EUROPEAN COMMISSION
Competition DG

CASE AT.40547-Styrene Monomer

(Only the English text is authentic)

CARTEL PROCEDURE

Council Regulation (EC) 1/2003

Article 7 Regulation (EC) 1/2003

Date: 29/11/2022

EUROPEAN
COMMISSION

Brussels, 29.11.2022
C(2022) 8507 final

COMMISSION DECISION

of 29.11.2022

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.40547 – STYRENE MONOMER)

(Text with EEA relevance)

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(AT.40547 – STYRENE MONOMER)

(Text with EEA relevance)

(Only the ENGLISH text is authentic)

THE EUROPEAN COMMISSION,

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

Having regard to the Agreement on the European Economic Area,

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

Having regard to Commission Regulation (EC) No 773/2004 of 7 April 2004 relating to the conduct of proceedings by the Commission pursuant to Articles 81 and 82 of the EC Treaty[2], and in particular Article 10a thereof,

Having regard to the Commission decisions of 17 July 2020 and of 26 September 2022 to initiate proceedings in this case,

Having given the undertakings concerned the opportunity to make known their views on the objections raised by the Commission pursuant to Article 27(1) of Regulation (EC) No 1/2003 and Article 11(1) of Regulation (EC) No 773/2004,

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

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

Whereas:

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1 OJ L 1, 4.1.2003, p.1. With effect from 1 December 2009, Articles 81 and 82 of the EC Treaty have become Articles 101 and 102, respectively, of the Treaty on the Functioning of the European Union (the "Treaty"). The two sets of provisions are, in substance, identical. Pursuant to Article 5(3) of the Treaty of Lisbon, references in legal acts to Articles 81 and 82 of the EC Treaty are to be understood as references to Articles 101 and 102 of the Treaty when appropriate.

2 OJ L 123, 27.4.2004, p. 18.

1. INTRODUCTION

(1) This Decision relates to a single and continuous infringement of Article 101 of the Treaty and Article 53 of the Agreement on the European Economic Area (the 'EEA Agreement')[3].

(2) The infringement consisted in bilateral and multilateral exchanges of sensitive commercial and pricing-related information and in coordinating a price element related to the purchases of styrene monomer. Geographically, it covered the entire EEA[4]. The infringement lasted from 1 May 2012 until 30 June 2018.

(3) This Decision is addressed to the following legal entities:

(a) INEOS Limited, INEOS Europe AG, INOVYN Enterprises Limited and INEOS Styrolution UK Limited (together referred to as **"INEOS"**);

(b) Synthomer Deutschland GmbH, Synthomer (UK) Limited (formerly Synthomer Limited) and Synthomer plc (formerly Yule Catto & Co plc) (together referred to as **"Synthomer"**);

(c) Trinseo PLC and Trinseo Europe GmbH (together referred to as **"Trinseo"**);

(d) Synbra Holding B.V. and BEWI RAW B.V. (formerly BEWiSynbra RAW B.V. and before that Synbra Technology B.V.) (together referred to as **"Synbra"**);

(e) O.N. Sunde AS and SUNPOR Kunststoff Gesellschaft m.b.H (together referred to as **"Sunpor"**);

(f) Synthos S.A., Synthos Styrenics Services B.V. and Black Forest SICAV-SIF (together referred to as **"Synthos"**).

(4) INEOS, Synthomer, Trinseo, Synbra, Sunpor and Synthos are collectively referred to as the "Parties" or individually as the "Party".

2. THE INDUSTRY SUBJECT TO THE PRESENT PROCEEDINGS

2.1. The product

(5) This case concerns the purchase of styrene monomer ("styrene") on the merchant market. Styrene is an intermediate chemical product which has no end-use in itself. It is a key input for many other chemical products, that in turn are used for a wide range of applications. It is a liquid, homogenous product which does not have different levels or grades.

(6) Styrene is widely traded within the EEA and easily transported over long distances. Transport is usually done by ship or barge but is also possible by rail tank car or truck. Transport costs by barge form an integral part of the value of purchases of

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[3] For the purposes of this Decision, although the United Kingdom withdrew from the European Union as of 1 February 2020, according to Article 92 of the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community (OJ L 29, 31.1.2020, p. 7), the Commission continues to be competent to apply Union law as regards the United Kingdom for administrative procedures which were initiated before the end of the transition period.

[4] For the purposes of this Decision, the EEA is understood to cover the 27 Member States of the European Union and the United Kingdom, as well as Iceland, Liechtenstein and Norway. Accordingly, any references made to the EEA in this Decision are meant to also include the United Kingdom.

styrene. The styrene market in Europe is characterised by the fact that only a few large net sellers and only a few large net buyers are active on the market (alongside numerous smaller buyers).

(7) This case does not cover styrene produced for captive purposes, that is to say, produced and used by the producers for their own consumption.

2.2. The SMCP pricing mechanism

(8) Styrene is sold on the basis of both long-term contracts and on the spot market (i.e. for immediate delivery). To counteract the volatility of styrene prices, long-term[5] styrene supply contracts in the EEA can refer to the Styrene Monthly Contract Price or "SMCP"[6]. The SMCP is not a net price for styrene but forms part of the pricing formula in such contracts.

(9) The price of styrene in long-term supply contracts (where those contracts use the SMCP) is typically the SMCP (minus an individually negotiated discount[7]), used stand-alone or combined with other elements (e.g. spot average or the cost of feedstock) in variable proportion.

(10) In order to establish a SMCP for the upcoming month, the following method was applied:

(a) at the beginning of each month[8], buyers negotiated with sellers with whom they had a long-term supply agreement; they negotiated in pairs, independently and separately from other pairs.

(b) Once a pair of buyer-seller agreed on a desired level of SMCP ("settlement"), the result of that bilateral SMCP settlement was communicated to ICIS (Independent Commodity Intelligence Services), a reporting agency[9], as the views of that specific pair of buyer and seller about the appropriate level of the SMCP for that month[10].

(c) When another pair had reached and notified to ICIS a bilateral settlement at precisely the same SMCP level ("2+2 rule"), that number was then published by ICIS and became the SMCP valid for the entire upcoming month. This figure was used for the pricing of styrene delivered under long-term supply contracts whose pricing formula was based on the SMCP.

(11) This method (the "2+2" system) had been established by the industry in late 2011[11].

(12) In order to be recognised by ICIS as a qualifying set of counterparties, a buyer and a seller must each be "of significant size", and they must have a physical long-term SMCP-based supply contract in place for the relevant year, with supply taking place in Europe[12]. Only a few buyers met these conditions during the infringement period.

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5 Usually, "long-term" contracts are concluded for a year or more.

6 Purchases of styrene which do not reference the SMCP but other pricing systems, such as that operated by […] are not part of this case.

7 The discount is negotiated individually between seller and buyer. It is not part of the conduct that is the object of this case.

8 […]

9 Some other reporting agencies […] are sometimes involved in publishing the initial settlement and/or the final SMCP when it has been agreed by the market operators […].

10 […].

11 […].

12 […].

Over the period of the infringement, all Parties have taken part in the SMCP pricing mechanism[13].

(13) Only those contracts where the SMCP is a part of the pricing formula are within the scope of this case. Its scope does not include purchases made on the styrene spot market[14].

2.3. Undertakings subject to the present proceedings

(14) The following undertakings comprising the legal entities listed below took part in the infringement described below.

2.3.1. The undertaking INEOS

(15) INEOS, a UK-based undertaking, is one of the largest chemical producers in Europe and worldwide, active in different markets such as construction, production of fuels, lubricants, food and packaging, pharmaceuticals and agrochemicals. INEOS had a global turnover of approximately EUR 53 500 million in 2021.

(16) The relevant legal entities are:

(a) INEOS Limited;

(b) INEOS Europe AG;

(c) INOVYN Enterprises Limited;

(d) INEOS Styrolution UK Limited.

2.3.2. The undertaking Synthomer

(17) Synthomer is an undertaking active in different segments of the chemical industry, such as production of acrylic and vinyl aqueous emulsion polymers, speciality polymers and latexes. It is active in markets such as coatings, construction, technical textiles, paper, carpets, foam, adhesives, oil & gas, and synthetic latex gloves. Synthomer had a turnover of approximately EUR 2 710 million in 2021.

(18) The relevant legal entities are:

(a) Synthomer Deutschland GmbH;

(b) Synthomer (UK) Limited (formerly Synthomer Limited);

(c) Synthomer plc (formerly Yule Catto & Co plc).

2.3.3. The undertaking Trinseo

(19) Trinseo is an undertaking manufacturing three product portfolios – plastics, latex binders and synthetic rubbers. Trinseo had a turnover of approximately EUR 4 080 million in 2021.

(20) The relevant legal entities are:

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13 […].

14 The spot prices affect the SMCP, but this relationship is asymmetric; the SMCP price does not affect spot prices, which are determined solely on the basis of prevailing supply and demand dynamics at any given moment. As a practical matter, the primary factor in determining a spot price for a particular spot transaction is a daily price index published by ICIS on the previous day, though this is adjusted upwards or downwards based on the most up-to-date information influencing supply and demand equilibrium (e.g. plant closures), and any issues that are specific to the two counterparties. Spot transactions can take place between any interested seller and buyer, regardless of the existence of a long-term supply contract between them.

(a) Trinseo PLC[15];

(b) Trinseo Europe GmbH.

2.3.4. The undertaking Synbra

(21) Synbra undertaking is a specialist in expanded polystyrene (EPS) and specialty foams for industrial products and sustainable insulation systems. Synbra had a turnover of approximately EUR 217.7 million in 2021.

(22) The relevant legal entities are:

(a) Synbra Holding B.V.;

(b) BEWI RAW B.V. (formerly BEWiSynbra RAW B.V. and before that Synbra Technology B.V.).

2.3.5. The undertaking Sunpor

(23) O.N. Sunde AS operates in chemical production but also in a range of other sectors such as cruise and ferry services, retails sales of sporting and fashion goods, real estate and financial investments. O.N. Sunde had a turnover of approximately EUR 869 million in 2021.

(24) The relevant legal entities are:

(a) O.N. Sunde AS;

(b) SUNPOR Kunststoff Gesellschaft m.b.H.

2.3.6. The undertaking Synthos

(25) Synthos group is operating in five main segments: butadiene rubber ("Synthetic Rubbers"), styrene and styrene derivatives ("Styrene Plastics"), dispersions, adhesives and latex ("Dispersion, Adhesives and Latex"), plant protection products ("Agro") and cosmeceuticals and food supplements ("Care"). Synthos Group had a turnover of approximately EUR 1 850 million in 2021.

(26) Synthos was 100% held by Black Forest SICAV-SIF during the last 5 months of the infringement and at the start of the proceedings[16]. Black Forest SICAV-SIF had a turnover of approximately EUR […] million in 2021.

(27) The relevant legal entities are:

(a) Synthos S.A.;

(b) Synthos Styrenics Services B.V.;

(c) Black Forest SICAV-SIF.

3. PROCEDURE

(28) On 28 September 2017, INEOS applied for immunity under the Commission notice on immunity from fines and reduction of fines in cartel cases[17] ("the Leniency

[15] Trinseo PLC is the legal and economic successor company of Trinseo S.A., 26-28 rue Edouard Steichen, L-2540 Luxembourg City, Grand Duchy of Luxembourg, ultimate parent of Trinseo Europe GmbH during the infringement period. On 8 October 2021, Trinseo S.A. was merged into Trinseo PLC and legally ceased to exist.

[16] In December 2021, Synthos S.A. was transferred to MS Galleon GmbH (which itself operated as MS Galleon AG prior to 30 June 2022).

Notice"). The immunity application was followed by a number of submissions consisting of oral statements and documentary evidence. On 22 May 2018, the Commission granted INEOS conditional immunity from fines pursuant to point 8(a) of the Leniency Notice.

(29) Between 5 and 8 June 2018, the Commission carried out unannounced inspections at the premises of Synthomer, Sunpor and Synthos in the United Kingdom, Austria, France and Poland. In parallel with the inspections, a request for information under Article 18(2) of Regulation (EC) No 1/2003[18] was sent to Trinseo on 6 June 2018 ("6 June 2018 RFI"). The Commission could not carry out inspections at Trinseo's premises since Trinseo is a Swiss-based undertaking and according to the information the Commission had at the time of the inspections, the individuals involved in the conduct were employed by a Swiss-based legal entity. Trinseo confirmed the receipt of this request of information on 6 June 2018. The 6 June 2018 RFI explained the subject matter of the Commission's investigation in the styrene purchasing sector and asked several questions on specific employees of Trinseo who were suspected of being involved in the conduct and on their contacts with other styrene buyers.

(30) On 8 June 2018, Synthos applied for immunity from fines or, in the alternative, for a reduction of the fine under the Leniency Notice.

(31) On 11 June 2018, Sunpor applied for immunity from fines or, in the alternative, for a reduction of the fine under the Leniency Notice.

(32) On 17 September 2018, Trinseo applied for immunity from fines or, in the alternative, for a reduction of the fine under the Leniency Notice.

(33) On 18 October 2018, Synthomer applied for immunity from fines or, in the alternative, for a reduction of the fine under the Leniency Notice.

(34) Following the inspection, the review of the evidence indicated that a sixth undertaking, Synbra, was also likely to be a party to the conduct. The Commission sent Synbra a request for information on 24 October 2018 under Article 18(2) of Regulation (EC) No 1/2003 ("24 October 2018 RFI"). The 24 October 2018 RFI explained the subject matter of the Commission's investigation in the styrene purchasing sector and asked several questions on the specific employee of Synbra who was suspected of being involved in the conduct and on his contacts with other styrene buyers. Synbra replied on 30 November 2018.

(35) Subsequently, on 28 October 2019, the Commission sent requests for information under Article 18(2) of Regulation (EC) No 1/2003 to each of the Parties with questions in particular regarding the factual explanations on the evidence on the file, the functioning of the styrene industry, the SMCP mechanism as well as the values of styrene purchases.

(36) On 17 July 2020, the Commission initiated proceedings pursuant to Article 2(1) of Regulation (EC) No 773/2004[19] against the Parties with a view to engaging in

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

18 Council Regulation (EC) No 1/2003 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).

19 Commission Regulation (EC) No 773/2004 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).

settlement discussions with the Parties according to the rules stipulated in the Settlement Notice[20]. After each of the Parties had confirmed its willingness to engage in settlement discussions, discussions started on 21 September 2020. By Decision adopted on 26 September 2022, the Commission initiated proceedings pursuant to Article 2(1) of Regulation (EC) No 773/2004 against Trinseo PLC, as the legal and economic successor of Trinseo S.A. (recital (20)).

(37) Settlement meetings between the Parties and the Commission took place between 21 September 2020 and 30 June 2022. During those meetings, the Commission informed the Parties of the objections it envisaged raising against them and disclosed the main pieces of evidence in the Commission's file that would be relied on to establish these objections. Between 5 October and 20 November 2020, the parties were granted access to the relevant evidence in the file at Commission premises, including the oral statements. Further access to evidence was granted via email on 22 December 2020 and 7 May 2021. The Parties were […] given access […][21]. The Parties were offered the opportunity to access upon request any of the documents listed. The Commission also provided the Parties with an estimate of the range of fines likely to be imposed by it.

(38) Each Party expressed its view on the objections that the Commission envisaged raising against it. The Parties' comments were carefully considered by the Commission and, where appropriate, taken into account. At the end of the settlement discussions, all Parties considered that there was a sufficient common understanding as regards the potential objections, and the estimate of the range of likely fines, to continue the settlement process.

(39) Between […][22], the Parties submitted to the Commission their formal request to settle pursuant to Article 10a(2) of Regulation (EC) No 773/2004 (the "settlement submissions"). The settlement submission of each Party contained:

(a) an acknowledgement in clear and unequivocal terms of its liability for the infringement summarily described as regards its object, the main facts and legal qualification, including its role and the duration of its participation in the infringement;

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

(c) its confirmation that it has been sufficiently informed of the objections the Commission envisages raising against it and that it has been given sufficient opportunity to make its views known to the Commission;

(d) its confirmation that it does not envisage requesting access to the file or requesting to be heard again in an oral hearing, unless the Commission does

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

21 On the first day of their presence in the Commission premises for the access to the file: INEOS on 5 October 2020, Trinseo on 12 October 2020, Synthos on 26 October 2020, Sunpor on 3 November 2020, Synbra on 10 November 2020 and Synthomer on 16 November 2020.

22 Trinseo S.A. submitted its settlement submission on […]. As Trinseo S.A. ceased to exist following its merger into Trinseo PLC, the latter (as the legal and economic successor of Trinseo S.A.) submitted on […] a new settlement submission.

not reflect its settlement submission in the Statement of Objections and in the decision;

(e) its agreement to receive the Statement of Objections and the final decision pursuant to Articles 7 and 23 of Regulation (EC) No 1/2003 in English.

(40) Each party made its settlement submission conditional upon the imposition of a fine by the Commission, which does not exceed the amount specified in its settlement submission.

(41) On 29 September 2022, the Commission adopted a Statement of Objections addressed to the Parties. All the Parties replied to the Statement of Objections by confirming that it corresponded to the contents of their settlement submissions and that they therefore remained committed to following the settlement procedure.

4. DESCRIPTION OF THE EVENTS

4.1. Nature and scope of the conduct

(42) The conduct consisted of contacts[23] regarding the setting of the SMCP[24].

4.1.1. Objective

(43) The objective of the conduct was to influence the SMCP negotiations to the buyers' advantage with the aim of buying styrene at a lower price, and to promptly reach an alignment among the buyers on the desired level of SMCP.

4.1.2. Scope

(44) The Parties coordinated their future behaviour through bilateral and multilateral contacts[25] relating to the formation of the SMCP, prior to and during the SMCP settlement negotiations.

(45) More precisely, as part of their coordination, the Parties:

(a) exchanged and occasionally agreed on the SMCP proposals they intended to use for the start of the bilateral negotiations with styrene sellers[26];

(b) exchanged commercially sensitive information about the sellers' and other buyers' willingness to enter into settlement and at what level and about the SMCP sellers aimed to achieve[27];

(c) exchanged and occasionally agreed on the SMCP they ultimately wanted to achieve in the bilateral negotiations with styrene sellers[28];

(d) exchanged and occasionally agreed on the price negotiation strategy they would pursue to reach the desired level of SMCP[29];

(e) exchanged in parallel with their negotiations with their sellers commercially sensitive information on the status of negotiations with styrene sellers,

23 […].
24 […].
25 […].
26 […].
27 […].
28 […].
29 […].

including the price increases or reductions that they managed to obtain from them[30];

(f) exchanged and jointly evaluated information on market trends and developments of elements likely to influence the forming of the SMCP, such as the price of feedstock, styrene spot prices, reduced level of feedstock availability, styrene imports, closure or planned maintenance of plants[31]. Some of that information was publicly available.

(46) The exchanges occurred via e-mails, phone[32], […][33], […][34], […][35], […] messages[36]. Physical meetings between certain of the Parties also took place […][37].

4.1.3. Specific features in relation to the conduct of Trinseo

(47) From 2 May 2012 to 31 August 2016, Trinseo was involved only to a limited extent in the collusive conduct since it only participated in bilateral collusive exchanges with INEOS.

4.1.4. Specific features in relation to the conduct of Synthomer

(48) From 1 May 2012 to 31 August 2016, Synthomer was involved only to a limited extent in the collusive conduct since it only participated in bilateral collusive exchanges with INEOS. Synthomer's participation was also more sporadic: in several settlements, Synthomer had been a passive recipient of information or did not participate at all to the collusive exchanges.

4.1.5. Specific features in relation to the conduct of Synbra

(49) From 29 January 2013 to 31 December 2014, i.e. throughout the entire period of its participation, Synbra was involved only to a limited extent in the collusive conduct since it only participated in bilateral collusive exchanges with INEOS.

4.2. Geographic scope of the conduct

(50) The geographic scope of the conduct was EEA-wide. The cartel was implemented in the EEA and was not restricted to any particular territory given the locations of the Parties' production facilities, the non-existence of any legal, technical or economic barriers and the use of SMCP[38] widely in the styrene industry within the EEA[39].

4.3. Duration

(51) The conduct started with the first collusive contact of the Party concerned, i.e. on 1 May 2012 for INEOS[40] and Synthomer[41], on 2 May 2012 for Trinseo[42], on 29

30 […].
31 […].
32 […].
33 […].
34 […].
35 […].
36 […].
37 […].
38 The SMCP that ICIS published was valid in all of Europe […].
39 In past mergers decisions, the geographic market for styrene was considered either global or EEA-wide in scope. See Case COMP/M.8015 - SYNTHOS/INEOS STYRENICS; Case COMP/M.6093 - BASF/INEOS/Styrene/JV; and Case COMP/M.3578 - BP/Nova Chemicals/JV.
40 […].
41 […].
42 […].

January 2013 for Synbra[43], on 1 September 2016 for Synthos[44], and on 30 September 2016 for Sunpor[45].

(52) Based on the available evidence on the file, the last colluded SMCP stopped applying on 30 June 2018 (the next SMCP negotiation round started on 1 July 2018). The Commission, thus, considers 30 June 2018 as the end date of Sunpor's, Synthomer's, Synthos' and Trinseo's participation in the conduct. For INEOS, its participation is considered to have ended on 28 September 2017 when it applied for immunity from fines. For Synbra, the end date is considered to be 31 December 2014[46], which is when the last SMCP where Synbra participated in the collusion stopped applying to it as Synbra moved from the SMCP to another pricing system.

5. LEGAL ASSESSMENT

(53) Having regard to the body of evidence and facts referred to in recitals (5) to (52) and the Parties' clear and unequivocal acknowledgement of the facts and the legal qualification thereof contained in their settlement submissions, and their replies to the Statement of Objections, the legal assessment is set out as follows in recitals (54) to (121).

5.1. Jurisdiction

(54) In this case, the Commission has jurisdiction to apply Article 101 of the Treaty and Article 53 of the EEA Agreement on the basis of Article 56 of the EEA Agreement since the cartel arrangements were capable of having an appreciable effect upon trade between Member States/Contracting Parties.

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

5.2.1. Agreements and concerted practices

5.2.1.1. Principles

(55) Article 101 of the Treaty prohibits *agreements* between undertakings, decisions by associations of undertakings and *concerted practices* which may affect trade between Member States/Contracting Parties and which have as their object or effect the prevention, restriction or distortion of competition within the internal market.

(56) Article 53(1) of the EEA Agreement (which is modelled on Article 101(1) of the Treaty) contains a similar prohibition. However, in the EEA Agreement, the reference in 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 EEA Agreement"[47].

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43 […].

44 […]. Synthos joined the conduct following its acquisition of the EPS business from INEOS. At the time of transfer, a key INEOS employee involved in the conduct also joined Synthos. That employee remained involved in the conduct also in his new capacity as Synthos' employee from that date.

45 […].

46 […].

47 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 recital 15 and Article 6 of the EEA Agreement as well as Article 3(2) of the Agreement between the EFTA States on the establishment of a Surveillance Authority and a Court of Justice.

(57) An *agreement* may be said to exist when the undertakings adhere to a common plan which limits, or is likely to limit, their individual commercial conduct by determining the lines of their mutual action or abstention from action in the market. Although Article 101(1) of the Treaty and Article 53(1) of the EEA Agreement draw a distinction between the concept of "*concerted practices*" and that of "*agreements between undertakings*", the object is to bring within the prohibition of those Articles a form of co-ordination between undertakings by which, without having reached the stage where an agreement properly so-called has been concluded, they knowingly substitute practical co-operation between them for the risks of competition[48]. Thus, conduct may fall under Article 101 of the Treaty and Article 53(1) of the EEA Agreement 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[49].

(58) Article 101(1) of the Treaty and Article 53(1) of the EEA Agreement preclude any direct or indirect contact between economic operators of such a kind as either to influence the conduct on the market of an actual or potential competitor or to reveal to such a competitor the conduct which an operator has decided to follow itself, or contemplates adopting, on the market, where the object or effect of those contacts is to restrict competition[50].

(59) The concepts of *agreement* and *concerted practice* are fluid and may overlap. 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.

(60) It is not necessary to define exactly whether a certain conduct constitutes an *agreement* or a *concerted practice* as long as it is established that: the infringement involved anti-competitive agreements and/or concerted practices and that the participating undertakings intended to contribute, by their own conduct, to the common objectives pursued by all the participants and were aware of the actual conduct planned, or put into effect, by the other undertakings in pursuit of the same objectives or could reasonably have foreseen it and were prepared to take the risk[51].

5.2.1.2. Application to this case

(61) As it emerges from the facts and the evidence described under recitals (43) to (46), the Parties exchanged information and occasionally reached agreements on SMCP positions which they intended to use for the start of their bilateral SMCP settlement negotiations with styrene sellers as well as on their negotiation strategy, and on the final SMCP they ultimately wanted to achieve.

(62) The Parties also exchanged information on their future pricing positions for the upcoming SMCP settlement negotiation round and on the status of the ongoing

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48 Case 48/69, *Imperial Chemical Industries v Commission*, EU:C:1972:70, para. 64.

49 See Case T-7/89, *Hercules* v *Commission*, EU:T:1991:75, para. 256. See also Case 48/69, *Imperial Chemical Industries* v *Commission*, EU:C:1972:70, para. 64, and Joined Cases 40-48/73 etc., *Suiker Unie and others* v *Commission*, EU:C:1975:174, paras 173 and 174.

50 Case T-396/10, *Zucchetti v Commission*, EU:T:2013:446, para. 56 and case-law cited therein.

51 Case C-49/92 P, *Commission v Anic Partecipazioni*, EU:C:1999:356, paras 81 to 87.

SMCP settlement negotiations, as well as on the impact that market trends could have on the SMCP.

(63) The conduct described above presents all the characteristics of an agreement or a concerted practice, or both, in the sense of Article 101(1) of the Treaty and Article 53(1) of the EEA Agreement.

5.2.2. Single and continuous infringement

5.2.2.1. Principles

(64) An infringement of Article 101(1) of the Treaty and/or of Article 53(1) of the EEA Agreement can result not only from an isolated act, but also from a series of acts or from continuous conduct, even if one or more aspects of that series of acts or continuous conduct could also, in themselves and taken in isolation, constitute an infringement of that provision. Accordingly, if the different actions form part of an 'overall plan', because their identical object distorts competition within the common market, the Commission is entitled to impute responsibility for those actions on the basis of participation in the infringement considered as a whole[52].

(65) An undertaking that has participated in such a single and continuous infringement through its own conduct, which falls within the definition of an agreement or a concerted practice having an anti-competitive object for the purposes of Article 101(1) of the Treaty and/or of Article 53(1) of the EEA Agreement and was intended to help bring about the infringement as a whole, may accordingly be liable also in respect of the conduct of other undertakings in the context of the same infringement throughout the period of its participation in the infringement. That is the position where it is shown that the undertaking intended, through its own conduct, to contribute to the common objectives pursued by all the participating undertakings and that it was aware of the anti-competitive conduct planned or put into effect by other undertakings in pursuit of the same objectives or that it could reasonably have foreseen it and was prepared to take the risk[53].

(66) An undertaking may thus have participated directly in all the aspects of anti-competitive conduct comprising a single infringement, in which case the Commission is entitled to attribute liability to it in relation to that conduct as a whole and, therefore, in relation to the infringement as a whole. Equally, the undertaking may have participated directly in only some of the anti-competitive conduct comprising a single infringement, but have been aware of all the other unlawful conduct planned or put into effect by the other participants in the cartel in pursuit of the same objectives, or could reasonably have foreseen that conduct and have been prepared to take the risk. In such a case, the Commission is also entitled to attribute liability to that undertaking in relation to all the anti-competitive conduct comprising such an infringement and, accordingly, in relation to the infringement as a whole[54].

(67) On the other hand, if an undertaking has directly taken part in one or more of the aspects of anti-competitive conduct comprising a single infringement, but it has not been shown that; that undertaking intended, through its own conduct, to contribute to all the common objectives pursued by the other participants in the cartel; and that it

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52 Joined Cases C-204/00 etc., *Aalborg Portland et al.*, EU:C:2004:6, para. 258.

53 Case C-441/11 P, *Commission* v *Verhuizingen Coppens*, EU:C:2012:778, para. 42, Case 49/92 P, *Commission v Anic Partecipazioni*, EU:C:1999:356, para. 83.

54 Case C-441/11 P, *Commission* v *Verhuizingen Coppens*, EU:C:2012:778, para. 43.

was aware of all the other unlawful conduct planned or put into effect by those other participants in pursuit of the same objectives; or that it could reasonably have foreseen all that conduct and was prepared to take the risk, the Commission is entitled to attribute to that undertaking liability only for the conduct in which it participated directly and the conduct planned or put into effect by the other participants in pursuit of the same objectives as those pursued by that undertaking where it has been shown that the undertaking was aware of that conduct or could reasonably have foreseen it and was prepared to take the risk[55].

5.2.2.2. Application to this case

(68) The practices described in recitals (43) to (46) were part of an overall plan pursuing a common objective, namely to influence the SMCP settlement negotiations to the buyers' advantage with the aim of buying styrene at a lower price, and to promptly reach an alignment among the buyers on the level of SMCP.

(69) The conduct related to one single product - styrene - and to the same geographical scope - the EEA - throughout the duration of the infringement. The conduct involved the same undertakings for their respective participation as described in recitals (51) and (52). From the start of the infringement in May 2012, the conduct involved INEOS, Synthomer and Trinseo; they were subsequently joined by Synbra and then Synthos and Sunpor.

(70) Subject to what has been set out in recitals (47) to (49), the conduct was ongoing on a regular (monthly) and continuous basis without interruption and did not consist of isolated or sporadic occurrences. The contacts between the Parties were taking place in the same or similar manner as described in recital (46), involving the same individuals (or their successors as the case may be) and covering identical or largely similar topics as described in recitals (43) to (45).

(71) Each of the Parties knowingly contributed to the realisation of this common objective in the manner appropriate to their own specific circumstances and was aware of the actual conduct planned or put into effect by other participants in pursuit of the same objective or at the very least could reasonably have foreseen it and was prepared to take the risk[56], subject to recital (105)[57].

(72) All these elements taken together demonstrate the addressees of this Decision participated in a single and continuous infringement of Article 101 of the Treaty and of Article 53(1) of the EEA Agreement.

5.2.3. Restriction of competition

5.2.3.1. Principles

(73) To come within the prohibition laid down in Article 101(1) of the Treaty and/or Article 53(1) of the EEA Agreement, an agreement, a decision by an association of undertakings or a concerted practice must have as its object or effect the prevention, restriction or distortion of competition in the internal market.

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55 Case C-441/11 P, *Commission* v *Verhuizingen Coppens*, EU:C:2012:778, para. 44.

56 See Case C-49/92 P, *Commission v Anic Partecipazioni*, EU:C:1999:356, para. 83, Case C-293/13 P, *Del Monte v Commission*, EU:C:2015:416, para. 157, Case C-441/11 P, *European Commission v Verhuizingen Coppens NV*, EU:C:2012:778, para. 42.

57 […].

(74) In that regard, it is apparent from the Court's case-law that certain types of coordination between undertakings reveal a sufficient degree of harm to competition that it may be found that there is no need to examine their effects[58]. That case-law arises from the fact that certain types of coordination between undertakings can be regarded, by their very nature, as being harmful to the proper functioning of normal competition[59]. Article 101 of the Treaty is intended to protect not only the interests of competitors or consumers, but also the structure of the market and thus competition as such[60].

(75) Consequently, certain collusive behaviour, such as that leading to horizontal price-fixing by cartels, is so likely to have negative effects, in particular on the price, quantity or quality of the goods and services, that it may be considered redundant, for the purposes of applying Article 101(1) of the Treaty, to prove that it has actual effects on the market[61].

5.2.3.2. Application to this case

(76) The conduct amounted to an agreement and/or a horizontal concerted practice, which included the exchange of sensitive commercial and pricing-related information and the coordination of a price element[62]. The SMCP forms part of the pricing formula in certain styrene supply contracts of the Parties (recital (9)). It directly influences the actual styrene purchase price under such styrene supply contracts[63]. The conduct adopted by the Parties ultimately aimed at reducing or eliminating uncertainty as to the future pricing behaviour of parties in SMCP settlement negotiations.

(77) The Parties to the conduct refrained from determining independently the commercial policy that they intended to adopt in their SMCP settlement negotiations with the sellers. Instead, they coordinated their behaviour related to these negotiations through direct bilateral and multilateral contacts. Even when a Party did not engage actively in the collusive exchanges in a particular month and only passively received information, it can be presumed that this undertaking would take account of the information exchanged when determining its own conduct on the market[64]. The

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

59 Joined Cases 56/64 and 58/64, *Consten and Grundig* v *Commission*, EU:C:1966:41, Joined Cases C-238/99 P, C-244/99 P, C-245/99 P, C-247/99 P, C-250/99 P to C-252/99 P and C-254/99 P, *Limburgse Vinyl Maatschappij and Others* v *Commission*, EU:C:2002:582, para. 508, Case C-389/10 P, *KME Germany and Others* v *Commission*, EU:C:2011:816, para. 75, Case C-67/13 P, *Groupement des Cartes Bancaires v Commission*, EU:C:2014:2204, para. 50, Case C-286/13 P, *Dole Food and Dole Fresh Fruit Europe v Commission*, EU:C:2015:184, para. 114.

60 Joined Cases C-501/06 P, C-513/06 P, C-515/06 P and C-519/06 P, *GlaxoSmithKline Services and Others* v *Commission and Others*, EU:C:2009:610, para. 63.

61 Case C-67/13 P, *Groupement des Cartes Bancaires v Commission*, EU:C:2014:2204, para. 51, Case C-286/13 P, *Dole Food and Dole Fresh Fruit Europe v Commission*, EU:C:2015:184, para. 115.

62 See Case T-240/17, *Campine NV and Campine Recycling NV v. Commission*, EU:T:2019:778, para. 297, Case T-270/12, *Panalpina World Transport (Holding) and Others v Commission*, EU:T:2016:109, para. 200.

63 See Case T-655/11, *FSL Holdings v Commission*, EU:T:2015:383, paras 246, 328, 329 and 330.

64 See Case C-8/08, *T-Mobile Netherlands and Others*, EU:C:2009:343, para. 33, 35, 41, Case C-286/13 P, *Dole Food and Dole Fresh Fruit Europe v Commission*, EU:C:2015:184, paras 120, 123, 134, Case T-105/17, *HSBC v. Commission*, EU:T:2019:675, para. 60, T-39/06, *Transcatab v Commission*, EU:T:2011:562, para. 165, Case T-180/15, *Icap plc v Commission*, EU:T:2017:795, paras 63 and 75.

Parties knowingly substituted the risks of competition through practical co-ordination between them.

(78) Given that the SMCP is an element of the pricing formulas for styrene purchasing within the scope of this case, the conduct is regarded as having as its object the restriction of competition on the styrene purchasing market within the meaning of Article 101(1) of the Treaty as well as Article 53(1) of the EEA Agreement[65]. There is no need to take into account the effects of the conduct and to consider whether or not the Parties ultimately succeeded in reaching the desired level of SMCP.

(79) Even though some of the sellers may have occasionally heard of some exchanges between buyers, this does not change the anti-competitive nature of the conduct of the buyers, and hence the qualification of the conduct as a by-object restriction of competition.

5.2.4. Effect upon trade between Member States and between Contracting parties to the EEA Agreement

5.2.4.1. Principles

(80) Article 101(1) of the Treaty and Article 53(1) of the EEA Agreement are aimed at agreements and concerted practices which might harm unfettered competition in the EU or the attainment of a single market between the Member States, whether by partitioning national markets or by affecting the structure of competition within the internal market[66].

5.2.4.2. Application to this case

(81) During the relevant period, the Parties purchased styrene from styrene sellers in the EEA. These purchases involved a substantial volume of trade between several Member States/Contracting Parties to the EEA Agreement.

(82) The Parties influenced or attempted to influence the SMCP, which is used for styrene trading in the EEA. The infringement was therefore capable of having an appreciable effect upon trade between Member States and upon trade between the Contracting Parties to the EEA Agreement within the meaning of Article 101(1) of the Treaty and Article 53(1) of the EEA Agreement[67].

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

5.2.5.1. Principles

(83) The provisions of Article 101(1) of the Treaty and Article 53(1) of the EEA Agreement may be declared inapplicable pursuant to Article 101(3) of the Treaty and Article 53(3) of the EEA Agreement, respectively, where an agreement or concerted practice contributes to improving the production or distribution of goods or to promoting technical or economic progress, provided that it allows consumers a fair share of the resulting benefit, does not impose restrictions that are not indispensable to the attainment of those objectives and does not afford the undertakings concerned the possibility of eliminating competition in respect of a substantial part of the

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65 See Case T-62/98, *Volkswagen v Commission*, EU:T:2000:180, para. 178, Case T-264/12, *UTi Worldwide and Others v Commission*, EU:T:2016:112, para. 118.

66 Case T-265/12, *Schenker Ltd v Commission,* EU:T:2016:111, para. 151.

67 See Case C-125/07 P, *Erste Bank der österreichischen Sparkassen v Commission*, EU:C:2009:576, para. 39.

products in question. The undertaking bears the burden of proving that the above conditions are fulfilled.

5.2.5.2. Application to this case

(84) On the basis of the facts before the Commission and of the arguments brought forward by the Parties, there are no indications that the conditions of Article 101(3) of the Treaty and Article 53(3) of the EEA Agreement could be fulfilled with regard to this case.

5.3. Conclusion

(85) On the basis of all the above considerations and of the Parties' clear and unequivocal acknowledgements of their participation in the infringement described above, it is concluded that the conduct presents all the characteristics of a single and continuous infringement of Article 101 of the Treaty and of Article 53 of the EEA Agreement. The single and continuous infringement consisted of the exchange of commercially sensitive information and the coordination, through bilateral and multilateral contacts, of the Parties' future behaviour relating to the SMCP formation, prior to and during the SMCP settlement negotiations.

6. DURATION OF THE INFRINGEMENT

(86) In view of the facts and the evidence set out in recitals (5) to (52), Table 1 sets out the duration of the participation of each Party in the infringement as follows:

TABLE 1 – Duration

Undertaking	Participation in the infringement (start and end dates)		Duration (days)
INEOS	1 May 2012	28 September 2017[68]	1979
SUNPOR	30 September 2016	30 June 2018	639
SYNBRA	29 January 2013	31 December 2014	702
SYNTHOMER	1 May 2012	30 June 2018	2252
TRINSEO	2 May 2012	30 June 2018	2251
SYNTHOS	1 September 2016	30 June 2018	668

7. LIABILITY

7.1. Principles

(87) EU competition law refers to the activities of undertakings and the concept of an undertaking covers any entity engaged in an economic activity, irrespective of its legal status and the way in which it is financed[69].

[68] The date of the submission of the immunity application.

[69] Case C-511/11 P, *Versalis v Commission*, EU:C:2013:386, para. 51.

(88) When such an entity infringes the competition rules, it falls, according to the principle of personal responsibility, to that entity to answer for that infringement. 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 independently its own conduct on the market 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 itself committed the infringement of Article 101 of the Treaty and/or of Article 53 of the EEA Agreement[70].

(89) 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 another one[71].

(90) 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/EEA 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[72].

(91) In addition, when an entity which has committed an infringement of the competition rules is subject to a legal or organisational change, this change does not necessarily create a new undertaking free of liability for the conduct of its predecessor which infringed the competition rules, when, from an economic point of view, the two entities are identical. Where two entities constitute one economic entity, the fact that the entity that committed the infringement still exists does not as such preclude the Commission from imposing a penalty on the entity to which its economic activities were transferred. In particular, applying penalties in this way is permissible where those entities have been under the control of the same person and have, therefore, given the close economic and organisational links between them, carried out, in all material respects, the same commercial instructions[73].

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

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70 Case C-97/08 P, *Akzo Nobel and others v Commission*, EU:C:2009:536, para. 61, Case C-521/09 P, *Elf Aquitaine* v *Commission*, EU:C:2011:620, paras 57 and 63, Joined cases C-628/10 P and C-14/11 P, *Alliance One International and Standard Commercial Tobacco* v *Commission* and *Commission* v *Alliance One International and Others,* EU:C:2012:479, paras 43 and 46, Case C-508/11 P, *ENI* v *Commission*, EU:C:2013:289, para. 47, Case C-286/98 P, *Stora Kopparbergs Bergslags v Commission*, EU:C:2000:630, para. 29, Case T-391/09, *Evonik Degussa et AlzChem v Commission*, EU:T:2014:22, para. 77, Case C-440/11 P, *Commission v Stichting Administratiekantoor Portielje*, EU:C:2013:514, para. 41.

71 Joined Cases T-56/09 and T-73/09, *Saint-Gobain Glass France and others v Commission*, EU:T:2014:160, para. 311.

72 Case C-97/08 P, *Akzo Nobel and others v Commission*, EU:C:2009:536, para. 60.

73 Case C-434/13 P, *Commission v Parker Hannifin Manufacturing and Parker-Hannifin*, EU:C:2014:2456, paras 40 and 41.

7.2. Application in this case

(93) Having regard to the body of evidence and the facts described in recitals (5) to (52), the clear and unequivocal acknowledgements by the Parties in their settlement submissions of the facts and the legal qualification thereof, as well as the parties' replies to the Statement of Objections, liability for the infringement resulting from conduct referred to in recitals (42) to (52) should be imputed to the following legal entities[74].

7.2.1. INEOS

(94) For INEOS' participation in the infringement, the Commission holds liable:

(a) INEOS Europe AG;

(b) INOVYN Enterprises Limited (formerly INEOS Enterprises Limited);

(c) INEOS Styrolution UK Limited;

(d) INEOS Limited.

(95) INEOS Europe AG has clearly and unequivocally acknowledged liability for its direct participation in the infringement from 1 May 2012 to 1 March 2013 and from 1 January 2015 to 28 September 2017.

(96) INOVYN Enterprises Limited (formerly INEOS Enterprises Limited) has clearly and unequivocally acknowledged liability for its direct participation in the infringement from 1 March 2013 to 31 August 2016.

(97) INEOS Styrolution UK Limited has clearly and unequivocally acknowledged liability for its direct participation in the infringement from 1 May 2012 to 1 October 2013.

(98) INEOS Limited has clearly and unequivocally acknowledged that it is jointly and severally liable from 1 May 2012 to 28 September 2017 as the parent company holding indirectly 100% of the shares in INEOS Europe AG, INOVYN Enterprises Limited (formerly INEOS Enterprises Limited) and INEOS Styrolution UK Limited during the infringement period[75]. INEOS Limited is presumed to have exercised decisive influence over INEOS Europe AG, INOVYN Enterprises Limited and INEOS Styrolution UK Limited in that period.

(99) The Commission, therefore, imputes liability for the infringement to INEOS Europe AG, INOVYN Enterprises Limited, INEOS Styrolution UK Limited and INEOS Limited, as follows:

– jointly and severally to **INEOS Europe AG** (for its direct participation from 1 May 2012 to 1 March 2013 and from 1 January 2015 to 28 September 2017), **INOVYN Enterprises Limited** (for its direct participation from 1 March 2013 to 31 August 2016), **INEOS Styrolution UK Limited** (for its direct participation from 1 May 2012 to 1 October 2013) and **INEOS Limited** (from 1 May 2012 to 28 September 2017 as the indirect ultimate parent of INEOS

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74 See Case C-97/08 P, *Akzo Nobel NV and others v Commission*, EU:C:2009:536, paras 60 and 61, Case T-455/14, *Pirelli & C.SpA v Commission*, EU:T:2018:450, paras 68,69, 97, 99, Case C-595/18 P, *The Goldman Sachs Group Inc v Commission*, EU:C:2021:73, esp. paras 29, 31, 35 and 36.

75 Prior to 1 December 2016, the parent company holding indirectly 100% of the shares in INEOS Europe AG, INEOS Enterprises Limited and INEOS Styrolution UK Limited was INEOS AG. INEOS Limited is its economic successor.

Europe AG, INOVYN Enterprises Limited and INEOS Styrolution UK Limited).

7.2.2. Sunpor

(100) For Sunpor's participation in the infringement, the Commission holds liable:

(a) SUNPOR Kunststoff Gesellschaft m.b.H.;

(b) O.N. Sunde AS.

(101) SUNPOR Kunststoff Gesellschaft m.b.H. has clearly and unequivocally acknowledged liability for its direct participation in the infringement from 30 September 2016 to 30 June 2018.

(102) O.N. Sunde AS has clearly and unequivocally acknowledged that it is jointly and severally liable from 30 September 2016 to 30 June 2018 as the parent company holding indirectly 100% of the shares in SUNPOR Kunststoff Gesellschaft m.b.H. during the infringement period. O.N. Sunde AS is presumed to have exercised decisive influence over SUNPOR Kunststoff Gesellschaft m.b.H. in that period.

(103) The Commission, therefore, imputes liability for the infringement to SUNPOR Kunststoff Gesellschaft m.b.H. and O.N. Sunde AS, as follows:

– jointly and severally to **SUNPOR Kunststoff Gesellschaft m.b.H.** (for its direct participation from 30 September 2016 to 30 June 2018) and **O.N. Sunde AS** (from 30 September 2016 to 30 June 2018 as the indirect ultimate parent of SUNPOR Kunststoff Gesellschaft m.b.H.).

7.2.3. Synbra

(104) For Synbra's participation in the infringement, the Commission holds liable:

(a) BEWI RAW B.V. (formerly BEWiSynbra RAW B.V. and before that Synbra Technology B.V.);

(b) Synbra Holding B.V.

(105) As set out in recital (49), Synbra entered into collusive exchanges only with INEOS. The evidence available does not allow it to be concluded that Synbra was or should have been reasonably aware of the exchanges between other Parties. Therefore, Synbra is held liable for the single and continuous infringement only in so far as it participated in bilateral collusive arrangements with INEOS[76].

(106) BEWI RAW B.V. (formerly BEWiSynbra RAW B.V. and before that Synbra Technology B.V.) has clearly and unequivocally acknowledged liability for its direct participation in the infringement from 29 January 2013 to 31 December 2014.

(107) Synbra Holding B.V. has clearly and unequivocally acknowledged that it is jointly and severally liable from 29 January 2013 to 31 December 2014 as the parent company holding indirectly 100% of the shares in BEWI RAW B.V. (formerly BEWiSynbra RAW B.V. and before that Synbra Technology B.V.) during the infringement period. Synbra Holding B.V. is presumed to have exercised decisive influence over BEWI RAW B.V. (formerly BEWiSynbra RAW B.V. and before that Synbra Technology B.V.).

[76] Case C-99/17 P, *Infineon Technologies v Commission*, EU:C:2018:773, para. 177.

(108) The Commission, therefore, imputes liability for the infringement to BEWI RAW B.V. (formerly BEWiSynbra RAW B.V. and before that Synbra Technology B.V.) and Synbra Holding B.V., as follows:

– jointly and severally to **BEWI RAW B.V.** (formerly BEWiSynbra RAW B.V. and before that Synbra Technology B.V.) (for its direct participation from 29 January 2013 to 31 December 2014) and **Synbra Holding B.V.** (from 29 January 2013 to 31 December 2014 as the indirect parent of BEWiSynbra RAW B.V. (formerly BEWiSynbra RAW B.V. and before that Synbra Technology B.V.)).

7.2.4. Synthomer

(109) For Synthomer's participation in the infringement, the Commission holds liable:

(a) Synthomer (UK) Limited;

(b) Synthomer Deutschland GmbH;

(c) Synthomer plc.

(110) Synthomer (UK) Limited and Synthomer Deutschland GmbH have clearly and unequivocally acknowledged liability for their direct participation in the infringement from 1 May 2012 to 30 June 2018.

(111) Synthomer plc has clearly and unequivocally acknowledged that it is jointly and severally liable from 1 May 2012 to 30 June 2018 as the parent company holding indirectly 100% of the shares in Synthomer (UK) Limited and Synthomer Deutschland GmbH during the infringement period. Synthomer plc is presumed to have exercised decisive influence over Synthomer (UK) Limited and Synthomer Deutschland GmbH in that period.

(112) The Commission, therefore, imputes liability for the infringement to Synthomer (UK) Limited, Synthomer Deutschland GmbH and Synthomer plc, as follows:

– jointly and severally to **Synthomer (UK) Limited** (for its direct participation from 1 May 2012 to 30 June 2018), **Synthomer Deutschland GmbH** (for its direct participation from 1 May 2012 to 30 June 2018) and **Synthomer plc** (from 1 May 2012 to 30 June 2018 as the indirect parent of Synthomer (UK) Limited and Synthomer Deutschland).

7.2.5. Trinseo

(113) For Trinseo's participation in the infringement, the Commission holds liable:

(a) Trinseo Europe GmbH;

(b) Trinseo PLC.

(114) Trinseo Europe GmbH has clearly and unequivocally acknowledged liability for its direct participation in the infringement from 2 May 2012 to 30 June 2018.

(115) Trinseo PLC has clearly and unequivocally acknowledged that it is jointly and severally liable from 2 May 2012 to 30 June 2018 as the legal and economic successor of the parent company Trinseo S.A. holding indirectly 100% shares in Trinseo Europe GmbH during the infringement period. Trinseo PLC is presumed to have exercised decisive influence over Trinseo Europe GmbH in that period.

(116) The Commission, therefore, imputes liability for the infringement to Trinseo Europe GmbH and Trinseo PLC, as follows:

– jointly and severally to **Trinseo Europe GmbH** (for its direct participation from 2 May 2012 to 30 June 2018) and **Trinseo PLC** (from 2 May 2012 to 30 June 2018 as the legal and economic successor of Trinseo S.A. which had been, at the time of the infringement, the indirect parent of Trinseo Europe GmbH).

7.2.6. Synthos

(117) For Synthos's participation in the infringement, the Commission holds liable:

(a) Synthos Styrenics Services B.V.;

(b) Synthos S.A.;

(c) Black Forest SICAV-SIF.

(118) Synthos Styrenics Services B.V. has clearly and unequivocally acknowledged liability for its direct participation in the infringement from 1 September 2016 to 30 June 2018.

(119) Synthos S.A. has clearly and unequivocally acknowledged that it is jointly and severally liable from 1 September 2016 to 30 June 2018 as the parent company holding 100% of the shares in Synthos Styrenics Services B.V. during the infringement period. Synthos S.A. is presumed to have exercised decisive influence over Synthos Styrenics Services B.V. in that period.

(120) Black Forest SICAV-SIF has clearly and unequivocally acknowledged that it is jointly and severally liable from 19 January 2018 to 30 June 2018 as the parent company holding indirectly 100% shares in Synthos Styrenics Services B.V. and Synthos S.A. during that period. Black Forest SICAV-SIF is presumed to have exercised decisive influence over Synthos Styrenics Services B.V. and Synthos S.A. in that period.

(121) The Commission, therefore, imputes liability for the infringement to Synthos Styrenics Services B.V., Synthos S.A. and Black Forest SICAV-SIF, as follows:

– jointly and severally to **Synthos Styrenics Services B.V.** (for its direct participation from 1 September 2016 to 30 June 2018), **Synthos S.A.** (as the direct parent of Synthos Styrenics Services B.V. from 1 September 2016 to 30 June 2018) and **Black Forest SICAV-SIF** (from 19 January 2018 to 30 June 2018 as the indirect ultimate parent of Synthos Styrenics Services B.V. and Synthos S.A.).

8. REMEDIES

8.1. Article 7 of Regulation (EC) No 1/2003 – Finding and termination of infringement

(122) Where the Commission finds that there is 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.

(123) Given the gravity of the infringement which is the object of this Decision, it is appropriate for the Commission to require the undertakings to which this Decision is addressed to bring the infringement to an end (if they have not already done so) and to refrain from any agreement, concerted practice or decision of an association which may have the same or a similar object or effect.

8.2. Article 23(2) and (3) of Regulation (EC) No 1/2003 – Fines

(124) Under Article 23(2) of Regulation (EC) No 1/2003, the Commission may by decision impose on undertakings fines where, either intentionally or negligently, they infringe Article 101 of the Treaty and Article 53 of the EEA Agreement[77]. For each undertaking participating in the infringement, the fine must not exceed 10% of its total turnover in the preceding business year.

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

(126) Fines should therefore be imposed on the undertakings to which this Decision is addressed.

(127) In fixing the amount of any fine pursuant to Article 23(3) of Regulation (EC) No 1/2003, regard is to be had both to the gravity and to the duration of the infringement. In setting the fines to be imposed, the Commission will base itself on 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[78] (the "Guidelines on fines").

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

(129) In assessing the fines to be imposed on each undertaking, the Commission will also take account of the respective duration of its participation in the infringement as described in point 24 of the Guidelines on fines.

(130) Finally, the Commission will apply, as appropriate, the provisions of the Leniency Notice and the Settlement Notice.

8.3. Basic amount of the fine

(131) In accordance with the Guidelines on fines, the basic amounts for each Party are determined by adding a variable amount and an additional amount. The variable amount results from a percentage of up to 30% of the value of sales of goods or services to which the infringement relates in a given year (normally, the last full business year of the infringement) multiplied by the number of years of the undertaking's participation in the infringement. The additional amount ("entry fee") is set 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 company if aggravating circumstances, or mitigating circumstances, respectively, are found.

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

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

(132) The Commission may depart from the methodology set out in the Guidelines on fines where this is justified by the particularities of a given case or the need to achieve deterrence in a particular case[79].

8.3.1. The value of purchases

(133) 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[80], that is the annual 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.

(134) This Decision concerns a purchasing cartel. The infringement relates to an element (SMCP) of the purchase prices of styrene (recital (9)).

(135) The Commission considers that, in this case, it is relevant and appropriate to use figures for the value of purchases of styrene rather than value of sales of the downstream products because of the particular nature of the cartel (purchasing cartel)[81] and the fact that the Parties are not all present on the same downstream market(s). The percentage of styrene as input costs for further production and as a percentage of the sales value of their respective downstream products varies depending on the downstream market in which the respective party operates. It would therefore not be appropriate to use values of sales of the downstream products as a basis for setting the basic amount.

(136) The infringement concerns the setting of the SMCP (recitals (43) to (45)). It does not therefore relate to all styrene purchases made by the Parties. It relates to those purchases made under contracts where the SMCP is a part of the pricing formula as described in recital (9). Purchases made on the styrene spot market are unrelated to the infringement. Purchases made under different pricing formulas, not using the SMCP, are also unrelated to the infringement. Therefore, the Commission considers that it is appropriate to take into account only those values of purchases made under the styrene supply contracts where the SMCP is a part of the pricing formula.

(137) The relevant geographical area is the EEA.

(138) The Commission normally takes the value of sales/purchases made by the undertakings during the last full business year of their participation in the infringement[82]. By deviation from point 13 of the Guidelines on fines, and considering certain previous Commission decisions[83], the Commission considers that, in this case, it is appropriate to determine the value of purchases as the annual average of purchases made during full calendar months during the respective infringement period. This takes into account the significant fluctuation of SMCP styrene purchases throughout the duration of the infringement.

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79 Point 37 of the Guidelines on fines.

80 Point 12 of the Guidelines on fines.

81 Commission Decision AT.40018 (Car battery recycling), paras 298 et seq.; confirmed in case T-222/17, *Recylex S.A. Fonderie et Manufacture de Métaux S.A. and Harz-Metall GmbH v Commission*, EU:T:2019:356, para. 124.

82 Point 13 of the Guidelines on fines.

83 E.g. Commission Decision AT.40028 (Alternators and Starters), AT.39633 (Shrimps), AT.40009 (Maritime Car Carriers).

(139) Accordingly, on the basis of the data provided by the Parties, the value of purchases for each Party as set out in Table 2 serves as a basis for setting the basic amount of the fines:

TABLE 2 – Value of purchases

Undertaking	Value of purchases (in EUR)
INEOS	[170 000 000 – 220 000 000]
SUNPOR	[90 000 000 – 110 000 000]
SYNBRA	[45 000 000 – 50 000 000]
SYNTHOMER	[38 000 000 – 50 000 000]
TRINSEO	[35 000 000 – 45 000 000]
SYNTHOS	[120 000 000 – 140 000 000]

(140) Each Party has, in its settlement submission, confirmed its respective value of purchases for the setting of the fine for the infringement.

8.3.2. Determination of the basic amount of the fines

(141) The basic amount consists of an amount of up to 30% of an undertaking's relevant sales, depending on the degree of gravity of the infringement and multiplied by the number of years of the undertaking's participation in the infringement, and an additional amount of between 15% and 25% of the value of an undertaking's relevant sales, irrespective of duration[84].

8.3.2.1. Gravity

(142) The gravity of the infringement determines the percentage of the value of purchases taken into account in setting the fine. In assessing the gravity of the infringement, the Commission will have regard to a number of factors, such as the nature of the infringement, the combined market share of all the undertakings concerned, the geographic scope of the infringement and/or whether or not the infringement has been implemented[85].

(143) In its assessment, the Commission considers the facts described in this Decision, and in particular the fact that collusive conduct with a view of reducing competitive uncertainty is, by its very nature, among the most harmful restrictions of competition. Therefore, the proportion of the value of purchases taken into account for such infringements will generally be set at the higher end of the scale of the value of purchases[86].

(144) Given the specific circumstances of this case, taking into account the nature and the geographic scope of the infringement, the proportion of the value of sales to be taken into account should be 16%.

84 Points 19 to 26 of the Guidelines on fines.
85 Points 21 and 22 of the Guidelines on fines.
86 Point 23 of the Guidelines on fines.

8.3.2.2. Duration

(145) In assessing the fine to be imposed on each undertaking, the Commission will also take into consideration the duration of the infringement, as described in recital (86) and Table 1. The increase for duration (duration multiplier) is determined based on each Party's exact number of days of participation in the infringement, expressed in years.

(146) The time period to be taken into account for the purpose of setting fines, for each party to the infringement, and the multiplier corresponding to that period, is set out in Table 3.

TABLE 3 – Duration

Undertaking	**Participation in the infringement (start and end dates)**		**Duration (days)**	**Duration (years)**
INEOS	1 May 2012	28 September 2017	1979	5.41
SUNPOR	30 September 2016	30 June 2018	639	1.74
SYNBRA	29 January 2013	31 December 2014	702	1.92
SYNTHOMER	1 May 2012	30 June 2018	2252	6.16
TRINSEO	2 May 2012	30 June 2018	2251	6.16
SYNTHOS	1 September 2016	30 June 2018	668	1.82

8.3.2.3. Determination of the additional amount

(147) The infringement committed by the addressees relates to a cartel. Therefore, the Commission will include in the basic amount a sum of between 15% and 25% of the value of purchases to deter undertakings from even entering into such illegal practices, on the basis of the criteria listed with respect to the variable amount[87].

(148) For the purpose of determining the proportion of the value of purchases to be taken into account for the infringement, the Commission considers the factors relating to the nature of the infringement set out in recitals (143) and (144). Therefore, the proportion of the value of purchases to be taken into account for the purpose of setting the additional amount should be set at 16%.

8.3.3. Conclusion on the basic amounts

(149) Based on the criteria explained in recitals (133) to (148), the basic amount of the fine for each party is presented in Table 4.

[87] Point 25 of the Guidelines on fines.

TABLE 4 – Basic amounts of the fine

Undertaking	Basic Amount (in EUR)
INEOS	[170 000 000 – 220 000 000]
SUNPOR	[40 000 000 – 50 000 000]
SYNBRA	[19 000 000 – 23 000 000]
SYNTHOMER	[43 000 000 – 57 000 000]
TRINSEO	[40 000 000 – 50 000 000]
SYNTHOS	[50 000 000 – 70 000 000]

8.4. Adjustments to the basic amount of the fine

8.4.1. Aggravating or mitigating factors

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

(151) No aggravating circumstances have been identified in this case.

(152) Given the specific features in relation to the conduct of Trinseo, Synthomer and Synbra, as described in recitals (47) to (49), the Commission will take into account mitigating circumstances resulting in a reduction of the respective fine for each of these three undertakings, which will reflect the specific situation of each undertaking.

(153) Synbra's, Synthomer's and Trinseo's participation in the infringement is considered limited for the following reasons:

(a) from 2 May 2012 to 31 August 2016, Trinseo was involved only to a limited extent in the collusive conduct since it only participated in bilateral collusive exchanges with INEOS.

(b) From 1 May 2012 to 31 August 2016, Synthomer was involved only to a limited extent in the collusive conduct since it only participated in bilateral collusive exchanges with INEOS. Synthomer's participation was also more sporadic: in several settlements, Synthomer had been a passive recipient of information or did not participate at all in the collusive exchanges.

(c) From 29 January 2013 to 31 December 2014, i.e. through the entire period of its participation, Synbra was involved only to a limited extent in the collusive conduct since it only participated in bilateral collusive exchanges with INEOS. Furthermore, the evidence available does not allow for the conclusion that Synbra was or should reasonably have been aware of the exchanges between other parties (see recital (105)) and therefore of all the essential characteristics of the cartel.

(154) Therefore, the Commission is granting the following individual fines reductions for the factors set out above respectively reflecting a different intensity of involvement in the infringement by the respective Party as analysed in recital (153): 20% for Synbra, 10% for Synthomer, 5% for Trinseo.

8.4.2. Specific increase for deterrence

(155) Particular attention should be paid to the need to ensure that fines have a sufficiently deterrent effect. To that end, the fine to be imposed on undertakings which have a particularly large turnover beyond the sales of goods or services to which the infringement relates may be increased[88].

(156) In this case, the Commission applies such an increase for deterrence on INEOS, which had a global turnover of approximately EUR 53 500 million in 2021. The deterrence multiplier to INEOS is set at 1.2 to take into account its particularly large turnover.

8.4.3. Application of point 37 of the Guidelines on fines

(157) The Guidelines on fines indicate that, in order to achieve the objectives of specific and general deterrence, it is appropriate for the Commission to refer to the value of the sales of goods or services to which the infringement relates as a basis for setting the fine[89].

(158) The mechanism of the general method for the setting of fines is such that the more successful a sales cartel is, the higher the value of sales and thus the amount of the fine. The combination of the value of sales to which the infringement relates and of the duration of the infringement is regarded as providing an appropriate proxy to reflect the economic importance of the infringement as well as the relative weight of each undertaking in the infringement[90].

(159) This infringement, however, concerns a purchasing cartel. The inherent objective of purchasing cartels is not to increase the (purchase) price but, on the contrary, to reduce it or to prevent its increase. The setting of the basic amount of the fines according to the value of purchases would result in a situation in which the nature of the cartel would inherently lead to a reduction of the level of the fines. The more successful the cartel members were in reducing the purchase price, the lower the value of purchases on which the fine is calculated would be[91].

(160) It is thus inherent to the fact that the cartel in this case is a purchasing cartel that the value of purchases in itself is unlikely to be an appropriate proxy for reflecting the economic importance of this infringement.

(161) Therefore, following the general methodology of the Guidelines on fines without any adjustment would also not achieve a sufficiently deterrent effect, which is not only necessary to sanction the undertakings concerned in this case (specific deterrence) but also to deter other undertakings from engaging in this type of infringement (general deterrence).

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88 Point 30 of the Guidelines on fines.

89 Point 5 of the Guidelines on fines.

90 Point 6 of the Guidelines on fines.

91 Commission Decision AT.40018 (Car battery recycling), paras 363 et seq. (confirmed in Case T-222/17, *Recylex S.A. Fonderie et Manufacture de Métaux S.A. and Harz-Metall GmbH v Commission*, EU:T:2019:356, para. 124, and in Case T-240/17, *Campine NV and Campine Recycling NV v Commission*, EU:T:2019:778, paras 342 to 349).

(162) To take this particularity into account and to achieve deterrence, it is appropriate to apply, in line with the Commission's previous practice, under point 37 of the Guidelines on fines, an increase of the amount of the fine in this case by 10% for all undertakings held liable for the infringement.

(163) The increase of the amount of the fine by 10% pursuant to point 37 of the Guidelines on fines is not conditional upon proof that the infringement outlined in this Decision had any actual effects on the market[92].

(164) Though the uplift of the fine is uniformly applied to each Party, their respective specific position was taken into account and reflected in the setting of the basic amount (as the values of purchases differ for each Party), in the determination of the duration of its participation and, for some of them, by the granting of a fine reduction for mitigating circumstances[93].

(165) The resulting adjusted basic amounts are set out in Table 5.

TABLE 5 – Adjusted basic amounts

Undertaking	Adjusted basic Amount (in EUR)
INEOS	[170 000 000 – 220 000 000]
SUNPOR	[45 000 000 – 55 000 000]
SYNBRA	[18 000 000 – 21 000 000]
SYNTHOMER	[43 000 000 – 57 000 000]
TRINSEO	[40 000 000 – 50 000 000]
SYNTHOS	[55 000 000 – 70 000 000]

8.5. Application of the 10% turnover limit

(166) Article 23(2) of Regulation (EC) No 1/2003 provides that the fines imposed on each undertaking must not exceed 10% of its total turnover in the preceding business year.

(167) In this Decision, none of the fines calculated exceeds 10% of the respective undertaking's total turnover in 2021[94].

8.6. Application of the Leniency Notice

INEOS

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92 Case T-240/17, *Campine NV and Campine Recycling NV v Commission*, EU:T:2019:778, para 345 to 347.

93 See, to that effect, Case T-222/17, *Recylex S.A. Fonderie and Others v Commission*, EU:T:2019:356, para. 129.

94 For Synthos, considering that Black Forest SICAV-SIF became the parent company on 19 January 2018 (see recital 26) the 10% limit has been calculated on Synthos S.A.'s turnover for the period 1 September 2016 to 18 January 2018 (when it was the ultimate parent) and on Black Forest SICAV-SIF's turnover for the period 19 January 2018 to 30 June 2018 (see Case C-408/12 P, *YKK Corporation and Others v European Commission*, EU:C:2014:2153, paras. 58 to 65 and the case-law cited). The ceiling is not reached for either of these two periods of time.

(168) INEOS submitted an application under the Leniency Notice on 28 September 2017 and was granted conditional immunity from fines for the infringement on 22 May 2018[95]. INEOS' cooperation fulfilled the requirements of the Leniency Notice throughout the procedure. INEOS is therefore granted immunity from fines for the infringement.

Synthos

(169) On 8 June 2018, Synthos applied for immunity from fines pursuant to point 8 of the Leniency Notice or, in the alternative, for a reduction of the fine that would otherwise have been imposed. Synthos was also the first undertaking to meet the requirements of points 24 and 25 of the Leniency Notice as regards the infringement.

(170) On 17 July 2020, the Commission informed Synthos of its intention to grant Synthos a leniency reduction within the range of 30% to 50% of any fine that would otherwise have been imposed for the infringement.

(171) As outlined in recital (30), Synthos was the first undertaking to qualify for a reduction of the fine in this case. Synthos' leniency application was very timely. Synthos submitted its application on the day when the Commission's unannounced inspection ended. Synthos also provided significant added value by confirming and further supplementing the evidence that was available to the Commission at the time of its submission. Synthos confirmed its own participation in the collusion and provided evidence on […][96] that were previously not known to the Commission. This strengthened the ability of the Commission to incriminate […]. Synthos provided additional new evidence on […][97].

(172) Furthermore, the statements by Synthos confirmed […]. […], helping the Commission to properly define the scope of the investigated case at a very early stage.

(173) […], Synthos provided for further significant information about […][98].

(174) That being said, Synthos' application did also present some shortcomings in terms of its added value to the Commission's investigation. First, some […] as presented to the Commission were not in line with the evidence on the Commission file, […]. Second, some pieces of evidence were already in the Commission's possession as they were collected during the unannounced inspections; hence many pieces of evidence were not new to the Commission but rather corroborated the incriminating evidence which was already on the Commission file. Third, Synthos' explanations of […] contradicted, to some extent, the evidence on the file and the information provided by other Parties and was thus not useful for the Commission investigation. Overall, this justifies a reduction in fines for Synthos at the mid-range within the 30-50% band.

(175) In the light of the assessment in recitals (171) to (174), the fine imposed on Synthos should be reduced by 40%.

Sunpor

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95 This made immunity unavailable for subsequent applicants, which was confirmed to them in their respective leniency band decisions.

96 […].

97 […].

98 […].

(176) On 11 June 2018, Sunpor applied for immunity from fines pursuant to point 8 of the Leniency Notice or, in the alternative, for a reduction of the fine that would otherwise have been imposed. Sunpor was the second undertaking to meet the requirements of points 24 and 25 of the Leniency Notice as regards the infringement.

(177) On 17 July 2020, the Commission informed Sunpor of its intention to grant Sunpor a leniency reduction within the range of 20% to 30% of any fine that would otherwise have been imposed for the infringement.

(178) As outlined in recital (31), Sunpor was the second undertaking to qualify for a reduction of the fine. Sunpor's leniency application was very timely. Sunpor applied for leniency on the first working day after the Commission's unannounced inspection ended.

(179) Sunpor admitted its involvement in the conduct and confirmed that […]. This assisted the Commission in reaching conclusions on […]. It provided […], which helped the Commission understand […]. Sunpor provided additional evidence previously not known to the Commission, in particular […][99]. It described further […][100]. It also supplemented the Commission's file with […].

(180) The Commission considers that the timing of the application at the very early stage of the proceedings and the significant added value of the evidence of which the Commission was not aware at the time of the submission, as well as confirmation by Sunpor as […], justifies the maximum reduction in the band.

(181) In the light of the assessment in recitals (178) to (180), the fine imposed on Sunpor should be reduced by 30%.

Trinseo

(182) On 17 September 2018, Trinseo applied for immunity from fines pursuant to point 8 of the Leniency Notice or, in the alternative, for a reduction of the fine that would otherwise have been imposed. It was also the third undertaking to meet the requirements of points 24 and 25 of the Leniency Notice as regards the infringement.

(183) On 17 July 2020, the Commission informed Trinseo of its intention to grant Trinseo a leniency reduction of up to 20% of any fine that would otherwise have been imposed for the infringement.

(184) As outlined in recital (32), Trinseo was the third undertaking to qualify for a reduction of the fine.

(185) Trinseo admitted its participation in the conduct and provided valuable new evidence not previously known to the Commission, in particular on […][101]. Such evidence was particularly useful to establish […]. Moreover, Trinseo provided […]. […] corroborated the Commission's conclusion on […].

(186) The information provided by Trinseo helped the Commission to fill in some gaps in the evidence on the file […], which strengthened overall the ability of the Commission to shape the case and to prove […]. The significant added value of Trinseo's submission justifies the maximum reduction in the band.

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99 […].

100 […].

101 […].

(187) In the light of the assessment in recitals (184) to (186), the fine imposed on Trinseo should be reduced by 20%.

Synthomer

(188) On 18 October 2018, Synthomer applied for immunity from fines pursuant to point 8 of the Leniency Notice or, in the alternative, for a reduction of the fine that would otherwise have been imposed. It was also the fourth undertaking to meet the requirements of points 24 and 25 of the Leniency Notice as regards the infringement.

(189) On 17 July 2020, the Commission informed Synthomer of its intention to grant Synthomer a leniency reduction of up to 20% of any fine that would otherwise have been imposed for the infringement.

(190) As outlined in recital (33), Synthomer was the fourth undertaking to qualify for a reduction of the fine.

(191) Synthomer provided the Commission with some pieces of evidence of a corroboratory nature, such as […][102]. Given the fact that the cartel was partially functioning via […], the evidence provided by Synthomer further strengthened the ability of the Commission to establish […]. Synthomer further provided […], thus enabling the Commission to determine […].

(192) However, the evidence that was provided is rather of a corroboratory nature and certain pieces of information by Synthomer […] as well as the majority of the evidence provided was already in the possession of the Commission before the submission by Synthomer. This justifies a reduction in fines for Synthomer at the mid-range within the 0-20% band.

(193) In the light of the assessment in recitals (190) to (192), the fine imposed on Synthomer should be reduced by 10%.

8.7. Application of the Settlement Notice

(194) As foreseen in point 32 of the Settlement Notice, the reward for settlement results in a reduction of 10% of the amount of the fine to be imposed on a party after the 10% turnover cap has been applied having regard to the Guidelines on fines. Pursuant to point 33 of the Settlement Notice, when settled cases involve leniency applicants, the reduction of the fine granted to them for settlement will be added to their leniency reward.

(195) Consequently, the amount of the fine to be imposed on each Party should be further reduced by 10%.

8.8. Conclusion

(196) The fines to be imposed pursuant to Article 23(2) of Regulation (EC) No 1/2003 are set out in Table 6.

TABLE 6 – Fines

[102] […].

Undertaking	Fines (in EUR)
INEOS	0
SUNPOR	31 720 000
SYNBRA	17 215 000
SYNTHOMER	43 011 000
TRINSEO	32 621 000
SYNTHOS	32 505 000

HAS ADOPTED THIS DECISION:

Article 1

The following undertakings infringed Article 101 of the Treaty and Article 53 of the EEA Agreement by participating, during the periods indicated, in a single and continuous infringement consisting in bilateral and multilateral exchanges of sensitive commercial and pricing-related information and in coordinating a price element related to the purchases of styrene monomer within the entire European Economic Area:

(a) INEOS Limited from 1 May 2012 to 28 September 2017; INEOS Europe AG from 1 May 2012 to 1 March 2013 and from 1 January 2015 to 28 September 2017; INOVYN Enterprises Limited from 1 March 2013 to 31 August 2016; and INEOS Styrolution UK Limited from 1 May 2012 to 1 October 2013;

(b) Synthomer Deutschland GmbH, Synthomer (UK) Limited (formerly Synthomer Limited) and Synthomer plc (formerly Yule Catto & Co plc) from 1 May 2012 to 30 June 2018;

(c) Trinseo PLC and Trinseo Europe GmbH from 2 May 2012 to 30 June 2018;

(d) Synbra Holding B.V. and BEWI RAW B.V. (formerly BEWiSynbra RAW B.V. and before that Synbra Technology B.V.) from 29 January 2013 to 31 December 2014;

(e) O.N. Sunde AS and SUNPOR Kunststoff Gesellschaft m.b.H from 30 September 2016 to 30 June 2018;

(f) Synthos S.A. and Synthos Styrenics Services B.V. from 1 September 2016 to 30 June 2018; and Black Forest SICAV-SIF from 19 January 2018 to 30 June 2018.

Article 2

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

(a) on INEOS Europe AG, INOVYN Enterprises Limited, INEOS Styrolution UK Limited and INEOS Limited jointly and severally liable: EUR 0;

(b) on SUNPOR Kunststoff Gesellschaft m.b.H. and O.N. Sunde AS jointly and severally liable: EUR 31 720 000;

(c) on BEWI RAW B.V. and Synbra Holding B.V. jointly and severally liable: EUR 17 215 000;

(d) on Synthomer (UK) Limited, Synthomer Deutschland GmbH and Synthomer plc jointly and severally liable: EUR 43 011 000;

(e) on Trinseo Europe GmbH and Trinseo PLC jointly and severally liable: EUR 32 621 000;

(f) out of a total fine of EUR 32 505 000:

– on Synthos Styrenics Services B.V. and Synthos S.A. jointly and severally liable: EUR 24 573 000;

– on Synthos Styrenics Services B.V., Synthos S.A. and Black Forest SICAV-SIF jointly and severally liable: EUR 7 932 000.

The fines shall be credited, in euros, within 3 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.40547

After the expiry of that period, interest shall automatically be payable at the interest rate applied by the European Central Bank to its main refinancing operations on the first day of the month in which this Decision is adopted, plus 3.5 percentage points.

Where an undertaking referred to in Article 1 brings an action against this Decision before the General Court, that undertaking shall cover the fine by the due date, by either providing an acceptable financial guarantee or by making a provisional payment of the fine in accordance with Article 108 of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council[103].

Article 3

The undertakings listed in Article 1 shall immediately bring to an end the infringement referred to in that Article insofar as they have not already done so.

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

Article 4

This Decision is addressed to:

(a) INEOS Limited, c/o IQ EQ, Victoria Road, Douglas, IM2 4DF, Isle of Man;

(b) INEOS Europe AG, Avenue des Uttins 3, 1180 Rolle, Switzerland;

(c) INOVYN Enterprises Limited, Bankes Lane Office, Bankes Lane, PO BOX 9, Runcorn, Cheshire, WA7 4JE, United Kingdom;

(d) INEOS Styrolution UK Limited, Hawkslease, Chapel Lane, Lyndhurst, Hampshire, SO43 7FG, United Kingdom;

(e) Synthomer Deutschland GmbH, Werrastraße 10, 45768 Marl, Germany;

(f) Synthomer (UK) Limited, Central Road, Temple Fields, Harlow, Essex, CM20 2BH, United Kingdom;

(g) Synthomer plc, Central Road, Temple Fields, Harlow, Essex, CM20 2BH, United Kingdom;

[103] Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the European Union (OJ L 193, 30.7.2018, p. 1).

(h) Trinseo PLC, Riverside One, Sir John Rogerson's Quay, Dublin 2, Dublin D02 X576, Ireland;

(i) Trinseo Europe GmbH, Gwattstrasse 15, 8808 Pfäffikon, Switzerland;

(j) Synbra Holding B.V., Zeedijk 25, 4871 NM Etten-Leur, Noord-Brabant, The Netherlands;

(k) BEWI RAW B.V., Zeedijk 25, 4871 NM Etten-Leur, Noord-Brabant, The Netherlands;

(l) O.N. Sunde AS, Bryggegata 3, 0250 Oslo, Norway;

(m) SUNPOR Kunststoff Gesellschaft m.b.H, Tiroler Straße 14, 3105 St. Pölten, Austria;

(n) Synthos S.A., Chemików 1, 32-600 Oświęcim, Poland;

(o) Synthos Styrenics Services B.V., Lijndonk 25, 4825 BG Breda, The Netherlands;

(p) Black Forest SICAV-SIF, rue de l'Eau 18, L-1449 Luxembourg, Grand Duchy of Luxembourg.

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

Done at Brussels, 29.11.2022

For the Commission
Margrethe VESTAGER
Executive Vice-President