



Appeal brought on 11 December 2024 by Crown Holdings, Inc. and Crown Cork & Seal Deutschland Holdings GmbH against the judgment of the General Court (Second Chamber, Extended Composition) delivered on 2 October 2024 in Case T-587/22, Crown Holdings et Crown Cork & Seal Deutschland v Commission

(Case C-855/24 P)

(C/2025/711)

Language of the case: English

Parties

Appellants: Crown Holdings, Inc., Crown Cork & Seal Deutschland Holdings GmbH (represented by: A. Burnside, avocat, C. Graf York von Wartenburg, Rechtsanwalt, D. Strohl, avocate, T. von Döhren, Rechtsanwalt)

Other parties to the proceedings: European Commission and Federal Republic of Germany

Form of order sought

The appellants claim that the Court should:

- set aside the judgment under the appeal in so far as it dismissed the action brought by the Appellants against the Commission Decision C(2022) 4761 final of 12 July 2022 relating to a proceeding under Article 101 TFEU (Case AT.40522 – Metal packaging) ('the contested decision'), and ordered the Appellants to pay 90 % of the costs incurred by the Commission;
- make use of its power under the second sentence of the first paragraph of Article 61 of the Statute of the Court to give final judgment in the matter and annul the contested decision insofar as it applies to the Appellants; alternatively, refer the case back to the General Court for reassessment; and
- in any case, to order the Commission to bear the Appellants' costs and expenses in connection with these proceedings and the proceedings before the General Court, or reserve the costs of the present proceedings if it refers the case back to the General Court.

Pleas in law and main arguments

First, the General Court erred in law in considering that the Commission Notice on cooperation within the Network of Competition Authorities ('ECN Notice') did not give rise, in this case, to legitimate expectations and that the Commission had complied with the ECN Notice. The ECN Notice clearly requires that re-allocation of cases between National Competition Authorities and the Commission be made quickly and efficiently; that requirement is embodied in the indicative two-month period set out at Paragraph 18 of the ECN Notice. Given the excessive passage of time in the present case, the Appellants could reasonably expect that the Commission would not accept a re-allocation of the case. Moreover, it follows from a literal, contextual, systemic, historical and teleological interpretation of the ECN Notice, and in particular its Paragraph 19, that belated re-allocation of cases can only take place when there is a material change to the facts known about the case, i.e., the facts that may constitute an infringement of competition rules and not, as the General Court says, 'any relevant fact'. Judging differently would empty the provision of its substance and run counter to general principles of EU law, including the principles of (i) legal certainty, (ii) procedural autonomy, (iii) rule of law and (iv) institutional balance. Since there was here no material change to the facts of the case, the General Court erred in law in considering that the Commission complied with the ECN Notice when accepting the re-allocation of the case.

Second, the General Court erred in law in considering that the Commission was not subject to a reinforced duty to state reasons and provided an adequate statement of reasons in the contested decision. The Commission was required to provide reasons for its acceptance of the re-allocation since the possibility offered by Paragraph 19 of the ECN Notice to re-allocate cases at a later time, is in itself a rule departing from a more general rule; moreover the Commission exceeded the indicative two-month period for re-allocation, which warranted further explanation. In addition, contrary to the General Court's views, additional explanations provided by the Commission in press releases cannot remedy a failure to properly state reasons in a decision, even more so when such explanations are late and inconsistent.

Third, the General Court erred in law in considering that there was no infringement of the principle of subsidiarity. Indeed, in situations where the Commission chooses to depart from the principles set out in the ECN Notice, as in the present case, it is not tenable simply to assert that, since the system set up by Regulation 1/2003 (1) is in itself compliant with the principle of subsidiarity, there cannot have been an infringement of that principle.

Fourth, the General Court misrepresented several arguments put forward by the Appellants, appearing to conflate these with arguments put forward by Silgan in Case T-589/22. The procedural errors made by the General Court introduced confusion into its assessment of the substance of the pleas made by the Appellants and therefore constitute a breach of procedure that has adversely impacted the Appellants' rights of defence.

(1) 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 2003, L 1, p. 1).