EUROPEAN COMMISSION
Competition DG

CASE AT.40410-ETHYLENE

(Only the English text is authentic)

CARTEL PROCEDURE

Council Regulation (EC) 1/2003

Article 7 Regulation (EC) 1/2003

Date: 14/07/2020

EUROPEAN
COMMISSION

Brussels, 14.7.2020
C(2020) 4817 final

COMMISSION DECISION

of 14.7.2020

relating to a proceeding under Article 101 of the Treaty on the Functioning of the European Union

(AT.40410 - ETHYLENE)

(Only the ENGLISH text is authentic)

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COMMISSION DECISION

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relating to a proceeding under Article 101 of the Treaty on the Functioning of the European Union

(AT.40410 - ETHYLENE)

(Only the ENGLISH text is authentic)

THE COMMISSION,

Having regard to the Treaty on the Functioning of the European Union[1],

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[2], and in particular Articles 7 and 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[3], as amended by Commission Regulation (EC) No 622/2008 of 30 June 2008[4] and Commission Regulation (EU) 2015/1348 of 3 August 2015[5] as regards the conduct of settlement procedures in cartel cases, and in particular Article 10a thereof,

Having regard to the Commission Decision of 10 July 2018 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 on 10 July 2020,

Having regard to the final report of the Hearing Officer in this case issued on 10 July 2020,

Whereas:

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1 OJ C 115, 9.5.2008, p. 47.

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

3 OJ L 123, 27.4.2004, p. 18.

4 OJ L 171, 1.7.2008, p. 3.

5 OJ L 208, 5.8.2015, p. 3.

1. INTRODUCTION

(1) This Decision relates to a single and continuous infringement of Article 101 of the Treaty on the Functioning of the European Union (the 'TFEU'). The infringement consisted in exchanging sensitive commercial and pricing-related information and in fixing a price element related to the purchases of ethylene. The infringement took place between 26 December 2011 and 29 March 2017. Geographically, the infringement covered the territories of the Member States of the European Union ('the Union') in Belgium, France, Germany and the Netherlands.

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

(a) Westlake Chemical Corporation, Westlake Germany GmbH & Co. KG, Vinnolit GmbH & Co. KG and Vinnolit Holdings GmbH (collectively referred to as **"WESTLAKE"**)

(b) ORBIA ADVANCE CORPORATION, S.A.B. de C.V.[6] and VESTOLIT GmbH (collectively referred to as **"ORBIA"**)

(c) Clariant AG and Clariant International AG (collectively referred to as **"CLARIANT"**)

(d) Celanese Corporation, Celanese Services Germany GmbH and Celanese Europe B.V. (collectively referred to as **"CELANESE"**)

2. THE INDUSTRY SUBJECT TO THE PROCEEDINGS

2.1. The product concerned by the infringement

(3) The product concerned by the anti-competitive conduct is ethylene purchased on the merchant market. It does not cover ethylene produced for captive purposes, that is to say, produced and used by the producers for their own consumption.

(4) Ethylene is a colourless flammable gas produced from naphtha and gas by means of steam cracking. It is widely used in the chemical industry for the production of various chemical products.

(5) Due to high transport costs, ethylene purchased by European customers is generally sourced from suppliers located within the European Economic Area (EEA). In the Member States of the EU in Northwest Europe (Belgium, France, Germany and the Netherlands, ethylene is almost exclusively transported via pipelines from sellers´ production facilities (steam crackers) to production facilities of the buyers. In other parts of the Union, where the pipeline networks are less developed, ethylene is transported by ship and trucks.

(6) The purchase price of ethylene depends on volatile market factors (for example, raw material prices, supply/demand relationship, and captive use of ethylene). In order to reflect the risk of price volatility in ethylene supply agreements - and to allow for a benchmark against which ethylene trades can be priced - ethylene supply agreements especially in Belgium, France, Germany and the Netherlands often refer to the so-called ethylene Monthly Contract Price (the 'MCP') reported by private and independent reporting agencies, such as […]. Pricing formulas based on other elements (such as feed stock prices, oil prices, cracker margins, or ethylene prices in

[6] Until 5 September 2019 the legal entity was called Mexichem S.A.B. de C.V.

other regions such as the ethylene market in the United States of America) are also used in certain supply contracts, […].[7]

(7) The MCP is not a net price for ethylene, but instead forms part of the pricing formula in certain ethylene supply agreements[8] especially in Belgium, France, Germany and the Netherlands, and functions as a reference price for certain chemical products, such as polyethylene.[9] The MCP thus directly influences the actual ethylene purchase price paid in transactions made under certain ethylene supply agreements especially in Belgium, France, Germany and the Netherlands and in certain transactions on the ethylene spot market[10].

2.2. The MCP 'Settlement' process

(8) In order to establish an ethylene MCP for a given upcoming month, two separate but identical bilateral agreements (also called 'settlements') between two different pairs of suppliers and buyers have to be reached (2+2 rule) as described in recital (9).

(9) After one pair of a supplier and a buyer has reached an agreement on the price for the following month, they communicate it to the private and independent reporting agencies, such as […].[11] The agencies publish this agreement - *"initial settlement"* - to the market.[12] After another pair of a buyer and a supplier settles at an identical price, this price becomes the MCP for the following month via a publication by those agencies.[13] The agencies compete to be the first to report on the MCP.[14]

(10) Companies participate in the MCP 'settlement' process on a voluntary basis. This means that, while some companies might participate very often, others may not be active at all. There is also no obligation for participating companies to submit all relevant information to the reporting agencies. 'Settlement' negotiations usually take place after publication of the relevant market analysts' pricing forecasts in the last few days of the preceding month. The addressees of this Decision (also referred to as 'parties' or individually 'party') by this Decision regularly took part in the 'settlement' negotiations on a monthly basis; they also were among settling parties.

2.3. The undertakings subject to the proceedings

(11) The following undertakings, comprising the legal entities referred to in recitals (12) to (19) were involved in the infringement described in recitals (38) to (47).

2.3.1. Undertaking WESTLAKE

(12) WESTLAKE is one of the leading PVC manufacturers in Europe and worldwide. The relevant legal entities of the WESTLAKE group that the Commission regards for the purposes of this Decision as constituting a single undertaking at the time of the infringement are:

– Westlake Chemical Corporation with registered offices at 2801 Post Oak Boulevard, Houston, Texas 77056, United States of America

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7 […]
8 […]
9 For example, […].
10 […]
11 […]
12 […]
13 […]
14 […].

– Westlake Germany GmbH & Co. KG with registered offices at Carl-Zeiss-Ring 25, 85737, Ismaning, Germany

– Vinnolit GmbH & Co. KG with registered offices at Carl-Zeiss-Ring 25, 85737, Ismaning, Germany

– Vinnolit Holdings GmbH with registered offices at Carl-Zeiss-Ring 25, 85737, Ismaning, Germany

(13) The undertaking's world-wide consolidated turnover was USD 8 118 million (approx. EUR 7 251 million) in 2019[15].

2.3.2. Undertaking ORBIA

(14) ORBIA is a global specialty chemicals manufacturer. The relevant legal entities of the ORBIA group that the Commission regards for the purposes of this Decision as constituting a single undertaking at the time of the infringement are:

– ORBIA ADVANCE CORPORATION, S.A.B. de C.V. with registered offices at Paseo de la Reforma No. 483, Floor 47, Colonia Cuauhtémoc, C.P. 06500, Mexico City, Mexico

– VESTOLIT GmbH with registered offices at Paul-Baumann-Straße 1, 45772 Marl, Germany

(15) The undertaking's world-wide consolidated turnover was USD 6987 million (approx. EUR 6241 million) in 2019[16].

2.3.3. Undertaking CLARIANT

(16) CLARIANT is one of the world’s leading specialty chemical manufacturers. The relevant legal entities of the CLARIANT group that the Commission regards for the purposes of this Decision as constituting a single undertaking at the time of the infringement are:

– Clariant AG with registered offices at Rothausstrasse 61, 4132 Muttenz, Switzerland

– Clariant International AG with registered offices at Rothausstrasse 61, 4132 Muttenz, Switzerland

(17) The undertaking's world-wide consolidated turnover was CHF 4 399 million (approx. EUR 3 955 million) in 2019[17].

2.3.4. Undertaking CELANESE

(18) CELANESE is a global specialty chemical manufacturer active in different areas of the chemical industry. The relevant legal entities of the CELANESE group that the Commission regards for the purposes of this Decision as constituting a single undertaking at the time of the infringement are:

– Celanese Corporation with registered offices at 222 W. Las Colinas Blvd., Suite 900N, Irving, TX 75039 - 5421, United States of America

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15 The exchange rate applied is the European Central Bank USD/EUR average exchange rate for 2019.

16 The exchange rate applied is the European Central Bank USD/EUR average exchange rate for 2019.

17 The exchange rate applied is the European Central Bank CHF/EUR average exchange rate for 2019.

– Celanese Services Germany GmbH with registered offices at Am Unisys-park 1, 65843 Sulzbach, Germany

– Celanese Europe B.V. with registered offices at The New Atrium, Strawinskylaan 3105, 1077 ZX Amsterdam, the Netherlands

(19) The undertaking's world-wide consolidated turnover was USD 6 297 million (approx. EUR 5 625 million) in 2019[18].

3. PROCEDURE

(20) On 29 June 2016, WESTLAKE applied for immunity under the Commission notice on immunity from fines and reduction of fines in cartel cases[19] ('the Leniency Notice') in relation to collusive contacts related to the purchases of ethylene in the Union/EEA. The immunity application was followed by a number of submissions consisting of oral statements and documentary evidence. On 28 March 2017, the Commission granted WESTLAKE conditional immunity from fines pursuant to point 8(a) of the Leniency Notice.

(21) Between 16 and 19 May 2017, the Commission carried out unannounced inspections under Article 20(4) of Regulation (EC) 1/2003[20] at the premises of CELANESE, CLARIANT and ORBIA in Germany and the Netherlands.

(22) On 23 May 2017, ORBIA applied for immunity from fines or, in the alternative, for a reduction of the fine under the Leniency Notice.

(23) On 6 June 2017, CLARIANT applied for immunity from fines or, in the alternative, for a reduction of the fine under the Leniency Notice.

(24) On 3 July 2017, CELANESE applied for immunity from fines or, in the alternative, for a reduction of the fine under the Leniency Notice.

(25) The Commission sent several requests for information to other purchasers of ethylene in the EEA under Article 18 of Regulation (EC) No 1/2003 between June 2017 and October 2017.

(26) The Commission sent requests for information to the parties under point 12 of the Leniency Notice on 20 April 2018 asking for the value of purchases in the relevant years of the infringement. All parties replied.

(27) On 10 July 2018, the Commission initiated proceedings pursuant to Article 11(6) of Regulation (EC) No 1/2003 against the addressees of this Decision with a view to engaging in settlement discussions with them under the Commission Notice on the conduct of settlement procedures in view of the adoption of Decisions pursuant to Article 7 and Article 23 of Regulation (EC) No 1/2003 in cartel cases[21] (the 'Settlement Notice').

(28) On 10 July 2018, the Commission adopted decisions in which it preliminarily concluded that ORBIA, CLARIANT and CELANESE had met the conditions of

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18 The exchange rate applied is the European Central Bank USD/EUR average exchange rate for 2019.

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

20 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).

21 OJ C 167, 2.7.2008, p. 1.

point 27 of the Leniency Notice and established the applicable ranges of the reductions in the level of fines that each of the undertakings would receive in respect of the infringement, provided that they continued to meet the conditions of point 12 of the Leniency Notice.

(29) After each party had confirmed its willingness to engage in settlement discussions, those discussions commenced. Settlement meetings and contacts between each party and the Commission took place between 18 September 2018 and 12 November 2019. In the course of the settlement procedure, the Commission informed the parties of the objections it envisaged raising against them and disclosed to them the key evidence on the Commission´s file that it relied upon to establish those objections.

(30) Between 18 and 27 September 2018, the parties had access to the relevant documentary evidence on the file as well as to a list of all the documents therein, and - at the Commission premises - to all oral statements submitted under the Leniency Notice. The parties were also granted access to additional evidence on 8 April and 27 May 2019.

(31) The Commission also provided the parties with an estimation of the range of fines likely to be imposed by the Commission.

(32) Each party expressed its view on the objections which the Commission envisaged raising against it. The parties' comments were carefully considered by the Commission and taken into account where justified.

(33) At the end of the settlement discussions, all parties considered that there was a sufficient common understanding between them and the Commission as regards the potential objections and the range of likely fines to continue the settlement process.

(34) […], 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 the following:

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

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

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

– the party's 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 not reflect its settlement submission in the statement of objections and the decision;

– the party's agreement to receive the statement of objections and the final decision pursuant to Articles 7 and 23 of Regulation (EC) No 1/2003 in English.

(35) 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.

(36) On 7 February 2020, the Commission adopted a statement of objections addressed to the parties. All of the parties replied to the statement of objections by confirming that it reflected the contents of their settlement submissions and that they remained committed to following the settlement procedure.

(37) Having regard to the clear and unequivocal acknowledgments of the parties given in their settlement submissions and to their clear and unequivocal confirmation that the statement of objections reflected their settlement submissions, it is concluded that the addressees of this Decision should be held liable for the infringement described in this Decision.

4. DESCRIPTION OF THE EVENTS

4.1. Nature, objective and scope of the conduct

(38) The present case concerns a single and continuous infringement which consisted in exchanging of sensitive commercial and pricing-related information and the fixing of a price element, namely the MCP, related to the purchases of ethylene in the Member States of the Union in Belgium, France, Germany and the Netherlands,.

4.1.1. Objective

(39) The objective of the conduct was to influence the MCP negotiations to the buyers´ advantage with the aim of buying ethylene at lowest possible price accepted by sellers in the 'settlement' process[22].

4.1.2. Scope

(40) The parties coordinated their future behaviour through bilateral contacts[23] relating to the MCP, to their future market conduct during MCP 'settlement' negotiations with ethylene sellers and to views of the market trends; all prior to and during MCP 'settlement' negotiations.

(41) As regards the MCP, the parties agreed on price targets which they intended to use at the start of the MCP 'settlement' negotiations with ethylene sellers, as well as MCP price targets they ultimately wanted to achieve, in particular based on a joint evaluation by the parties of market pricing factors and publicly available analyst intelligence[24].

(42) As regards coordination of future market conduct for MCP 'settlement' negotiations:

- Parties exchanged information on the status and future outlook of MCP 'settlement' negotiations with ethylene sellers and discussed the parties´ current positions, including actual pending offers received and the parties´ readiness to accept those offers or to rather continue MCP 'settlement' negotiations[25];

22 For example, […].
23 In addition, […].
24 For example, […].
25 For example, […].

- Parties exchanged information about sellers´ willingness to enter into 'settlement' and at what level, with a view to influencing the MCP to the buyers' advantage, in order to make it possible for them to buy ethylene at the lowest possible price[26];
- Parties exchanged information on the outcomes of MCP 'settlement' negotiations with ethylene sellers and coordinated the timing of the 'settlement' communication to […][27].

(43) As regards market trends, parties exchanged information on market trends relating to the developments of elements important for the formation of the ethylene price (oil and naphtha prices, ethylene spot market prices, propylene prices, improved or reduced level of ethylene supplies, Asia ethylene market) and exchanged their views on the extent to which these developments should influence the ethylene MCP for the upcoming month(s)[28].

(44) The bilateral contacts occurred via […][29], […][30], […][31] and […][32]. […][33].

4.2. Geographic scope of the conduct

(45) The geographic scope of the conduct was the territories of the Member States of the EU in Belgium, France, Germany and the Netherlands, throughout the duration of the infringement.

4.3. Duration of the collusive conduct

(46) The conduct started on 26 December 2011 for WESTLAKE and CLARIANT[34], on 18 January 2012 for CELANESE[35] and on 17 November 2015 for ORBIA[36], the dates being the first collusive contact for each party respectively.

(47) Based on the available evidence on the file, the Commission considers, for the purpose of this Decision, 28 March 2017 as the end date for CELANESE´s and ORBIA´s participation in the conduct[37] and 29 March 2017 for CLARIANT´s participation[38], which are the dates of each party´s last collusive contact. For WESTLAKE, its participation is considered to have ended on 29 June 2016 when it applied for immunity.

5. LEGAL ASSESSMENT

(48) Having regard to the body of evidence, the facts as described in recitals (38) to (47) and the parties' clear and unequivocal acknowledgement of the facts and the legal

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26 For example, […].
27 For example, […].
28 […].
29 […].
30 For example, […].
31 For example, […].
32 For example, […].
33 For example, […].
34 […].
35 […].
36 […].
37 […].
38 […].

qualification thereof contained in their settlement submissions, and their replies to the Statement of Objections, the Commission´s legal assessment is set out in recitals (49) to (76).

5.1. Application of Article 101(1) of the TFEU

5.1.1. Agreements and concerted practices

5.1.1.1. Principles

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

(50) An *agreement* may be said to exist when the parties adhere to a common plan which limits or is likely to limit their individual commercial conduct by determining the lines of their mutual action or abstention from action in the market. Although Article 101(1) of the TFEU draws a distinction between the concept of *concerted practice* and that of *agreements between undertakings*, the object is to bring within the prohibition of this Article a form of coordination between undertakings by which, without having reached the stage where an agreement properly so-called has been concluded, they knowingly substitute practical cooperation between them for the risks of competition. Therefore, conduct may fall under Article 101 of the TFEU 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 practices which facilitate the coordination of their commercial behaviour[39].

(51) Article 101(1) of the TFEU precludes 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 following, on the market, where the object or effect of those contacts is to restrict competition[40].

(52) 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.

(53) 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 by their own conduct intended to contribute 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 those common objectives (or could reasonably have foreseen it and were prepared to take the risk)[41].

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

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

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

5.1.1.2. Application in this case

(54) As it emerges from the facts described in recitals (38) to (47), the parties reached agreements on MCP targets which they intended to use for the start of the MCP settlement negotiations with ethylene sellers, the negotiation strategy and on the final MCP they ultimately wanted to achieve. On other occasions, directions on the desired MCP level and/or settlement timing were signalled or requested by the parties.

(55) The parties also exchanged information and updates on the status of the MCP settlement negotiations, as well as on the impact that market trends were supposed to have on the ethylene MCP, and thereby knowingly substituted practical cooperation between them for the risks of competition.

(56) Based on the submissions of the parties and the other evidence obtained during the course of the Commission's investigation, it is therefore concluded that the conduct described in recitals (38) to (47) presents all the characteristics of an agreement or a concerted practice, or both within the meaning of Article 101(1) of the TFEU.

5.1.2. Single and continuous infringement

5.1.2.1. Principles

(57) An infringement of Article 101(1) of the TFEU 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 objective 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.[42]

(58) An undertaking that has participated in such a single and continuous infringement through its own conduct, which fell within the definition of an agreement or a concerted practice having an anti-competitive objective for the purposes of Article 101(1) of the TFEU 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 case 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..[43]

(59) 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

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

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

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[44].

(60) 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 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.[45]

5.1.2.2. Application in this case

(61) The parties engaged in anti-competitive practices, which formed part of an overall plan pursuing the common objective of maintaining the MCP for ethylene purchases as low as possible.

(62) The conduct followed a consistent pattern over the entire duration of each undertaking´s participation in the infringement attempting to influence the MCP and was not limited to isolated or sporadic occurrences. The contacts between the parties were of a continuous nature, taking place in the same or similar manner in the context of the MCP settlement process, involving the same individuals (or their successors as the case may be) and covering identical or largely similar topics related to MCP and MCP settlement negotiation strategy. ORBIA was aware of its external consultant being involved in the infringement and it provided evidence to that effect.[46] The individual elements of the infringement were in pursuit of the single anti-competitive objective described in recital (39), which remained the same throughout the whole period of the infringement.

(63) Each of the parties contributed to the realisation of this common objective and was aware of the actual conduct planned or put into effect by the 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[47].

(64) On the basis of all those elements of the infringement outlined in recitals (61) to (63) and of the parties' clear and unequivocal acknowledgements of the single and continuous nature of the infringement, it is concluded that the undertakings

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

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

46 […].

47 For example, […].

concerned participated in a single and continuous infringement of Article 101 of the TFEU.

5.1.3. Restriction of competition

5.1.3.1. Principles

(65) To come within the prohibition laid down in Article 101(1) of the TFEU, an agreement or 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.

(66) 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.[48] Those principles developed from the 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.[49] Article 101 of the TFEU is intended to protect not only the interests of competitors or consumers, but also the structure of the market and thus competition[50].

(67) 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 TFEU, to prove that it has actual effects on the market[51].

5.1.3.2. Application in this case

(68) The conduct amounted to concerted horizontal practices, which included exchange of sensitive commercial and pricing-related information and fixing of a price element.[52] The MCP forms part of the pricing formula in certain supply agreements (see recital (7)) […]. It directly influences the actual ethylene purchase price under such contracts and in certain transactions on the spot market.[53] The conduct adopted by the parties ultimately aimed at reducing or eliminating uncertainty and information asymmetry as to the future pricing behaviour of parties on the ethylene purchasing market, thereby enabling the parties to make decisions based on more specific and

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

49 Joined Cases 56/64 and 58/64, *Consten and Grundig* v *Commission*, ECLI: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*, ECLI:EU:C:2002:582, para. 508 | Case C-389/10 P, *KME Germany and Others* v *Commission*, ECLI:EU:C:2011:816, para. 75 | Case C-67/13 P, *Groupement des Cartes Bancaires v Commission*, ECLI:EU:C:2014:2204, para. 50 | Case C-286/13 P, *Dole Food and Dole Fresh Fruit Europe v Commission*, ECLI:EU:C:2015:184, para. 114.

50 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*, ECLI:EU:C:2009:610, para. 63.

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

52 T-588/08 *Dole Food and Dole Germany OHG v Commission*, paragraph 585, 653-655, T-270/12 *Panalpina World Transport (Holding) and Others v Commission*, ECLI:EU:T:2016:109, paragraph 200.

53 T-655/11 *FSL Holdings v Commission*, ECLI:EU:T:2015:383, paragraph 246, 328-330.

reliable data in comparison, for instance, with information received from ethylene sellers[54]. The parties knowingly substituted the risks of competition through practical co-ordination between them.

(69) That conduct thus had by its very nature the object of creating conditions of competition that did not correspond to the normal conditions on the market for ethylene purchasing[55]. It can be presumed that undertakings taking part in such conduct and remaining active on the market would take account of the information exchanged with competing purchasers of ethylene when determining their own conduct on the market[56].

(70) The parties to the conduct refrained from determining independently the commercial policy that they intended to adopt for MCP but instead coordinated their behaviour related to MCP and MCP settlement negotiations through direct bilateral contacts[57] and exchanged commercially sensitive information, such as information on future market conduct during MCP settlement negotiations with ethylene sellers, as well as interpretation of market trends[58].

(71) Based on the submissions of the parties and the other evidence obtained during the course of the Commission's investigation, it is concluded that the conduct should be regarded as having as its object the restriction of competition on the ethylene purchasing market within the meaning of Article 101(1) of the TFEU[59]. 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 MCP[60].

5.1.4. Capability to affect trade between Union Member States

5.1.4.1. Principles

(72) Article 101(1) of the TFEU is aimed at agreements and concerted practices which might harm unfettered competition in the Union 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.[61]

5.1.4.2. Application in this case

(73) During the relevant period, the parties purchased ethylene from ethylene sellers especially in Belgium, France, Germany and the Netherlands. These purchases

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54 See Commission Decision of 8 February 2017, AT.40018 – Car battery recycling, C(2017)900 final, paragraph 193.

55 See C-286/13 P *Dole Food and Dole Fresh Fruit Europe v Commission*, paragraph 123, 134 and T-180/15 *Icap plc v European Commission*, ECLI:EU:T:2017:795, paragraph 63, 75.

56 See Case C-49/92 P *Commission v Anic Partecipazioni*, ECLI:EU:C:1999:356, paragraph 121; C-286/13 P *Dole Food and Dole Fresh Fruit Europe v Commission*, paragraph 127.

57 In addition, […].

58 See Case T-39/06, *Transcatab v Commission*, ECLI:EU:T:2011:562, paragraph 165; C-286/13 P *Dole Food and Dole Fresh Fruit Europe v Commission*, paragraphs 123, 134 and T-180/15 *Icap plc v European Commission*, ECLI:EU:T:2017:795, paragraphs 63 and 75.

59 See Case C-8/08, *T-Mobile Netherlands and Others*, ECLI:EU:C:2009:343, paragraphs 33, 35, 41; C-286/13 P *Dole Food and Dole Fresh Fruit Europe v Commission*, paragraph 134, T-270/12 *Panalpina World Transport (Holding) and Others v Commission*, ECLI:EU:T:2016:109, paragraph 200, T-180/15 *Icap plc v European Commission*, ECLI:EU:T:2017:795, paragraph 63 and 75.

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

61 Case T-265/12, *Schenker Ltd v Commission*, ECLI:EU:T:2016:111, paragraph 151.

involved a substantial volume of trade between several Member States. The conduct relates to the ethylene MCP that is used in pricing formulas in ethylene supply agreements […] in Belgium, France, Germany and the Netherlands.

(74) It is therefore concluded that the conduct was capable of having an appreciable effect upon trade between Member States within the meaning of Article 101(1) of the TFEU.

5.1.5. Non-applicability of Article 101(3) of the TFEU

5.1.5.1. Principles

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

5.1.5.2. Application in this case

(76) On the basis of the facts before the Commission, there is no evidence - and the parties do not allege - that the conduct of the parties resulted in any benefits for the customers within the Union. Accordingly, it is concluded that the conditions of Article 101(3) of the TFEU are not fulfilled in the present case.

6. DURATION OF ADDRESSEES' PARTICIPATION IN THE INFRINGEMENT

(77) In view of the evidence set out in recitals (38) and (47), Table 1 sets out the duration of the participation of each party in the infringement.

TABLE 1

Undertaking	**Participation in the infringement (start and end dates)**	
CELANESE	18 January 2012	28 March 2017
CLARIANT	26 December 2011	29 March 2017
ORBIA	17 November 2015	28 March 2017
WESTLAKE	26 December 2011	29 June 2016[62]

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

7. LIABILITY

7.1. Principles

(78) Union 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[63].

(79) When such an entity infringes the competition rules, it falls upon that entity, according to the principle of personal responsibility, 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 upon 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 TFEU[64].

(80) The Commission cannot merely find that a legal entity is able to exert decisive influence over another legal entity, without checking whether that influence was actually exerted. On the contrary, it is, as a rule, for the Commission to demonstrate such decisive influence on the basis of factual evidence, including, in particular, any management power one of the legal entities may have over the other[65].

(81) However, in particular in those cases where one parent holds all or almost all of the capital in a subsidiary which has committed an infringement of the Union competition rules, there is a rebuttable presumption that that parent company in fact does exercise a decisive influence over its subsidiary. In such a situation, it is sufficient for the Commission to prove that all or almost all of the capital in the subsidiary is held by the parent company in order to take the view that that presumption applies[66].

(82) 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 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

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63 Case C-511/11 P, *Versalis v Commission*, ECLI:EU:C:2013:386, para. 51.

64 Case C-97/08 P, *Akzo Nobel and others v Commission*, ECLI:EU:C:2009:536, para. 61 | Case C-521/09 P, *Elf Aquitaine* v *Commission*, ECLI: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*, ECLI:EU:C:2012:479, paras. 43 and 46 | Case C-508/11 P, *ENI* v *Commission*, ECLI:EU:C:2013:289, para. 47 | Case C-286/98 P, *Stora Kopparbergs Bergslags v Commission*, ECLI:EU:C:2000:630, para. 29 | Case T-391/09, *Evonik Degussa et AlzChem v Commission*, ECLI:EU:T:2014:22, para.77 | Case C-440/11 P, *Commission v Stichting Administratiekantoor Portielje*, ECLI:EU:C:2013:514, para. 41.

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

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

economic and organisational links between them, carried out, in all material respects, the same commercial instructions[67].

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

7.2. Application in this case

(84) Having regard to the body of evidence and the facts described in recitals (38) and (47), 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 the conduct referred to in recitals (38) and (47) should be imputed to the following legal entities referred to in recitals (85) to (104).

7.2.1. WESTLAKE

(85) For WESTLAKE´s participation in the infringement, the Commission holds liable:

(a) Westlake Chemical Corporation

(b) Westlake Germany GmbH & Co KG

(c) Vinnolit Holdings GmbH

(d) Vinnolit GmbH & Co. KG

(86) Vinnolit GmbH & Co. KG has clearly and unequivocally acknowledged liability for its direct participation in the infringement from 26 December 2011 to 29 June 2016.

(87) Vinnolit Holdings GmbH has clearly and unequivocally acknowledged that it is jointly and severally liable for the conduct of its wholly owned subsidiary Vinnolit GmbH & Co. KG from 26 December 2011 to 29 June 2016. Vinnolit Holdings GmbH is presumed to have exercised decisive influence over Vinnolit GmbH & Co. KG in that period.

(88) Westlake Germany GmbH & Co KG has clearly and unequivocally acknowledged that it is jointly and severally liable as indirect parent company holding indirectly 100% of the shares in Vinnolit GmbH & Co. KG from 31 July 2014 to 29 June 2016. Westlake Germany GmbH & Co KG is presumed to have exercised decisive influence over Vinnolit GmbH & Co. KG in that period.

(89) Westlake Chemical Corporation has clearly and unequivocally acknowledged that it is jointly and severally liable as the ultimate parent company holding indirectly 100% of the shares in Vinnolit GmbH & Co. KG from 31 July 2014 to 29 June 2016. Westlake Chemical Corporation is presumed to have exercised decisive influence over Vinnolit GmbH & Co. KG in that period.

(90) The Commission, therefore, imputes liability for the infringement to Vinnolit GmbH & Co. KG, Vinnolit Holdings GmbH, Westlake Germany GmbH & Co KG and Westlake Chemical Corporation, as follows:

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

– jointly and severally to **Vinnolit GmbH & Co. KG** (for its direct participation from 26 December 2011 to 29 June 2016), **Westlake Chemical Corporation** (as the ultimate parent of Vinnolit GmbH & Co. KG from 31 July 2014 to 29 June 2016), **Westlake Germany GmbH & Co KG** (as the indirect parent of Vinnolit GmbH & Co. KG from 31 July 2014 to 29 June 2016) and **Vinnolit Holdings GmbH** (as the direct parent of Vinnolit GmbH & Co. KG from 26 December 2011 to 29 June 2016).

7.2.2. ORBIA

(91) For ORBIA´s participation in the infringement, the Commission holds liable:

(a) ORBIA ADVANCE CORPORATION, S.A.B. de C.V.

(b) VESTOLIT GmbH

(92) VESTOLIT GmbH has clearly and unequivocally acknowledged liability for its direct participation in the infringement from 17 November 2015 to 28 March 2017.

(93) ORBIA ADVANCE CORPORATION, S.A.B. de C.V. (formerly Mexichem S.A.B. de C.V.) has clearly and unequivocally acknowledged that it is jointly and severally liable for the conduct of its indirectly wholly owned subsidiary VESTOLIT GmbH from 17 November 2015 to 28 March 2017. ORBIA ADVANCE CORPORATION, S.A.B. de C.V. is presumed to have exercised decisive influence over VESTOLIT GmbH in that period.

(94) The Commission, therefore, imputes liability for the infringement to VESTOLIT GmbH and ORBIA ADVANCE CORPORATION, S.A.B. de C.V., as follows:

– jointly and severally to **VESTOLIT GmbH** (for its direct participation) and to **ORBIA ADVANCE CORPORATION, S.A.B. de C.V.** (as the parent of VESTOLIT GmbH) from 17 November 2015 to 28 March 2017.

7.2.3. CLARIANT

(95) For CLARIANT´s participation in the infringement, the Commission holds liable:

(a) Clariant AG

(b) Clariant International AG

(96) Clariant International AG has clearly and unequivocally acknowledged liability for its direct participation in the infringement from 26 December 2011 to 29 March 2017.

(97) Clariant AG has clearly and unequivocally acknowledged that it is jointly and severally liable for the conduct of its directly wholly owned subsidiary Clariant International AG from 26 December 2011 to 29 March 2017. Clariant AG is presumed to have exercised decisive influence over Clariant International AG in that period.

(98) The Commission, therefore, imputes liability for the infringement to Clariant International AG and Clariant AG, as follows:

– jointly and severally to **Clariant International AG** (for its direct participation) and to **Clariant AG** (as the parent of Clariant International AG) from 26 December 2011 to 29 March 2017.

7.2.4. CELANESE

(99) For CELANESE´s participation in the infringement, the Commission holds liable:

(a) Celanese Corporation

(b) Celanese Services Germany GmbH

(c) Celanese Europe B.V.

(100) […]. Following this internal reorganisation, Celanese Services Germany GmbH, as an economic and legal successor of […], has clearly and unequivocally acknowledged liability for its direct participation in the infringement from 18 January 2012 to 20 January 2016.

(101) Celanese Europe B.V. has clearly and unequivocally acknowledged liability for its direct participation in the infringement from 21 January 2016 to 28 March 2017.

(102) Celanese Europe B.V. has clearly and unequivocally acknowledged that it is jointly and severally liable for the conduct of its indirectly wholly owned subsidiary Celanese Services Germany GmbH from 18 January 2012 to 20 January 2016. Celanese Europe B.V. is presumed to have exercised decisive influence over Celanese Services Germany GmbH.

(103) Celanese Corporation has clearly and unequivocally acknowledged that it is jointly and severally liable for the conduct of its indirectly wholly owned subsidiaries Celanese Services Germany GmbH (from 18 January 2012 to 20 January 2016) and Celanese Europe B.V. (from 21 January 2016 to 28 March 2017). Celanese Corporation is presumed to have exercised decisive influence over Celanese Services Germany GmbH and Celanese Europe B.V. in those periods.

(104) The Commission, therefore, imputes liability for the infringement to Celanese Services Germany GmbH, Celanese Europe B.V. and Celanese Corporation, as follows:

– jointly and severally to **Celanese Services Germany GmbH** (for its direct participation from 18 January 2012 to 20 January 2016), **Celanese Europe B.V.** (for its direct participation from 21 January 2016 to 28 March 2017 and as the indirect parent of Celanese Services Germany GmbH from 18 January 2012 to 20 January 2016) and to **Celanese Corporation** (as the parent of Celanese Services Germany GmbH and Celanese Europe B.V.) from 18 January 2012 to 28 March 2017.

8. REMEDIES

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

(105) Where the Commission finds that there is an infringement of Article 101 of the TFEU, 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.

(106) Given the secrecy in which the cartel arrangements are usually carried out and the gravity of such infringements, 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

(107) 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 TFEU. For each undertaking participating in the infringement, the fine shall not exceed 10% of its total turnover in the preceding business year.

(108) In the present case, the Commission considers that, based on the facts described in recitals (38) and (47) the infringement was committed intentionally.

(109) Fines should therefore be imposed on the undertakings concerned in this Decision for the infringement for which the Commission holds them liable.

(110) In fixing the amount of any fine, pursuant to Article 23(3) of Regulation (EC) No 1/2003, regard is to be given both to the gravity and to the duration of the infringement. In setting the fines to be imposed, the Commission will refer to the principles laid down in its Guidelines on the method of setting fines imposed pursuant to Article 23(2)(a) of Regulation No 1/2003[68] (the 'Guidelines on fines').

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

(112) In line with Article 23(2) of Regulation (EC) No 1/2003 for each undertaking participating in the infringement, the fine is not to exceed 10% of its total turnover in the preceding business year.

(113) Finally, the Commission applies, as appropriate, the provisions of the Leniency Notice and the Settlement Notice.

8.3. Calculation of the fines

(114) In accordance with the Guidelines on fines, the basic amounts for each party result from the addition of a variable amount and an additional amount. The variable amount results from a percentage of up to 30% of the value of sales of goods or services to which the infringement relates in a given year (normally, the last full business year of the infringement) multiplied with the number of years of the undertaking's participation in the infringement. The additional amount (the 'entry fee') is calculated as a percentage between 15% and 25% of the value of sales, irrespective of the duration of the infringement. The resulting basic amount can then be increased or reduced for each undertaking if either aggravating or mitigating circumstances are found to be applicable.

(115) The Commission may depart from the methodology set out in the Guidelines where it is justified by the particularities of a given case or the need to achieve deterrence in a particular case.[69]

8.3.1. The value of purchases

(116) 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[70], 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 within the EU.

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68 Guidelines on the method of setting fines imposed pursuant to Article 23(2)(a) of Regulation No 1/2003, (OJ C 210, 1.09.2006, p. 2).

69 Point 37 of the Guidelines on Fines

70 Point 12 of the Guidelines on fines.

(117) This Decision concerns a purchasing cartel. The infringement relates to an element (MCP) of the purchase prices of ethylene (see recitals (7) and (40) to (43)).

(118) The Commission considers it relevant and appropriate to use figures for the value of purchases of ethylene rather than the value of sales of the downstream products because of the particular nature of the cartel (purchasing cartel)[71] and the fact that the parties are not all present on the same downstream market(s). The percentage of ethylene as input costs for further production and as 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.

(119) The infringement does not relate to all ethylene purchases made by the parties. It relates to those purchases that were made while using MCP-related pricing formulas (see recitals (7) and (40) to (43)). Purchases made under different pricing formulas, not using the MCP, are unrelated to the infringement. Therefore, the Commission considers that it is appropriate to take into account only those values of purchases made under the ethylene supply agreements using a pricing formula, which is MCP-based, as well as MCP-based purchases made by the parties on the ethylene spot market.

(120) The relevant geographical area within the EU is the territory of Belgium, Germany, France and the Netherlands.

(121) 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[72]. Based on the facts described in recitals (38) to (47), Table 1 and on the information provided by the parties, the Commission uses the value of purchases made in 2016 for CELANESE, CLARIANT and ORBIA for setting the basic amount of the fine. For WESTLAKE 2015 is the last full business year of that undertaking's participation in the infringement.

(122) 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

Undertaking	**Value of purchases (EUR)**
CELANESE	[100 000 000 – 125 000 000] […].
CLARIANT	[150 000 000 – 190 000 000] […].
ORBIA	[114 000 000 – 140 000 000]

[71] 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*, ECLI:EU:T:2019:356, para 124).

[72] Point 13 of the Guidelines on fines.

	[…].
WESTLAKE	[200 000 000 – 240 000 000] […].

(123) Each party has, in its settlement submission, confirmed the relevant values of purchases for the calculation of the fine for the infringement.

8.3.2. Determination of the basic amount of the fines

(124) The basic amount is calculated based on the gravity percentage determined for the infringement as per recitals (125) to (129) applied on the undertaking's relevant value of purchases as stated in Table 2 and multiplied by the number of years of the respective undertaking's participation in the infringement.[73]

8.3.2.1. Gravity of the infringement

(125) 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 is to 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.

(126) In its assessment, the Commission considers the facts described in recitals (38) to (47), 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 an infringement are generally set at the higher end of the scale of the value of purchases.[74].

(127) The proportion of the value of purchases to be taken into account should, therefore, be 15% for the present infringement.

8.3.2.2. Duration of the infringement

(128) In assessing the fine to be imposed on each undertaking, the Commission also takes into consideration the duration of the infringement, as described in recital (77) and Table 1. The increase for duration (duration multiplier) is to be calculated on the basis of days.

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

TABLE 3

Undertaking	**Participation in the infringement (start and end dates)**	**Duration (days)**	**Duration (years)**

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

[74] Point 23 of the Guidelines on fines.

CELANESE	18 January 2012	28 March 2017	1897 days	5,19
CLARIANT	26 December 2011	29 March 2017	1921 days	5,25
ORBIA	17 November 2015	28 March 2017	498 days	1,36
WESTLAKE	26 December 2011	29 June 2016	1648 days	4,51

8.3.2.3. Additional Amount for the purposes of deterrence

(130) The infringement committed by the parties concerns collusive conduct with a view of reducing competitive uncertainty. 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 outlined in recitals (125) to (127) with respect to the variable amount.[75]

(131) 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 (125) and (126). The proportion of the value of purchases to be taken into account for the purpose of calculating the additional amount should be 15%.

8.3.2.4. Calculation of the basic amount

(132) In applying the criteria set out in recitals (114) to (131), the basic amounts of the fines to be imposed on each party, for the infringement, are set out in Table 4.

TABLE 4 – Basic amounts of the fine

Undertaking	**Basic amount (EUR)**
CELANESE	[100 000 000 – 120 000 000] […]
CLARIANT	[140 000 000 – 170 000 000] […]
ORBIA	[40 000 000 – 60 000 000] […]
WESTLAKE	[190 000 000 – 220 000 000] […]

8.4. Adjustments of the basic amount

8.4.1. Aggravating or mitigating factors

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

[75] Point 25 of the Guidelines on fines.

circumstances that result in a reduction of the basic amount. These circumstances are listed in a non-exhaustive way in point 29 of the Guidelines on fines.

(134) The Commission takes into account that Clariant AG and its subsidiary Clariant GmbH were found liable by the Commission by a decision of 19 January 2005 for an infringement of Article 101(1) of the TFEU in relation to collusive conduct in the market for monochloroacetic acid in case *AT.37773 MCAA,* (Commission Decision under Article 101 of the Treaty of 19 January 2005 in case AT.37773) (the '2005 MCAA cartel decision').

(135) According to the case-law, the analysis of the gravity of the infringement must take account of any repeated infringement.[76]

(136) According to point 28 of the Guideline on fines 'where an undertaking continues or repeats the same or a similar infringement after the Commission or a national competition authority has made a finding that the undertaking infringed Article 81 [Article 101] or 82 [Article 102]: the basic amount will be increased by up to 100 % for each such infringement established'.

(137) As outlined in the Statement of Objections, the Commission considers recidivism as an aggravating circumstance for CLARIANT given its previous participation in the cartel infringement described in recital (134).

(138) In the present case, the Commission considers that an aggravating circumstance of repeated infringement of Article 101 TFEU can be found against CLARIANT on the following grounds:

– Firstly, the start date of the conduct described in this Decision as regards CLARIANT (26 December 2011) was after the date of the decision by the Commission finding an infringement of Article 101(1) of the TFEU in the MCAA cartel decision (19 January 2005);

– Secondly, only a relatively limited period of time has passed between the 2005 MCAA cartel decision (19 January 2005) and the present infringement (26 December 2011 as a start date of the conduct described in this Decision)[77] ;

– Thirdly, the fact that both the first infringement found by the Commission in the 2005 MCAA cartel decision and the infringement in this Decision relate to Article 101 of the TFEU implies that the infringements are sufficiently similar and therefore constitute a "similar" infringement within the meaning of point 28 of the of the Guideline on fines[78]. Notably, according to the case-law, 'it is sufficient that the Commission is dealing with infringements falling under the same provision of the [TFEU]'[79];

– Fourthly, Clariant AG was a parent company of the direct infringer and formed with it a single undertaking during the infringement period as established in the 2005 MCAA cartel decision. It was thus an addressee of the MCAA cartel decision. The Commission envisages to hold Clariant AG liable for the

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76 Case C-3/06 *Groupe Danone v Commission*, ECLI:EU:C:2007:88, para. 26.

77 Case C-3/06 *Groupe Danone v Commission*, ECLI:EU:C:2007:88, para. 40 ; joined cases T-56/09, *Saint-Gobain Glass France and others* and T-73/09, *Compagnie de Saint-Gobain*, ECLI:EU:T:2014:160, paras. 326 et seq.

78 Case T-66/01 *ICI v Commission*, ECLI:EU:T:2010 :255, para 378-381.

79 Joined cases T-101/05 and 111/05 *BASF v Commission*, ECLI:EU:T:2007:380, para

infringement in the present case under the parental liability concept (see recital (98)).[80] Notably, according to the case-law, the past activities of the entire undertaking and not just of the direct infringer are to be taken into consideration.[81]

– Fifthly, specific circumstances surrounding the infringement established in the 2005 MCAA cartel decision, which justified a fine not being imposed on CLARIANT, have no connection with the failure of CLARIANT to comply with the competition rules subsequently to that Decision.[82]

(139) The basic amount for CLARIANT for the infringement should therefore be increased by 50%.

(140) In the light of the facts as described in (38) to (47), the Commission does not consider that there are any mitigating circumstances relevant for the purpose of this Decision.

8.4.2. Increase of the fine pursuant to point 37 of the Guidelines on fines

(141) 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[83].

(142) 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*[84].

(143) The infringement described in this Decision, 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 results in a situation in which the level of the fines is inversely proportional to the actual objective of the cartel. 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.

(144) It is therefore self-evident, given that the cartel in the present 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 the present infringement. This is also because, normally in an operating undertaking, purchases are lower than sales in value terms, thus giving a systematic lower starting point for the calculation of a fine.

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80 Joined cases C-93/13 P and C-123/13 P *Commission v. Versalis SpA and Eni Spa*, ECLI:EU:C2015:150, para. 91.

81 Joined cases T-56/09, *Saint-Gobain Glass France and others* and T-73/09, *Compagnie de Saint-Gobain*, ECLI:EU:T:2014:160, paragraphs 335-337.

82 Case C-03/06P *Groupe Danone v Commission*, ECLI:EU:C:2007:88, para. 41; Case T-53/03 *BPB*, ECLI :EU :T : 2008 :254, para 387 ; Case T-122/04 *Outokumpy Oyj and Luvata Oy v Commission*, ECLI :EU :T :2009 :141, para. 63-64.

83 Point 5 of the Guidelines on fines.

84 Point 6 of the Guidelines on fines.

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

(146) In order to take this particularity into account and to achieve deterrence, it is appropriate for the Commission to apply, in line with its previous practice[85], under point 37 of the Guidelines on fines, an increase of the amount of the fine in the present case (before the legal maximum of 10% of worldwide turnover) by 10% for all undertakings held liable for the infringement.

(147) The Commission notes that, in line with the previous case-law[86], the intended increase of the amount of the fine by 10% on the basis of point 37 of the Guidelines on fines is not conditional on proof that the infringement outlined in this Decision had any actual effects on the market.

(148) Each of the Parties´ specific position was taken into account both in the calculation of the basic amount, as the values of purchases differ for each undertaking, and in calculation of the duration of its participation.[87]

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

TABLE 5 – Adjusted basic amount

Undertaking	Adjusted basic amount (EUR)
CELANESE	[110 000 000 – 130 000 000] […]
CLARIANT	[250 000 000 – 280 000 000] […]
ORBIA	[40 000 000 – 70 000 000] […]
WESTLAKE	[190 000 000 – 230 000 000] […]

85 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*, ECLI:EU:T:2019:356, para 124; an appeal is currently pending before the Court of Justice (case C-563/19 P), but the General Court's findings concerning the application of the 10% increase of the amount of the fine under point 37 of the Guidelines on fines have not been appealed. Also confirmed in case T-240/17, *Campine NV and Campine Recycling NV v Commission*, ECLI:EU:T:2019:778, paras 342-349.

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

87 Case T-222/17, *Recylex S.A. Fonderie et Manufacture de Métaux S.A. and Harz-Metall GmbH v Commission*, ECLI:EU:T:2019:356, para 129.

8.5. Application of the 10% turnover limit

(150) Article 23(2) of Regulation (EC) No 1/2003 provides that the fines imposed on each undertaking which participated in an infringement of Article 101 of the TFEU must not exceed 10% of its total turnover in the preceding business year. That 10% ceiling is applied before any reduction is granted for leniency or for settlement, or both.[88]

(151) In this Decision, none of the fines calculated exceeds 10% of the respective undertaking´s total turnover in 2019.

8.6. Application of the Leniency Notice

(152) WESTLAKE submitted an application under the Leniency Notice on 29 June 2016 and was granted conditional immunity from fines for the infringement on 28 March 2017. WESTLAKE´s cooperation fulfilled the requirements of the Leniency Notice throughout the procedure. WESTLAKE is therefore granted immunity from fines for the infringement.

(153) On 23 May 2017 ORBIA applied for immunity from fines pursuant to point (8) of the Leniency Notice or, in the alternative, for a reduction of any fine that would otherwise have been imposed. It was also the first undertaking to meet the requirements of points (24) and (25) of the Leniency Notice as regards the infringement.

(154) On 10 July 2018 the Commission informed ORBIA of its intention to grant ORBIA a leniency reduction within the range of 30%-50% of any fine that would otherwise have been imposed for the infringement.

(155) As outlined in recital (22) ORBIA applied for leniency at a very early stage in the investigation, namely the second working day after the end of the inspection and submitted[89] evidence of the infringement which represented significant added value with respect to the evidence already in the Commission´s possession. In particular, ORBIA provided certain valuable contemporaneous evidence ([…][90], […][91], […][92]) corroborating the parties´ participation in the infringement, as well as evidence providing further background information on the infringement, its scope and objective, the parties´ participation therein and the industry concerned[93]. However, certain information that was provided in the application was already in the possession of the Commission.

(156) In the light of the assessment in recitals (153) to (155), the fine imposed on ORBIA should be reduced by 45%.

(157) On 6 June 2017 CLARIANT applied for immunity from fines pursuant to point (8) of the Leniency Notice or, in the alternative, for a reduction of any fine that would otherwise have been imposed. It was also the second undertaking to meet the requirements of points (24) and (25) of the Leniency Notice as regards the infringement.

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88 Points 32 and 34 of the Guidelines on fines and points 32 and 33 of the Settlement Notice. See also case T-52/02, *SNCZ v Commission*, ECLI:EU:T:2005:429, para 41.

89 […].

90 For example, […].

91 For example, […].

92 For example, […].

93 […].

(158) On 10 July 2018 the Commission informed CLARIANT of its intention to grant CLARIANT a leniency reduction within the range of 20%-30% of any fine that would otherwise have been imposed for the infringement.

(159) Pursuant to recital (23) CLARIANT applied for leniency at an early stage in the investigation, less than a month after the end of the inspection, and submitted evidence of the infringement which represented significant added value with respect to the evidence already in the Commission´s possession. In particular, CLARIANT provided some valuable contemporaneous evidence ([…][94], […][95], […][96]) on collusive contacts with other cartelists. It also provided evidence of a corroboratory nature and detailed information providing further background on the infringement and the industry concerned[97] and confirming the existence of the infringement within the timeframe identified by the Commission.

(160) In the light of the assessment in recitals (157) and (159), the fine imposed on CLARIANT should be reduced by 30%.

(161) On 3 July 2017 CELANESE applied for immunity from fines pursuant to point (8) of the Leniency Notice or, in the alternative, for a reduction of any 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.

(162) On 10 July 2018 the Commission informed CELANESE of its intention to grant CELANESE a leniency reduction of up to 20% of any fine that would otherwise have been imposed for the infringement.

(163) As outlined in recital (24) CELANESE applied for leniency less than two months after the end of the inspection and submitted evidence of the infringement which represented significant added value with respect to the evidence already in the Commission´s possession. In particular, CELANESE provided evidence of some collusive contacts with other parties to the infringement.[98] It also provided detailed information on the historical evolution and the functioning of the investigated conduct.[99] It further provided information on facts and evidence of a corroboratory nature providing further background on the infringement, and the continued participation of other parties to the infringement.

(164) In the light of the assessment in recitals (161) to (163), the fine imposed on CELANESE should be reduced by 20%.

8.7. Application of the Settlement Notice

(165) According to point 32 of the Settlement Notice, the reward for settlement results is a reduction of 10% of the amount of the fine to be imposed 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 also involve leniency applicants, the reduction of the fine granted to them for settlement is to be applied to their leniency reward.

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94 For example, […].
95 For example, […].
96 For example, […].
97 For example, […].
98 For example, […].
99 For example, […].

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

8.8. Conclusion: Total amount of individual fines to be imposed by this Decision

(167) 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

Undertaking	Fines (EUR)
CELANESE	82 307 000
CLARIANT	155 769 000
ORBIA	22 367 000
WESTLAKE	0

HAS ADOPTED THIS DECISION:

Article 1

The following undertakings infringed Article 101 of the Treaty on the Functioning of the European Union by participating, during the periods indicated, in a single and continuous infringement consisting of exchanging sensitive commercial and pricing-related information and of fixing a price element related to the purchases of ethylene, within the territories of Belgium, France, Germany and the Netherlands,:

(a) Vinnolit GmbH & Co. KG, Vinnolit Holdings GmbH, from 26 December 2011 to 29 June 2016; Westlake Chemical Corporation and Westlake Germany GmbH & Co. KG from 31 July 2014 to 29 June 2016;

(b) Orbia Advance Corporation, S.A.B. de C.V. and VESTOLIT GmbH from 17 November 2015 to 28 March 2017;

(c) Clariant International AG and Clariant AG from 26 December 2011 to 29 March 2017;

(d) Celanese Services Germany GmbH from 18 January 2012 to 20 January 2016; Celanese Europe B.V. and Celanese Corporation from 18 January 2012 to 28 March 2017.

Article 2

The following fines are imposed for the infringement referred to in Article 1:

(a) On Vinnolit GmbH & Co. KG, Vinnolit Holdings GmbH, Westlake Chemical Corporation and Westlake Germany GmbH & Co. KG, jointly and severally liable: EUR 0;

(b) On Orbia Advance Corporation, S.A.B. de C.V. and VESTOLIT GmbH jointly and severally liable: EUR 22 367 000;

(c) On Clariant International AG and Clariant AG jointly and severally liable: EUR 155 769 000;

(d) On Celanese Services Germany GmbH, Celanese Europe B.V. and Celanese Corporation jointly and severally liable: EUR 66 484 000;

(e) On Celanese Europe B.V. and Celanese Corporation jointly and severally liable: EUR 15 823 000.

The fines shall be credited, in euros, within six months of the date of notification of this Decision, to the following bank account held in the name of the European Commission:

BANQUE ET CAISSE D'EPARGNE DE L'ETAT
1-2, Place de Metz
L-1930 Luxembourg

IBAN: LU02 0019 3155 9887 1000
BIC: BCEELULL
Ref.: EC/BUFI/AT.40410

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

Where an undertaking referred to in Article 1 lodges an appeal, that undertaking shall cover the fines by the due date, either by providing an acceptable financial guarantee or by making a provisional payment of the fines in accordance with Article 108 of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council[100].

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.

Those undertakings 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) Westlake Chemical Corporation, 2801 Post Oak Boulevard, Houston, 77056 Texas, United States of America;

(b) Westlake Germany GmbH & Co. KG, Carl-Zeiss-Ring 25, 85737 Ismaning, Germany;

(c) Vinnolit Holdings GmbH, Carl-Zeiss-Ring 25, 85737 Ismaning, Germany;

(d) Vinnolit GmbH & Co. KG, Carl-Zeiss-Ring 25, 85737 Ismaning, Germany;

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

(e) Orbia Advance Corporation, S.A.B. de C.V., Paseo de la Reforma No. 483, Floor 47, Colonia Cuauhtémoc, C.P. 06500, Mexico City, Mexico;

(f) Vestolit GmbH, Paul-Baumann-Straße 1, 45772 Marl, Germany;

(g) Clariant AG, Rothausstrasse 61, 4132 Muttenz, Switzerland;

(h) Clariant International AG, Rothausstrasse 61, 4132 Muttenz, Switzerland;

(i) Celanese Corporation, 222 W. Las Colinas Blvd, Suite 900N, Irving, TX 75039-5421, USA;

(j) Celanese Services Germany GmbH, Am Unisys-Park 1, 65843, Sulzbach, Deutschland;

(k) Celanese Europe B.V., The New Atrium, Strawinskylaan 3105, 1077 ZX Amsterdam, The Netherlands.

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

Done at Brussels, 14.7.2020

(signed)

For the Commission
Margrethe VESTAGER
Executive Vice-President