C/2024/6961

18.11.2024

Summary of Commission Decision

of 19 October 2023

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

(Case AT.40636 – SNBB)

(notified under document number C(2023) 6863)

(Only the English text is authentic)

(Text with EEA relevance)

(C/2024/6961)

On 19 October 2023, the Commission adopted a Decision relating to a proceeding under Article 101 of the Treaty on the Functioning of the European Union and Article 53 of the EEA Agreement. In accordance with the provisions of Article 30 of Council Regulation (EC) No 1/2003 ([1]), the Commission herewith publishes the names of the parties and the main content of the decision, including any penalties imposed, having regard to the legitimate interest of undertakings in the protection of their business secrets.

1. INTRODUCTION

(1) The Decision relates to a single and continuous infringement of Article 101(1) of the Treaty on the Functioning of the European Union and Article 53(1) of the EEA Agreement. The infringement consisted of bilateral and multilateral contacts regarding sales prices and the allocation of quotas on the worldwide merchant market for N-Butylbromide Scopolamine/Hyoscine ('SNBB') ([2]), including the European Economic Area ('EEA').

(2) SNBB is an Active Pharmaceutical Ingredient ('API') and an important input material for the production of the drug Buscopan and its generic versions. These are medications used in the treatment of motion sickness, abdominal cramps, and post-operative nausea and vomiting. SNBB is commonly extracted from the leaves of Duboisia trees, which are a natural source of SNBB.

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

a) Alkaloids of Australia Pty. Limited;

b) Alkaloids Corporation;

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

d) C-squared PHARMA S.à r.l.;

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

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

(4) The undertakings mentioned in paragraphs 3(a) – 3(c) and 3(e) are together referred to as 'SNBB producers' and the undertakings in paragraphs 3(d) and 3(f) as 'SNBB distributors'.

([1]) OJ L 1, 4.1.2003, p. 1.

([2]) SNBB is the acronym often used in the industry. The product is also known as Butylscopolamine bromide, Scopolamine butylbromide and Hyoscine butylbromide.

2. **CASE DESCRIPTION**

2.1. **Procedure**

(5) Following an immunity application by C2 PHARMA on 15 April 2019 under the Leniency Notice ([3]), the Commission carried out unannounced inspections between 17 and 20 September 2019.

(6) On 19 September 2019, Transo-Pharm applied for immunity or, in the alternative, for reduction of fines. The application was followed by the leniency application by Linnea on 29 October 2019.

(7) On 20 October 2021, the Commission initiated proceedings under Article 11(6) of Regulation (EC) No 1/2003 ([4]) against the Addressees of the Decision and an additional undertaking with a view to engaging in settlement discussions with them under the Settlement Notice ([5]). Settlement discussions with the Addressees and the additional undertaking took place between December 2021 and May 2023. Each Addressee then submitted its formal request to settle pursuant to Article 10a(2) of Regulation (EC) No 773/2004 ([6]).

(8) The additional undertaking did not submit a formal request to settle pursuant to Article 10a(2) of Regulation (EC) No 773/2004 ([7]).

(9) On 17 July 2023, the Commission adopted a statement of objections addressed to the Addressees. The Addressees replied to the statement of objections confirming that it corresponded to the content of their settlement submissions and that they remained committed to following the settlement procedure.

(10) The Advisory Committee on Restrictive Practices and Dominant Positions issued a favourable opinion on 16 October 2023.

(11) On 16 October 2023, the Hearing Officer issued a final report in this case.

(12) The Commission adopted the Decision on 19 October 2023.

2.2. **Summary of the infringement**

(13) The conduct that is the subject of these proceedings consisted of bilateral and multilateral contacts involving the Addressees regarding sales prices and the allocation of quotas ([8]) on the worldwide merchant market for SNBB.

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

([3]) Commission notice on Immunity from fines and reduction of fines in cartel cases (OJ C 298, 8.12.2006, p. 17).
([4]) Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty(OJ L 1 of 4.1.2003, p. 1).
([5]) Commission Notice on the conduct of settlement procedures in view of the adoption of Decisions pursuant to Article 7 and Article 23 of Council Regulation (EC) No 1/2003 in cartel cases (OJ C 167, 2.7.2008, p. 1).
([6]) Commission Regulation (EC) No 773/2004 of 7 April 2004 relating to the conduct of proceedings by the Commission pursuant to Articles 81 and 82 of the EC Treaty (OJ L 123, 27.4.2004, p. 18). Regulation as amended by Commission Regulation (EC) No 622/2008 (OJ L 171, 1.7.2008, p. 3) and Commission Regulation (EU) 2015/1348 (OJ L 208, 5.8.2015, p. 3).
([7]) Concerning the additional undertaking, the Commission has reverted to the standard procedure for the adoption of a possible decision pursuant to Articles 7 and 23 of Regulation (EC) No 1/2003.
([8]) The quotas were allocated per SNBB producer.

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

(16) The infringement covered by the Decision was EEA-wide and lasted from 1 November 2005 to 17 September 2019.

2.3. **Addressees and duration**

(17) The Addressees of the Decision are held liable for the infringement for the following durations:

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

2.4. **Remedies**

(18) The Decision applies the 2006 Guidelines on Fines ([9]).

2.4.1. *Basic amount of the fine*

(19) In setting the fines, the Commission took into account the annual average of each Addressee's sales of SNBB delivered in the EEA during the entire infringement period. The Commission included intragroup sales to the extent that such sales are captive sales in the EEA ([10]).

(20) Moreover, in light of the specific business model pursued by SNBB distributors, the Commission calculated their fine based on the difference between the purchasing price of SNBB paid by SNBB distributors to SNBB producers and the selling price of SNBB delivered by the respective SNBB distributor to independent third customers in the EEA.

(21) In addition, the Commission took into account the fact that cartels are, by their very nature, among the most harmful restrictions of competition, the duration of the infringement, its multifaceted nature, the fact that the infringement covered the EEA and an additional amount to deter undertakings from entering into such practices.

2.4.2. *Adjustments to the basic amount*

(22) The Commission did not apply any aggravating or mitigating circumstances.

([9]) 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).

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

2.4.3. *Application of the 10 % turnover limit*

(23) In case of Alkaloids of Australia, the fine (before the application of the leniency and settlement reductions) exceeded 10 % of the total worldwide turnover in the business year preceding the date of the Decision and it was reduced accordingly.

2.4.4. *Application of the 2006 Leniency Notice*

(24) The Commission granted C2 PHARMA full immunity from fines. The Commission granted a 50 % fine reduction to Transo-Pharm and 30 % to Linnea.

2.4.5. *Application of the Settlement Notice*

(25) As a result of the application of the Settlement Notice, the amount of the fines was further reduced by 10 % for all Addressees.

3. **CONCLUSION**

(26) The following fines were imposed pursuant to Article 23(2) of Regulation (EC) No 1/2003:

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

(b) Alkaloids Corporation: EUR 537 000

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

(d) C-squared PHARMA S.à r.l.: EUR 0

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

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