchem] told [...] that the reasonable price worldwide was currently [...] for SNBB and he further stressed during the meeting that it was rational to maintain this price. The meeting between [Alchem] and [...] is confirmed by [...] handwritten notes of 22 January 2015.<sup>313</sup>
- (190) On **12 February 2015**, a meeting was held in New Delhi (India)<sup>314</sup> between [...] ([...]) and [...] and [...] (both Alchem). During that meeting, [Alchem] provided to [...] further background information regarding the various arrangements between the Parties. According to an email dated 27 February 2015 between [...] ([...]) and [...] ([...]), the meeting was successful. In particular, [...] mentions: '*I just heard that [Alchem] and [Alchem] met the CEO of [...] ([...]) [...] in India...It appears as if [Alchem] did the hosting and both got along very well.*'<sup>315</sup>
- (191) On **27 February 2015**, [...] ([...]) sent an email to [...] ([...]) where they discussed Alchem's situation following the entry in the market of [...]. Specifically, [...] explained that [...] (Alchem) was around Kingaroy in early January trying to expand growing areas. [Alchem] shared his plan to become the principle generic supplier of SNBB and was expanding significantly.<sup>316</sup>
- (192) On **9 June 2015**, [...] ([...]) sent an email to [...] and [...] (both [...]), indicating the existence of a [...] as well and showing the influence of low price in [...] on the prices in other markets: '*[...] [...] is of little interest to us except if it becomes a price setter for the rest of the world. I think you and Alchem [...] or is someone else trying to mussel in?*'<sup>317</sup> Contrary to Alchem's arguments that [...] is a common expression and not an indication of the existence of an anticompetitive conduct and that [...] is not relevant for the rest of the world<sup>318</sup>, the Commission notes that this email evidences [...] and the potential of prices in specific markets to have wider influence for the rest of the world.

---

<sup>310</sup> [...].

<sup>311</sup> [...].

<sup>312</sup> [Alchem] further mentioned [...] ([...]), [...] and [...] (both [...]), [...] ([...]), (to a limited extent) [...] ([...]), [...] ([...]), [...] (previously [...], now [...]) and [...] ([...]).

<sup>313</sup> [...].

<sup>314</sup> [...].

<sup>315</sup> [...].

<sup>316</sup> [...].

<sup>317</sup> [...].

<sup>318</sup> [...].

- (193) On **11 June 2015**, a meeting between [...] ([...]) and [...] (Alchem) was held in Frankfurt (Germany) at the [...] Hotel. As [...] handwritten notes from the meeting show, they discussed amongst other matters the Duboisia harvest and SNBB pricing. [...] reiterated to [Alchem] that the shortage of SNBB supply was a major factor to [...] high pricing of SNBB globally and that current pricing levels were at an all-time high.<sup>319</sup>
- (194) On **14 July 2015**, [...] ([...]) and [...] (Alchem) had a meeting at the airport of New Delhi (India). [Alchem] tried to gather information on SNBB pricing. [Alchem] said that in his view prices should be maintained at a high level. He added that [...] was new to the SNBB market and did not understand its ‘*special dynamics*’. In this context, [Alchem] said to [...] ‘[...], *you need to listen*’. [Alchem] also argued that ‘*it is better to sell smaller volumes at a much higher price, even if you have to destroy some material*’.<sup>320</sup> Contrary to Alchem’s claims<sup>321</sup>, rather than sharing his experience to assist a direct competitor, the exchange shows that [Alchem] was explaining to [...], a newcomer, the functioning and the advantages of the pricing strategy that was at the basis of the arrangements in place between the Parties.
- (195) On **13 October 2015**, [...] (Alchem), [...] ([...]) and [...] ([...]) held a meeting at the [trade fair] in Madrid (Spain).<sup>322</sup> [...] and [Alchem] confirmed their interest to pursue the ‘*pricing arrangement*’ on SNBB with [...]. [...] was more elusive and stressed that the shortage of SNBB supply by [...] was the main factor to [...] high pricing of SNBB globally. [...] also said that [...] aimed to resolve the shortage and in that case, the ‘*System*’ would not be reliable and would ultimately need to stop.<sup>323</sup>
- (196) On **21 October 2015**, [...] ([...]) sent an email to [...] (Alchem), the functional email of [...] (addressed probably to [...]) and [...] ([...]) disclosing a conversation with [...] ([...]). The email confirms that the participants of the meeting in Madrid (see recital (195)) discussed SNBB pricing as well as the upcoming harvest of SNBB. [...] explained that he received a call from [...] for the first time in many years, who wanted to know the consensus of Madrid. [...] also informed that ‘*I advised that [...] were considered appropriate with a net price to [...]. He concurred with such levels and assured me that these are his levels.*’ [...] further stated that they both had concerns over the harvest and agreed that the situation needed to be reviewed in the new year.<sup>324</sup> In its reply to SO,<sup>325</sup> Alchem argued that the conversation between [...] and [...] above is unlikely to correspond to prices in the EEA, given that [...] had no authorisation to sell in the EEA. However, the Commission notes that [...] communicated to [...] the universal consensus that the Parties reached during the meeting in Madrid.
- (197) On **2 November 2015**, [...] ([...]) sent an internal email to some of his colleagues which shows that [...], [...], [...] and Alchem had agreed on [...] as a common market price worldwide for SNBB and wanted to sell at least at this price: ‘*Yes – this is the market price – and everyone ([...], [...], [...], Alchem) says they sell at this*

<sup>319</sup> According to [...], [Alchem] never missed an opportunity to try to gather SNBB pricing information. [...].

<sup>320</sup> [...].

<sup>321</sup> [...].

<sup>322</sup> Alchem confirmed its attendance at [trade fair], [...].

<sup>323</sup> [...].

<sup>324</sup> [...].

<sup>325</sup> [...].

*price and even higher.*<sup>326 327</sup> In its reply to the SO,<sup>328</sup> Alchem claimed that in this instance [...] does not speak about a worldwide market price, as in the same email he mentioned that new markets and customers needed to be identified. In this regard, the Commission notes that Alchem ignores that in the same email [...] recognised [...] own difficult market situation did not allow it to keep the worldwide price and acknowledged that if it sourced material from [...] they could even sell higher than [...] and more to existing customers.

- (198) The evidence in the Commission's file supports the Commission's finding that, in 2015, the cartel agreement between the Parties remained in place. Alchem played a significant role to introduce and include [...] into the arrangements upon its entry into the SNBB merchant market, notably by attending meetings in Geneva (Switzerland) and Delhi (India). The exchanges also show that agreed worldwide minimum prices of [...] were in place.

### 5.13. Events in 2016

- (199) On **13 January 2016**, [...] ([...]) sent a reply to [...] ([...])<sup>329</sup> concerning alleged low prices of [...] (mentioned as [...]), copying [...] ([...]): ' *[...] are emphatically denying [...]. They are claiming they are firm [...] and claim that they are the last [...]. They are certainly correct about being the last [...]. We are [...], Alchem claims to be [...] and [...] claims [...].*'<sup>330</sup> The email confirms that the SNBB suppliers actively monitored the adherence to the pricing agreements by verifying the accuracy of pricing information received from the market with competing undertakings.<sup>331</sup> In its reply to the SO<sup>332</sup>, Alchem argued that this document is irrelevant, because [...] was unable to sell in the EEA as it lacked the necessary registration. However, the Commission confirms that [...] (and all Parties) sold quantities of SNBB in the EEA<sup>333</sup>. In addition, Alchem argued that the significant price spread between suppliers contradicts the existence of an agreement. However, the evidence in the file (for example see recital (200) below) shows that the Parties had agreed a target price, notably of [...]. The fact that they were not always able (or willing) to respect the target price is irrelevant.

- (200) On **4 February 2016**, [...] ([...]) and [...] (Alchem) held a meeting in Geneva (Switzerland). [Alchem] was inquiring [...] whether it was true that [...] sold SNBB below [...] (see also recital (199)). He also said to [...] that the market participants had an agreement to keep the price as high as possible and that they were trying to find the highest ' *durable*' price level.<sup>334</sup> Although Alchem claims that this exchange is not commercially sensitive and doubts that it is related to an EEA client<sup>335</sup>, it shows a direct contact between competitors on pricing and confirms that an agreement was in place to keep prices at a minimum level.

---

<sup>326</sup> [...], original quote in German: '*Ja richtig – das ist der Marktpreis – und alle ([...], [...], [...], Alchem) sagen, dass sie zu diesem Preis und noch höher verkaufen*'

<sup>327</sup> Nevertheless, [...] recognised that its own difficult market situation, might lead to its deviations from the market price. [...].

<sup>328</sup> [...].

<sup>329</sup> [...].

<sup>330</sup> [...].

<sup>331</sup> [...].

<sup>332</sup> [...].

<sup>333</sup> [...].

<sup>334</sup> [...]. According to [...], this was the last meeting to which [...] participated.

<sup>335</sup> [...].

- (201) On **19 February 2016**, [...] ([...]) sent an email to [...] (Alchem), [...] ([...]) and [...] ([...]) pushing them to adhere to new SNBB prices: *'It is suggested that there be a minimum price of [...], until the end of March at least to allow the old [...] material to wash through the market. [...] has agreed to this on the basis that there is agreement from others'*.<sup>336</sup>
- (202) On **6 October 2016**, [...] sent an email to [...] (both [...]), stating: *'Ciao [...] called. Spoke with other [...] and Indians'*<sup>337</sup>. *For the price for 6 months 2017 end user [...] we are in line. Slch*<sup>338</sup> *doesn't agree thinks at [...]. [...] said he would have a lot of material that could not sell everything in 2017, but said that he will sell in [...]*<sup>339</sup> In its Reply to the SO,<sup>340</sup> Alchem claimed that the reference to [...] indicates that the EEA market was not concerned. The Commission considers on the contrary that the reference to [...] demonstrates that in principle the price indications were general and that one party singled out a country where they could sell some product in excess without disrupting the other competitors.
- (203) On **3 and 15 November 2016**, [...] ([Alchem]), who was in contact with [...] ([...]) about the situation on the SNBB market, reported about this contact on 3 November to [...] copying [...] and [...] (all Alchem) and on 15 November to [...] and [...] (all Alchem). They discussed amongst others, [...] future SNBB production, expected SNBB prices and [...] business relationship with [...].<sup>341</sup>
- (204) The contacts between Alchem and [...] further continued throughout December. On **8 December 2016**, [...] ([Alchem]) sent an email to [...] (Alchem) with [...] (Alchem) in copy, informing him about possible dates in December for a meeting with [...] ([...]) requested by [Alchem], without additional information about the agenda.<sup>342</sup>
- (205) On **15 December 2016**, [...] ([Alchem]) sent an email to [...] (Alchem) with [...] (Alchem) in copy, sharing newly gathered information about the SNBB market including that [...] had stock in Europe of 1,600 kg as well as the fact that it would receive 6 metric tons of SNBB in 2017 from [...].<sup>343</sup> In its reply to the SO,<sup>344</sup> Alchem claimed that the EU competition law does not prohibit the collecting of market intelligence. However, the Commission notes that this information could not be publicly known and can be characterised as sensitive. Therefore, the Commission considers that this exchange was the result of an anticompetitive exchange between Alchem and [...].
- (206) The evidence in the Commission's file supports the Commission's finding that, in 2016, the Parties actively monitored the adherence to the pricing agreements by verifying the accuracy of pricing information received from the market with

---

<sup>336</sup> [...].

<sup>337</sup> In this regard, see also recital (45). The use of plural without any further indication suggests that both Indian producers were involved, meaning Alchem and [...].

<sup>338</sup> The Slch reference appears to be a typo for Alchem and it is confirmed by the earlier reference to *'the Indians'*.

<sup>339</sup> [...], original quote in Italian: *'Ciao [...] ha chiamato Parlato con altri [...] e indiani Prezzo per 6 mesi 2017 end user [...] dunque siamo in linea. Slch Nn "accordo pensa a [...] ha detto avrà molto materiale che Nn potrà vendere tutto in 2017 ma detto che Vende in [...]*'.

<sup>340</sup> [...].

<sup>341</sup> [...].

<sup>342</sup> [...].

<sup>343</sup> [...].

<sup>344</sup> [...].

competing undertakings.<sup>345</sup> Alchem was again in direct contact with [...] emphasising the agreement in place between the Parties to keep the SNBB worldwide price at the highest level. Alchem was also in close contact with [...] over prices and the market situation.

#### 5.14. Events in 2017

- (207) Throughout April and May 2017, the SNBB suppliers intensively discussed the situation on the [...] market, which threatened to destabilise the global SNBB market (see also recital (192)). On **19 April 2017**, [...] ([...]) sent an email to [...] ([...]) informing that he had been contacted by [...] (Alchem) who wanted him to organize a meeting with [...] ([...]) on 22 April 2017 in Hamburg (Germany) to discuss the [...] market and to deter [...] (via its SNBB distributor [...]) from competing there. [...] confirmed to [...] on the same day that he had also talked to [Alchem] about Alchem's plans to compete with [...] in [...] and possibly [...] but not to extend the price war to other markets (*'Feel he is at [...], other than these two markets and that should be fine.'*).<sup>346</sup> In its reply to the SO,<sup>347</sup> Alchem argues that the Commission creates the impression of a collusion of global proportions, whereas in fact the conduct was limited to selected countries, and that [Alchem] defined his business strategy independently, however it is clear from the exchange above that other than the threat of a possible price war in the [...] markets in light of [Alchem] market entry, he confirmed that he would follow the agreed prices in all other markets, i.e. globally.
- (208) On **21 April 2017**, [...] ([...]) sent another email to [...] ([...]) giving feedback on another discussion with [...] and [...] (both Alchem), during which [Alchem] warned against dropping prices in [...] and also threatened: *'I want 4 tons of the 6 tons total market and if [...] doesn't agree, I will take over 100%'*. [...] further mentioned to [...] that *'Right now we both have nothing to lose in [...] as we are not qualified yet. The only big unknown is, how will this battle effect the other markets...'* [...] replied by referring to the existing status quo on other markets: *'All the manufacturers have appreciable capacity now and if both of them extend competition to other markets, things will be really bad.'* [...] therefore concluded that it was necessary to have a meeting of the *'old team'* ([...], Alchem, [...], [...] and maybe [...]) *'to openly discuss the situation and options'*.<sup>348</sup>
- (209) On **22 April 2017**, [...] ([...]) and [...] ([...]) held a bilateral meeting in Hamburg (Germany). They agreed that [...] would contact Alchem and [...] in order to find a solution for the *'price war in [...]*' and to stabilize the price. They agreed for the meeting to take place during [...] Fair in Geneva (Switzerland) on 12 May 2017 (see also recital (213)).<sup>349</sup>
- (210) On **4 May 2017**, [...] ([...]) sent an email to [...] ([...]) explaining that [...] ([...]) would meet [...] (Alchem) and [...] ([...]) in Europe the following week. [...] stated that: *'He [[Alchem]] reluctantly agrees with the [...] proposal but would prefer that there be no final decision or implementation until next week. I would support this*

---

345 [...].

346 [...].

347 [...].

348 [...].

349 [...].

*consultation period*'.<sup>350</sup> Then, [...] replied: 'Call me [...] Why [Alchem]? [Alchem] has already implemented !!!'<sup>351</sup>

- (211) On **9 May 2017**, [...] ([...]) sent an email to [...] ([...]) reporting about his meetings with [...] ([...]) in Frankfurt (Germany), and [...] (Alchem) and [...] ([...]) in Geneva (Switzerland), concerning the price war on the [...] market. He further proposed to discuss with [Alchem] to have a meeting with the 'old boys' in Shanghai (China) before or during the [trade fair], which was planned to take place on 20-22 June 2017 (see also recital (215)). In his reply, [...] indicated that he had discussed the situation on the SNBB market with [...] (Alchem).<sup>352</sup>
- (212) On **10 May 2017**, [...] ([...]) sent an email to [...] ([...]) outlining the main points from two meetings he had with [...] (Alchem). He reported that [Alchem] was open to the possibility to meet during the [trade fair] in Shanghai (China) ('It is a good idea to revive the old club.'). He further reported in respect to [...] that they would not come due to legal reasons. Regarding product volumes and stocks he reported that [Alchem] was holding 20 metric tons of processed SNBB and suggested in relation to sales prices for SNBB not to go [...].<sup>353</sup> Contrary to Alchem's argument that the contacts described above related only [...]<sup>354</sup>, the email from [...] ([...]) to [...] ([...]) dated 9 May 2017 in the same email thread shows that beyond [...], there was an additional matter: 'second topic is to talk to [Alchem] about having a meeting with the "old boys" in Shanghai...' Furthermore, given the high quantities referred to<sup>355</sup> and the general level of pricing<sup>356</sup>, the exchange cannot be limited to [...] only. In any event, the evidence in the Commission's file confirms the global impact of the possible price war in [...] on the worldwide market with SNBB ('What is going on in [...] will have a great impact on other markets (and already has) [...]').<sup>357</sup>
- (213) On **12 May 2017**, [...] ([...]), [...] (Alchem), [...] ([...]) and [...] ([...]) held a meeting during the [...] Fair in Geneva (Switzerland) to discuss among others matters the price and [...] (see recitals (207) – (211)). The meeting took place in the morning in Alchem's office in Geneva.<sup>358</sup> Following the meeting, [...] sent an email to [...] ([...]) informing in particular: 'We have an agreement!'.<sup>359</sup>
- (214) Following the agreement of 12 May 2017, [...] (Alchem) sent an email to [...] ([...]) on **1 June 2017** asking about a price to be offered to a customer in [...]. Specifically, she wrote: '...Our question to you now is, shall we maintain old price [...]?' Look forward to your response'.<sup>360</sup>
- (215) On **20 June 2017**, [...] ([...]), [...] ([...]) and [...] ([...]) had a dinner during the [trade fair] in Shanghai (China) in order to discuss a common strategy to solve 'the issue' with decreasing SNBB prices worldwide. While in the beginning [...] (Alchem) confirmed that he would attend, he eventually cancelled.<sup>361</sup> [...] ([...])

---

350 [...].

351 [...].

352 [...].

353 [...].

354 [...].

355 As [Alchem] himself recognises in recital (216), the total market is only about 24 to 28 metric tons.

356 The indicated price level corresponds generally to the SNBB price discussed between [...], [...] and [...] on 20 June 2017 (see recital (215)).

357 [...].

358 [...].

359 [...].

360 [...].

361 [...].

could not participate in the meeting either.<sup>362</sup> As [...] indicated, the participants discussed the worldwide quotas allocation and setting minimum selling price [...]. No final agreement was reached, as they wanted to coordinate with the SNBB suppliers not present at the meeting (for Alchem, see also recital (216)).

- (216) On **22 June 2017**, [...] ([...]) sent an email to [...] ([...]) reporting about his discussion with [...] (Alchem) following the meeting in Shanghai (China). The email shows that [Alchem] was willing to find a common solution for the disputes with [...] and agreed with the basic agreement for the global market from Shanghai: *‘I had a long, and ultimately, fruitful session with [Alchem]. He agrees that we all need to live with [...]. He agrees that we need to move quickly to conclude an understanding that has a high chance of success. He seemed in broad agreement with the principles already outlined.’* The email further touches upon the allocation of quotas discussed in Shanghai: *‘[Alchem] thinks that the current total market is only about 24 to 28 tons rather than the 28 to 30 tons you suggest. For any arrangement to be sustainable, the total allocations can only total the market.’* [...] reply from 30 June 2017 confirms that he also discussed the quota allocation in the global market with [Alchem].<sup>363</sup> In its reply to the SO,<sup>364</sup> Alchem argued that these attempts were in the end unsuccessful as Alchem never agreed to be bound by them. However, first, the text of the email shows that Alchem was in favour of an understanding with its competitors and broadly agreed with the basic principles that had already been discussed by the other participants; second, the evidence described in the recitals below clearly show that Alchem participated in the anti-competitive discussions and only in the end it did not commit as it had concerns regarding the worldwide quota of [...] and the lack of transparency of the European SNBB producers.
- (217) On **27 June 2017**, [...] ([...]) sent an email to [...] ([...]) which shows that an agreement on a price level had been reached: *‘Have informed [...] ([...]) that a consensus has been reached [...].’*<sup>365</sup>
- (218) On **28 June 2017**, [...] reported internally to [...] and [...] (all [...]) the following: *‘FYI – during the exhibition in Shanghai last week [...], from [...], approached me at our booth on two occasions concerning the ongoing discussions and meetings between himself and the other market players concerning SNBB pricing and current market demand vs capacity. I understood from what [...] said that the participants in these meetings were; himself, [...] of Alchem, [...] of [...], [...] of [...] and [...] of [...].’*<sup>366</sup>
- (219) On **4 July 2017**, [...] ([...]) reported to [...] ([...]) about a phone call with [...] (Alchem) in which [Alchem] reported that [...] ([...]) informed him that his company was supplying *‘[...] with a maximum of 50 tons of Duboisia per year.’*<sup>367</sup>
- (220) On **6 July 2017**, [...] ([...]) and [...] ([...]) shared information about [...] and [...] decreasing prices.<sup>368</sup> [...] wrote: *‘I will talk to [...] [[...]] and [...] [[...]] (Alchem) on Monday about this. I strongly believe if the rest of us work together we can defend our positions more effectively than if we walk alone...’*<sup>369</sup> [...] agreed to [...] plan, as

---

362 [...].

363 [...].

364 [...].

365 [...].

366 [...].

367 [...].

368 [...].

369 [...].

confirmed by [...] reply from **8 July 2017**: *‘What has been proposed since Barcelona is that there is a managed reduction in prices in an attempt to avoid the wholesale collapse as we saw with the [...] over reactions. But, if [...] [[...]] ([...]) wants a fiasco, then that it what will be. We are with you on staying together.’*<sup>370</sup>

- (221) An email from [...] ([...]) to [...] ([...]) on **24 July 2017** shows, on the one hand, that the Parties continued trying to prevent the prices from falling, and on the other hand, that they were not successful in persuading [...] to re-join the agreement. In his reply, [...] made clear that he followed the agreement: *‘Our business is steady, albeit a bit slow and we are presently not moving on price. We are happy to stick with our friends, but, is there a plan?’* [...] replied by referring to his contacts with [...] and his plan to contact Alchem in relation to the SNBB prices.<sup>371</sup>
- (222) On **25 July 2017**, [...] (Alchem) sent an email to [...] ([...]) regarding [...] status following the termination of its SNBB supply contract by [...] and the impact on the SNBB market. He expressed concerns about the regulatory requirements of [...] in [...] with consequences that *‘all the material they are manufacturing will find its way into other markets where all of us are present.’* The same email was sent also to [...] ([...]).<sup>372</sup> In its reply to the SO,<sup>373</sup> Alchem claimed that following the termination of the supply contract by [...], [...] could only sell to markets without regulatory requirements, therefore [Alchem] comment above could not relate to the EEA. In this regard, the Commission notes that this quote shows that Alchem was concerned about the regulatory situation of [...] and strictly monitored any deviations that this change could provoke, even in markets that Alchem was not active.
- (223) On **28 July 2017**, [...] ([...]) sent an email to [...] (Alchem) regarding Alchem’s low SNBB prices: *‘Heard from [...] [[...]] ([...]) about rumors [sic] that you quoted at [...]. True or not true? Are you kicking ass??? I think our approach (‘the old club’) should be: only fire against the enemy if you are threatened and only if have solid evidence’.*<sup>374</sup> On **29 July 2017**, [Alchem] refuted the rumours: *‘As you know [...] [[...]] ([...]) is all the time getting information from sources that feed him what they want. Since March, I have not reduced prices but as a matter of fact I am now in the process of increasing. [...] As you know I am not at all interested in decreasing prices any further and would like the prices to stabilize but if [...] insists on sending dubosia [sic] to [...], he will create problems for himself’.*<sup>375</sup> [...] reacted on **1 August 2017** by reiterating the need for a common approach, as [...] was only reporting information he was picking up. [...] concluded stating to [Alchem]: *‘As you can see it is mandatory in order to get the best results to stick together!’*<sup>376</sup>
- (224) On **15 August 2017**, [...] ([...]) sent an email to [...] and [...] (both Alchem) regarding SNBB prices: *‘[...] [[...]] ([...]) called me a few days ago – we said that he is continuing to honor [sic] [...]...’.*<sup>377</sup> On **16 August 2017**, [Alchem] replied: *‘Nice to hear [...] [spelling mistake for [...]] has decided to be sensible’.*<sup>378</sup>

---

370 [...].

371 [...].

372 [...].

373 [...].

374 [...].

375 [...].

376 [...].

377 [...].

378 [...].

- (225) On **7 September 2017**, [...] (Alchem) inquired by email whether [...] ([...]) got in touch with [...] ([...]) to ask about an inquiry in [...]. [...] confirmed he had got in touch and reported the conversation. [Alchem] stated at the end of their email conversation that: *‘I would like to quote if at all after I consult [...]’*.<sup>379</sup>
- (226) On **29 September 2017**, [...] ([...]) and [...] ([...]) exchanged information about SNBB prices in [...] and the worldwide SNBB market. [...] wrote: *‘It seems to be relatively calm on the SNBB front...here and there some craziness, but nothing to worry about. Only [...] is a problem – as the melting pot of the global SNBB business’*. Additionally, they agreed to meet in Frankfurt (Germany) on 24 October 2017 during the [trade fair].<sup>380</sup> In its reply to the SO,<sup>381</sup> Alchem claimed that the exchange relates only to [...] and there is no mention of a worldwide market. The Commission notes that on the contrary the message is clearly about the global SNBB market – apparently under control – and [...] is mentioned as an exception.
- (227) Between **24 and 26 October 2017**, during the [trade fair] in Frankfurt (Germany), [...] ([...]) was again approached amongst others by [...] (Alchem)<sup>382</sup>. [...] repeated to him that [...] would not enter into any price agreement with other SNBB producers, and it would continue to push the SNBB prices down.<sup>383</sup> A multilateral meeting between [...], Alchem, [...] and [...] took place as well (see recital (228)).
- (228) On **3 November 2017**, [...] ([...]) sent an email to [...] (Alchem), [...] ([...]) and [...] ([...]) reporting about the meeting he had with [...] ([...]) during the [trade fair] in Frankfurt (Germany) on 22-24 October 2017. The email shows that they discussed SNBB sales volumes and tried to agree on an allocation of worldwide quotas among SNBB suppliers.<sup>384</sup> [...] replied that rates were going down drastically and suggested that: *‘a joint meeting can pave the way for disciplined selling’*. He further stressed the need to have an arrangement on quantities and an understanding on the approximate market size beforehand.<sup>385</sup> In its reply to the SO,<sup>386</sup> Alchem indicated that the email of [...] shows that there were no actual figures on the table and that there is no reason to believe that the information could be related to the EEA. The Commission disagrees with this interpretation as in the same email [...] confirmed that *‘earlier [...] tonnages may not now be the appropriate numbers’*.<sup>387</sup> Therefore the Commission notes that there were some figures on the table, although possibly to be amended. Moreover, there is no indication that in this case the discussion about quota allocation was limited to specific markets.
- (229) On **6 November 2017**, [...] ([...]) sent another email to [...] (Alchem), [...] ([...]) and [...] ([...]) confirming the need to reach an agreement on SNBB prices.<sup>388</sup> [...] reacted later in the chain informing that [...] ([...]) was prepared to talk about quantities. He further asked [Alchem] and [...] who had contacted [...] ([...])

---

379 [...].

380 [...].

381 [...].

382 Contrary to Alchem’s claim ([...]) that Alchem did not propose such agreement to [...], the Commission notes that although the evidence in the file does not describe in detail Alchem’s approach, it seems likely given [...] that [Alchem] raised the issue of [...] entry into the agreement as he previously had done in the margins of other trade fair.

383 [...].

384 [...].

385 [...].

386 [...].

387 [...].

388 [...].

whether there is a way to ‘recontact him after we had an in principle agreement to talk, with quantities?’<sup>389</sup>

- (230) Still on **6 November 2017**, [...] (Alchem) intervened: ‘I suggest that we do not react till early December as in my view the basic problem is [...] trading in [...] [...] material using 50 tons of leaf as a platform and this has upset both [...] [...] ( [...]) and me as he has also predicted lower prices next year if [...] [...] ( [...]) you can persuade [...] [...] ( [...]) to only sell material obtained from the leaf supplied by [...] [...] we will have a solution.’<sup>390</sup>
- (231) [...] ( [...]) disagreed with [...] (Alchem) proposal, indicating that [...] was unlikely to ‘meekly’ agree to a reduction of 1-2 metric tons per year. He added that in their earlier conversation, he informed [...] ( [...]) about the need to accept ‘a more realistic number around 4 to 6 tons’ of the worldwide quota and that they agreed to discuss around these numbers. He further stressed ‘[Alchem], [...] is not going to go away. We have to live with them as we have to live with [...].’ He concluded by underlining the urgency for the discussions and not postponing them for another month.<sup>391</sup>
- (232) On **7 November 2017**, [...] (Alchem) exchanged emails with [...] about low market prices for SNBB. He referred to a conversation with [...] ( [...]) who was concerned about a very low offer from either [...] or [...] and added ‘besides these 2, I have not heard any news of misbehaviour of any other manufacturer yet.’<sup>392</sup>
- (233) On the same day, [...] ( [...]) replied to [...] (Alchem) and added also [...] ( [...]) and [...] ( [...]) in the conversation: ‘Dear [Alchem], The choices are: 1. We all sit around and listen to prices that buyers claim. I was told 30 minutes ago that ‘everybody is offering [...]’ (absolute BS). If we continue to do nothing, this will happen. OR 2. Try to take [...] [...] ( [...]) up on his indication at [trade fair] that he may be prepared to talk’. I, and [...] and [...] are doubtful that (2) will work but we all believe that it is a better chance than (1). Your last stated position is to do nothing until December. By December the price has a high probability of being [...]. The understanding must be on prices and quantities. [...] [...] ( [...]) has agreed with this principle. The two [...] have agreed on this principle. No one has agreed on the actual numbers – this must be the topic of the discussion. [...] Unless we talk there can be no trust and (1) is the outcome. What do you want to do – try talk now or drop the price [...]?’<sup>393</sup>
- (234) [...] ( [...]) stressed that there was no harm in [...] ( [...]) trying to contact [...] ( [...]) in order to find out, whether an agreement among all the players would be possible to avoid decreasing prices for SNBB. [...] (Alchem) replied: ‘I have no problems in your contacting [...] and you can try seeing whether he can stop offering low prices.’<sup>394</sup>
- (235) On **9 November 2017**, [...] ( [...]) sent an email to [...] (Alchem), [...] ( [...]) and [...] ( [...]) reporting about his discussion with [...] regarding the possible allocation of the worldwide market shares.<sup>395</sup> The same discussion was also summarized in an

---

389 [...].  
390 [...].  
391 [...].  
392 [...].  
393 [...].  
394 [...].  
395 [...].

internal [...] email sent on **12 November 2017** from [...] to [...] and [...]: *'I received an unsolicited call from [...] of [...] who indicated that further meetings and phone calls had taken place between himself and representatives [of] Alchem, [...], [...], [...] and [...] in order to arrive at agreement on volumes to supplied by each player into the global market for SNBB in 2018 [...] also indicated that the parties would like us involved in the discussions and therefore be a party to any understanding established. I reiterated again that we will not participate in any such discussions nor be party to any such agreements.'*<sup>396</sup> [...] ([...]) replied: *'Thanks. Ironically, I got on Wednesday morning an SMS from [...] from Alchem (see below). I did not bother to respond.'* The SMS says: *'[...] need to talk to urgently [Alchem]'*.<sup>397</sup>

(236) On **14 November 2017**, [...] ([...]) sent an email to [...] (Alchem), [...] ([...]), [...] ([...]) and [...] ([...]) explaining his plan on how to stabilize prices for SNBB. He especially pointed out that the market for SNBB is a worldwide market and proposed a worldwide yearly quantity for SNBB. He also wrote: *'It is my view that if there is an understanding of quantities, that have a realistic estimate of total world demand, there is no need for any explicit understanding on price. If no one is trying to aggressively take market share, the price will remain stable. The first key number that needs to be estimated and agreed upon is total world demand. I will suggest a number of 24 tons'*.<sup>398</sup>

(237) On **16 November 2017**, [...] (Alchem) replied: *'Regarding the quantities I would agree that the recent consumption is about 25 tons per year but this can be easily made available by either [...] or Alchem and though Alchem is showing restraint [...] for some strange reason are not'*. [...] ([...]) replied the same day: *'However each player sources the product, there is to be an understanding on the quantity that they sell. [...] are not directly part of my conversation group. ALL other players are. ALL other players have agreed, in principle, to the numbers.'* The same day, [Alchem] reacted: *'I am in basic agreement with the overall approach and the proposed limits but not the approach and limits set for Alchem and [...] and your thought of treating Alchem and [...] at Par as it does not reflect the present ground realities both in terms of markets and leaf. [...] On the marketing front last year they sold approx 2.5 tons and so far approx 3 tons (thanks to Alchem restraints) so if it has to sell 5 tons Alchem will need to step back something that is not reasonable.'*<sup>399</sup> In its reply to the SO<sup>400</sup>, Alchem argues that this exchange related to the [...] market. However, although earlier in the exchange there were complaints about product being dumped in the [...] market, it is evident that any reference to quantities related to the worldwide market.

(238) On **16 November 2017**, [...] ([...]) wrote to [...] ([...]) that in order to stabilize prices, [...] and [...] were offering to reduce their market share by 20 to 30%. Furthermore, he informed [...] that [...] and [...] had not increased their market share for a long time. He further stressed that *'Alchem is the only player who has significantly grown their market share (+40%) and with the group granting Alchem 5 tons is a very good compromise for Alchem. Everyone is losing, Alchem is the winner...'*. [...] asked [...] ([...]) in return *'Can either you or [...] speak to*

---

396 [...].  
397 [...].  
398 [...].  
399 [...].  
400 [...].

[Alchem]. *He can rant on all he likes, but some numbers need to be agreed. Ask [Alchem] what his [...] number is and let us see what [...] will agree to.*<sup>401</sup>

- (239) On the same date [...] ([...]) sent an email to [...] ([...]), copying [...] (Alchem) and [...] ([...]) writing: *'If we all agree let us make it simple and divide the quantities amongst ourselves with pricing discipline as per projected demand (all of us have agreed to that).'*<sup>402</sup>
- (240) On **17 November 2017**, [...] ([...]) forwarded the exchange to [...] ([...]) and asked whether he could speak to [...] (Alchem). [...] ([...]) agreed to talk to [Alchem], adding *'finally we have to be sensible. It is a now or never situation at the moment.'*<sup>403</sup>
- (241) [...] (Alchem) and [...] ([...]) held a meeting at the airport of Frankfurt (Germany) on **20 November 2017** as well as had a dinner on **24 November 2017** to discuss the allocation of quota on the global SNBB market.<sup>404</sup> Following the meeting on 20 November 2017, [...] sent an email to [...] ([...]) reporting that: *'I had 3 hours with our friend...[...] He will only agree at this stage to [...] having 1,2 tons...He sees 3 options: a) [...] comes forward with information and agrees on a much lower market share b) Alchem to inform the authorities of [...] wrongdoing c) Price war in [...] to punish [...] and drive them out of business. He has currently no issues with [...] (which is not surprising, given the markets they are in). [...] he does not want to give up his position (~6,5 tons) because of parties who are illegally relabeling material.'* He further added that [Alchem] got very upset when a meeting set up with [...] and [...] was cancelled. [...] further wrote that he would talk to [...] ([...]) to persuade him to adopt a more passive attitude in [...] in order to at least delay a price war, adding *'[...] is clearly the starting point of all issues...this is the market we have to get under control again...'*<sup>405</sup>
- (242) On **21 November 2017**, [...] ([...]) sent another email to [...] ([...]) in the framework of the aforementioned discussion. He wrote that he had a long discussion with [...] ([...]) about Alchem's concerns and his next step would be to go back to [...] (Alchem) to ask him if he was interested in meeting [...]. He further underlined the importance of maintaining the exchanges, which would ensure that *'nothing dramatic should happen on the price front....'*<sup>406</sup>
- (243) As a follow-up to the previous email, on **21 November 2017**, [...] ([...]) sent an email to [...] (Alchem) asking him, whether he would be willing to meet [...] ([...]) and added: *'The big question is, do you see the slightest chance – if you meet him – for a fair and balanced compromise? Not like, Alchem gets 100% and [...] nothing.'*<sup>407</sup> [Alchem] replied: *'thanks an equitable compromise is always better than a war yes I can meet him this week in Geneva'*.<sup>408</sup> [...] forwarded [Alchem] reply to [...] ([...]) who then replied that he had reached out to [...] who was looking forward to meeting [Alchem]. [...] then replied: *'Now we all have to ensure until we have a*

---

401 [...].

402 [...].

403 [...].

404 [...].

405 [...].

406 [...].

407 [...].

408 [...].

*final agreement in place that in the meantime we are outdated by reality...hence, we need everyone to stop quoting below [...]...'*<sup>409</sup>

- (244) On **23 November 2017**, [...] ([...]) sent an email to [...] ([...]) expressing that he was happy [...] (Alchem) and [...] ([...]) were finally meeting to find a solution and stressed that an agreement between those two would be very important to reach an overall agreement with all market players.<sup>410</sup>
- (245) This meeting which was held later the same week between Alchem and [...] is also confirmed in an email sent by [...] ([...]) to [...] (Alchem) on **23 November 2017**. In this email, [...] confirmed that [...] ([...]) was prepared to meet in order to come to *'a workable arrangement.'*<sup>411</sup>
- (246) On **29 November 2017**, [...] ([Alchem]) sent an internal email to [...] (Alchem) asking him whether there was an email with the proposed quota following the meeting with [...] ([...]). [Alchem] replied putting in copy also [...] (Alchem) *'Alchem concurring annual tonnage of 5 tons; [...] 5; [...] 5; [...], [...], [...] 3 each.'* [Alchem] responded to [Alchem] based on his discussion with [...] ([...]): *'[...] said 6 MT [...]. I corrected him based on the below which is what I remembered you told me.'*<sup>412</sup>
- (247) On **29 November 2017**, [...] ([Alchem]) sent another internal email to [...] (Alchem) and [...] (Alchem) reporting about his discussions with [...] ([...]) and [...] ([...]). As regards the contact with [...], the email mentions amongst other the ongoing discussion regarding the quota allocation and resulting prices (*'He [...] does not accept the position that [...] does not have a historical rights [...] He is willing to restrict his sales to 4 MT (down from 5 MT) with Alchem at 6 MT (up from 5 MT) in order to preserve margin. He says he can live with a [...] but then would sell more volume to offset the loss of margin.'*)<sup>413</sup>
- (248) In his summary of the discussion with [...], [...] ([Alchem]) gives more details regarding the possible quota allocation agreement and the price of SNBB worldwide. As regards the quota, the email reveals: *'[...] states that the figures he discussed with you are 5 MT [...], 6 MT [...], 5 MT Alchem, 2 MT [...], 3 MT [...], 3 MT [...].'* In relation to prices, the email provides: *'[...] is panic[k]ing that the price is beginning to dump. [...] are offering to his traditional customers at [...]. He intends to follow if no agreement is reached.'* At the end of the email, [Alchem] recommends internally *'to accept the agreement and keep the pricer [sic] healthy to recoup investment in the shorter term if possible although I remain sceptical that it will hold with the over supply and [...] are a loose canon.'*<sup>414</sup>
- (249) On **30 November 2017**, [...] ([...]) sent an email to [...] ([...]) which followed the progress of the discussions between [...] (Alchem) and [...] ([...]) where he confirmed that [Alchem] and [...] reached an agreement on quantities for SNBB worldwide: *'[...] [[...] ([...])] told me that [...] finally agreed to reduce to 4... [...] so he [Alchem] gets 6... I will find out today if this agreement is now final.'*<sup>415</sup>

---

409 [...].  
410 [...].  
411 [...].  
412 [...].  
413 [...].  
414 [...].  
415 [...].

- (250) On **5 December 2017**, [...] (Alchem) sent an email to [...] ([...]), [...] ([...]) and [...] ([...]) stating *‘I would like to thank you for your efforts in initiating an attempt to stabilize the market and as you know I have been the first one over the last many years to advocate this’*. However, he raised doubts regarding the viability of the proposal on the quota allocation to stabilize the market price for SNBB in the global market. In particular, he was concerned that although there was transparency concerning the export statistics of *‘the Indian manufacturers’*, there was not similar transparency from other players, therefore he was not sure that the other players would stick to their commitments. Accordingly, he proposed another meeting with [...] in January or earlier to address the issue.<sup>416</sup>
- (251) On **6 December 2017**, [...] ([...]) replied to [...] (Alchem), as well as [...] ([...]) and [...] ([...]) stressing that the Parties should start trusting each other.<sup>417</sup> [Alchem] replied to all three: *‘Thanks and I look forward to meeting you in Sydney in Jan. I think you will appreciate that in absence of a proper interaction and transparency with the European players it is difficult for me to start a relationship of trust with them.’*<sup>418</sup> [...] proposed a trial period of trust of 6 months to see how it goes. He added that: *‘If it fails, so be it – unless we start trusting each other we are going to [...] anyway. [Alchem], we agree to differ. I respect your position but do not understand it or agree with it.’* He concluded by referring to their upcoming appointment in January<sup>419</sup>. On the same day, [...] sent an email to [Alchem] to intervene in the ongoing dispute by referring to the correspondence between [...] and [Alchem] asking him to speak over the phone.<sup>420</sup>
- (252) On **6 December 2017**, as a reaction to the aforementioned email exchange between [...] ([...]) and [...] (Alchem), [...] ([...]) sent an email to [...] ([...]), clearly labelled as confidential. He wrote: *‘Going through the exchange of mails, I smell a rat and it seems he is trying to prolong the time period and sell quantities at somewhat lower rates whereas others are stuck.’*<sup>421</sup>
- (253) On **11 December 2017**, [...] ([...]) exchanged emails with [...] ([...]) and [...] ([...]). [...] wrote: *‘Everyone is in agreement except [...] [[...] (Alchem)]. You have seen my emails to him. I have had long conversations with [...] [[...] ([Alchem])]. I cannot move him.’*<sup>422</sup>
- (254) The evidence on the Commission’s file in respect of 2017 supports the Commission’s finding that the cartel agreement between the Parties remained in place. Alchem entered into discussions on prices concerning the [...]market, which threatened to destabilise the world market. Discussions on prices involving Alchem also took place on the [...] market, which was also important to protect worldwide prices. Alchem also entered into discussions to establish worldwide quotas per SNBB producer although a firm agreement was not ultimately reached. The aim of the quota allocation was to avoid drastic erosion of market prices and set a minimum

---

416 [...].  
 417 [...].  
 418 [...].  
 419 [...].  
 420 [...].  
 421 [...].  
 422 [...].

sales price level globally.<sup>423</sup> This is also the reason why the Parties again attempted to include [...] in the discussions without success.<sup>424</sup>

- (255) In its reply to the SO,<sup>425</sup> Alchem argued that the Commission ignores clear evidence of Alchem's refusal to be involved in an agreement or an exchange of information. In this respect, the evidence described in the recitals above confirms that a final, firm agreement on the respective quotas was not ultimately reached, as Alchem had concerns regarding the worldwide quota of [...] and the lack of transparency of the European SNBB producers (*'everyone is in agreement except [Alchem]'*,<sup>426</sup>). However, Alchem does not deny its participation in these discussions. It explicitly confirms that Alchem had been the first one over the last many years to advocate an anticompetitive agreement on quotas. The evidence also shows that Alchem reached an initial compromise with [...] regarding the allocation of quota during their bilateral meeting (see recital (246)), nevertheless Alchem finally decided not to commit for the moment to the agreement and proposed to postpone the discussions to 2018 (see recital (250)). The evidence thus demonstrates that Alchem's conduct cannot be qualified as a refusal to be involved in the agreement but rather as Alchem's attempt to maximise its allocated quota especially at [...] expense and to obtain even more transparency from its competitors to monitor the respect of the agreement. Furthermore, no evidence indicates that Alchem distanced itself in any way from these discussions on the grounds of their anticompetitive nature. To the contrary, the evidence shows that Alchem took an active role to estimate the total worldwide market and to try to include [...] in the discussions. Moreover, Alchem was always seen as part of the *'old boys'* group. Alchem's refusal to agree was perceived from the rest of the group as part of Alchem's strategy *'to prolong the time period and sell quantities at somewhat lower rates whereas others are stuck.'* (see recital (252)), i.e. as part of an opportunistic behaviour. [...] also indicated that in general [...], [...] and [...] were almost always in favour of higher prices and avoiding a price war, while [...] and Alchem often changed their strategies, depending on the circumstances.<sup>427</sup>

### 5.15. Events in 2018

- (256) On **8 January 2018**, [...] ([...]) sent an email to [...] ([...]) asking if anything substantial happened in the SNBB world.<sup>428</sup> In his reply on **9 January 2018**, [...] gave him an overview of [...] current range of sales prices for SNBB *'at [...] depending on quantity and location'*. He added that [...] (Alchem) seemed to be fine at the moment as he had not heard anything extraordinary about him.<sup>429</sup> [...] replied that he knows the reason why he was not hearing much about Alchem and described a personal matter of [Alchem]. [...] replied that he had not heard about this, as he had talked to [...] (Alchem) a few days back and this personal event might have happened not long before.<sup>430</sup>

---

423 [...].

424 [...].

425 [...].

426 [...].

427 [...].

428 [...].

429 [...].

430 [...].

- (257) On **31 January 2018**, [...] and [...] (both [...]) discussed internally strategies regarding SNBB. Afterwards they both met [...] (Alchem).<sup>431</sup> In its reply to the SO,<sup>432</sup> Alchem argued that the conversation between [...] and Alchem was not SNBB related. Whilst there is no evidence of the anticompetitive nature of this meeting, it nevertheless shows the ongoing close relationship between the individuals involved.
- (258) On **9 February 2018**, [...] ([Alchem]) sent an email to [...] ([...]): *‘Attached you will find the updated 2017 figures full year imports into [...]. As [Alchem] discussed with [...] he only believes what he sees on paper. Another 1 ton Q4 in [...] for a total of 3.4 MT not 1.9 MT. The smoke and mirrors and mind games really not helping.’*<sup>433</sup>
- (259) On **12 February 2018**, [...] ([Alchem]) sent an internal email to [...] and [...] (Alchem) reporting on various issues linked to [...], including the ongoing negotiations with [...] regarding the global sales quota. In his email, he mentions amongst other in relation to [...]: *‘[...] are willing to discuss/accept a gesture. But be clear - from my conversation with [...] [[...]] (and a message from [...]) - they do not consider this as a gesture from a position of weakness. It would be done in the market interest considering all the players interest as [...] [[...]] tried to broker. They could manage their availability in [...] to 2 MT and not more than 2.5 MT. As much as we do not trust them they do not trust us and only a period of compliance to the volumes/price outlines will change that. Regular communication as markets evolve – expand or contract amending the size of the pie – will give any chance for it to function to any degree. Bluff and games make little sense from here forward.’*<sup>434</sup>
- (260) The evidence on the Commission’s file supports the Commission’s finding that, even after the failed attempt to establish new global quotas and minimum prices arrangements, the SNBB suppliers including Alchem continued the exchanges of information until the beginning of 2018.<sup>435</sup> Alchem was notably involved in exchanges with [...] to resolve ongoing difficulties between the two.

## **6. APPLICATION OF ARTICLE 101(1) OF THE TREATY AND ARTICLE 53(1) OF THE EEA AGREEMENT**

### **6.1. Relationship between the Treaty and the EEA Agreement**

- (261) The arrangements described above applied to the whole EEA. They were therefore liable to affect competition in the whole of the internal market and the territory covered by the EEA Agreement.
- (262) In view of the fact that Romania and Bulgaria accessed the EU on 1 January 2007 and Croatia on 1 July 2013, the Decision does not cover the arrangements in question as regards Romania, Bulgaria and Croatia prior to their respective accession to the EU.
- (263) The EEA Agreement, which contains provisions on competition equivalent to the Treaty, came into force on 1 January 1994.

---

<sup>431</sup> [...].

<sup>432</sup> [...].

<sup>433</sup> [...].

<sup>434</sup> [...].

<sup>435</sup> [...].

(264) Insofar as the arrangements affected competition in the internal market and trade between Member States, Article 101 of the Treaty is applicable. As regards the operation of the cartel in EFTA States which are part of the EEA ('EFTA/EEA States') and its effect upon trade between the Member States of the European Union and EFTA/EEA States or between EFTA/EEA States, Article 53 of the EEA Agreement is applicable.

## 6.2. Jurisdiction

### 6.2.1. Article 101 TFEU applies to this infringement

(265) As the Court of Justice set out in the *Wood Pulp* case<sup>436</sup>, an infringement of Article 101 of the Treaty 'consists of conduct made up of two elements, the formation of the agreement, decision or concerted practice and the implementation thereof. If the applicability of the prohibitions laid down under competition law were made to depend on the place where the agreement, decision or concerted practice was formed, the result would obviously be to give undertakings an easy means of evading those prohibitions. The decisive factor is therefore the place where it is implemented.' Thus, the place of formation of the anti-competitive conduct is irrelevant for the Commission's territorial jurisdiction and the focus is on the place of its implementation. Furthermore, in the *Gencor* case, the General Court confirmed that 'According to *Wood pulp*, the criterion as to the implementation of an agreement is satisfied by mere sale within the [Union], irrespective of the location of the sources of supply and the production plant'.<sup>437</sup>

(266) The General Court further held in the *Gencor* case that the application of EU competition law is justified under public international law when it is foreseeable that the conduct in question will have an immediate and substantial effect in the European Union.<sup>438</sup>

(267) According to settled case law, the Commission can establish its jurisdiction on the basis of either the implementation test under the *Wood Pulp* case or the qualified effects test under the *Gencor* case. Those tests are thus alternative and not cumulative.<sup>439</sup> In this case, the Commission relies on both tests.

(268) As regards the implementation test, the cartel covered behaviour that was implemented on a global scale, including the entire EEA. More specifically, the SNBB suppliers involved in the cartel engaged in collusion to maintain a minimum worldwide sales price for SNBB and to allocate worldwide SNBB sales quotas per SNBB producer.

(269) The product concerned by the collusion, SNBB, was sold across the whole world. The Parties, including Alchem<sup>440</sup> sold and delivered SNBB also in the EEA.<sup>441</sup> This demonstrates that the cartel was implemented in the EEA.<sup>442</sup>

---

<sup>436</sup> Judgment of 27 September 1988, *Ahlström and others v Commission* ("*Wood Pulp*"), 89/85, 104/85, 114/85, 116/85, 117/85, 125/85, 126/85, 127/85, 128/85 and 129/85, EU:C:1988:447, paragraphs 16 and 17.

<sup>437</sup> Judgment of 25 March 1999, *Gencor Ltd v Commission*, T-102/96, EU:T:1999:65, paragraph 87.

<sup>438</sup> Judgment of 25 March 1999, *Gencor Ltd v Commission*, T-102/96, EU:T:1999:65, paragraph 90.

<sup>439</sup> Judgment of 12 July 2018, *Brugg Kabel and Kabelwerke Brugg v Commission*, T-441/14, EU:T:2018:453, paragraphs 95 to 98; see also, to that effect, judgment of 6 September 2017, *Intel v Commission*, C-413/14 P, EU:C:2017:632, paragraphs 40 to 47 and 62 to 64.

<sup>440</sup> [...].

<sup>441</sup> [...].

- (270) Furthermore, as regards the qualified effects test, it was foreseeable that the setting of the worldwide SNBB sales prices and allocation of the worldwide sales quotas was capable of having an immediate and substantial effect on competition within the EEA. The worldwide conduct in question concerned SNBB sold amongst others in the EEA. The conduct was thus liable to increase the price of SNBB sold to the EEA customers and, indirectly, the price of the final pharmaceutical products containing SNBB sold to the EEA consumers.
- (271) In addition, as demonstrated in Section 5, the setting of the worldwide SNBB sales prices and allocation of the worldwide sales quotas were discussed and agreed on mainly during the multilateral Club meetings. The evidence shows that the anticompetitive contacts concerning local markets in countries outside the EEA impacted the worldwide price of SNBB as well. This was the consequence of the worldwide nature of the conduct and of the global characteristics of the SNBB merchant market, where local pricing deviations had the potential to impact the price of SNBB elsewhere in the world.
- (272) Alchem together with the Settling Parties therefore strictly monitored any local deviations from the agreed prices or allocated quotas even if some of them were not active on the local market concerned. The evidence shows that the pricing in individual countries and the adherence to the agreed allocation of quotas was considered essential for maintaining a global price level of SNBB and the same individuals as those participating in the multilateral Club meetings were thus also involved in the discussions concerning local markets (see for example recitals (123)<sup>443</sup>, (126)<sup>444</sup>, (160)<sup>445</sup>, (192)<sup>446</sup>, (208)<sup>447</sup> and (226)<sup>448</sup>).<sup>449</sup>
- (273) It was therefore in the Parties' interest that the prices of SNBB were applied uniformly across the world and certain factors support this conclusion regarding the Parties' interest. Firstly, the cultivation of the *Duboisia* trees was concentrated only in few areas around the world, in particular in Australia. Secondly, in addition to the limited area of cultivation, the SNBB market was highly concentrated as suppliers were limited to the Parties and only a few other competitors, whose pricing and quantities sold on the SNBB market were regularly monitored and discussed by the Parties.
- (274) Furthermore, the relatively low overall annual volume of the market (up to 26 metric tons) indicates that it was easy (subject to fulfilling the regulatory requirements) to ship significant amounts of SNBB from one country to another while exploiting favourable pricing conditions.

---

<sup>442</sup> See, to that effect, Judgment of 13 July 2023, *Nippon Chemi-Con Corporation v Commission*, C-759/21 P, EU:C:2023:577, paragraphs 170-173.

<sup>443</sup> *'I am not concerned with the [...] market except for its potential to flow into other markets.'*

<sup>444</sup> *'We each need to decide if we wish to maintain the international price level for hyoscine or do a few favours on hyoscine to gain some other business.'*

<sup>445</sup> *'We really need to stop these silly prices in [...]. Sooner or later, they will spill into other markets.'*

<sup>446</sup> *'[...] is of little interest to us except if it becomes a price setter for the rest of the world.'*

<sup>447</sup> *'Right now we both have nothing to lose in [...] as we are not qualified yet. The only big unknown is, how will this battle affect the other markets...'*

<sup>448</sup> *'It seems to be relatively calm on the SNBB front...here and there some craziness, but nothing to worry about. Only [...] is a problem – as the melting pot of the global SNBB business.'*

<sup>449</sup> Further examples can be found in paragraphs (71), (76), (78), (84), (85), (168), (149), (183) and (222).

## 6.2.2. Arguments of Alchem

### 6.2.2.1. Implementation of the agreement in the EEA

- (275) Alchem contends that the Commission has not satisfied the implementation test as established by the case law of the European Courts. According to Alchem, the contacts between the Parties did not have a global reach and the cartel was not implemented in the EEA, as the contacts did not directly concern the EEA market and the Parties did not intend to set prices and quotas for the EEA either. Alchem submits that the SNBB quantities used to produce Buscopan ([...]) were excluded from the investigation as was consequently the Duboisia leaf production from Brazil acquired by [...]. Alchem also claims that the Commission did not demonstrate that the Parties agreed on the prices they charged to their customers in the EEA and that they put that concertation into effect by selling at prices which were coordinated in line with the *Toshiba* case law<sup>450</sup>. Alchem adds that SNBB was not sold across the whole world as suggested by the Commission, as there were regions where SNBB was not approved for sale. Alchem contends in this regard that certain Parties did not have an authorisation to sell in the EEA during the period of infringement ([...] only as of 2017 and [...] as of 2016) and the Parties (except for [...]) were hence not able to regulate the supply worldwide and in the EEA, in terms of quantities and prices. Alchem further submits that the conduct had only an insignificant effect on the EEA.<sup>451</sup> Finally, in its response on the factual section of the SO, Alchem repeatedly claims that the discussions in certain contacts concerned markets outside the EEA and have no relevance for competition in the EEA (for example in relation to the contacts described in recitals (53), (54), (55), (60), (62), (65), (68), (69), (71), (72), (73), (77), (78), (84), (86), (87), (94), (101), (102), (107), (113), (121), (123), (125), (126), (127), (139), (140), (141), (142), (143), (144), (145), (146), (147), (148), (149), (150), (153), (154), (156), (157), (158), (160), (168), (169), (172), (173), (180), (183), (185), (188), (189), (196), (200), (201), (202), (203), (207), (208), (209), (212), (214), (217), (218), (220), (222), (223), (224), (225), (226), (228), (233), (234), (241), (258), (259)).
- (276) In this respect, the Commission recalls that the General Court confirmed in the *Gencor* case that ‘*the implementation of an agreement is satisfied by mere sale within the Community*’.<sup>452</sup> In line with the *Wood Pulp* case<sup>453</sup>, to establish the Commission’s jurisdiction it is therefore not required that undertakings discuss and set either prices or quotas of the cartelised products specifically for the EEA market, but it suffices that the discussions concern the worldwide market and the products are sold at cartelised prices in the EEA. The absence of instances of EEA specific discussions is therefore irrelevant, considering that the scope of the conduct was worldwide (see for example recitals (43), (44), (73), (130) - (132) and (216)).
- (277) Furthermore, it is not true that the Commission established its jurisdiction in case of the implementation test based on the fact that ‘*some small quantities of SNBB occasionally found their way into the EEA*’ as suggested by Alchem<sup>454</sup>. On the

---

<sup>450</sup> Judgment of 9 September 2015, *Toshiba v Commission*, T-104/13, EU:T:2015:610.

<sup>451</sup> [...].

<sup>452</sup> Judgment of 25 March 1999, *Gencor Ltd v Commission of the European Communities*, T-102/96, EU:T:1999:65, paragraph 87.

<sup>453</sup> Judgment of 27 September 1988, *Ahlström and others v Commission ("Wood Pulp")*, 89/85, 104/85, 114/85, 116/85, 117/85, 125/85, 126/85, 127/85, 128/85 and 129/85, EU:C:1988:447, paragraphs 16 and 17.

<sup>454</sup> [...].

contrary, the figures provided by the Parties show that the annual value of the Parties' sales on the SNBB merchant market in the EEA amounted to several million euros and that these sales were far from occasional.<sup>455</sup>

- (278) Alchem's statement that the contacts between the Parties did not have a global reach is clearly contradicted by the evidence on the file. The evidence shows that Alchem and the Settling Parties discussed and sometimes agreed on the minimum worldwide sales price for SNBB as well as on worldwide yearly quota allocations per SNBB producer (see for example recitals (43), (44), (73), (130) - (132) and (216)). Furthermore, the evidence also indicates that they regularly exchanged commercially sensitive information (see also recital (313)). There are no references in the evidence that would indicate that any specific countries or regions would be excluded from the discussions, on the contrary, the Parties frequently referred to the global impact of the cartel conduct (see also recital (272)).
- (279) Moreover, the fact that the cartel conduct and consequently the investigation covered only the sales on the merchant market with SNBB does not mean that the cartel was not implemented in the EEA, nor that the Parties were not in a position to regulate the supply of a global market with SNBB, and by extension the supply of the EEA, in terms of quantities and prices as suggested by Alchem. The Commission has listed several elements confirming the implementation of the agreement in the EEA (see in this regard recitals (268) - (269) as well as (276) - (278)).
- (280) In addition, as regards [...] EEA sales of SNBB addressed by Alchem in its SO Reply<sup>456</sup>, the figures provided by [...] show that the latter had considerable sales on the SNBB merchant market in the EEA.<sup>457</sup> In light of that, the aggregated annual sales of the Parties show that, even without the internal sales of [...], the Parties made significant sales on the EEA merchant market with SNBB (see also recital (290)).<sup>458</sup> In addition, concerning Alchem's claim that most Duboisia leaf used in the EEA was of Brazilian and not Australian origin<sup>459</sup>, the evidence in the file and specifically the Australian export statistics show significant volumes imported into Germany ([...]) throughout the period considered.<sup>460</sup>
- (281) As regards Alchem's references to the *Toshiba* case law<sup>461</sup>, it can be concluded that there is nothing in the judgment that would contradict the Commission's conclusions as regards its jurisdiction in the SNBB case. Just like Alchem, the applicant in the *Toshiba* case claimed that the Commission lacked jurisdiction because the cartel meetings did not concern the European market, but only sales to Asian customers, and no arrangements on price, production or market shares were made at those meetings in relation to the EEA.<sup>462</sup>
- (282) Alchem refers<sup>463</sup> in particular to paragraph 154 of the *Toshiba* judgment, according to which '*when undertakings established outside the EEA, but which produce goods*

---

<sup>455</sup> [...]. In any event, it follows from the case law that even "*very limited*" sales in the EEA satisfy the implementation criterion, see judgment of 29 September 2021, *Nippon Chemi-Con Corporation v Commission*, T-363/18, EU:T:2021:638, paragraphs 81-82.

<sup>456</sup> [...].

<sup>457</sup> [...].

<sup>458</sup> [...].

<sup>459</sup> [...].

<sup>460</sup> [...].

<sup>461</sup> Judgment of 9 September 2015, *Toshiba v Commission*, T-104/13, EU:T:2015:610.

<sup>462</sup> Judgment of 9 September 2015, *Toshiba v Commission*, T-104/13, EU:T:2015:610, paragraph 150.

<sup>463</sup> [...].

*that are sold within the EEA to third parties, concert on the prices they charge to their customers in the EEA and put that concertation into effect by selling at prices which are actually coordinated, they are taking part in concertation which has the object and effect of restricting competition within the internal market within the meaning of Article 101 TFEU and which the Commission has territorial jurisdiction to proceed against’.* However, it does not follow from the *Toshiba* judgment that a price agreement needs to specifically relate to the EEA in the sense that it would not be sufficient that a worldwide agreement covers the EEA. The judgment confirms in paragraph 157 that *‘the criterion as to implementation of the cartel as a factor linking the latter to EU territory is satisfied by mere sale within the Union of the cartelised product, irrespective of the location of the sources of supply and the production plant’.* Furthermore, the judgment confirms in paragraph 158 that *‘notwithstanding the fact that the cartel arrangements had been formed outside the EEA and that their main objective was not Europe, the participants in those arrangements had nevertheless had an impact on customers in the EEA through their CPT sales in that territory or measures influencing those sales.’*

- (283) In addition, Alchem’s claim that the SNBB suppliers were limited geographically in their sales due to the restrictions imposed by certain jurisdictions on the sales of SNBB<sup>464</sup> does not have any bearing on the assessment of the cartel conduct as worldwide. This assessment is based on the nature of the discussions and agreements by the Parties (see also recital (313)), which concerned a worldwide market with SNBB. Furthermore, the evidence shows that the alleged restrictions in the EEA only mean that the SNBB suppliers are required to receive a prior marketing authorisation for supplies of SNBB to drug manufacturers in the EEA by requiring a drug master file to be submitted to the regulatory authority (see also recital (6)).
- (284) The contention that, according to Alchem, certain Parties received this authorisation only during the infringement period and were thus not allegedly able to sell in the EEA during a specific period of the infringement is contradicted by the sales figures on the merchant market provided by the Parties.<sup>465</sup> These confirm that, contrary to Alchem’s arguments, the sales of the Parties in the EEA were regular (with the exception of Alchem, which did not register any EEA sales in 2013 and 2014). Furthermore, nothing in the evidence indicates that the Parties would consider that they were not able to regulate the supply into the EEA, in terms of quantities and prices as suggested by Alchem, which would be even more surprising considering the regular nature of these sales. Finally, the evidence shows that all Parties, including Alchem, had considerable value of sales on the SNBB merchant market in the EEA. The fact that some of the SNBB sales were according to Alchem *‘most likely’* to traders for re-export to non-EEA markets is not relevant, as the European Courts confirmed that the implementation of an agreement is satisfied by a mere sale within the EEA.<sup>466</sup>
- (285) As regards Alchem’s reference to the *Javico*<sup>467</sup> judgment and the condition of appreciable effects, the paragraphs mentioned by Alchem relate to the analysis of the effect on trade between Member States and not to the question of the Commission’s jurisdiction as a matter of public international law. As regards the application of the implementation test, the case law of the European Courts does not prescribe any

---

<sup>464</sup> [...].

<sup>465</sup> [...].

<sup>466</sup> Judgment of 25 March 1999, *Gencor v Commission*, T-102/96, EU:T:1999:65, paragraph 87.

<sup>467</sup> Judgment of 28 April 1998, C-306/96 *Javico*, EU:C:1998:173, paragraphs 15-18; [...].

requirements concerning the significance of the implementation in the EEA.<sup>468</sup> Nevertheless, the Commission concludes that the conduct was capable of having an immediate and substantial effect on competition within the EEA in line with the qualified effects test (see in particular recitals (270) - (274)). Moreover, it is also confirmed in Section 6.3.4 that the conduct had an appreciable effect upon trade between Member States and between the Contracting Parties to the EEA Agreement.

(286) Finally, concerning Alchem's arguments that contacts referring to markets outside the EEA are irrelevant, these arguments are addressed in recital (272) which explains and provides examples of how avoiding deviations from agreed prices and quotas at a local level was necessary to ensure the maintaining of prices and quotas on a global level, which includes the EEA.

#### 6.2.2.2. Relevance of the sales figures provided by the Parties

(287) Alchem submits that the sales figures provided by the Parties in their RFI replies, which were made accessible to Alchem in the Letter of Facts and which the Commission uses to corroborate its jurisdiction (see e.g. recital (277)), were collected for the purpose of calculating fines and may include other revenues besides the price to the customer, for example transportation costs, agent fees or other items. The Commission cannot according to Alchem simply take these figures out of context and use them as evidence of an impact on the EEA.<sup>469</sup>

(288) Alchem's objection is unfounded. The RFI sent by the Commission to the Parties asked them to provide their sales of SNBB for each year indicated, which were delivered in the EEA (without VAT and other taxes). The fact that the sales figures provided by the Parties could cover other costs (e.g. transportation costs) is normal and inherent to any business transaction, whose purpose is to at least recover all costs incurred by the entity who sells the product.<sup>470</sup> It follows that Alchem does not show (and does not explain) how the Parties' replies to the Commission's RFI (or the wording of the RFI itself) would have differed had the Commission asked the same question specifically for the purpose of assessing its jurisdiction. In subsidiary order, the Commission notes that the '*other revenues besides the price to the customers*' to which Alchem specifically refers in its submission,<sup>471</sup> amounted to a low share on the overall value of sales.<sup>472</sup> Therefore, their exclusion would not have any substantial effect on the Commission's finding that the infringement was capable of having effects on competition within in the EEA.

#### 6.2.2.3. Qualified effects of the agreement in the EEA

(289) As regards the *foreseeability of the effects*, Alchem claims that the Parties had no reason to foresee effects on competition in the EEA because this was not a market where they had a shared interest. This is according to Alchem supported by the fact that [...] was the only undertaking that could market SNBB without restrictions in

<sup>468</sup> See also footnote 455 above.

<sup>469</sup> [...].

<sup>470</sup> See judgment of 18 June 2013, T-406/08, *ICF v Commission*, EU:T:2013:322, paragraph 176: the value of sales reflects the price as charged to the customer, without deductions for transportation costs or other charges. With specific respect to transportation costs, where a producer delivers, at the request of the customer, the quantities sold, the transportation service forms an integral part of the sale of the product. The price charged for such a service, even where it represents the reimbursement of the sums owed by the seller to the independent carrier to which it had recourse for that service, is therefore a component of the overall sales price. The same reasoning applies to other charges.

<sup>471</sup> [...].

<sup>472</sup> [...].

the EEA. Alchem also repeats that [...] supplies in the EEA were excluded from the investigation, as they were internal sales. Alchem finally contests that SNBB suppliers had an interest in applying prices uniformly worldwide, which is allegedly confirmed by the fact that prices differed significantly between customers and countries.<sup>473</sup>

- (290) In this respect, the Commission notes that the sales data provided by the SNBB suppliers show that they all regularly sold SNBB in the EEA with an average annual value of sales amounting to several millions of euros.<sup>474</sup> In addition, the evidence in the file indicates that Alchem in particular has had an authorisation for Cyprus even already before its accession to the EU (and further during the infringement) and sold SNBB also in other countries (such as Greece and Germany) within the EEA<sup>475</sup>. It was thus foreseeable for Alchem and the Settling Parties that the conduct in question was capable of having an immediate and substantial effect on competition within the EEA. The fact that [...] might have been the only undertaking that could market SNBB without restrictions in the EEA, even if true, is therefore irrelevant, as it does not mean that the other Parties could not sell any SNBB in the EEA and that they did not have a shared interest in the EEA market.
- (291) Furthermore, as regards Alchem's claim concerning the exclusion of certain parts of [...] sales from the investigation, the Commission refers to the analysis in recital (280) and confirms that the question is irrelevant for the present purposes. In addition, the fact that prices might have differed between customers and countries is not unusual and does not contradict the conclusions in this Decision. The evidence indicates that the Parties strived to achieve a uniform price level to avoid erosion of SNBB prices and monitored the market to maintain this goal in particular in periods of oversupply (see also recital (272)). The evidence also confirms that the Parties did not always succeed in reaching agreements on prices and that even when prices were agreed there were complaints of non-compliance as the Parties cheated on the arrangements.
- (292) Secondly, as regards the *immediacy of the effects*, Alchem contends that the impact on the EEA market was at best a remote ripple effect on related local markets outside the EEA.<sup>476</sup> Alchem further submits in relation to the sales in the EEA that these are artificially inflated, as most of these sales were to traders who exported the SNBB to customers outside the EEA. They also included sales that were invoiced to customers outside the EEA.<sup>477</sup>
- (293) As already mentioned in recital (290), the SNBB suppliers regularly sold SNBB directly on the EEA market with average annual sales amounting to several millions of euros. The fact that part of these sales could have been re-exported outside the EEA as suggested by Alchem is not relevant in this regard, as a mere sale in the EEA is considered sufficient to affect competition in the EEA<sup>478</sup> irrespective of the subsequent transactions of the goods concerned. Furthermore, selected evidence from a limited number of Parties to which Alchem refers<sup>479</sup> confirms that part of the EEA sales of SNBB remained on the EEA market. The evidence also shows that Alchem

---

473 [...].

474 [...].

475 [...].

476 [...].

477 [...].

478 Judgment of 25 March 1999, *Gencor v Commission*, T-102/96, EU:T:1999:65, paragraph 87.

479 [...].

itself was selling its SNBB to generics producers in Cyprus throughout the infringement.<sup>480</sup> The fact that some of the sales could have been invoiced to customers located outside the EEA is inherent to the characteristics of international free trade and nothing specific to the SNBB market and it cannot thus change the overall assessment of the immediacy of the effects. In the same vein, a part of the goods billed to customers located in the EEA can thus be delivered outside the EEA. In conclusion, contrary to Alchem's claims, the cartel conduct concerning the worldwide sales of SNBB as defined in recital (313) had direct effects on the EEA market. In light of this direct link, it was therefore foreseeable for Alchem and the Settling Parties that the conduct would have immediate effects on the EEA market.

- (294) Thirdly, as regards the *substantiality of the effects*, Alchem submits that given the modest extent of occasional imports into the EEA, any effects on competition in the EEA would have been negligible.<sup>481</sup> Alchem further submits that the sales figures provided by the Parties do not confirm that sales were substantial, as the figures are open to interpretation.<sup>482</sup>
- (295) The General Court held in relation to the assessment of the substantiality that '*the assessment of whether the effects produced by the conduct at issue are substantial must be carried out in the light of all the relevant circumstances of the case. Those circumstances include, inter alia, the duration, nature and scope of the infringement. Other circumstances, such as the size of the undertakings which participated in that conduct, may also be relevant.*'<sup>483</sup>
- (296) The evidence indicates that the effects of the conduct were substantial in this case, in light of all the relevant circumstances. First, the duration of the cartel spanned over a period of nearly 14 years, with Alchem's own participation extending to more than 12 years. Second, as regards the nature of the conduct, the object of the conduct was to restrict competition in the worldwide market for SNBB, including the entire EEA. Moreover, the conduct under investigation, i.e. price fixing and market sharing arrangements as well as exchanges of commercially sensitive information, is by its very nature the most serious violation of Articles 101 of the Treaty and 53 of the EEA Agreement. Third, the geographical scope of the cartel was worldwide, including the entire EEA, and the conduct covered all sales on the merchant market for SNBB by the Parties. Fourth, the sales of the Parties represented a significant share of the overall SNBB supplies in the EEA and worldwide<sup>484</sup>. Fifth, the Court of Justice confirmed that in a case qualified as a single and continuous infringement '*it is necessary to examine the conduct of the undertaking or undertakings in question, viewed as a whole, in order to determine whether the Commission has the necessary jurisdiction to apply, in each case, EU competition law*'<sup>485</sup> and it thus ruled out any portioning of the conduct when assessing the Commission's jurisdiction. Furthermore, it is not necessary to show that the participation of a particular undertaking in an agreement or concerted practice had a substantial effect on

---

480 [...].

481 [...].

482 [...].

483 Judgment of 30 March 2022, *Air Canada v Commission*, T-326/17, EU:T:2022:177, paragraphs 262 – 263.

484 [...].

485 Judgment of 12 June 2014, *Intel v Commission*, T-286/09, paragraphs 268 and 280, upheld on appeal on the point of jurisdiction in Judgment of 6 September 2017, *Intel v Commission*, C-413/14 P, EU:C:2017:632, paragraph 50.

competition in the EEA. All that is required is that the agreement or concerted practice, viewed as a whole, had a significant effect.<sup>486</sup>

- (297) Finally, as regards Alchem's claim that the sales figures provided by the Parties do not confirm the existence of substantial effects, the analysis in recitals (295) and (296) shows that the volume of sales is considered only one of several elements establishing the substantial nature of the effects. Moreover, as mentioned in recitals (288) and (293), Alchem did not provide any argument that would put the relevance of these figures into doubt.

#### 6.2.2.4. Shifting of volumes from non-EEA countries to the EEA

- (298) Alchem further contests that it was easy for SNBB suppliers to shift SNBB between the different markets (including from non-EEA countries to the EEA) due to differing regulatory requirements and preferences of customers. Moreover, Alchem claims that this would require the presence of specialised service providers and infrastructure (such as warehouses for the storage of SNBB) and logistics on the ground in the relevant countries.<sup>487</sup>
- (299) Contrary to Alchem's claims, the evidence in the file shows that it was considered a credible threat by the SNBB suppliers that SNBB could be moved between different markets (see recital (222)). Equally, SNBB could be shipped from one country to another by SNBB customers who could have profited from purchasing SNBB (directly or via agents/distributors) for a cheaper price in other than their local markets to increase their margin. The fact that there might have been certain regulatory or quality requirements as suggested by Alchem, which could have made these trades more difficult, does not mean that such exports would not have been possible.

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

- (300) Article 101(1) of the Treaty prohibits as incompatible with the internal market all agreements between undertakings, decisions by associations of undertakings or 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 common market, and in particular those which directly or indirectly fix purchase or selling prices or any other trading conditions, limit or control production and markets, or share markets or sources of supply.
- (301) Article 53(1) of the EEA Agreement (which is modelled on Article 101(1) of the Treaty) contains a similar prohibition. However, the reference of Article 101(1) of the Treaty to trade '*between Member States*' is replaced by a reference to trade '*between contracting parties*' and the reference to competition '*within the internal market*' is replaced by a reference to competition '*within the territory covered by the this [i.e. the EEA] Agreement*'.<sup>488</sup>

---

<sup>486</sup> See, to that effect, as regards the existence of an appreciable effect on trade between Member States, judgment of 24 October 1991, *Petrofina v Commission*, T-2/89, EU:T:1991:57, paragraph 226.

<sup>487</sup> [...].

<sup>488</sup> 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 EEA Surveillance and Court Agreement. Accordingly, in this Decision reference is only made to Article 101 of the Treaty on the understanding that the same considerations apply to Article 53 of the EEA Agreement.

### 6.3.1. *Agreements and concerted practices*

#### 6.3.1.1. Principles

- (302) Article 101(1) of the Treaty prohibits *agreements* between undertakings, *decisions of 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.
- (303) 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. It does not have to be made in writing; no formalities are necessary, and no contractual sanctions or enforcement measures are required. An agreement may be express or implicit in the behaviour of the parties. Furthermore, it is not necessary, in order for there to be an infringement of Article 101(1) of the Treaty, for the participants to have agreed in advance upon a comprehensive common plan.
- (304) In its judgment in the *PVC II* case, the General Court stated that ‘*it is well established in the case law that for there to be an agreement within the meaning of Article [101(1)] of the Treaty it is sufficient for the undertakings to have expressed their joint intention to behave on the market in a certain way*’.<sup>489</sup> Furthermore, the Court of Justice set out in the *AC-Treuhand* judgment that ‘*according to the Court's case law, in order for there to be an agreement, there must be the expression of the concurrence of wills of at least two parties, the form in which that concurrence is expressed not being by itself decisive*’.<sup>490</sup>
- (305) Although Article 101(1) of the Treaty draws a distinction between the concept of ‘concerted practices’ and ‘agreements between undertakings’, the object is to bring within that prohibition a form of co-ordination between undertakings by which, without having reached the stage where an agreement properly so-called has been concluded, they knowingly substitute practical co-operation between them for the risks of competition.<sup>491</sup>
- (306) The criteria of co-ordination and co-operation laid down by the case law of the Court, far from requiring the elaboration of an actual plan, must be understood in the light of the concept inherent in the provisions of the Treaty relating to competition, according to which each economic operator must determine independently the commercial policy which he intends to adopt in the common market. Although that requirement of independence does not deprive undertakings of the right to adapt themselves intelligently to the existing or anticipated conduct of their competitors, it strictly precludes any direct or indirect contact between such operators the object or effect of which is either to influence the conduct on the market of an actual or

---

<sup>489</sup> The case law of the Court of Justice and the Court of First Instance in relation to the interpretation of Article 81 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, Article 3(2) of the EEA Surveillance and Court Agreement, as well as Case E-1/94 of 16.12.1994, recitals 32-35. References in this text to Article 81 therefore apply also to Article 53.

<sup>490</sup> Judgment of 22 October 2015, *AC-Treuhand v Commission*, C-194/14, EU:C:2015:717, paragraph 28.

<sup>491</sup> Judgment of 14 July 1972, Case 48/69, *Imperial Chemical Industries v Commission*, EU:C:1972:70, paragraph 64.

potential competitor or to disclose to such a competitor the course of conduct which they themselves have decided to adopt or contemplate adopting on the market.<sup>492</sup>

- (307) 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 co-ordination of their commercial behaviour.<sup>493</sup> Furthermore, the process of negotiation and preparation culminating effectively in the adoption of an overall plan to regulate the market may well also (depending on the circumstances) be correctly characterised as a concerted practice.
- (308) Although in terms of Article 101(1) of the Treaty the concept of a concerted practice requires not only concertation but also conduct on the market resulting from the concertation and having a causal connection with it, it may be presumed, subject to proof to the contrary, that undertakings taking part in such a concertation and remaining active in the market will take account of the information exchanged with competitors in determining their own conduct on the market, all the more so when the concertation occurs on a regular basis and over a long period. Such a concerted practice is caught by Article 101(1) of the Treaty even in the absence of anti-competitive effects on the market.<sup>494</sup>
- (309) Moreover, it is established case law that the exchange, between undertakings, in pursuance of a cartel falling under Article 101(1) of the Treaty, of information concerning their respective deliveries, which not only covers deliveries already made but is intended to facilitate constant monitoring of current deliveries in order to ensure that the cartel is sufficiently effective, constitutes a concerted practice within the meaning of that provision.<sup>495</sup>
- (310) However, in the case of a complex infringement of long duration, it is not necessary for the Commission to characterise the conduct as exclusively an agreement or a concerted practice. The concepts of agreement and concerted practice are fluid and may overlap. The anti-competitive behaviour may well be varied from time to time, or its mechanisms adapted or strengthened to take account of new developments. Indeed, it may not even be possible to make such a distinction, 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. It would however 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 time. Article 101 of the Treaty lays down no specific category for a complex infringement of the present type.<sup>496</sup>
- (311) In its *PVC II* judgment<sup>497</sup>, the General Court stated that ‘[i]n the context of a complex infringement which involves many producers seeking over a number of years to

---

<sup>492</sup> Judgment of 16 December 1975, Joined Cases 40-48/73 etc., *Suiker Unie and others v Commission*, EU:C:1975:174.

<sup>493</sup> Judgment of 17 December 1991, T-7/89, *Hercules v Commission*, EU:T:1991:75, paragraph 256.

<sup>494</sup> Judgment of 8 July 1999, C-199/92, *P Hüls v Commission*, EU:C:1999:358, paragraphs 158-166.

<sup>495</sup> See, to that effect, Judgments of 6 April 1995, T-147/89, *Société Métallurgique de Normandie v Commission*, EU:T:1995:67 ; T-148/89, *Trefilunion v Commission*, EU:T:1995:68, paragraph 72, and T-151/89, *Société des treillis et panneaux soudés v Commission*, EU:T:1995:71.

<sup>496</sup> Judgment of 17 December 1991, T-7/89, *Hercules v Commission*, EU:T:1991:75, paragraph 264.

<sup>497</sup> Judgment of 20 April 1999, T-305/94 etc., *Limburgse Vinyl Maatschappij N.V. and others v Commission* (PVC II), EU:T:1999:80, paragraph 696.

*regulate the market between them, the Commission cannot be expected to classify the infringement precisely, for each undertaking and for any given moment, as in any event both those forms of infringement are covered by Article [101] of the Treaty’.*

- (312) The General Court further confirmed these principles in its *Sony* judgment by stating *‘In addition, while Article 101 TFEU distinguishes between ‘concerted practices’, ‘agreements between undertakings’ and ‘decisions by associations of undertakings’, the aim is to have the prohibitions of that article catch different forms of coordination and collusion between undertakings. Accordingly, a precise characterisation of the nature of the cooperation at issue in the main proceedings, consisting in an exchange of information between competitors, is not liable to alter the legal analysis to be carried out under Article 101 TFEU.’*<sup>498</sup>

#### 6.3.1.2. Application in the present case

- (313) The facts described in Section 5 above demonstrate that Alchem together with the Settling Parties coordinated their behaviour in relation to the sale of SNBB. More specifically, Alchem participated in:

- discussions and sometimes agreements on the minimum worldwide sales price for SNBB (see for example recitals (44) and (130) - (132));
- discussions and sometimes agreements on yearly quota allocations per SNBB producer worldwide (see for example recitals (43), (73) and (216)); and
- regular exchanges of commercially sensitive information concerning in particular the SNBB sales price (see for example recitals (82), (172)), their SNBB quantities available for supply (see for example recitals (59) and (141)), quantities produced and sold on the SNBB merchant market (see for example recitals (95) and (230)), expected harvests of *Duboisia* leaves (see for example recitals (119) and (182)) and market developments and trends (see for example recitals (53) and (116)).

- (314) Alchem took an active role and was instrumental to the success of the cartel. Alchem together with the Settling Parties expressed a concurrence of wills to coordinate and agree on their future conduct in relation to the worldwide sales of SNBB to their customers (i.e. distributors and generic drug manufacturers). The ultimate aim of the coordination was to “stabilise” the world market price of SNBB and to prevent it from falling. The contacts Alchem entered into were important to achieve full transparency among the competitors by having a complete understanding concerning future conduct in relation to the sales of SNBB.

- (315) Alchem thus engaged in both multilateral and bilateral contacts. As set out in recitals (43) and (44), a representative of Alchem participated at the first Club meeting on 1 November 2005. The participants in that meeting discussed if not agreed on the allocation of quotas among SNBB producers and on the price of SNBB with both agreements to be applied worldwide. The discussion on the allocation of quotas was closely intertwined with the agreement on the level of prices, as the control over the amount of SNBB delivered on the market prevented a possible oversupply resulting in a decrease of prices. The same *modus operandi* was then repeated in the following years when prices or allocation of quotas or both were discussed and sometimes agreed on. The evidence further shows, particularly for the initial years of the cartel,

---

<sup>498</sup> Judgment of 12 July 2019, T-762/15, *Sony Corporation and Sony Electronics, Inc v Commission*, EU:T:2019:515, paragraph 256.

that in terms of both timing and content the Club meetings took place at regular intervals and involved discussions of the same or similar topics (see for example recitals (54), (68), (72) or (80)).

- (316) Moreover, the contacts concerned not only coordination on the quota allocation and the price of SNBB but also an active monitoring of the SNBB market to identify possible instances of SNBB having been sold under the agreed price level (see for example recitals (72), (123) and (223)).
- (317) The evidence further indicates that from mid-2011, bilateral and multilateral email exchanges and occasional bilateral and multilateral physical meetings gradually replaced the formalised Club meetings. The frequency of these contacts differed depending on the prevailing situation on the SNBB market (with more contacts taking place when the price of SNBB was under pressure, see for example recital (95) and following, or recital (228) and following). The contacts were less organised, however their objective aiming at coordination of the future conduct remained the same.
- (318) Alchem together with the Settling Parties therefore expressed a concurrence of wills limiting their individual commercial conduct and jointly determining their mutual action in the market. The individual elements of their collusive conduct mentioned in recital (313) were interrelated and overlapping. For example, instances of exchanging commercially sensitive information allowed Alchem and the Settling Parties to coordinate their pricing behaviour and allocate quotas among them. Since, in their contacts, Alchem together with the Settling Parties expressed a joint intention to behave on the market in a certain way, they no longer determined their commercial policy independently and knowingly substituted practical co-operation between them for the risks of competition.<sup>499</sup> This type of collusive behaviour runs counter to the concept inherent in competition law according to which each economic operator must determine independently the policy which it intends to adopt on the market, since the requirement of independence strictly precludes any direct or indirect contact between such operators with the object or effect of either influencing the conduct on the market of an actual or potential competitor or of disclosing to such a competitor the course of conduct which they themselves have decided to adopt or contemplate adopting on the market.<sup>500</sup>
- (319) There were instances when Alchem or any of the other Parties did not adhere to the agreed prices or quota allocation. However, these cases were immediately followed-up by the others to reinstate the proper functioning of the cartel. As regards the behaviour of Alchem, this is evidenced for example in recitals (76), (78), (123) and (168) when Alchem was caught offering low prices and it was therefore motivated to adhere to the agreement (*'got religion'*). Conversely, when others offered low

---

<sup>499</sup> Judgment of 14 July 1972, *Imperial Chemical Industries v Commission*, C-48/69, EU:C:1972:70, paragraph 64.

<sup>500</sup> Judgment of 16 December 1975, *Suiker Unie a.o. v Commission*, Joined Cases 40 to 48, 50, 54 to 56, 111, 113 and 114/73, EU:C:1975:174, paragraphs 173-174; Judgment of 14 July 1981, *Gerhard Züchner v Bayerische Vereinsbank AG*, 172/80, EU:C:1981:178, paragraph 13; Judgment of 31 March 1993, *A. Ahlström Osakeyhtiö a.o. v Commission*, Joined Cases C-89/85, C-104/85, C-114/85, C-116/85, C-117/85 and C-125/85 to C-129/85, EU:C:1993:120, paragraph 63; Judgment of 28 May 1998, *John Deere Ltd v Commission*, C-7/95 P, EU:C:1998:256, paragraph 86; Judgment of 19 March 2015, *Dole Food and Dole Fresh Fruit Europe v Commission*, C 286/13 P, EU:C:2015:184, paragraph 120; Judgment of 4 June 2009, *T-Mobile Netherlands BV a.o. v Raad van bestuur van de Nederlandse Mededingingsautoriteit*, C-8/08, EU:C:2009:343, paragraphs 32-33; Judgment of 24 September 2019, *HSBC Holdings plc a.o. v Commission*, T-105/17, EU:T:2019:675, paragraphs 59-60.

pricing, Alchem in turn encouraged others to follow the agreed line, see, for example, recitals (143), (150) and (200). The Commission notes in this regard that cheating may occur during a long life-span of a cartel such as in this case, but does not deprive the arrangement from its anticompetitive character. Furthermore, the fact that Alchem never distanced itself from the anticompetitive conduct but, on the contrary, actively adhered to the agreement, reinforced the other participants' belief that it subscribed to what was decided and would comply with it.<sup>501</sup>

- (320) In conclusion, by coordinating and agreeing on the level of the minimum sales price of SNBB for customers worldwide, exchanging commercially sensitive information, and allocating quotas among themselves in the ways described above, Alchem and the Settling Parties expressed a joint intention to behave on the market in a coordinated manner and substituted practical cooperation between them for the risks of competition.
- (321) Based on the above considerations, the Commission finds that the conduct described in Section 5 of this Decision presents all the characteristics of an agreement and/or a concerted practice in the sense of Article 101(1) of the Treaty and Article 53(1) of the EEA Agreement.

#### 6.3.1.3. Arguments of Alchem

- (322) Alchem contends that the individual incidents throughout the infringement were often unsuccessful attempts to reach an agreement, which is not in itself illegal. Alchem further claims that the contacts among the Parties took place before the harvest of Duboisia leaves when it was possible to forecast only the likely production volume, based on projections, which is not identical with a sales quota, and the possible market value. It further refers to the strong market position of [...] as the largest supplier of SNBB allegedly dominating the SNBB market and limiting the supply on the merchant market, for the benefit of its own proprietary end-product, Buscopan. According to Alchem, [...] orchestrated throughout its direct participation the discussions on production forecasts to find out about capacities of other SNBB suppliers. Alchem submits that it did not reveal much for reasons of prudence and the figures forecasted by [...] did not match Alchem's actual production volumes. Finally, Alchem claims that it rarely participated in exchanges of information and the other Parties often only speculated about Alchem.<sup>502</sup>
- (323) In this regard, the Commission first notes that Alchem itself, in alleging that the incidents were in some cases unsuccessful attempts to reach an agreement, admits implicitly that in other cases the "attempts" were successful, i.e. an agreement was reached. And indeed, this is the case for instance of the contacts mentioned in recitals (44), (55) - (56), (78), (130) - (132) and (173), where the Parties agreed on the course of action to be followed, in terms of prices and/or quota.
- (324) The Commission also notes that the General Court confirmed in the *NCC* case that a mere discussion concerning a pricing behaviour without reaching an unanimous opinion can be qualified as anticompetitive conduct.<sup>503</sup> Moreover, irrespective of that, and under the specific circumstances of this case, the instances of the attempted agreements – considered together with the instances where conversely an agreement

---

<sup>501</sup> See Judgment of 25 January 2007, *Sumitomo Metal Industries Ltd and Nippon Steel Corp. v Commission*, C-403/04 P and C-405/04 P, EU:C:2007:52, paragraph 48.

<sup>502</sup> [...].

<sup>503</sup> Judgment of 29 September 2021, *Nippon Chemi-Con Corporation v Commission*, T-363/18, EU:T:2021:638, paragraph 218.

was reached – evidence the continued nature of the conduct among the SNBB suppliers, which regularly engaged in anticompetitive contacts relating to the SNBB market with the aim of agreeing on prices and allocation of quotas. The fact that they did not always succeed in reaching an agreement does not change anything in this regard. More importantly, the evidence also shows that even if Alchem and the Settling Parties did not reach a specific agreement in certain periods e.g. in 2017 or on certain aspects, they still exchanged commercially sensitive information and coordinated their conduct on the SNBB market, including the coordination on prices (see also recital (313) as well as e.g. recitals (135), (172), (189), (201) and (203)). Alchem together with the Settling Parties thus no longer determined their commercial policy independently and knowingly substituted practical co-operation between them for the risks of competition. Furthermore, it should again be recalled that the Parties did reach agreement on prices and/or quotas on a number of occasions (see recital (323)).

- (325) Moreover, the evidence indicates that the fact that the discussions took place before the harvest of Duboisia did not prevent the Parties from agreeing on the allocation of specific quotas to individual SNBB suppliers as evidenced by the examples mentioned in recital (313). Even accepting Alchem’s argument that at that stage the agreement was only indicative of the future situation on the SNBB market, the agreement was still capable of reducing the uncertainty as regards the future market behaviour of the Parties and thus contributed to the stabilising of the minimum price of SNBB, to which the allocation of worldwide quotas (and thus the attribution of each SNBB supplier’s role on the SNBB market) essentially contributed. This becomes even more evident when assessed together with the remaining body of evidence.
- (326) As regards the claims concerning the strong position of [...] on the SNBB market, [...] economic importance does not have any impact on the existence of the cartel arrangements and Alchem’s involvement in the conduct. There is no evidence that would show that [...] abused its strong market position to coerce other Parties (including Alchem) to join the cartel or to remain in it. Moreover, the fact that it was [...] employee who was one of the main driving forces of the cartel arrangements in the initial years was rather connected with the personality of that employee than with the strong position of [...]. This is confirmed by the acceptance of the same role also shortly after he left [...] and moved to [...]. The fact that [...] was the first undertaking to leave the cartel at the end of 2014 (without disrupting its further functioning) also points against any pivotal role of [...]. Finally, the fact that [...] could have possibly limited its supply on the merchant SNBB market, for the benefit of its own proprietary end-product, Buscopan, is irrelevant for the assessment of the cartel case as described in this Decision.
- (327) In addition, as regards the claims that Alchem ‘*allegedly did not reveal much*’ when [...] was collecting information concerning the capacities of individual undertakings<sup>504</sup>, even if it were true, it would not in any way exculpate Alchem from its participation in the infringement throughout the years. As confirmed in recital (319) in this regard, possible cheating by the individual undertakings does not deprive the arrangement of its anticompetitive character. This also applies to the allegedly higher production of SNBB by Alchem than forecasted by [...], and consequently to the alleged augmented level of competition on the SNBB market.

---

<sup>504</sup> [...].

Neither of the two aspects change anything in the assessment of Alchem's involvement in the cartel conduct. Moreover, contrary to Alchem's claims in the SO reply, its real goals that clearly contradict the alleged increase of competition on the SNBB market are best displayed in Alchem's discussions with [...], during which Alchem mentioned amongst other things that '*it is better to sell smaller volumes at a much higher price, even if you have to destroy some material*' (see also recital (194)).

- (328) Finally, as regards Alchem's claim that it rarely participated in the exchanges of information, this statement is clearly contradicted by the facts of the case, which demonstrate an intense and consistent participation of Alchem in such exchanges (see in particular recital (339)).

### 6.3.2. *Restriction of competition*

#### 6.3.2.1. Principles

- (329) Article 101(1) of the Treaty prohibits agreements and concerted practices which have as their object or effect the restriction of competition by, in particular, directly or indirectly fixing prices or any other trading conditions.<sup>505</sup>
- (330) It is clear from the Court's case-law that the concept of restriction of competition 'by object' must be interpreted strictly and can be applied only to some concerted practices between undertakings which reveal, in themselves and having regard to the content of their provisions, their objectives, and the economic and legal context of which they form part, a sufficient degree of harm to competition for the view to be taken that it is not necessary to assess their effects, since some forms of coordination between undertakings can be regarded, by their very nature, as being harmful to the proper functioning of normal competition. When determining that context, it is necessary to take into consideration the nature of the goods or services affected, as well as the real conditions of the functioning and structure of the market or markets in question.<sup>506</sup>
- (331) Accordingly, when it is established that an agreement has as its object the prevention, restriction or distortion of competition within the internal market, for the purpose of applying Article 101(1) of the Treaty, there is no need to take into account the actual effects of an agreement. Consequently, it is not necessary to show actual anti-competitive effects where the anti-competitive object of the conduct in question is proved.<sup>507</sup>
- (332) In addition, the fact that an agreement having an anti-competitive object is implemented, even if only in part, is sufficient to preclude the possibility that the agreement had no effect on the market.<sup>508</sup>

---

<sup>505</sup> The list is not exhaustive, see C-209/07, *The Competition Authority v Beef Industry Development Society Ltd and Barry Brothers (Carrigmore) Meats Ltd*, EU:C:2008:643, paragraph 23 and the reference to the Opinion of AG Trstenjak, delivered on 4 September 2008, EU:C:2008:467, paragraph 48.

<sup>506</sup> Judgment of 30 January 2020, C-307/18, *Generics (UK) Ltd a.o. v Competition and Markets Authority*, EU:C:2020:52, paragraphs 67-68.

<sup>507</sup> Judgment of 6 July 2000, *Volkswagen AG v Commission*, T-62/98, EU:T:2000:180, paragraph 178.

<sup>508</sup> Judgment of 25 October 2005, *Groupe Danone v Commission*, T-38/02, EU:T:2005:367, paragraph 148.

### 6.3.2.2. Application in this case

- (333) The evidence described in Section 5 above demonstrates that Alchem and the Settling Parties refrained from determining independently their commercial and pricing policy for SNBB worldwide. Instead, they coordinated their conduct related to the sales prices of SNBB and the SNBB quantities placed on the merchant market through multilateral and bilateral contacts. They also exchanged commercially sensitive information concerning the SNBB sales prices worldwide, their SNBB quantities available for supply, quantities produced and sold on the worldwide SNBB market and on expected harvests of Duboisia leaves and market developments and trends. The conduct ultimately aimed at restricting competition among the Parties regarding 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 Alchem in relation to SNBB on a worldwide basis, including the EEA.
- (334) The Commission considers that Alchem together with the Settling Parties engaged in: (i) price fixing, in particular discussing and sometimes agreeing on SNBB minimum sales prices either worldwide or in specific regions. In the latter case, discussions on prices in specific regions had a direct impact on the worldwide price of SNBB, including the EEA; (ii) market sharing, by allocating quotas on a worldwide basis between SNBB producers; and (iii) the exchange of commercially sensitive information regarding SNBB pricing and market conditions.
- (335) First, Alchem together with the Settling Parties engaged in price fixing, discussing and sometimes agreeing on SNBB minimum sales prices during the following instances of the conduct described in Section 5 above: in particular recitals (43), (53), (54), (60), (62), (65), (68), (67), (69), (72), (75), (77), (80), (86), (87), (90), (96), (121), (123), (124), (125), (126), (130), (132), (133), (135), (136), (137), (140), (149), (156), (159), (168), (169), (172), (173), (174), (175), (176), (196), (201), (215), (223) and (232).
- (336) The discussions concerning the setting of new SNBB prices typically took place during the multilateral Club meetings in the framework of trade fairs [...], which were also regularly attended by Alchem. The meetings were usually organised before the harvest of new Duboisia leaves, as the expected amount of harvest was one of the main elements considered in the setting of the agreed price. Following these meetings, the adherence to the agreement was monitored by the Parties and cases of non-compliance mostly discussed via email or phone calls. The Parties also engaged in ad hoc contacts concerning pricing information relating to specific customers. The main motivation of these contacts was to verify the truthfulness of the information received and, if necessary, to require the adherence to the pricing agreement by the Party concerned.
- (337) Second, Alchem together with the Settling Parties engaged in market sharing, by allocating quotas on a worldwide basis between SNBB producers (see in particular recitals (43), (68), (71), (73), (96), (101), (102), (105), (108), (109), (120), (130), (132), (133), (135), (136), (137), (141), (142), (145), (149), (153), (160), (215), (228), (238), (239) and (249)).
- (338) The quota allocation discussions took mostly place in parallel with the pricing discussions, as an agreement on quota allocation was essential for maintaining the agreed level of the price by avoiding a possible oversupply on the SNBB market. Moreover, following the agreement on the quota allocation, the Parties engaged in contacts when a Party could not reach its allocated share of sales and asked for

support from the others, or, when Parties did not adhere to the agreement and sold higher amounts of SNBB than allocated to them.

- (339) Third, Alchem together with the Settling Parties exchanged commercially sensitive information regarding SNBB pricing and market conditions (see instances in particular in recitals (54), (55), (56), (59), (60), (62), (63), (68), (69), (76), (77), (78), (79), (80), (81), (84), (85), (88), (89), (94), (98), (101), (113), (118), (119), (127), (139), (143), (144), (145), (147), (148), (149), (150), (152), (155), (156), (157), (158), (159), (160), (169), (176), (180), (183), (185), (187), (189), (190), (191), (192), (193), (194), (195), (199), (200), (202), (203), (207), (208), (212), (213), (214), (217), (219), (220), (221), (223), (224), (226), (227), (229), (232), (235), (236), (237), (242), (243), (250), (251), (256), (258) and (259)).
- (340) The Parties in particular exchanged information concerning the SNBB market that could affect the future pricing of SNBB. Most typically, they updated each other about the expected impact of the weather conditions on the Duboisia plantations and the resulting harvest of leaves. Furthermore, they frequently updated each other about their amounts of SNBB sales, including the selling prices. Finally, they also discussed additional topics relevant for their assessment of the SNBB market and the setting of prices, e.g. the entry of new market participants to the SNBB market or new plantations of Duboisia.
- (341) The conduct engaged in by Alchem and the Settling Parties, as described above, 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.<sup>509</sup>
- (342) In view of the above, the Commission concludes that the set of agreements and concerted practices in which Alchem participated, as described in Section 5 above, had as its object the restriction of competition in the internal market and the EEA within the meaning of Article 101(1) of the Treaty.

### 6.3.2.3. Arguments of Alchem

- (343) Alchem submits that the Commission did not demonstrate that the conduct revealed by its very nature a sufficient degree of harm to competition in the EEA. Moreover, Alchem submits that the conduct did not aim at preventing the prices from falling but it was designed to correct a market failure with the objective of fostering a resilient supply chain. In light of that, according to Alchem, the conduct had no significant actual effects on competition in the EEA, at least for the period from 2014 onwards, when the Parties only engaged in an information exchange.<sup>510</sup>
- (344) In its reply to the SO,<sup>511</sup> Alchem claimed that some of the exchanges described in Section 5 (see recitals (51), (54), (56), (60), (65), (68), (79), (81), (100), (101), (102), (119), (121), (128), (157), (159), (175), (176), (182), (183), (184), (185), (187), (193), (194), (196), (200), (203), (228), (257)) were publicly known facts or obvious information without competitive relevance and therefore did not constitute exchange of sensitive information.

---

<sup>509</sup> As regards price fixing, see e.g., judgment of 28 March 2019, *Pometon v Commission*, T-433/16, EU:T:2019:201, paragraph 278; as regards quota allocation, see e.g., judgment of 12 July 2018, T-445/14, *ABB v Commission*, EU:T:2018:449, paragraphs 60 and 62; as regards information exchange, see e.g., judgment of 29 September 2021, *Nichicon Corporation v Commission*, T-342/18, EU:T:2021:635, paragraph 108.

<sup>510</sup> [...].

<sup>511</sup> [...].

- (345) The Commission notes that, as already stated in Section 6.2 above, the conduct in question did not aim exclusively at the SNBB market in the EEA but at restricting competition on the SNBB market on a worldwide basis, which consequently also covers the EEA (see also recital (333)). When contesting the restriction of competition on the EEA market, Alchem does not refer to any specific pieces of evidence that would demonstrate that the EEA market was excluded from the cartel conduct. On the contrary, the Commission has demonstrated that the agreements were of a general nature and that even the contacts concerning individual countries outside the EEA were still relevant in relation to the restriction of competition in the EEA (see also recital (272)). Therefore, it can be certainly concluded that the conduct was, by its very nature, harmful to the proper functioning of normal competition in the EEA.
- (346) Furthermore, not a single piece of evidence indicates that the cartel conduct would aim at correcting a market failure with the objective of fostering a resilient supply chain as suggested by Alchem. As rightly emphasized by Alchem, the Horizontal Guidelines<sup>512</sup> require that *‘the parties to an agreement substantiate that the main object of an agreement is the pursuit of a sustainability objective’*. It is evident that Alchem has not fulfilled this test. Alchem did not produce a single piece of evidence supporting its conclusions regarding the alleged creation of a resilient supply chain (see also Section 6.3.5). On the contrary, the vast majority of the evidence shows that the main concern of the Parties, including Alchem, was keeping the prices of SNBB above the competitive level (see also e.g. recitals (44), (54), (60), (68) - (69), (77), (96), (135) - (137), (153), (173), (184), (194), (201) and (212)). This is also why Alchem together with the Settling Parties engaged in the different types of conduct described in recitals (333) - (340), as well as in the monitoring of the SNBB market described in recital (319). In any case, according to the settled case law, conducts having as their object the prevention, restriction or distortion of competition, such the one at hand, necessary fall within the prohibition laid down in Article 101(1) of the Treaty, even if they do not have the restriction of competition as their sole aim but also pursue other legitimate objectives in the public interest.<sup>513</sup>
- (347) As regards the conduct from 2014 onwards, first the Commission notes that the Parties mainly exchanged information in order to attempt to agree on the prices and quota allocation of SNBB (see for example recitals (184), (197), (200), (216) - (217) and (247) - (249)). In this respect, as already observed the General Court confirmed in the *NCC* case that a mere discussion concerning a pricing behaviour without reaching a unanimous opinion can be qualified as anticompetitive conduct.<sup>514</sup> Moreover, the Parties exchanged commercially sensitive information concerning in particular the SNBB sales price, their SNBB quantities available for supply and quantities produced and sold on the SNBB merchant market (see in particular examples mentioned in recital (339)). Moreover, a substantial part of the information exchanged was confidential (see in particular examples mentioned in recitals (183), (184), (189), (192), (194), (195), (199), (200), (202), (203), (212), (213), (214), (220), (223), (224) and (232) concerning contacts in relation to the SNBB prices quoted (or to be quoted) in the market; recitals (187), (193), (202) and (212)

---

<sup>512</sup> Communication from the Commission – Guidelines on the application of Article 81(3) of the Treaty – OJ C 101, 27.04.2004, p. 0097–0118.

<sup>513</sup> Judgment of 4 October 2024, *FIFA v BZ*, C-650/22, EU:C:2024:824, paragraphs 149-150 and the case-law cited.

<sup>514</sup> Judgment of 29 September 2021, *Nippon Chemi-Con Corporation v Commission*, T-363/18, EU:T:2021:638, paragraph 218.

concerning contacts in relation to the impact of the harvest on the respective SNBB stocks; recitals (189) and (190) concerning contacts in relation to the general functioning of the cartel; recital (191) concerning contacts in relation to the future expansion plans; and recitals (207) and (219) concerning contacts in relation to the general competitive landscape). The confidential nature of the exchanges was also implicitly admitted by Alchem (see recital (344)) when it claims that only some of the exchanges described in Section 5 regarded information in the public domain.

- (348) Consequently, contrary to Alchem's claims, the Commission considers that the conduct of the Parties can be qualified as an infringement by object and there is therefore no need to demonstrate, for the period from 2014 onwards, that the conduct had significant actual effects on competition in the EEA. This conclusion is in line with the case law of the Court of Justice which confirmed that *'for a market to function under normal conditions, operators on that market must not only determine independently the policy which they intend to adopt on the single market, but also, and more generally, remain uncertain as to the future conduct of other participants on that market.'* It further stated that *'As a result, an exchange of information may be regarded as constituting a form of coordination between undertakings which, by its very nature, is harmful to the proper functioning of normal competition, [...] where that exchange makes it possible to remove such uncertainty. To that end, it is sufficient for the information exchanged to be, first, confidential and, second, strategic.'*<sup>515</sup> The examples of exchanges information mentioned in recital (347) fall under this category, as information concerning pricing, allocation of markets or future conduct in the SNBB market are of confidential and strategic nature and as such enabled the Parties, including Alchem, to remove uncertainty as regards the future conduct of competitors. These exchanges were therefore harmful to the proper functioning of normal competition.
- (349) Finally, even assuming that part of the information exchanged was not confidential (in particular information concerning Duboisia harvest and weather conditions), it has to be noted that, although exchanges of public information do not in themselves constitute an infringement, the exchanges of public information concerning harvest and weather conditions were of particular relevance in this case as they formed the basis for discussions on prices and quotas and for monitoring the adherence to the agreements given their key importance to forecast the market supply of SNBB<sup>516</sup> (see for example recitals (89), (121) and (159)). These exchanges were therefore an inherent part of the anticompetitive contacts between the Parties, as they enhanced the coordination of their market behaviour and decreased the uncertainty concerning their future conduct. The Court of Justice held in this regard that if supply on a market is highly concentrated, the exchange of certain information may, according in particular to the type of information exchanged, be liable to enable undertakings to be aware of the market position and commercial strategy of their competitors, thus distorting rivalry on the market and increasing the probability of collusion, or even facilitating it.<sup>517</sup>

---

<sup>515</sup> Judgment of 29 July 2024, *Banco BPN v BIC Português and Others*, C-298/22, EU:C:2024:638, paragraphs 61 and 62.

<sup>516</sup> [...].

<sup>517</sup> Judgment of 23 November 2006, *Asnef-Equifax and Administración del Estado*, C-238/05, EU:C:2006:734, paragraph 58.

### 6.3.3. *Single and continuous infringement*

#### 6.3.3.1. Principles

- (350) The concept of a single infringement covers a situation in which a number of undertakings have participated in an infringement consisting in continuous conduct in pursuit of a single economic aim designed to distort competition or in individual infringements linked to one another by the same object (all the elements sharing the same purpose) and the same subjects (the same undertakings, which are aware that they are participating in the common object).<sup>518</sup> According to settled case-law, 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. Conversely, it follows from that case-law that the finding of a single and continuous infringement does not necessarily presuppose that the Commission establishes a number of infringements, each of which falls within Article 101(1) of the Treaty, but rather that the Commission demonstrates that the various instances of conduct which it has identified form part of an overall plan designed to achieve a single anti-competitive objective.<sup>519</sup> Accordingly, if the different actions form part of an overall plan because their identical object distorts competition in the internal market, the Commission is entitled to impute responsibility for those actions on the basis of participation in the infringement considered as a whole.<sup>520</sup>
- (351) A complex cartel may properly be viewed as a single and continuous infringement for the time frame in which it existed. According to the case law of the Union Courts, the concept of ‘single agreement’ or ‘single infringement’ presupposes a complex of practices adopted by various parties in pursuit of a single anti-competitive economic aim.<sup>521</sup> The conduct may well be varied from time to time, or its mechanisms adapted or strengthened to take account of new developments. The validity of this assessment is not affected by the possibility that one or more elements of a series of actions or of a continuous course of conduct could individually and in themselves constitute a violation of Article 101 of the Treaty.
- (352) 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 manifests itself in both agreements and concerted practices.
- (353) In the case of a complex cartel of long duration, the term ‘agreement’ can properly be applied not only to any overall plan or to the terms expressly agreed but also to the implementation of what has been agreed on the basis of the same mechanisms and in pursuance of the same common purpose. As the Court of Justice has pointed out, it follows from the express terms of Article 101(1) of the Treaty that agreement

---

<sup>518</sup> Judgment of 29 September 2021, *Nippon Chemi-Con Corporation v Commission*, T-363/18, EU:T:2021:638, paragraph 310 and the case-law cited therein.

<sup>519</sup> Judgment of 2 February 2022, *Scania v Commission*, T-799/17, EU:T:2022:48, paragraph 208.

<sup>520</sup> Judgment of 24 June 2015, *Fresh Del Monte Produce v Commission and Commission v Fresh Del Monte Produce*, C-293/13 P and C-294/13 P, EU:C:2015:416, paragraph 156 and the case-law cited therein.

<sup>521</sup> Judgment of 12 July 2019, T-762/15, *Sony Corporation and Sony Electronics, Inc v Commission*, EU:T:2019:515, paragraph 238.

may consist not only in an isolated act but also in a series of acts or a course of conduct.<sup>522</sup>

- (354) Although a cartel is a joint enterprise, each participant in the arrangement may play its own particular role. One or more may exercise a dominant role as ringleader(s). Internal conflicts and rivalries, or even cheating may occur, but will not however prevent the arrangement from constituting an agreement or concerted practice for the purposes of Article 101 of the Treaty where there is a common overall plan.
- (355) As the Court of Justice stated in its judgment in Case *Commission v Anic Partecipazioni*,<sup>523</sup> the agreements and concerted practices referred to in Article 101(1) of the Treaty necessarily result from collaboration by several undertakings, who are all co-perpetrators of the infringement but whose participation can take different forms according, in particular, to the characteristics of the market concerned and the position of each undertaking on that market, the aims pursued and the means of implementation chosen or envisaged.
- (356) 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 overall plan. 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 risk.<sup>524</sup>
- (357) Consequently, according to the case law of the Union Courts, an undertaking that has participated in 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 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.<sup>525</sup>

#### 6.3.3.2. Application in the present case

- (358) The evidence presented and discussed in Section 5 above shows that, during the infringement period, Alchem together with the Settling Parties coordinated their behaviour in relation to the sales of SNBB by discussing and sometimes agreeing on

---

<sup>522</sup> Judgment of 8 July 1999, *Commission v Anic Partecipazioni*, C-49/92 P, EU:C:1999:356, paragraph 81.

<sup>523</sup> Judgment of 8 July 1999, *Commission v Anic Partecipazioni*, C-49/92 P, EU:C:1999:356, paragraph 79.

<sup>524</sup> Judgment of 8 July 1999, *Commission v Anic Partecipazioni*, C-49/92 P, EU:C:1999:356, paragraph 83.

<sup>525</sup> Judgment of 8 July 1999, *Commission v Anic Partecipazioni*, C-49/92 P, EU:C:1999:356, paragraph 83. See to this effect Judgment of 24 June 2015, joined cases C-293/13 P and C-294/13 P, *Fresh Del Monte Produce v Commission*, EU:C:2015:416, paragraphs 156-157; Judgment of 19 December 2013, 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.

the minimum SNBB price, discussing and sometimes agreeing yearly quota allocations per SNBB producer worldwide and regularly exchanging commercially sensitive information concerning in particular the SNBB sales price, SNBB quantities available for supply, quantities produced and sold on the SNBB merchant market, expected harvests of Duboisia leaves and market developments and trends.

- (359) In order to establish the existence of a single and continuous infringement of Article 101(1) of the Treaty, the Commission considered whether (a) the conduct described in Section 5 above had a single anti-competitive aim (i.e. the overall plan); whether, (b) Alchem contributed in its own way to the single aim and whether (c) Alchem was aware or should have been aware of the general scope of the contacts as a whole and of their anti-competitive nature and was prepared to take the risk.

*(i) Existence of an overall plan pursuing a common objective*

- (360) The facts described in Section 5 above show that Alchem together with the Settling Parties engaged in anti-competitive practices which formed part of an overall plan pursuing the common objective, namely to maintain the minimum worldwide sales price for SNBB and to allocate yearly sales quotas per SNBB producer to ensure that the worldwide price for SNBB remained stable and to prevent it from falling. They engaged in regular bilateral and multilateral contacts during which prices and allocation of sales quota were discussed. The conduct followed a consistent pattern of repetitive and continuous behaviour restricting competition in the SNBB market.

- (361) In light of this aim, Alchem together with the Settling Parties employed a combination of various collusive practices, including (a) price fixing, in particular discussions and sometimes agreements on the minimum SNBB sales price, (b) market sharing, by discussing and sometimes agreeing on yearly quota allocations per SNBB producer worldwide, and (c) exchanges of commercially sensitive information in relation to SNBB sales price, SNBB quantities available for supply, quantities produced and sold on the SNBB merchant market, expected harvests of Duboisia leaves and market developments and trends.

- (362) Furthermore, the combination of the following elements confirms that the collusive contacts were linked and complementary in nature and that, by interacting, they contributed to the realisation of the common overall plan.

- (363) Firstly, the collusive conduct related to one single product – SNBB – and to the same geographical scope – i.e. worldwide, including the entire EEA – throughout the duration of the conduct.

- (364) Secondly, the nature of the conduct was consistently the same and took place via multilateral Club meetings, other physical meetings, exchanges via email and telephone exchanges. As described in Section 5 above, the contacts involving Alchem evolved in their structure and intensity but did so in a gradual manner and the fundamental nature of the exchanges and their common objective described in recital (360) remained the same.

- (365) Moreover, the contacts continued on a regular basis without any interruption, and they concerned identical or largely similar topics throughout the duration of the conduct (level of SNBB sales price, SNBB quantities available for supply, quantities produced and sold on the SNBB merchant market, expected harvests of Duboisia leaves and market developments and trends).

- (366) Thirdly, the contacts involved the same undertakings for the duration of their respective participation in the infringement with a number of undertakings participating throughout the duration of the conduct. The conduct thus initially

involved Alchem, [...], [...] and [...], with [...] joining the arrangements from October 2006, [...] from June 2011 and [...] from January 2015. Furthermore, the contacts also mostly involved the same individuals (or their successors as the case may be) at various employment levels within each respective undertaking.

- (367) Fourthly, the Parties usually followed the same pattern of behaviour. The contacts involving Alchem were taking place in the same or similar manner (via the multilateral Club meetings, other physical meetings, exchanges via email and telephone exchanges in particular). The Club meetings were organised in particular in the framework of trade fairs [...], which were also regularly attended by Alchem. Furthermore, ad hoc contacts were organised in case of an occurrence of instability on the SNBB market (e.g. aggressive pricing, new market participants or unexpected changes in the amount of the harvest). Depending on the circumstances, all Parties either attended these contacts, or, if more convenient, only a selected number of them directly impacted by the threat (see also recitals (315) to (317)).

*(ii) Intentional contribution to an overall plan*

- (368) The evidence outlined and discussed in Section 5 demonstrates that the regular and active collaboration of Alchem was such that it contributed to the overall plan to restrict and/or distort competition on the SNBB market. The evidence shows that Alchem was involved in the cartel from the outset and remained active in it until its final stages. Alchem participated directly in multilateral Club meetings (see for example recitals (43) and (212)), other meetings (see for example recitals (174) and (241)) and email exchanges (see for example recitals (65) and (149)). At times, Alchem was also informed indirectly of the conduct or of the outcome of discussions they had not attended (see for example recitals (215) - (216) and (235)).

- (369) The evidence further shows that Alchem also directly participated in all major aspects of the cartel conduct described in recital (358). Alchem thus took part in (a) discussions and sometimes agreements on the minimum SNBB price (see for example recitals (44) and (130) - (132)) (b) discussions and sometimes agreements on yearly quota allocations per SNBB producer worldwide (see for example recitals (43), (73) and (216)), and (c) exchanges of commercially sensitive information in relation to SNBB sales price (see for example recitals (82) and (172)), SNBB quantities available for supply (see for example recitals (59) and (141)), quantities produced and sold on the SNBB merchant market (see for example recitals (96) and (230)), expected harvests of Duboisia leaves (see for example recitals (119) and (182)) and market developments and trends (see for example recitals (53) and (116)).

*(iii) Awareness*

- (370) As already mentioned in recital (369), the evidence shows that Alchem took an active role and directly participated in all major aspects of the cartel conduct. Alchem regularly participated in both bilateral and multilateral contacts<sup>526</sup> with the Parties. In case of its absence, Alchem was frequently informed about bilateral or multilateral contacts, in which it did not participate (see for example recitals (215) - (216) and (235)).

---

<sup>526</sup> The evidence shows that Alchem participated in at least one multilateral meeting or email exchange during each year of its participation in the infringement. In addition to that, Alchem was also regularly involved in bilateral meetings and email exchanges.

(371) Alchem was therefore aware of the conduct planned or put into effect by the other Parties in pursuit of the aim of the cartel conduct or could have reasonably foreseen it and was prepared to take the risk.

#### 6.3.3.3. Conclusion

(372) On this basis, the Commission concludes that the conduct as described in Section 5 above 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. Alchem participated in such conduct, contributed to its overall plan and was also aware of the conduct planned or put into effect by the other Parties.

(373) Consequently, the Commission considers that Alchem participated in a single and continuous infringement of Article 101(1) of the Treaty and that it is liable for the entire single and continuous infringement for the period of its participation in it.

#### 6.3.3.4. Arguments of Alchem

(374) Alchem submits that the Commission downplays the role of specific developments, in particular the termination of [...] participation in the meetings, the change of the character of the meetings following 2011, or the fact that the Parties did not conclude agreements on prices or quotas from 2014 onwards. Alchem considers that these developments, at least for the period from 2014 onwards, call into question the assumption of a single and continuous infringement as well as the assessment with regard to the restriction of competition by object, or at the very least, the Commission's conclusions with regard to the gravity of the infringement. The same also applies according to Alchem to the conclusions concerning the Commission's jurisdiction. Finally, Alchem submits that the Commission's own description of the events shows that [...] of Alchem blocked attempts by some (not all) SNBB suppliers to agree on prices and volumes.<sup>527</sup>

(375) The Commission does not downplay the role of specific developments that occurred within the duration of the cartel as suggested by Alchem. On the contrary, the Commission specifically acknowledges the changing dynamics of the cartel in Section 4.4 and gives a precise account of this change of dynamics, in an even greater detail, in Section 5. This description acknowledges that the characteristics of the cartel contacts did not remain homogeneous throughout the duration of the infringement, in particular due to different external factors mentioned also by Alchem in its SO reply. It is completely normal that in case of cartels of such a long duration such as the one at stake the conduct develops in view of various changes affecting the dynamics of the cartel arrangements.

(376) Despite that, the description of the contacts in Section 5 confirms that the objective of the cartel, aiming at the stabilisation of the world market price of SNBB and preventing it from falling, remained the same throughout the duration of the infringement and the changes in the organisation could not thus affect the qualification of the conduct as a single and continuous infringement. More specifically, recitals (361) and (362) confirm in this regard that Alchem together with the Settling Parties employed a combination of various collusive practices to enhance the achievement of the common objective and that these practices were linked and complementary in nature.

---

<sup>527</sup> [...].

- (377) It is evident that the Commission's conclusions regarding the existence of the single and continuous infringement are in line with the case law of the Court of Justice, which confirmed that an infringement of Article 101(1) of the Treaty can also result from a series of acts or from continuous conduct and that *'Accordingly, if the different actions form part of an 'overall plan' because their identical object distorts competition within the internal market, the Commission is entitled to impute responsibility for those actions on the basis of participation in the infringement considered as a whole'*.<sup>528</sup> In other words, contrary to Alchem's claims concerning specific developments of the cartel, the Court of Justice confirmed that there is no reason to single out any specific instances of the conduct in case they pursue the same objective.
- (378) Furthermore, in the same vein and based on the same principles, the Court of Justice also confirmed that *'For the purposes of establishing a single and continuous infringement, it is usual to take into account the various links existing between the different elements making up the infringement in question. Thus, a contact between undertakings which, taken in isolation, would not in itself constitute an infringement of Article 101(1) TFEU may nevertheless be relevant in demonstrating the existence of a single and continuous infringement of that provision, having regard to the context in which that contact took place. In such a situation, that contact forms part of the body of evidence on which the Commission may legitimately rely in order to establish the existence of a single and continuous infringement of that provision.'*<sup>529</sup>
- (379) The fact that the Commission has acknowledged that the Parties did not reach final agreements on prices or quotas from 2014 onwards cannot therefore change anything as regards the classification of the conduct as a single and continuous infringement. This is even more the case, as the evidence shows that the Parties occasionally (albeit generally unsuccessfully) attempted to reach such agreements also after 2014 (see for example recitals (184), (197), (200), (216) - (217) and (247) - (249)). Moreover, the Parties continued to exchange commercially sensitive information in the same way as they did throughout the duration of the infringement (see in particular recital (339)). It has to be also reiterated in this regard that the General Court confirmed in the *NCC* case that a mere discussion concerning a pricing behaviour without reaching a unanimous opinion can be qualified as anticompetitive conduct.<sup>530</sup>
- (380) In conclusion, contrary to Alchem's arguments, Alchem together with the Settling Parties adhered to the common objective of the cartel also in the period from 2014 onwards and the conduct in question can be thus qualified as a single and continuous infringement of Article 101(1) of the Treaty. Furthermore, as demonstrated in Section 6.3.2, the conduct had as its object a restriction of competition in the internal market and the EEA within the meaning of Article 101(1) of the Treaty.
- (381) In the same vein, the developments that occurred within the duration of the cartel do not have any impact on the jurisdiction of the Commission. The Court of Justice confirmed in relation to an assessment of jurisdiction concerning a single and continuous infringement that *'it is necessary to examine the conduct of the undertaking or undertakings in question, viewed as a whole, in order to determine*

---

<sup>528</sup> Judgment of 16 June 2022, *Sony Optiarc and Sony Optiarc America v Commission*, C-698/19 P, EU:C:2022:480, paragraph 59.

<sup>529</sup> Judgment of 26 January 2017, *Commission v Keramag Keramische Werke and Others*, C-613/13 P, EU:C:2017:49, paragraph 52.

<sup>530</sup> Judgment of 29 September 2021, *Nippon Chemi-Con Corporation v Commission*, T-363/18, EU:T:2021:638, paragraph 218.

whether the Commission has the necessary jurisdiction to apply, in each case, EU competition law,<sup>531</sup> and it thus ruled out any portioning of the conduct when assessing the Commission's jurisdiction.

- (382) Finally, Alchem did not actively block attempts to agree on SNBB prices and volumes. On the contrary, the evidence indicates that [...] of Alchem actively contributed to the cartel conduct throughout the duration of Alchem's participation in the infringement (see recitals (368) and (369)). Although [*Alchem*] was not happy with the particular terms of the agreement proposed in 2017, given the quota allocation to [...], he nevertheless continued to participate in exchanges and finally proposed a new meeting to reach an agreement on an alternative basis (see recital (250)). In the same way, Alchem has not submitted any evidence of its public distancing from the cartel conduct that would demonstrate that Alchem did not wish to take part in the cartel contacts or to be invited to them. The existence of occasional cheating by Alchem is not relevant for this assessment. The case law confirmed in this regard that *'the fact that an undertaking does not abide by the outcome of meetings which have a manifestly anticompetitive purpose is not such as to relieve it of full responsibility for the fact that it participated in the cartel, if it has not publicly distanced itself from what was agreed in the meetings.'*<sup>532</sup>

#### 6.3.4. Effect upon trade between EU Member States and between EEA Contracting Parties

##### 6.3.4.1. Principles

- (383) Article 101(1) of the Treaty is aimed at agreements 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 common market. Similarly, Article 53(1) of the EEA Agreement is directed at agreements that undermine the achievement of a homogeneous European Economic Area.
- (384) The Union Courts have consistently held that, *'in order that an agreement between undertakings may affect trade between Member States, it must be possible to foresee with a sufficient degree of probability on the basis of a set of objective factors of law or fact that it may have an influence, direct or indirect, actual or potential, on the pattern of trade between Member States'*.<sup>533</sup> In any event, whilst Article 101 of the Treaty does not require that agreements referred to in that provision have actually

---

<sup>531</sup> Judgment of 12 June 2014, *Intel v Commission*, T-286/09, paragraphs 268 and 280, upheld on appeal on the point of jurisdiction in Judgment of 6 September 2017, *Intel v Commission*, C-413/14 P, EU:C:2017:632, paragraph 50.

<sup>532</sup> Judgment of 14 May 1998, *Sarrio SA v Commission*, T-334/94, EU:T:1998:97, paragraph 118; Judgment of 6 April 1995, *Tréfileurope Sales SARL v. Commission*, T-141/89, EU:T:1995:62, paragraph 85; Judgment of 17 December 1991, *Hercules Chemicals v Commission*, T-7/89, EU:T:1991:75, paragraph 232; Judgment of 15 March 2000, *Cimenteries CBR and Others v Commission* (Cement), joined Cases T-25/95, T-26/95, T-30/95, T-31/95, T-32/95, T-34/95, T-35/95, T-36/95, T-37/95, T-38/95, T-39/95, T-42/95, T-43/95, T-44/95, T-45/95, T-464/95, T-48/95, T-50/95, T-51/95, T-52/95, T-53/95, T-54/95, T-55/95, T-56/95, T-57/95, T-58/95, T-59/95, T-60/95, T-61/95, T-62/95, T-63/95, T-64/95, T-65/95, T-68/95, T-69/95, T-70/95, T-71/95, T-87/95, T-88/95, T-103/95 and T-104/95, EU:T:2000:77, paragraph 1389; Judgment of 27 September 2006, *Archer Daniels Midland Co. v. Commission*, T-329/01, EU:T:2006:268, paragraph 247; Judgment of 5 December 2006, *Westfalen Gassen Nederland BV v Commission*, T-303/02, EU:T:2006:374, paragraphs 138-139.

<sup>533</sup> Judgment of 30 June 1966, Case 56/65, *Société Technique Minière*, EU:C:1966:38, paragraph 7; Judgment of 11 July 1985, Case 42/84, *Remia and Others*, EU:C:1985:327, paragraph 22, Judgment of 15 March 2000, joined cases T-25/95 and others, *Cimenteries CBR*, EU:T:2000:77; Judgment of 28 April 1998, C-306/96 *Javico*, EU:C:1998:173, paragraph 16.

affected trade between Member States, it does require that it be established that the agreements are capable of having that effect.<sup>534</sup>

- (385) The application of Articles 101 of the Treaty and Article 53 of the EEA Agreement to a cartel is not, however, limited to that part of the sales of the cartel members 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.<sup>535</sup>

#### 6.3.4.2. Application to this case

- (386) During the period of the infringement, Alchem and the Settling Parties 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.
- (387) 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 Parties discussed and endeavoured to agree – on numerous instances successfully – on their pricing and quota allocation arrangements concerning SNBB worldwide, therefore including the entire EEA. The collusive contacts frequently concerned the pricing of SNBB in specific countries outside the EEA. Nevertheless, given the worldwide nature of the conduct, those contacts had a direct impact on the worldwide price of SNBB, including in the EEA and thus formed an important part of the overall conduct constituting an infringement of Article 101 of the Treaty (see also recital (270)).
- (388) 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(1) of the EEA Agreement.

#### 6.3.4.3. Arguments of Alchem

- (389) Alchem claims that during the relevant period there were only isolated occasions in certain years where modest volumes of its product found their way into a few EU countries. According to Alchem, nearly all shipments went to traders for reexport to non-EEA countries. Alchem further submits that, in a case concerning the merchant market, it is misleading for the Commission to refer to Buscopan, which was sourced from the captive supply mostly with Duboisia leaf of Brazilian origin and contests the existence of a worldwide agreement. Alchem therefore concludes that the Commission failed to demonstrate with a sufficient degree of probability that the conduct had a significant effect on trade in the EEA.<sup>536</sup>
- (390) The Commission notes that when examining the effect on trade between Member States, the assessment focuses on the effect of the cartel arrangement as a whole, and

---

<sup>534</sup> Judgment of 17 July 1997, C-219/95 P, *Ferriere Nord SpA v Commission*, EU:C:1997:375, paragraph 19.

<sup>535</sup> Judgment of 10 March 1992, T-13/89, *Imperial Chemical Industries v Commission*, EU:T:1992:35, paragraph 304.

<sup>536</sup> [...].

not on the individual conduct of a specific undertaking. This approach is in line with the Commission's Guidelines on the effect on trade, which state that '*If the agreement as a whole is capable of affecting trade between Member States, there is [Union] law jurisdiction in respect of the entire agreement, including any parts of the agreement that individually do not affect trade between Member States.*'<sup>537</sup> Based on that, it is therefore not relevant whether only modest volumes of Alchem's production were exported in the EEA in certain years, as suggested by Alchem, as the evidence shows that significant amounts of SNBB sold by the Settling Parties were imported in the EEA every year.<sup>538</sup> Moreover, the evidence shows that contrary to Alchem's claims concerning reexports to non-EEA countries, Alchem was selling to generics producers in Cyprus throughout the duration of the infringement.<sup>539</sup>

- (391) Furthermore, as regards the reference to trade with Buscopan, contrary to Alchem's claims, the Commission refers in this Decision not only to cross-border sales of Buscopan but also to the sales of its generic versions (see also recital (386)). As regards the worldwide nature of the conduct, this was extensively described in Section 6.2 above. The Court of Justice confirmed in this regard that the effect on trade between Member States is established in case the geographic scope of the conduct can be qualified as '*global*'.<sup>540</sup>
- (392) The Commission also considers that the conduct was capable of having a significant effect on trade in the EEA. Contrary to Alchem's claims, the Commission is not required to demonstrate that the conduct had an actual effect on trade in the EEA but only that it may have an influence, direct or indirect, actual or potential, on the pattern of trade between Member States.<sup>541</sup> In light of the fact that the cartel conduct covered amongst other the entire sales on the merchant market with SNBB in the EEA, it is evident that it was capable of having an effect on trade in the EEA. This is emphasized by the fact that Buscopan and its generic versions, in which SNBB constitutes an important substance used in their production process, are drugs widely used in the EEA.
- (393) Finally, as regards the appreciability of the effect on trade, the Guidelines on the effect on trade stipulate in paragraph 52 that an agreement is capable of appreciably affecting trade between Member States when the aggregate market share of the parties on the market affected by the agreement exceeds 5%. The evidence shows that the Parties represented an important part of the market with SNBB in the EEA and their market share was significantly above the 5% threshold.<sup>542</sup> It can therefore be determined with a sufficient degree of probability that the cartel could have a significant effect on the SNBB market in the EEA.

---

<sup>537</sup> Commission Notice - Guidelines on the effect on trade concept contained in Articles 81 and 82 of the Treaty, paragraph 14 (OJ C 101, 27/04/2004 P. 0081 – 0096).

<sup>538</sup> [...].

<sup>539</sup> [...].

<sup>540</sup> Judgment of 4 October 2024, C-650/22, *Fédération internationale de football association (FIFA) v BZ*, EU:C:2024:824, paragraph 123.

<sup>541</sup> Judgment of 13 July 2006, C-295/04 to C-298/04, *Manfredi and Others*, EU:C:2006:461, paragraph 42.

<sup>542</sup> [...].

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

6.3.5.1. Principles

- (394) The provisions of Article 101(1) of the Treaty and Article 53(1) of the EEA Agreement may be declared inapplicable under Article 101(3) of the Treaty and Article 53(3) of the EEA Agreement in the case of an agreement or concerted practice which 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 eliminating competition in respect of a substantial part of the products in question.
- (395) The undertaking invoking the application of Article 101(3) of the Treaty bears the burden of proving that those conditions are fulfilled.<sup>543</sup>

6.3.5.2. Arguments of Alchem

- (396) Alchem contends that Articles 101(1) of the Treaty and 53(1) of the EEA Agreement should be declared inapplicable under Article 101(3) of the Treaty and Article 53(3) of the EEA Agreement because the conduct led to relevant efficiency gains, did not impose restrictions that were not indispensable, provided the consumers with a fair share of the benefits, and did not afford the parties the possibility to eliminate competition.<sup>544</sup> As regards the efficiency invoked, Alchem states, in particular, that, *'to the extent that the Parties exchanged information on weather conditions and harvest volumes and related issues, this contributed to fostering the resilience of the supply chain and reducing supply chain disruptions which corresponds to an objective efficiency gain'*.<sup>545</sup>
- (397) The Commission first notes that Alchem's argument focuses on the efficiencies allegedly deriving from the exchange of information on "*weather conditions, harvest volumes and related issues*". However, it results from Section 6.3.1 above that, in addition to the exchange of commercially sensitive information, Alchem and the Settling Parties engaged in a complex of practices that included agreements on minimum worldwide sales price for SNBB and yearly quota allocations per SNBB producer worldwide, a conduct which, as mentioned in Section 6.3.2 above, corresponds to price fixing and market sharing. Complex infringements amounting to secretly organised coordination between competitors in relation to essential parameters of competition such as price and quotas, like the one which is the subject of this Decision are, by definition, among the most detrimental restrictions of competition. In this respect, it should be noted that, under Article 101(3) of the Treaty and Article 53(3) of the EEA Agreement, the pro-competitive effects of an agreement or concerted practice, if existent, must outweigh its anti-competitive

---

<sup>543</sup> Judgment of 27 September 2012, T-353/06, *Vermeer Infrastructuur v Commission*, EU:T:2012:484, paragraph 134.

<sup>544</sup> [...].

<sup>545</sup> [...].

effects,<sup>546</sup> and, in cases where severe restrictions took place, such as price fixing and market allocation, this is unlikely to happen.<sup>547</sup>

- (398) In addition, Alchem's efficiency claim is scarcely developed and largely unsubstantiated. Alchem seems to invoke the existence of a sustainability agreement,<sup>548</sup> but does not explain in any detail how such agreement between Alchem and the Settling Parties took place and how it contributed to a resilient supply chain of Duboisia leaves. Therefore, Alchem completely failed to substantiate how the conduct in question could lead to such an efficiency. In this respect, the Commission recalls that, for the application of Article 101(3) of the Treaty to sustainability agreements, the efficiencies cannot simply be assumed: they must be capable of being substantiated and they also need to be objective, concrete and verifiable.<sup>549</sup>
- (399) Furthermore, even though the burden of proof in this respect is on Alchem, it is worth noting that the evidence in the Commission's file also does not corroborate Alchem's argument. In fact, as already pointed out in Section 6.3.2 above, in particular in recital (346), not a single piece of evidence indicates that the cartel conduct would aim at fostering a resilient supply chain. On the contrary, the vast majority of the evidence shows that the main concern of the Parties, including Alchem, was keeping the prices of SNBB above the competitive level, and not the creation of a resilient supply chain.
- (400) In this context, the first condition of Article 101(3) of the Treaty and Article 53(3) of the EEA Agreement, *i.e.*, the existence of an efficiency resulting from the agreement or concerted practice, is not fulfilled in the present case, making it unnecessary to examine the remaining conditions of Article 101(3) of the Treaty and Article 53(3) of the EEA Agreement, since they are of cumulative application.

## 7. DURATION OF THE INFRINGEMENT

- (401) It is apparent from the facts described in Section 5 above that Alchem participated in the Club meeting on 1 November 2005<sup>550</sup>, which is considered the starting date of Alchem's participation in the infringement. On 12 February 2018, Alchem sent an internal email reporting on various issues linked to [...], including the ongoing negotiations with [...] regarding the allocation of worldwide sales quota.<sup>551</sup> The Commission considers that 12 February 2018 is the end date of Alchem's participation in the infringement, as this is the date of the last piece of evidence indicating Alchem's direct involvement in the infringement and Alchem never distanced itself from the anticompetitive conduct prior to this date. Between 1

---

<sup>546</sup> Communication from the Commission – Guidelines on the application of Article 81(3) of the Treaty – OJ C 101, 27.04.2004, p. 0097–0118 – paragraphs 33 and 43.

<sup>547</sup> Communication from the Commission – Guidelines on the application of Article 81(3) of the Treaty – OJ C 101, 27.04.2004, p. 0097–0118 – paragraph 46.

<sup>548</sup> The efficiency invoked by Alchem is the alleged fostering of the resilience of the supply chain of Duboisia, and in its argumentation Alchem quotes paragraphs 571 and 575 of the Communication from the Commission – Guidelines on the applicability of Article 101 of the Treaty on the Functioning of the European Union to horizontal co-operation agreements, OJ C 259, 21.7.2023, p. 1–125. These paragraphs are included in Section 9 of these guidelines, dedicated to sustainability agreements.

<sup>549</sup> Guidelines on the applicability of Article 101 of the Treaty on the Functioning of the European Union to horizontal co-operation agreements, OJ C 259, 21.7.2023, p. 1–125, paragraph 559.

<sup>550</sup> [...].

<sup>551</sup> [...].

November 2005 to 12 February 2018, representatives and employees of Alchem regularly participated in the anti-competitive conduct.

- (402) In its reply to the SO<sup>552</sup>, Alchem argued that it was never a party to an anticompetitive agreement concerning the EEA. In addition Alchem claimed that the Commission failed to take account of the pivotal role of [...] and the profound change of the market dynamics after [...] exit from the market in 2014. Alchem further claimed that in any event, from 2016, there is no evidence of Alchem's participation to the anticompetitive conduct, but the evidence shows that Alchem opposed the conclusion of such agreements.
- (403) The Commission however notes that, as regards the claims concerning the duration, the Commission replied to each of them in Section 5 on the chronology of relevant contacts and the meetings and in Section 6 on the Application of Article 101(1) of the Treaty and Article 53(1) of the EEA Agreement. Specifically, regarding the argument that the conduct does not relate to the EEA, the Commission replied in Section 6.2.2. Regarding Alchem's claim about [...] role and the profound change of the market dynamics after [...] exit from the market in 2014, the Commission replied to this argument also in recitals (188) and (379). Regarding Alchem's claim regarding its alleged non participation and opposition to the cartel arrangements as from 2016, the Commission refers to Sections 5.13-5.15. The investigation established that Alchem participated 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.
- (404) The Commission therefore considers that Alchem participated in the infringement from 1 November 2005 to 12 February 2018 without any interruption.

## **8. LIABILITY**

### **8.1. Principles**

- (405) 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 same context, must be understood as designating an economic unit even if in law that economic unit consists of several persons, natural or legal.
- (406) The concept of 'undertaking' in Union law is a functional one. The concept of an undertaking encompasses every entity engaged in an economic activity, regardless of the legal status of the entity or its precise legal form under national law.<sup>553</sup> According to the case law, '*Community competition law recognises that different companies belonging to the same group form an economic unit and therefore an undertaking within the meaning of Article 81 EC and 82 EC [now Articles 101 and 102 of the*

---

<sup>552</sup> [...].

<sup>553</sup> Although an undertaking within the meaning of Article 101(1) of the Treaty is not necessarily the same as a company having legal personality, it is necessary for the purposes of enforcing decisions to identify the legal or natural personality to whom the decision will be addressed. See judgment of 20 April 1999, *Limburgse Vinyl Maatschappij N.V. and others v Commission* (PVC II), joined cases T-305/94, T-306/94, T-307/94, T-313/94 to T-316/94, T-318/94, T-325/94, T-328/94, T-329/94 and T-335/94, EU:T:1999:80, paragraph 978, and judgment of 12 December 2007, *Akzo Nobel and Others v Commission*, T-112/05, EU:T:2007:381, paragraph 59.

Treaty] if the companies concerned do not determine independently their own conduct on the market.’<sup>554</sup>

- (407) When an undertaking infringes Article 101(1) of the Treaty, it falls, according to the principle of personal responsibility, to that entity to answer for that infringement. It is then necessary to identify a natural or legal person who was responsible for the operation of the undertaking at the time when the infringement was committed and can answer for it.<sup>555</sup>
- (408) According to settled case law, where a number of entities are held liable for the participation of one undertaking in the infringement of competition law, the Commission considers them jointly and severally liable for that infringement, including the legal person directly or indirectly managing the undertaking at the time of the infringement.<sup>556</sup>
- (409) The conduct of a subsidiary can be imputed to its parent where the parent exercises a decisive influence over it, namely where that subsidiary does not decide upon its own conduct on the market independently, but carries out, in all material respects, the instructions given to it by the parent company. In effect, as the controlling company in the undertaking, the parent is deemed to have committed the infringement of Article 101 of the Treaty.<sup>557</sup>
- (410) The Commission cannot merely find that a legal entity is able to exert decisive influence over another legal entity, without checking whether that influence was actually exerted. On the contrary, it is, as a rule, for the Commission to demonstrate such decisive influence on the basis of factual evidence, including, in particular, any management power one of the legal entities may have over the other.<sup>558</sup>

---

<sup>554</sup> Judgment of 14 July 1972, *Imperial Chemical Industries v Commission*, C-48/69, EU:C:1972:70, paragraphs 132-133; Judgment of 12 July 1984, *Hydrotherm Gerätebau*, C-170/83, EU:C:1984:271, paragraph 11; Judgment of 12 January 1995, and Court of First Instance in Case T-102/92, *Viho v Commission*, T-102/92, EU:T:1995:3, paragraph 50, cited in judgment of 30 September 2003, *Michelin v Commission*, T-203/01, EU:T:2003:250, paragraph 290.

<sup>555</sup> Judgment of 12 July 1984, *Hydrotherm Gerätebau*, C-170/83, EU:C:1984:271, paragraph 11; Judgment of 3 March 2011, *Areva and Others and Alstom v Commission*, joined cases T-117/07 and T-121/07, EU:T:2011:69, paragraph 84.

<sup>556</sup> Judgment of 6 March 1974, *Istituto Chemicoterapico Italiano and Commercial Solvents v Commission*, joined cases C-6/73 and 7-/73, EU:C:1974:18, paragraph 41; Judgment of 16 November 2000, *Metsä-Serla and Others v Commission*, C-294/98 P, EU:C:200:632, paragraphs 33 and 34; Judgment of 20 March 2002, *HFB Holding and Isoplus Fernwärmetechnik Beteiligungsgesellschaft mbH & Co. KG and Others v Commission*, T-9/99, EU:T:2002:70, paragraphs 54, 524 and 525; Judgment of 15 June 2005, *Tokai Carbon and Others v Commission*, joined cases T-71/03, T-74/03, T-87/03 and T-91/03, EU:T:2005:220, paragraph 60-62; Judgment of 10 September 2009, *Akzo Nobel NV and Others v Commission*, C-97/08 P, EU:C:2009:536, paragraphs 57-62; Judgment of 3 March 2011, *Areva and Others and Alstom v Commission*, joined cases T-117/07 and T-121/07, EU:T:2011:69, paragraph 145.

<sup>557</sup> Judgment of 10 September 2009, *Akzo Nobel and others v Commission*, C-97/08 P, EU:C:2009:536, paragraph 61; Judgment of 1 October 2013, *Elf Aquitaine v Commission*, C-521/09 P, EU:C:2011:620, paragraphs 57 and 63; Judgment of 19 July 2012, *Alliance One International and Standard Commercial Tobacco v Commission and Commission v Alliance One International and Others*, joined cases C-628/10 P and C-14/11 P, EU:C:2012:479, paragraphs 43 and 46; Judgment of 8 May 2013, *ENI v Commission*, C-508/11 P, EU:C:2013:289, paragraph 47; Judgment of 16 November 2000, *Sotra Kopperbergs Bergslags v Commission*, C-286/98 P, EU:C:2000:630, paragraph 29; Judgment of 23 January 2014, *Evonik Degussa et AlzChem v Commission*, T-391/09, EU:T:2014:22, paragraph 77; Judgment of 11 July 2013, *Commission v Stichting Administratiekantoor Portielje*, C-440/11 P, EU:C:2013/514, paragraph 41.

<sup>558</sup> Judgment of 27 March 2014, *Saint Gobain Glass France and others v Commission*, joined cases T-56/09 and T-73/09, EU:T:2014:160, paragraph 311.

(411) However, in particular in those cases where one parent holds all or almost all of the capital in a subsidiary which has committed an infringement of the Union competition rules, there is a rebuttable presumption that that parent company in fact does exercise a decisive influence over its subsidiary. In such a situation, it is sufficient for the Commission to prove that all or almost all of the capital in the subsidiary is held by the parent company in order to take the view that that presumption applies.<sup>559</sup>

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

(412) Based on the facts described in Sections 5 and 7 above, the Commission concludes that (i) in the period from 1 November 2005 to 12 February 2018, employees and company representatives<sup>560</sup> of Alchem International Pvt. Ltd., and (ii) in the period from 1 April 2012 to 12 February 2018, individuals acting on behalf<sup>561</sup> of Alchem International (H.K.) Limited participated in the cartel conduct described in this Decision.<sup>562</sup> The Commission therefore concludes that Alchem International Pvt. Ltd., from 1 November 2005 to 12 February 2018, and Alchem International (H.K.) Limited, from 1 April 2012 to 12 February 2018, are liable for their direct participation in the infringement.

(413) Moreover, throughout the period from 1 April 2012 to 12 February 2018, Alchem International Pvt. Ltd. owned directly 100% of Alchem International (H.K.) Limited. In line with the case-law referred to in Section 8.1, a presumption therefore exists that during the said period, Alchem International Pvt. Ltd. exercised decisive influence over Alchem International (H.K.) Limited. Consequently, the Commission concludes that Alchem International Pvt. Ltd. and Alchem International (H.K.) Limited formed part of the same undertaking in the period from 1 April 2012 to 12 February 2018.

(414) The Commission therefore holds Alchem International Pvt. Ltd. solely liable for its participation in the infringement from 1 November 2005 to 31 March 2012 and jointly and severally liable together with Alchem International (H.K.) Limited for their participation in the infringement from 1 April 2012 to 12 February 2018 and addresses this Decision to them.

## **9. REMEDIES**

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

(415) Where the Commission finds that there has been an infringement of Article 101 of the Treaty and Article 53 of the EEA Agreement, 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.

(416) In the present case, it is not possible to declare with absolute certainty that the infringement has ceased.

---

<sup>559</sup> Judgment of 10 September 2009, *Akzo Nobel and others v Commission*, C-97/08 P, EU:C:2009:536, paragraph 60.

<sup>560</sup> [...] Alchem International Pvt. Ltd. [...]; [...] (who reported to [...] throughout the infringement period); and [...].

<sup>561</sup> [...].

<sup>562</sup> A list of key personnel directly engaged on behalf of Alchem in the illegal contacts is provided in paragraph (42) in Table 1.

- (417) The Commission therefore requires Alchem to bring the infringement to an end (if it has 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.

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

- (418) Under Article 23(2) of Regulation (EC) No 1/2003<sup>563</sup>, the Commission may by decision impose on undertakings fines where, either intentionally or negligently, they infringe Article 101 of the Treaty and/or Article 53 of the EEA Agreement. For each undertaking participating in the infringement, the fine shall not exceed 10% of its total turnover in the preceding business year.
- (419) In fixing the amount of any fine, pursuant to Article 23(3) of Regulation (EC) No 1/2003, regard shall be had both to the gravity and to the duration of the infringement. In setting the fines to be imposed, the Commission will refer 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 1/2003<sup>564</sup> ('the Guidelines on fines').
- (420) In the present case, the Commission considers that, based on the facts described in this Decision and the assessment contained above, Alchem has committed an infringement of Article 101 of the Treaty intentionally or at least negligently. Alchem participated 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. Alchem also participated in regular exchanges of commercially sensitive information concerning the merchant market for SNBB.
- (421) The Commission therefore imposes a fine in this case on Alchem International Pvt. Ltd. and Alchem International (H.K.) Limited (see also recital (414)).

## **9.3. Calculation of the fine**

- (422) In accordance with the Guidelines on fines, a basic amount is to be determined for each undertaking's fine, which results from 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 directly or indirectly relates in the relevant geographic area within the EEA 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 the infringement. The additional amount 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 there are either aggravating or mitigating circumstances.
- (423) The Commission may depart from the methodology set out in the Guidelines where this is justified by the particularities of a given case or the need to achieve deterrence in a particular case.

---

<sup>563</sup> Under Article 5 of Council Regulation (EC) No 2894/94 of 28 November 1994 concerning arrangements of 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 EC Treaty [...] shall apply *mutatis mutandis*'. (OJ L 305/6 of 30 November 1994).

<sup>564</sup> OJ C210, 1.9.2006, p. 2.

### 9.3.1. *Value of sales*

- (424) 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<sup>565</sup>, 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. The value of sales used by the Commission for the determination of the basic amount of the fine is based on the sales of SNBB delivered by Alchem in the EEA.
- (425) Furthermore, the Commission normally takes the sales made by the undertakings during the last full business year of their participation in the infringement.<sup>566</sup> 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 Parties' sales fluctuated considerably during the infringement period, the Commission calculates the value of sales based on the annual average of Alchem's sales during the full financial years<sup>567</sup> of its participation in the infringement (as established in Section 7).
- (426) Based on the information provided by Alchem, the Commission takes for the calculation of the value of sales the amount of EUR [195 000 – 230 000].

### 9.3.2. *Determination of the basic amount of the fine*

- (427) The basic amount of the fine consists of an amount of up to 30% of an undertaking's relevant sales in the EEA, depending on the degree of gravity of the infringement and multiplied by the period in years of the undertaking's participation in the infringement, and an additional amount of between 15% and 25% of the value of an undertaking's relevant sales, irrespective of the duration.<sup>568</sup>

#### 9.3.2.1. Gravity

- (428) 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/or whether or not the infringement has been implemented.
- (429) In its assessment of the gravity in the present case, the Commission takes into account the following facts described in this Decision:
- (a) price fixing and market sharing 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 be set at the higher end of the scale of the value of sales;
  - (b) the infringement was of a multi-faceted nature (price fixing and quota sharing);
  - (c) the infringement covered the whole territory of the EEA.
- (430) Given the specific circumstances of this case, in particular taking into account the criteria outlined in recital (429), the proportion of the value of sales to be taken into account for the calculation of the gravity should be 17 % for Alchem.

---

<sup>565</sup> Point 12 of the Guidelines on fines.

<sup>566</sup> Point 13 of the Guidelines on fines.

<sup>567</sup> Alchem's financial year lasts between 1 April and 31 March.

<sup>568</sup> Points 19-26 of the Guidelines on fines.

#### 9.3.2.2. Duration

- (431) In assessing the fine to be imposed on Alchem, the Commission also takes account of the duration of its participation in the infringement, as described in Section 7. The Commission calculates Alchem's duration based on the number of days of its participation in the infringement.
- (432) The Commission considers the duration of Alchem's participation as lasting from 1 November 2005 to 12 February 2018 as regards Alchem International Pvt. Ltd., which amounts to 4 487 days of participation in the infringement, and from 1 April 2012 to 12 February 2018 as regards Alchem International (H.K.) Limited, which amounts to 2 144 days of participation in the infringement.
- (433) The resulting duration multipliers are 12.28 for Alchem International Pvt. Ltd. and 5.86 for Alchem International (H.K.) Limited.

#### 9.3.2.3. Additional amount

- (434) 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 even entering into horizontal price-fixing, market-sharing and output-limitation agreements.
- (435) 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.
- (436) Given the specific circumstances of this case, taking into account the criteria discussed in Section 9.3.2.1, the percentage to be applied for the additional amount should be 17%.

#### 9.3.2.4. Calculation and conclusion on the basic amount

- (437) Based on the criteria explained in this Section, the basic amount of the fine to be imposed on Alchem in this case is as follows:

**Table 2: Basic amount**

| Entity | Basic amount (EUR)  |
|--------|---------------------|
| Alchem | [445 000 – 535 000] |

#### 9.3.3. Adjustments to the basic amount

##### 9.3.3.1. Aggravating circumstances

- (438) 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.
- (439) No aggravating circumstances are applicable to Alchem.

##### 9.3.3.2. Mitigating circumstances

- (440) 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.

- (441) In its Reply to the SO (specifically for the contacts described in recitals (84), (85), (185), (191), (207), (208), (209) and (216)), Alchem claimed that the other Parties perceived Alchem as an outsider and maverick whose efforts were to expand supply and bring competition to the market. Alchem further argued that it repeatedly refused to cooperate with the other Parties throughout the period considered, citing its behaviour in 2010 towards [...] and in 2017, when Alchem did not agree with the arrangements.<sup>569</sup>
- (442) To support the application of mitigating circumstances, Alchem further claimed that, as Alchem was a latecomer to the SNBB business, [...] had already established a system. It further claimed that [...] took measures to undermine Alchem's capacity to develop its own Duboisia leaves production.<sup>570</sup>
- (443) To further prove that it played a marginal role in the infringement, Alchem also claimed that Alchem's activities were limited to certain market segments and it had a limited market presence in the EEA and a limited size and economic power referring to specific case law.<sup>571</sup>
- (444) The Commission notes that the claims concerning Alchem's role were already replied to in Section 5 on the chronology of relevant contacts and meetings. Regarding Alchem's claim that it was perceived as an outsider and maverick, the Commission highlights that Alchem participated in all aspects of the cartel and took an active role in many instances, for example, when it proposed a new price (see recital (173)) or when [...] exited the market in 2014 and [...] entered it (see recital (189)). The evidence in the file shows that Alchem was and remained part of 'old boys' or 'the old club' (see recitals (212) and (223)). In any case, there is no evidence in the file confirming Alchem's claim that it was perceived as a minor player.
- (445) Furthermore, it is not correct to say that Alchem repeatedly refused to cooperate with the other Parties. Even if in some instances Alchem did not abide by the outcome of the arrangements, it never stopped coordinating (or at least attempting to coordinate) its market behaviour with the other Parties. Furthermore, [...] also indicated that in general throughout the conduct Alchem often changed its strategy, depending on the circumstances. Indeed it is not disputed that in some instances Alchem decided to opportunistically lower the price in order to increase demand.<sup>572</sup> As regards Alchem's references to the *Cheil Jedang*<sup>573</sup> case law<sup>574</sup>, the Commission stresses that contrary to what Alchem pretends, it cannot be considered as a latecomer in the market and the quota allocated to Alchem was at similar or even higher level compared to the other Parties (see for example recital (248)).
- (446) In addition, the Commission notes that Alchem's participation in the conduct cannot be characterised as limited throughout the period considered. Alchem's contacts with the other Parties were constant throughout the period considered and could never be characterised as sporadic. Furthermore, the Commission underlines that Alchem was involved in all aspects of the cartel and, even when in disagreement, never distanced itself from the anticompetitive behaviour but contributed actively to maintain the cartel. Alchem participated in most group meetings throughout the whole period

---

<sup>569</sup> [...].

<sup>570</sup> [...].

<sup>571</sup> [...].

<sup>572</sup> [...].

<sup>573</sup> Judgment of 9 July 2003, *Cheil Jedang Corporation v Commission*, T-220/00, EU:T:2003:193, paragraph 180.

<sup>574</sup> [...].

considered and some meetings were even organised in its booth during the trade fairs (see for example recitals (158) and (180)). The Commission thus underlines that Alchem never had a passive, limited or marginal role in the conduct throughout the period considered. To the contrary, Alchem was always seen as part of the ‘old boys’ or ‘the old club’.

- (447) In addition, Alchem’s claim that the SNBB suppliers were limited geographically in their sales due to the restrictions imposed by certain jurisdictions on the sales of SNBB cannot be accepted for the assessment of mitigating circumstances, as it is evident from the file that Alchem has had an authorisation for Cyprus even before its accession to the EU and sold also to other countries (such as Greece and Germany) within the EEA.<sup>575</sup> All Parties to the proceedings had sales in the EEA throughout the period of their respective participation in the infringement<sup>576</sup> and this is clearly corroborated by the sales data provided.<sup>577</sup> These data show that all the Parties regularly sold SNBB in the EEA with an average annual value of sales amounting to several million euros. In any case, even assuming that sales in the EEA were limited due to regulatory grounds, this would not constitute a mitigating circumstance for Alchem and it would be already reflected in a limited value of sales in the EEA. As regards Alchem’s references to the *Mamoli Robinetteria SpA*,<sup>578</sup> claiming that the differences between undertakings with regard to their respective involvement must be considered as the undertaking’s capacity to access the market, these should be also rejected. The Commission notes that in line with the same judgment ‘*such differences may also be reflected by means of the value of sales that is used in calculating the basic amount of the fine, inasmuch as that value reflects, for each participating undertaking, the scale of its involvement in the infringement in question, in accordance with point 13 of the 2006 Guidelines, under which it is possible to take as a starting point for the calculation of the fines an amount which reflects the economic significance of the infringement and the size of the undertaking’s contribution to it*’.<sup>579</sup> Moreover, as regards Alchem’s reference to the *Pometon* case law<sup>580</sup>, claiming that the capacity of an undertaking to undermine competition and consumer welfare by its unlawful conduct is an important factor that, like its ability to derive profits from the infringement and its size, needs to be considered when determining the individual liability of an undertaking, the Commission notes that these considerations were specific to this case because the Commission departed from the general methodology for the setting of fines when setting the fine for *Pometon* in line with point 37 of the Guidelines on fines.
- (448) Regarding the size of Alchem, its alleged limited market presence and its total turnover, the Commission notes that Alchem was not a smaller market player in the EEA market. As regards Alchem’s reference to the *Campine* case law<sup>581</sup>, claiming that a small operator should not be treated more severely than a larger market

---

<sup>575</sup> [...].

<sup>576</sup> Although Alchem did not have sales in the EEA in 2013-2014. [...].

<sup>577</sup> [...].

<sup>578</sup> See judgment of 26 January 2017, *Mamoli Robinetteria SpA v Commission*, C-19/13 P EU:C:2017:50, paragraph 104. [...].

<sup>579</sup> See, paragraph 106 of the same judgments and to that effect, judgment of 11 July 2013, *Team Relocations and Others v Commission*, C-444/11 P, not published, EU:C:2013:464, paragraph 76.

<sup>580</sup> Judgment of 28 March 2019, *Pometon SpA v Commission*, T-433/16, EU:T:2019:201 paragraphs 376 and 388.

<sup>581</sup> Judgment of 7 November 2019, *Campine and Campine Recycling v Commission*, T-240/17, EU:T:2019:778 paragraph 408.

operator, the Commission did not treat any small operator more severely than a larger one, fully respecting the principles of equal treatment. The Commission stresses that it would be even against the principle of equal treatment if it treated more favourably a smaller player compared to a larger one in the same proceedings albeit in a different procedure. In any event, any smaller size of a participant on the EEA market is already taken into account given the fine is determined on the basis of the value of sales in the EEA (see Section 9.3.1 above). As regards Alchem's references to the case law<sup>582</sup> claiming that the total turnover constitutes an indication of the size and the economic power and that the size is an important factor for determining the gravity of the individual conduct of an undertaking, it can be concluded that there is nothing in the judgments referred to, as explained also in the recitals above, that would contradict Commission's conclusions as regards mitigating circumstances.

(449) The Commission therefore considers that no mitigating factor apply to Alchem.

#### 9.3.4. *Deterrence*

(450) The Commission sets fines at a level sufficient to ensure deterrence as indicated in Point 30 of the Guidelines on fines. On the basis of the information provided by Alchem relating to its total worldwide turnover, the Commission does not apply a deterrence multiplier to Alchem.

#### 9.3.5. *Application of the 10% turnover limit*

(451) The fine imposed on Alchem does not exceed 10% of its total turnover relating to the business year preceding the date of the Commission's decision.<sup>583</sup>

#### 9.3.6. *Application of the Leniency Notice*

(452) Alchem did not submit an application for a reduction of fines in cartel cases and therefore no leniency reduction will be granted.

#### 9.3.7. *Conclusion: final amount of individual fines*

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

**Table 3: Final amount**

| <b>Final amount (EUR)</b> | <b>Entity</b>  |
|---------------------------|--|
| 489 000                   | On Alchem International Pvt. Ltd., of which Alchem International (H.K.) Limited is held jointly and severally liable for the amount of EUR 252 000 |

<sup>582</sup> Judgment of 7 September 2016, P, *Pilkington Group and Others v Commission* C-101/15 P, EU:C:2016:631, paragraph 17, Judgment of 28 2005, P, *Dansk Rørindustri A/S and Others v Commission*, Joined Cases C-189/02 P, C-202/02 P, C-205/02 P bis C-208/02 P und C-213/02, EU:C:2005:408; Judgment of 7 June 1983, *SA Musique Diffusion française and Others v Commission*, Joined Cases 100-103/80, paragraph 121.

<sup>583</sup> Article 23(2) of Regulation (EC) No 1/2003.

HAS ADOPTED THIS DECISION:

*Article 1*

Alchem International Pvt. Ltd., from 1 November 2005 to 12 February 2018, and Alchem International (H.K.) Limited, from 1 April 2012 to 12 February 2018, infringed Article 101(1) of the Treaty and Article 53(1) of the EEA Agreement by participating 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.

*Article 2*

For the infringement referred to in Article 1, the fine of EUR 489 000 is imposed on Alchem International Pvt. Ltd., of which EUR 252 000 jointly and severally with Alchem International (H.K.) Limited.

The fine shall be credited, in euros, within 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 action pursuant to Article 263 of the Treaty is brought before the Court of Justice of the European Union against this Decision, the fine/fines shall be covered by its/their due date, either by providing an acceptable financial guarantee or by making a provisional payment of the fine in accordance with Article 108 of Regulation (EU, Euratom) 2024/2509 of the European Parliament and of the Council<sup>584</sup>.

*Article 3*

Alchem International Pvt. Ltd. and Alchem International (H.K.) Limited shall immediately bring to an end the infringement referred to in Article 1 insofar as they have not already done so.

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

*Article 4*

This Decision is addressed to

- (a) Alchem International Pvt. Ltd., headquartered at 201, Empire Plaza, Mehrauli – Gurgaon Road, Sultanpur New Delhi-110 030, India;

---

<sup>584</sup> Regulation (EU, Euratom) 2024/2509 of the European Parliament and of the Council of 23 September 2024 on the financial rules applicable to the general budget of the Union, OJ L, 26.09.2024.

- (b) Alchem International (H.K.) Limited, headquartered at Rm 1705-06 The L. Plaza. 367-375 Queen's Rd Central, Hong Kong.

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

Done at Brussels, 4.7.2025

*For the Commission*

*(Signed)*  
*Teresa RIBERA*  
*Executive Vice-President*