II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 14 November 1995

declaring a concentration to be compatible with the common market and the functioning of the EEA Agreement

(Case No IV/M.603 — Crown Cork & Seal/CarnaudMetalbox)

(Only the English text is authentic)

(Text with EEA relevance)

(96/222/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 4064/89 of 21 December 1989 on the control of concentrations between undertakings (1), and in particular Article 8 (2) thereof,

Having regard to the EEA Agrement, and in particular Article 57 (1) thereof,

Having regard to the Commission Decision of 25 July 1995 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,

Having regard to the opinion of the Advisory Committee on Concentrations (2),

Whereas:

On 23 June 1995, Crown Cork & Seal Company, Inc. notified the Commission of a proposed concentration by which it intends to acquire sole control of CarnaudMetalbox SA. On 25 July 1995, the Commission adopted a decision pursuant to Article 6 (1) (c) of Regulation (EEC) No 4064/89.

I. THE PARTIES

(1) Crown Cork & Seal Company, Inc. (Crown), a United States corporation, is a multinational manufacturer of metal and plastic packaging, including cans, bottles, crowns and closures (metal and plastic) and machinery for filling, packaging and handling.

(2) CarnaudMetalbox SA (CMB), a French company, is one of the world's largest packaging manufacturers. The group focuses its operations on metal and plastic packaging and is the leading manufacturer of food cans in Europe.

II. THE OPERATION

(3) The agreement being notified has been entered into between Crown and Compagnie Générale d'Industrie et de Participations (CGIP) which holds a 32 % controlling interest in CMB, and due to double voting rights accuring to some of its shares,

(1) OJ No L 395, 30. 12. 1989, p. 1. Corringedum: OJ No L 257, 21. 9. 1990, p. 13.
(2) OJ No C 86, 23. 3. 1996, p. 3.

currently carries 45 % of the total voting rights. Under this agreement, Crown commits itself to acquiring at least 51 % of the voting rights in CMB, and CGIP commits to sell its 32 % controlling interest to Crown.

(4) The execution of this agreement will take place as part of a French public exchange share offer (offre publique d'échange — OPE) which will be launched by Crown for the entire common stock of CMB as soon as reasonably practicable.

(5) The offer will be made to all of CMB's shareholders on the same terms. All shareholders except GCIP (which will irrevocably elect to receive stock) will have a choice as to whether to accept cash or Crown shares in exchange for their CMB shares.

III. CONCENTRATION

(6) CGIP has consistently held a majority of the votes present at CMB's general meetings. Although CGIP's double voting rights will not be transferred to Crown, Crown will nonetheless have a controlling interest: by removing GCIP's double voting rights, but holding all other factors constant, CGIP would have voted [. . .] (1) of the shares at the 1993 general meeting (with double voting rights, CGIP actually voted [. . .] (2) and [. . .] (3) of the shares at the 1994 general meeting (with double voting rights, CGIP's interest translated into [. . .] (4) at that meeting). The acquisiton of CGIP's stake in CMB will thus confer to Crown sole control of CMB.

(7) Crown's acquisition of sole control of CMB constitutes a concentration within the meaning of Article 3 (1) (b) of the 'Merger' Regulation.

IV. COMMUNITY/EEA DIMENSION

(8) The undertakings concerned have a combined aggregate worldwide turnover in excess of ECU 5 000 million (Crown's 1994 turnover: ECU 3 743 million; and CMB's 1994 turnover: ECU 3 781 million). Each party has a Community-wide turnover in excess of ECU 250 million (Crown: ECU 465 million; and CMB: ECU 2 954 million) and neither achieves more than two-thirds of its turnover in one and the same Member State. The notified operation therefore has a Community dimension, and constitues a cooperation case under the EEA Agreement.

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V. COMPATIBILITY WITH THE COMMON MARKET

AFFECTED MARKETS

Relevant product markets

(9) Both companies are active in the packaging industry. The European packaging industry as a whole encompasses packaging products made of metal (tinplate and aluminium), plastic, glass and paper.

(10) The view of the Commission is that this industry does not constitute a single market but is divided into several markets. This conclusion is based on the existing differences in terms of the packaging material involved and the end use for the packaging product. For the purposes of this Decision, it is only necessary to examine the product markets affected by the notified operation: tinplate aerosol cans, food cans, beverage can ends and beverage bottle closures.

A. Tinplate aerosol cans

(11) Aerosol cans are used to fulfil specialized packaging needs for a wide variety of products, including health and beauty products, food products (e.g. whipped cream), cleaning and household products, and products for the pharmaceutical and automotive industries. Aerosol cans may be manufactured from tinplate or aluminium.

The parties submit in their notification that tinplate aerosol cans and aluminium aerosol cans compete in the same market. They also propose that the market for aerosol packaging may include various types of packaging other than cans.

Based on the results of its investigation, the Commission concludes that there is a distinct relevant product market for tinplate aerosol cans, and that neither alternative packaging nor aluminimum aerosol cans belong to this market, for the reasons discussed below.

1. *Alternative packaging does not belong to the same market as metal aerosol cans*

(12) As regards alternative packaging, some of the aerosol can customers (the fillers) interviewed during the Commission's investigation stated that the controversy over the use of CFCs had led to attempts to launch alternative products such as 'pump and spray' and PET aerosol containers. However, as alternative environmentally friendly

propellants have replaced freon, these attempts have, in most cases, been abandoned. Some alternative pump-dispensers remain on the market; however, none of them have been successful. Originally they too a very small market share, but even this low share has progressively declined. According to the areosol can customers, this lack of commercial success is primarily due to technical inadequancies (inability to deliver a fine spray, risk of droplets causing stains, lack of sufficient spray pattern) and to limited acceptance by the end-user customer. In addition, for some end-uses no alternative pump-dispenser can replace aerosol cans (for example, whipped cream). Consequently, none of the customers or competitors stated that pump dispensers compete with aerosol cans.

2. *There is a distinct market for tinplate aerosol cans*

(13) The overwhelming majority of aerosol can users who responded to the Commission's inquiry believe that aluminium and tinplate aerosol cans belong to two distinct markets. The Commission shares this view based on its investigation as well as on an analysis of facts and data submitted by the parties that:

— so far, a number of structural factors have led tinplate aerosol can users not to switch or even consider switching to aluminium aerosol cans, regardless of the respective prices of the two products in the past,

— tinplate aerosol can users would not consider switching to aluminium in the foreseeable future, even in the case of a significant increase in the price of tinplate aerosol cans.

(a) A number of structural factors have led tinplate aerosol can users not to switch to aluminium aerosol cans

(14) According to information gathered in the investigation, no tinplate aerosol can user has ever switched to aluminium cans in the past. This is due to the various factors analyzed below.

(15) Tinplate aerosol cans are less expensive than aluminium aerosol cans. Price differences may vary between 5 and 200 %, depending on the type of product, the type of printing, the production run length and the can size. The larger the diameter of the can, the larger the aluminium can price premium will be (except for small diameter (below 45 mm) where only aluminium cans are available for technical reasons). However, this price premium remains considerable, even for the smaller sizes (45 to 49 mm), where both tinplate and aluminium cans may be used (according to one large customer, the price premium in this segment is approximately 25 %).

These estimates of price differnces are in line with statements from the majority of customers (in particular the largest ones) who state that the average price difference between the two types of cans is currently between 20 and 30 %, and has been about 20 % for several years.

(16) The price differences are only partly due to the difference in the cost of the raw materials.

Aluminium can producers stated that the difference in raw material costs — for cans of a similar size — would be around 30 % (tinplate being 30 % cheaper), with the price of the raw material representing at least 30 % of the total cost of a printed aluminium can.

In addition, the production of aluminium cans is more capital intensive than the production of tinplate cans, it requires longer production runs, and is therefore subject to greater economies of scale. Furthermore, due to their relative specialization in personal care products, aluminium can producers are faced with a different product mix than tinplate can producers. This means that generally aluminium can manufacturers have smaller production runs for a given application, which factor contributes to raising the average price difference between the two products.

Finally, the cost of recycling is higher for aluminium than for tinplate. For example, the fee paid for recycling tinplate in Germany is only about 60 % of the fee paid for the recycling of aluminium. Since recycling costs must increasingly be borne by the fillers, this factor would further increase the price difference between tinplate and aluminium.

(17) Aluminium cans are a more expensive product than tinplate cans, but they are also seen by customers as more appropriate for the high-end range of products packed in aerosol cans. Aluminium cans are lighter and the metal permits a finer quality of printing on the surface than tinplate; in addition, they are produced as a one-piece monobloc unit. Thus, aluminum cans do not have the side or bottom seams of a three-piece tinplate aerosol can that would allow micro-leakage and eventual corrosion at the seams.

This different price-quality relationship for tinplate and aluminium explains why each product is traditionally preferred for distinct uses. Household and industrial aerosol can applications, for which price is a driving force, have been overwhelmingly dominated by tinplate cans (tinplate accounts for approximately 90 % of all cans used to fill household or industrial products). In contrast, personal care products, for which considerations of appearance play a major role, are predominantly filled in aluminium cans (60 to 70 %). Applications at the high end of the market (e.g. pharmaceuticals and perfumes) are even more totally dominated by aluminium cans (85 and 95 %, respectively).

(18) Aerosol can customers may switch their filling operations from the use of aluminium to tinplate cans using the same filling equipment, with minoir adjustments to the filling lines.

(19) However, some customers indicated that shifting from tinplate to aluminium would involve a number of adjustments in addition to direct switching costs (there are indications that these costs would be around 2 to 3 %). Switching would also require reorganization of the filling production process, as well as a change in the handling and conveyor system to be used (tinplate cans use magnetic conveyors, which is a cost-saving device, while aluminium cans require a completely different conveyor system). The shift itself would take one to two years to be implemented. As a result, the decision to shift would be a significant medium-term strategic decision.

(b) There is no substitution from tinplate to aluminium cans

(20) These factors explain why, according to a producer of aluminium cans, past fluctuations in the price of aluminium cans (unlike tinplate, aluminium is subject to frequent large price fluctuations) have not led tinplate can customers to switch to aluminium cans.

This suggests a long-term, low cross-price elasticity between the two products, which is confirmed by the results of the customers' survey by the Commission as well as by an analysis of data provided by the parties and of past market responses.

(21) Virtually all customers stated that they have never switched in the past from tinplate aerosol cans to aluminium aerosol cans (irrespective of the fluctuations in the price of aluminium aerosol cans) and that they would not consider such a switch in the foreseeable future unless the price of tinplate aerosol cans were to increase by a very significant amount (see the discussion below).

In addition, a majority of customers indicated that for the reasons detailed above under (a), they use aluminium only where it is necessary, either because of technical requirements or because of lack of consumer acceptance for tinplate in a particular application. However, a number of technical improvements in tinplate quality have recently led to a movement of one-way substitution from aluminium to tinplate (recent improvements in the quality of tinplate offering a product with better resistance to rust and less visible seals).

(22) Customers currently using tinplate usually indicated that they would only consider switching to aluminium if the price difference between aerosol aluminium cans and aerosol tinplate cans were reduced to zero or nearly zero. Customers also indicated that if the price of an aluminium can were to be equal to the price of a tinplate can, the tinplate can cost would still be cheaper in real terms as the recycling costs are lower. For this reason, some customers indicated to the Commission that in order for them to have an incentive to switch (or switch back) to aluminium cans, the price for aluminium cans would have to be lower (one customer indicated a figure of 15 %) than the price for tinplate, because of recycling costs.

As a result, traditional tinplate can customers, as well as customers having recently switched from aluminium to tinplate cans, stated that only a high increase in the price of tinplate cans would lead them to switch (or switch back) to aluminium cans. Depending on the product mix of can sizes used, customers stated that they would only consider switching following a price increase ranging from 15 % (lowest figure quoted in the answers to the survey) to 100 % (highest figure quoted) with the average of the various figures quoted being 43 %.

The results of the customer survey done by the Commission suggest, therefore, a long-term low cross-price elasticity between aluminium aerosol cans and tinplate aerosol cans.

(23) An analysis of data provided by the parties also suggests a low cross price elasticity.

The parties provided aluminium and tinplate aerosol can annual consumption volumes for the period since 1986, as well as annual price evolutions since 1987 for the two types of products in Italy. These figures do not show parallel price evolutions of the two products, nor do they show any substantial increase (or decrease) in the demand of one of the two products as a result of price increase (or decrease) of the other one. Although such data only related to Italy, the parties gave no reason why elasticities in Italy should be different from elasticities in the rest of Europe, since the parties and the Commission agree that the market is European.

(24) An analysis of past market reactions also suggest a low cross price elasticity.

Relying only on market reactions in Italy, the parties submitted however, that the product market should encompass both tinplate and aluminium products. They stated that in Italy, an increase in the aluminium aerosol can price by 35 % in 88 resulted in a drop in the volume of aluminium aerosol cans consumed from 144,5 to 62,3 million tonnes (i.e. a decrease of 82,2 million tonnes), between 1987 and 1989. In the meantime, the increase of tinplate volume was only 5,5 million tonnes (from 58,4 to 63,9 million tonnes). This example is not regarded as relevant by the Commission since it focuses on whether, and upon which conditions, aluminium can users would have substituted aluminium by tinplate cans. However, the merger only involves two tinplate can producers. Only the evolution of aluminium aerosol can demand following an increase of tinplate aerosol can prices would have constituted a valid indicator for the purpose of market definition in this case. However, even assuming that the test suggested by the parties had some relevance, it would also lead to the conclusion that the cross price elasticity between tinplate and aluminium is low. In fact, the parties' figures show that only a very small proportion of aluminium can users who ceased to use this product (around 6 %) would have turned to tinplate cans (i.e. a very low cross-price elasticity of 0,16).

(c) Conclusion

(25) As a result of all the above, it can be concluded that no substitution from tinplate to aluminium aerosol cans took place in the past, or can be expected to take place in the future in case of a small but significant price increase of tinplate aerosol cans. Both the analysis of past market data and the results of the Commission's market survey show that only a much higher increase of the price of tinplate aerosol cans (see above) might lead customers to switch to aluminium.

(26) In view of the above, the Commission cannot accept the parties' submission that there is only one aerosol can market encompassing both tinplate and aluminium aerosol cans. Both demand-side and supply-side factors indicate that no head-on competition takes place between tinplate and aluminium. The Commission therefore concludes that the market for tinplate aerosol cans is a distinct relevant product market.

B. **Food cans**

(27) The Commission agrees with the market definition submitted by the parties of a relevant product market for metal food cans.

(28) As regards substitution of food cans by plastic and glass containers, neither the parties nor the third parties expect a major switch from food cans to other packaging materials. This is not contradicted by the fact that there are different national preferences, as regards the final consumer, leading to certain products being packed almost exclusively in one material in certain Member States.

(29) Food cans may be either three-piece or two-piece cans. The majority are made from tinplate, while aluminium cans represent only a niche in the food can market. The three-piece (open top) food can is made out of tinplate by welding the side-wall and attaching a separate bottom. Two-piece cans where the bottom is an integral part of the can are made from either tinplate or aluminium. For both types of cans, the top is supplied by the manufacturer and attached by the filler. The only overlap between the parties in food cans is in three-piece cans.

(30) Three-piece and two-piece cans compete with each other in a single market for the following reasons:

— there is a signficiant demand-side substitutability between three-piece and two-piece cans, as they are interchangeable for most end uses. A filler would have to make only minor one-time adjustments to its filling lines if he wanted to switch between the can types. The exceptions are certain fruits which cannot be packed in two-piece cans, and some fish products which are only packed in two-piece cans. Furthermore, two-piece cans can only be produced up to a size of 500 ml,

— the cross-price elasticity appears to be high. Nearly all the food can producers as well as most of the customers stated that it would take only small price increases in one product to induce customers to change from three-piece cans to two-piece cans or vice versa.

C. **Beverage can ends**

(31) Beverage can ends are the top piece of a beverage can. Although the can itself may be made of tinplate or aluminium, the end is generally made of aluminium. The vast majority (over 90 %) are produced and sold by can manufacturers together with the can body and not as a separate item.

According to both the parties and third parties, there are no demand-side substitutes and the manufacturing equipment used in the production of can ends has no other use. Consequently, can ends may be considered to be in a separate product market.

D. **Beverage bottle closures**

(32) Both parties are active in the production of the following three types of beverage bottle closures: 1. metal crowns; 2. threaded plastic closures; and 3. aluminium bottle closures. On the demand side, the type of bottle closure used is dictated by the bottle design. A change in the choice of closure would require changes in the bottle design as well as modifications in the filling line, thus resulting in low short-term cross-price elasticity. On the supply side, different manufacturing technologies and equipment are required for producing the various types of closures. Consequently, it is not possible to quickly switch production from one product to another without further investments.

1. *Metal crowns*

(33) Metal crown are the traditional crimped 'bottle caps', generally made of tin-free steel (although tinplate is used in some applications) with a plastic or cork liner. They are used predominantly for sealing beer (accounting for approximately 90 % of applications) and also for carbonated beverage bottles. Crowns are used only on glass bottles that have a specialized unthreaded neck design.

For a significant portion of the market, these glass bottles are returnable and fillers must maintain a substantial stock of bottles for their production cycle. As a result, any change in closure product would reqire not only an investment in a new bottle design but also incurring the sunk costs involved in the obsolete bottle stock. For carbonated drinks that are contained in glass bottles with unthreaded necks, there are virtually no substitutes for metal crowns. These factors lead to low cross-price elasticity. Accordingly, metal crowns are a separate relevant product market.

2. *Aluminium and threaded plastic beverage closures*

(34) Plastic beverage closures are used for both carbonated and non-carbonated drinks for sealing both glass and plastic (PET) bottles. There are a number of different variations on these closures — including single-piece and two-piece closures — depending on the type of bottle used and its contents. The selection of the cap is largely driven by the customer's bottle choice and then the cap is customized to fit this type of bottle.

The equipment used to manufacture plastic closures can be used to make various types of threaded plastic closures, but cannot be used to make other types of closures, such as aluminium caps.

(35) Aluminium bottle closures are threaded caps used to seal glass and plastic bottles containing alcoholic spirits as well as soft drinks. While various sizes and styles in aluminium caps require some small differences in production equipment, the basic equipment for making all aluminium closures is the same. The process begins with the coating and printing of aluminium sheet metal which then passes through a slitter to form sheets which can be pressed to form the cap.

(36) While aluminium caps and plastic threaded closures can satisfy the same closure requirements, there are a number of factors indicating that the products are in separate relevant product markets: (a) the production equipment and technology are different; (b) despite the price advantage that aluminium enjoys over plastic (the cost of aluminum is approximately 10 % lower), customers (the fillers) prefer plastic and are willing to pay the premium in order to avoid consumer complaints of cut fingers on sharp aluminium edges; and (c) for historical and marketing reasons, at least one beverage segment — i.e. alcoholic spirits — are packaged predominantly with aluminium caps.

However, since even on the basis of two distinct markets for plastic and aluminium bottle closures, the operation will not lead to the creation or the strengthening of a dominant position, it can be left open whether the two types of closures belong to one and the same market or not.

Relevant geographic market

A. **Tinplate aerosol cans**

(37) The parties submit in their notification that the relevant geographic market for assessing this concentration would be 'at least the Community as a whole'. The Commission's view is that the relevant geographic market should be considered as embracing the whole of the EEA for the reasons detailed below.

(38) Neither the parties nor the competitors or customers interviewed reported any substantial imports into the EEA. Only one customer reported very small imports from the Czech Republic. In contrast, one of the larger customers reported unsuccessful attempts to source from eastern Europe where he was faced with problems of logistical complexity, loss of flexibility in placing and receiving orders, lack of quality and difficulties in meeting technical specifications. In addition, virtually no exports of tinplate aerosol cans outside ot the EEA was reported by any of the competitors who responded in the Commission's investigation, unlike aluminium aerosol cans, where substantial exports of small-diameter cans are made on a regular basis outside the EEA.

(39) several customers expressed the view that proximity of supply is an important qualitative competitive advantage in terms of, *inter alia,* transport costs, lead time, technical supervision of printing by customers, frequent and timely deliveries and other logistical considerations. However, despite the importance of these factors, a majority of both competitors and customers, including those cited above, did not consider this factor to be sufficient to define narrow geographic markets. Thus, they consider the market to be pan-European. In addition, an analysis of actual deliveries made by both the parties and competitors shows that all firms ship to several Member States (in some cases serving up to 10 Member States from one plant). According to the parties, a price increase of 5 % would expand the average range to 1 000 km.

(40) In light of the analysis above, the Commission concludes that the relevant geographic market for purposes of assessing the impact of this concentration on the tinplate aerosol can market is the EEA as a whole.

B. **Food cans**

(41) The parties have submitted in their notification that the relevant geographic market for food cans is the Community as a whole. This assessment is not in line with the opinion expressed by a majority of the competitors, who stated that food can markets are national. Responses from customers were less consistent: although a number of the customers felt the food can market was Euroepan, a substantial number of them stated that food can markets are national or that competition took place at local level. Moreover, a finding of national and transborder regional markets is more in line with actual purchasing and shipping data and facts submitted by most customers, as indicated below.

Based on the results of its investigation, the view of the Commission is that the relevant geographic market is not a European market. This assessment is based on an analysis of all information provided, including considerations of high transport costs for food cans, significant price differences among various Member States, different can norms, and the need for proximity to customers. These factors, taken together, indicate the existence of national markets or, in certain cases, transborder regional markets, as discussed below.

1. *Transport costs*

(42) Food cans are bulkier than aerosol cans and the transport costs represent a higher percentage of overall value. Therefore these cans have a shorter transportation range than aerosol cans. The parties indicated the current economically feasible shipping distance to be less than 500 km. Most of the competitors considered such a distance to be around 300 km. Some southern European food-can producers, based in countries whose currency has been devalued, ship further — up to 800 km. In the event of a hypothetical 5 % increase in market price, the maximum shipping range — based on transport costs alone — would increase to 700 km (for the vast majority of can sizes) up to 1 000 km (applying only to small cans).

2. *Needs for proximity to the customer*

(43) There is a strong need for proximity to the customer. The goods packed in food cans are perishable and must often be packed immediately after harvest. The customers therefore require timely delivery and absolute reliability.

This requirement is reinforced by the introduction of just-in-time production in the food industry, requiring food cans to be delivered several times a day at specified intervals for logistical reasons. As a result, some customers stated that they could not regard a supplier as reliable, if it were not situated close to their filling operations (figures quoted ranged from 50 km for the larger cans to 300 km for the smaller cans).

In addition, customers require quick and timely technical service from their can suppliers. In peak season, even a few hours of production down time are very costly, due to the risk of losing perishable crops. A can supplier must therefore be able to meet service needs within hours.

The enormous volume of cans utilized on a daily basis would create a need for additional warehouses and service facilities for suppliers who are not located close to the customer, the costs of which must be added to the transport costs that would be incurred. It would thus only be economical for a can producer to supply an area at a distance from its plants, if it received a substantial and long-term customer commitment that would enable it to set up these necessary service facilities.

This need for closeness is reflected in the current plant locations which are spread out all over the EEA. There are more than 40 food can-making factories in the EEA, with most Member States having more than one plant.

3. *Different can norms*

(44) A futher impediment to the Europeanization of the market is the inconsistency among various countries in the standardized norms for food can sizes, inhibiting cross-border sales. These restrictions could however be overcome, as large customers could induce manufacturers in an adjacent country to modify a line to make cans fitting the customer's norms.

4. *Significant price differences among Member States*

(45) A further indicator, arguing against a European market, are the significant and lasting price differences existing among the various Member States. Food cans are cheapest in Spain and Italy, while the price for a comparable can is up to 30 % higher in Germany and Austria.

5. *Conclusion*

(46) Taking into account the abovementioned factors, the Commission cannot accept the parties' submission that the relevant geographic market for food cans for the purpose of assessing this transaction is European. There are strong indications that the markets are generally national or transborder regional markets. Based on an analysis of actual transport distances, as well as the responses provided to the Commission, one could identify the following transborder regional markets which go beyond the boundaries of individual Member States: Spain and Portugal; the United Kingdom and Ireland; and Belgium, the Netherlands, and Luxembourg.

(47) In Spain and Portugal there are more than 15 food-can plants, all within competitive reach of each other. Shipping distances and plant locations indicate that Spanish producers can serve the Portuguese market, and Portuguese producers, the Spanish market. Imports into this market are negligible.

(48) Within the United Kingdom and Ireland, Crown owns the only food can plant in Ireland and CMB has six plants in the United Kingdom. There are however frequent exports to Ireland from the United Kingdom and the major British competitors have stated that they consider the two Member States to form one market. More than 90 % of the food cans consumed in this market are produced there. According to the Commission's investigation, this situation is not likely to change in case of a small but significant price increase.

(49) Belgium, the Netherlands and Luxembourg also constitute one geographic market with frequent transborder shipments amongst these areas. The parties have submitted that a regional geographic market focusing on the Benelux would have to take into account competitors in Germany and France.

The results of the Commission's investigation indicate that in fact companies with plants located in northern France and western Germany are currently shipping on a regular basis to the Benelux region. To a much lesser extent, Benelux producers ship to adjacent parts of Germany, while shipments to France are rare (93 % of the food cans consumed in France are produced in France). However, since even on the basis of the narrowest geographical market (i.e. Benelux) the operation will not lead to the creation or the strengthening of a dominant position, it can be left open whether the relevant geographic market sould encompass part of northern France and western Germany.

C. **Beverage can ends and bottle closures.**

(50) Due to their high packaging density, beverage can ends, metal crowns, threaded plastic closures and aluminium bottle closures all have a low freight cost-to-value ratio and can therefore be shipped economically throughout the Community. In beverage can ends, for example, Crown serves the Community from a single location in Ireland. Competitors also ship beverage can ends throughout the European Union, as well as to

eastern Europe, Turkey, and northern Africa. In the market for metal crowns, product is shipped throughout the European Union; and Crown ships from Spain to Holland and from its plants in the Community to the Middle East. Similarly, threaded plastic closures and aluminium bottle closures are shipped throughout the Community.

Both the parties and competitors have stated that they regard the relevant geographic market for each of these products as Europe. Accordingly, in light of shipment patterns as described above and the industry members' assessments, the above market appears to be the EEA.

Competitive assessment

A. **Timplate aerosol cans**

(51) A majority of the customers who responded in the Commission's inquiry have expressed concerns that the concentration and the resulting high market shares of the new entity would impede competition in the tinplate aerosol can market.

(52) Most tinplate aerosol can producers have also expressed concerns about the potentially anticompetitive effects that the proposed transaction will have on the market. They note, in particular, that the merger would allow the new entity to exploit a number of competitive advantanges of a qualitative nature which, when combined with its large market share, could give to the new entity the power, as expressed by one competitor, to 'lock out competition'.

(53) The Commission came to the conclusion that the operation would create a dominant position in the market for tinplate aerosol cans, for the reasons detailed below:

1. *Substantial structural changes in the tinplate aerosol can market will result from the concentration*

(a) Market shares

(54) According to the European aerosol manufacturer's trade association (FEA), the overall Community market for all aerosol cans — both tinplate and aluminium — amounted to approximately 3,3 billion units in 1994. This total is in line with estimates provided by the parties (3,45 billion units in the EEA).

According to estimates of the two main producers of aluminium aerosol cans, Boxal and Cebal, aluminium cans represent 1,2 to 1,3 billion units. This market estimate is in line with the actual sales data submitted by these two firms, who together account for around 1,1 billion units in the EEA.

Based on the above data, the EEA market for tinplate aerosol cans represents an overall volume of 2,1 to 2,25 billion units.

(55) On the basis of the highest of these figures, in 1994, market shares for CMB and Crown, respectively, accounted for [35 to 45 %] (1) and [20 to 30 %] (2) of EEA sales of tinplate aerosol cans. In that year, CMB and Crown sold, respectively, [...] (3) million units in the EEA. In addition, Crown delivered to [...] (4) million units in the framework of a [long-term] (5) supply agreement. (Crown constructed a 'wall-to-wall' tinplate aerosol manufacturing plant specifically for [...] (6) production plant.) Thus, the parties' total sales of approximately [...] (7) million units would give the post-merger firm a total combined share of [60 to 70 %] (8) of the EEA tinplate aerosol can market.

(56) The closest competitor is Schmalbach, a subsidiary of the Viag group, with sales in the range of 400 million units representing a market share of 18 %. The remaining 20 % (approximately) of the market is dispersed among small local competitors, each with a market share below 5 %. This includes Staehle, the third largest producer in the EEA, with a market share of approximately 4 to 5 %. All the remaining competitors would have market shares below 3 % (including, *inter alia,* May Verpackung in Germany, Linpac in the United Kingdom, Colep in Portugal, and Grumetal in Spain).

(57) As shown below, an examination of pre- and post-acquisition market shares in tinplate aerosol cans shows that there would be a dramatic change in the merged firm's market position and indeed in the market structure as a whole.

(58) Whereas prior to the acquisition, CMB is by far the largest firm (and is already twice as large as each of its next two competitors) in ther market, there are nonetheless two players — Crown and Schmalbach — who are approximately equal in size.

(1) Precise figure not disclosed: business secret.
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(6) Deleted: confidential information.
(7) Figure deleted: business secret.
(8) Precise figure not disclosed: business secret.

Company	*Market Share*
CMB	[35 to 45 %] (1)
Crown	[20 to 30 %] (2)
Schmalbach	[15 to 25 %] (3)
Staehle	[2 to 7 %] (4)
All other firms	10 to 15 %

(59) However, after the acquisition the market share of the combined Crown/CMB would be more than three times larger than its next closest competitor, who would itself be more than three times larger than the third largest remaining competitor in the EEA market for tinplate aerosol cans. As shown in the chart below, this operation would not only remove one of only two firms that has a significant market presence. In addition, it eliminates the only other firm that has been veiwed by customers as providing a significant competitive stimulus to the market leader (see below).

The post-acquisition market shares would be as follows:

Company	*Market share*
Crown/CMB	[60 to 70 %] (5)
Schmalbach	[15 to 25 %] (6)
Staehle	[2 to 7 %] (7)
All other firms	10 to 15 %.

(b) Excess capacity

(60) The parties estimate that a great deal of excess capacity exists in the market. (Their estimate of the average rate of use of production capacity in the market is [60 to 70 %] (8). However, the major portion of this excess capacity would be held by the merged entity itself. The parties together have a 'realistic capacity' (as defined by Crown, 'realistic capacity' is calculated as three shifts, using the current product mix and line configuraitons, and applying a factor of 75 % to that total to account for changeovers among products) sufficient to serve the total requirements of the market.

In contrast, the only competitor having a market share exceeding 5 % (Schmalbach) would hold maximum realistic excess capacity (calculated on the same basis as for the parties) that would allow it to serve [far less than 5 %] (9) of the market.

(c) Concentration of know-how, R&D and technology of the two market leaders

(61) In addition to the huge increment in market share and capacity, as well as the overwhelming market share of the new entity, the operation would result in the concentration of the two market leaders with respect to know-how, R&D and technology. Although such concentration might, in principle, have a positive impact on competition in terms of rationalization, in view of the existing barriers to entry, in this case it will have a negative impact for reasons detailed below.

Unlike food cans, aerosol cans are not a commodity product, and know-how has been reported by the vast majority of suppliers and competitors as playing an important role in the ability to compete in this market. This is particularly true in certain aspects of the production process, such as the formulation of internal lacquers (that ensure chemical compatibility with a particular filling) and development of efficient delivery systems (that protect the chemical integrity of the filling). This know-how capability is a key element in meeting customers' needs, both with respect to new fillings with particular chemical compositions that customers may want to launch, as well as competition on existing fillings.

Know-how and technological developments were also cited by a numer of customers inlcuding the largest ones as a reason why larger customers feel that they must source from large international companies with strong technical resources. CMB is seen by the largest customers as a high-quality innovative supplier, while CCS is making efforts to achieve the same level of quality. These two firms are seen as the innovative forces in the market. Customers also noted that the market is currently experiencing a fast-moving and costly evolution in technology and know-how, and that possessing and updating state-of-the-art know-how is a primary factor driving competition in the market. This has been confirmed by the parties in a memorandum submitted to the Commission on 18 July 1995. Along the same line, one customer noted the following:

'CMB — technology-wise — is the most advanced firm in the industry.... Because of this, other competitors are always forced to follow and develop in the same way as CMB.

(1) Precise figure not disclosed: business secret.
(2) Precise figure not disclosed: business secret.
(3) Precise figure not disclosed: business secret.
(4) Precise figure not disclosed: business secret.
(5) Precise figure not disclosed: business secret.
(6) Precise figure not disclosed: business secret.
(7) Precise figure not disclosed: business secret.
(8) Precise figure not disclosed: business secret.
(9) Precise figure not disclosed, confidential information of Schmalbach.

Crown was always the first to put into effect new developments which led to healthy competition between these two equal suppliers. If these two firms merge, it will lead to significant price increases because the existing competition (especially in the area of new developments) will cease to exist and in the end the new firm would have unlimited freedom to raise prices. In this company's view, there is actually no supplier financially strong enough to develop new technology aside from Crown and CMB, so as a result the end-user/final consumer will be the victim.'

(d) Elimination of one of the only two aerosol can competitors with European-wide plant coverage

(62) The operation will remove one of the only two suppliers able to offer full geographic coverage. Such capability is important to customers choosing a supplier in terms of lead time, after-sales service, day-to-day small deliveries (as compared to large, bulky deliveries that require extensive and costly warehousing) and reliability of deliveries.

(63) As already mentioned, both large and small customers have expressed the view that proximity of supplier to customer constitutes a competitive advantage, even where supplies are negotiated at the European level. For smaller customers, this is especially important for providing deliveries in small quantities. As regards larger customers, they are heavily dependent on large suppliers as regards technical flexibility, quality requirement, technological innovation and know-how (see below under 'countervailing power of customers'). They also prefer suppliers located close-by, particularly for providing technical assistance, reliability of deliveries, supervision of printing, reduced lead time, and the industry move toward day-specific deliveries in small quantities.

Prior to the operation, the merging parties are already the only ones in the market enjoying such flexibility: Crown operates plants in the United Kingdom, Spain, Italy, Belgium and the Netherlands; and CMB operates plants located in the United Kingdom, Spain, Germany and France. As noted above, this must be compared with the remaining competitors in the industry: Schmalbach, the only other multi-plant producer, operates only two plants (located in Germany and the Netherlands) and no other competitor has more than one production plant.

(e) Production flexibility

(64) The operation will also remove one of the two leading suppliers in terms of flexibility of production. In this respect, it will further widen the gap which, according to customers, already existed *vis-à-vis* the closest competitor.

(65) In terms of production flexibility, the new entity will also be the only one to be operating a total of more than [...] (1) tinplate aerosol can production lines ([...] (2) from Crown and [...] (3) from Carnaud) with at least [...] (4) production lines in each major area of Europe [...] (5).

Due to their large number of production lines, both Crown and CMB are able to keep production lines open for special large customers in the framework of dedicated supply agreements involving commitments for weekly deliveries. According to the Commission's investigation, the large number of lines that the merged firm will acquire would give them even greater flexibility in this respect and none of their competitors are able to provide this kind of service. Clearly, the ability to provide this customized service constitutes an important competitive hurdle for the other competitors to overome, as it appears to have been one of the factors (together with innovative capability) that led [...] (6) to choose CMB and Crown as its only suppliers when it decided to switch certain products from aluminium aerosol to tinplate aerosol cans. Another very large customer stated that CMB and Crown are both 'able to supply throughout Europe with good lead time, they can take advantage of currency moves as they produce in a number of European countries and they offer flexibility (day-to-day offers).... No other tinplate can producer in Europe is curently able to offer this service'.

2. *The remaining competitors will be unable to constrain the new firm's exercice of market power in the tinplate aerosol can market*

(66) A number of large customers expressed the veiw that smaller competitors do not and would not constitute a viable alternative to meet their requirements, since they usually purchase a number of

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different sizes of aerosol cans in large quantities that are manufactured in long production runs. This would not be economically possible for smaller competitors operating a limited number of lines in one location. This is all the more true as a number of the largest customers already negotiate their purchases at the European level with large suppliers that operate a number of lines throughout Europe. All major customers expressed the concern that they would not have any alternative in the choice of their 'primary' suppliers after the operation. In particular, one of the largest customers complained that the merger would lead to a situation of quasi-monopoly that would be competitively harmful to customers generally, including large customers such as itself.

(67) The only remaining major multi-plant competitor, Schmalbach (Viag), does not have adequate excess capacity nor the geographical flexibility to compete effectively against the parties throughout the marketplace. With its only two plants located in northern Europe, it is virtually absent from Spain and Italy with its sales mainly focused on the Benelux, Germany, the Nordic countries and, to a lesser extent, the United Kingdom. In addition, in view of its fairly localized plant locations, the number of lines it operates and its limited free capacity, Schmalbach would not enjoy the same technical flexibility either.

Finally, unlike the parties, Schmalbach was not cited as a 'technology leader' in the market.

(68) Thus, Schmalbach will be hindered in its ability to constrain any possible anti-competitive behaviour of the new company. This is further confirmed by statements made by several customers who rank among the largest aerosol can customers. In particular one customer stated that '... Schmalbach in particular cannot offer this flexibility, its plants are all located in the same area, and it is not an innovative company. For all these reasons, Schmalbach would not be considered by (our company) as qualifying as a primary supplier under current conditions. In order to constitute a credible alternative as a primary supplier they would have to invest a lot of money, while the message from Viag's management is that the Viag group's priority is not in packacing'. Another large customer stated that 'Schmalbach does not constitute an alternative as a primary supplier, nor the remaining competitors, which are family-managed companies with less than 5 % of the European market'.

(69) With respect to the remaining small competitors, although collectively they account for considerable excess capacity, this capacity is dispersed amongst them and, consequently, they would not be regarded as a viable alternative in meeting the requirements of the larger customers. These small firms would suffer from even greater disadvantages than Schmalbach as fas as qualitative competitive factors are concerned. These smaller competitors will therefore not be able to constrain the behaviour of the merged entity to a significant extent, as reflected in the following statement made by a large customer:

> 'Actually, small competitors are on a "different planet" with respect to quality, flexibility, insufficient capacity, innovation, speed and quality of printing. These small companies mainly compete to obtain orders from third party fillers.'

3. *The countervailing power of customers would be inadequate to constrain the potential anti-competitive behaviour of the parties*

(70) The parties stated in their notification that larger customers would enjoy countervailing power as they could easily turn to other suppliers, or conclude long-term supply agreements, or even integrate vertically upstream.

(71) The largest customers state that they do not feel they could shift to smaller competitors. As already detailed above, these customers depend heavily upon technological innovation and know-how where the parties would hold the strongest position (and virtually the only credible position) in the market. In this respect the parties stressed that innovation is often developed through partnerships with customers and/or suppliers. Shifting a substantial part of their requirements to smaller suppliers would thus be likely to adversely affect such partnerships.

In addition, these customers would have to conclude several purchase agreements for relatively small quantities with a number of small players, as compared to the types large-volume contracts they conclude with Crown and/or CMB. This would adversely affect the reliability of supplies and would be difficult and uneconomical to manage.

Finally, large customers also state that only large international suppliers provide the option of European-wide negotiations and can meet their quality and tehnical requirements (see above).

As a result, the largest customers in the market have stated that they do not feel that they would have any alternatives to the new group if the merger is allowed.

(72) The same competition concerns apply to circumstances surrounding long-term agreements with customers and/or dedicated plants or production lines. One competitor has stated that the level of excess held by the new entity, together with its technical flexibility, would give the firm a clear advantage for these kinds of projects. It was also stated that the merged firm's dominating position in terms of know-how, R&D and technology, together with the financial investment possibilities available to the new group, would make the new entity a preferred partner for any such new project of a large customer. This is reflected in the following statement of a large aerosol can customer.

'As regards long term agreements with small suppliers, this would not be sensible from (our company's) point of view. (Our company's) policy would rather be to sign a long term agreement with the new group in order to benefit from the innovation and other advantages mentioned above and to secure evolution of can prices. In addition, smaller producers such as Colep in Portugal that (our company) visited recently would not constitute a credible alternative either for a large buyer such as (our company).'

(73) Finally, as to the possibility of vertical integration upstream by large customers, none of them stated that they would consider such integration. In contrast, all customers, including some who stated that they previously considered this possibility seriously at one time or another, stressed that a number of barriers to entry (detailed below under 'potential entry') would prevent them from doing so, particularly the requirements for know-how. In addition, some customers noted that the number of different permutations involved in aerosol can production — in terms of can size, multi-colour printing, and ensuring the compatibility of can contents with the appropriate internal lacquer — would require an uneconomical number of production lines which would, moreover, end up being under-utilized (one customer noted that his company's requirements account for more than 700 permutations).

(74) For all the reasons discussed above, even the largest customers will not be in a position to constrain the behaviour of the new entity.

4. *There is not adequate potential competition to constrain possible anti-competitive behaviour by the merged firm*

(a) Potentially entry into three-piece tinplate aerosol cans

(75) The parties state that the cost of market entry in terms of acquisition of the necessary production equipment is not extremely high, since tinplate aerosol cans are produced with the same technology as three-piece food cans.

In certain cases, converting a three-piece food can assembly line into an aerosol can line would not be costly or extremely difficult. It would however involve substantial retooling as well as special tooling for the domed ends utilized on aerosol cans (but not on foods cans). In addition, not all food can lines can be economically converted; rather, only high-performance lines producing small-diameter cans qualify. The parties state that the conversion costs of an existing high-performance food can line would be in the range of ECU 1 to 2 million for conversion (without moving the assembly line) into a one-size aerosol line. However, this figure is not necessarily useful in assessing realistic conversion costs, because the line would likely have to be moved from the food can production area to the aerosol production area.

The parties estimate that installing new production facilities would cost around ECU 10,7 million for a two-line production plant including printing facilities. Competitors consider that significant entry would require at least three lines (as compared to the [...] (1) lines held by the parties) involving a cost of some ECU 12,5 million (including bottoms and domed end production, but excluding printing, which is highly technical and costly to set up).

(76) None of the customers or competitors confirm this view. Indeed, the overwhelming majority state that new market entry is unlikely in the forseeable future, except through the acquisition of an existing competitor.

Moreover, the Commission's investigation shows that — beyond the installation of the manufacturing equipment — know-how is an important feature of the market and is seen as an important

(1) Figure deleted: confidential information.

barrier to entry by customers who have considered integrating upstream (see above under 'countervailing power of customers'). This requirement for know-how would also apply to food can producers seeking to enter the aerosol market, although presenting less of a barrier than for aerosol can customers considering *de novo* entry through vertical integration,

(77) The parties argue that from a technical and commercial point of view, entry could be done with only two lines. However, this claim is contradicted by statements of the larger customers who have declared that reliability of supply, flexibility of production, advanced technology, R&D and know-how constitute important factors in their decision to purchase from a particular supplier. These elements constitute therefore an important barrier to a significant entry that would be sufficient to constrain the behaviour of the market leader.

(78) The parties also argue that the market is growing rapidly (27 % between 1985 and 1994) which should in principle facilitate market entry. However, the parties do not show any evidence related to tinplate cans but only aggregated estimates relating to the overall aerosol sector. The only detailed figures available to the Commission for tinplate aerosol cans concern the Italian consumption. These figures show a market growth of 7 % between 1986 and 1994 in Italy.

(79) However, even if the European tinplate aerosol can market is not a stagnant market, it is unlikely that any entry on a significant scale would take place. Virtually all competitors ruled out the possibility that significant entry would take place through installing new capacity in the foreseeable future. There is already significant excess capacity in the market, with the market leader itself holding a substantial part of this free capacity. In fact, as noted earlier, the new entity would hold enough capacity to supply the entire market. In this respect, the parties indicated in their written answer to the objections of the Commission, that Crown's realistic capacity did not take into account bottle necks which would exist at the level of printing facility. However, the parties indicated in their notification that considerable capacity for printing was readily available on the market, since printing would be frequently contracted out. It results that an eventual limitation of the in-house printing capacity of the parties would not affect this analysis.

The overall elasticity of demand appears to be relatively low (there is no close substitute for tinplate aerosol cans and past price fluctuations of the closest substitute (aluminium cans) did not lead to any substantial change in the balance between the two products). The market leader would thus be in a position to lower prices quickly and steeply by putting additional quantities on the market. This ability to 'price limit' would discourage any attempt for large-scale market entry even in a market where the cost of entry is relatively low, as the new entrant could be very quickly forced to exit the market and would hesitate to enter anew when prices rise again.

As a result, the majority of the competitors estimate that if market entry were to take place in three-piece tinplate aerosol cans, it would have to be accomplished through the acquisition of an existing competitor.

(b) Future competition from aluminium can makers

(80) As noted above, according to the major customers, the price of aluminium cans would have to decrease steeply in order for aluminium to become a competitive alternative for a customer using tinplate. The average of the figures quoted by customers amounts to a decrease of approximately 43 % in the price of aluminium, the figures quoted by the larger customers ranged between 20 and 25 %. According to most market players (suppliers, competitors and customers of the parties), it is extremely unlikely that aluminium can prices will decrease by more than 10 % at most in the medium term. Aluminium can makers therefore cannot be considered as being likely to be a significant competitive constraint for tinplate can manufacturers in the foreseeable future.

(81) However, the parties have submitted in a memorandum addressed to the Commission that one of the major players in aluminium ([...] (1)) is in the process of developing a two-piece tinplate aerosol can technology (as opposed to the existing three-piece technology).

(82) However, a number of technical problems remain to be solved (such as resistance to pressure and reduction of the diameter of the top part of the can) and some degree of uncertainty still exists as to whether these problems can effectively be

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resolved. Such developments would in any case involve very heavy investment and take time to be implemented. Finally, the strategy of [...] (1) would primarily be to attempt to keep its existing business volume, while its customers are rapidly moving to tinplate cans. It is therefore likely that [...] (2) will focus on securing its existing customer base in the foreseeable future and will not be an aggressive competitor *vis-à-vis* customers currently using tinplate.

In addition, customers have stated that 'even though production was technically feasible using this new technology, it remains to be assessed whether it would be economically sensible in terms of production costs for production runs adapted to customer requirements. This will only be certain by no earlier than 1998.'

5. Conclusion on tinplate aerosol cans

(83) Based on the above analysis, it appears that after the operation, the merged entity would be able to behave to an appreciable extent independently of its competitors and its customers in the market for tinplate aerosol cans. The operation would thus lead to the creation of a dominant position in the market for tinplate aerosol cans.

B. Food cans

1. *Assessment on single dominance*

(a) Horizontal effect of the merger

(84) The parties have provided information on market volumes and market shares including self-manufacture by customers. Production by self-manufacture, however, does not affect-either supply or demand in the market. Supply-side, self-manufacturers (with the exception of one company) are currently not selling their production to outside customers. As regards demand, self-manufacturers will always use their own production first and will only turn to the market for their residual demand. Only this residual demand is therefore competed for by food-can producers. The market volume should therefore exclude self-manufacture (except the quantities sold to outside customers). On this basis, 26 billion units are sold in Europe per year. Out of this number, CMB sells [35 to 40 %] (3) and Crown [less than 5 %] (4). The next largest competitors are Pechiney with [10 to 15 %] (5) and Schmalbach-Lubeca with [5 to 10 %] (6). Other competitors are Ferembal [around 5 %] (7). Lawson Mardon and Massilly [less than 3 % each] (8).

(85) Within national markets, CMB is the market leader in a number of Member States. In fact, CMB is the only food can producer having an important position in almost every Member State of the EEA. The information provided by CMB regarding its actual sales and its estimate of the market volume would give CMB a market share of [55 to 65 %] (9) in the United Kingdom. This estimate is in line with competitors' estimates of CMB's market share in the United Kingdom, with the average being 61 %. CMB's actual sales data in the Italian market show that the company has a market share of [50 to 60 %] (10) in that market. CMB has also market shares above 40 % in France.

(86) An overlap between the parties exists only in France, Benelux, Germany, Spain/Portugal and in the United Kingdom/Ireland. However, in all of these markets — except the Benelux — the increment would be small. According to the parties' estimates, Crown has the following market shares: in the United Kingdom and Spain/Portugal around [< 2 %] (11); in France [< 1 %] (12); in Germany [< 1 %] (13).

In addition to these small market share increments, there would be no loss of potential competition. Although present in Europe for several years, Crown has never tried to increase its food-can business to an appreciable extent. Crown even reduced its existing capacity by closing its French food can operation as well as existing food can lines in its United Kingdom aerosol plant. It results that Crown was neither a likely entrant into any geographic markets where it is currently not present, nor did it possess the potential to significantly increase sales in the markets where it is established. Therefore, the concentration will have no significant horizontal effect in France, Germany, Spain/Portugal and in the United Kingdom/Ireland.

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(2) Name deleted: confidential information.
(3) Precise figure not disclosed: business secret.
(4) Precise figure not disclosed: business secret.
(5) Precise figure not disclosed: confidential information of Pechiney.
(6) Precise figure not disclosed: confidential information of Schmalbach.
(7) Precise figure not disclosed: confidential information of Ferembal.
(8) Precise figures not disclosed: confidential information of Lawson Mardon and Massily.
(9) Precise figure not disclosed: business secret.
(10) Precise figure not disclosed: business secret.
(11) Precise figure not disclosed: business secret.
(12) Precise figure not disclosed: business secret.
(13) Precise figure not disclosed: business secret.

(87) In the Benelux, there will be an horizontal effect as Crown has a significant market share of [15 to 25 %] (1). However, the competitive situation in this market indicates that the concentration will not create single dominance. After the merger the new entity will have a market share of less than 40 % and will face a strong competitor, Schmalbach, with a market share of 30 to 35 %. In addition, a number of competitors, including Pechiney, export into this market from other geographic markets. The new entity will therefore not be in a position to dominate the Benelux market alone.

(b) Impact of the merger on the upstream market of tinplate for metal packaging

(88) Almost all the European tinplate suppliers and competitors of the parties, as well as many of the parties' customers, have expressed concerns regarding the possible creation of buying power that the merged firm would acquire for purchases of tinplate and tinfree steel (hereinafter referred to as 'tin-mill products') through the concentration.

(89) The large volume of purchases of the new packaging group on both sides of the Atlantic would combine the requirements of CMB, the largest European customer, with Crown, the largest United States customer. The respective percentage of the market volume consumed by each of the parties is shown below:

	European Union	United States
Crown	[< 5 %] (2)	[15 to 20 %] (3)
CMB	[25 to 35 %] (4)	[< 5 %] (5)
Total	[30 to 40 %] (6)	[20 to 30 %] (7)

The next largest customer in Europe (Schmalbach) purchases less than the half of the current purchases of CMB.

(90) Following its in-depth investigation, the Commission concluded that the operation would be likely to lead to an increased bargaining power of the new entity. This conclusion is in line with the declaration made by Crown's chairman who stated that costs savings in the range of US $ 100 million should result from the merger in particular with respect to the purchase of tin-mill products. However, the Commission did not come to the conclusion that the merger would lead to the creation of buying power in the various tin-mill product markets in Europe.

(91) Prior to the operation, CMB enjoyed the lowest tin-mill product prices in Europe. However, CMB has not been able to enjoy a significant cost advantage in the purchase of tin-mill products as compared to its closest competitors in each Member State. The market prices went down in Europe since 1992 by some 15 %, and average prices and large customer prices (including CMB) have moved downward in parallel.

(92) This situation has been due to the fact that CMB was unable to credibly threaten to remove large quantities from one supplier, as it could not rely on securing a sufficiently large portion of its requirements from alternative reliable suppliers at an acceptable price, if it were to cancel the order for that portion from one of its original suppliers. The current European rate of capacity utilization in tinplate production (on average around 75 %) and the highly seasonal nature of production of food cans, beverage cans and metal crowns (representing more than 65 % of tinplate sales) do not allow the packaging manufacturers to easily switch large volumes from one tinplate supplier to another.

(93) The merger will bring about a certain change in the tinplate supply situation in Europe, as described above; however, the information collected by the Commission shows that the situation will not result in a radical change after the proposed merger for a number of reasons. First, although the prices of the American tin-mill products are on average cheaper than average prices in Europe, an economic survey ordered by the Commission showed that the new group would have no economic incentive to ship substantial amounts of tin-mill products across the Atlantic (8).

(1) Precise figure not disclosed: business secret.
(2) Precise figure not disclosed: business secret.
(3) Precise figure not disclosed: business secret.
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(8) Due to the both the decline in prices in Europe and currency moves, the average market price difference between the USA and western Europe has declined markedly during the last years. In 1992, USA average prices stood some 13 % below those in the European Union (EU). In 1994 they stood at less than 1 %. When comparing the prices obtained by the largest customers in both areas (including Crown in the USA and CMB in Europe), the price difference is somewhat larger (in the range of [< 5 %] cheaper in the USA). Since the import costs from the USA into the European Union are equivalent to some 15 % of the United States' average large customer price, the United States tin mill would have to suffer an 11 % margin reduction (when compared with the large customer price), in order to export to the European Union at a price comparable to the European Union average large buyer price. In other words, importing tin-mill products from the United States in large quantity would result in a significant raw material cost increase for the new group.

(94) Secondly, the current pattern of supply and demand for tin mill products in the USA shows that the United States tin mills have even less reserve capacity than the European mills and they are faced with the same constraints as the European in terms of 'peak season'.

In contrast, the Commission's study showed that imports of small quantities of United States' tin-mill products at attractive prices could take place since the United States' mills are interested in small orders that can easily fit into their production programmes, outside — or even sometimes within — the peak seasons. This possibility would be, however, available to the new group's competitors as well as to the parties, and the quantity involved would not be sufficient to destabilize the market.

(95) It results from the above that the merger will probably bring about efficiencies which should allow, according to the parties' press statement, raw material cost savings representing at least 1 % of the combined turnover of the new group. However, the current market situation, both in terms of prices and capacity in the USA will not allow the parties to use the lower United States' prices as an additional leverage *vis-à-vis* its European suppliers, with a view to obtaining purchasing conditions significantly different from those of its main competitors. The merger will thus not lead to any significant vertical effect.

(c) Conglomerate effect of the merger

(96) There is no significant difference in the overall product range produced by both parties. In addition, food can customers are mainly food processors which do not require any other product produced by the parties (i.e. aerosol cans, bottle closures). Thus, the concentration would not have a conglomerate effect.

(d) Conclusion on single dominance

(97) For the reasons mentioned above, the merger will not have a horizontal, vertical or conglomerate effect in the market for food cans that could create or strengthen a dominant position in any geographic market.

2. *Assessment on oligopolistic dominance*

(98) The only geographic market where the concentration could create a problem of oligopolistic dominance is the Benelux market. The food-can market is a mature market, characterized by low growth. The level of innovation is low, making food cans a commodity product and leading to the absence of non-price competition. In this context, after the concentration, there will be only two major suppliers with operations in Benelux, Crown/CMB and Schmalbach, each having a market share of more than [...] (1), and together holding around 70 % of the market. This changes the competitive situation in the market and may thus create an incentive to coordinate pricing to gain supra-competitive profits. Some customers stated that before the concentration, they could always assure competitive prices by asking the third major supplier for a price quote.

(99) The food-can market is sufficiently price transparent to allow anti-competitive parallel behaviour, even in the absence of price lists, since in a concentrated market it is possible to deduce the pricing behaviour of a competitor by analysing the contracts it gains. These transactions are not extremely complex; as they involve only a limited number of products, and non-price factors are not a decisive criterion for a customer, when choosing amongst the major suppliers.

(100) In addition, Crown has a capacity utilization in its Antwerp plant of [...] (2) and estimates CMB's capacity utilization to be [...] (3). Schmalbach has a lower capacity utilization in its Benelux plants, with a total capacity utilization of around [...] (4). However, these numbers, indicating a low capacity utilization, depend on the assumption of a three-shift production, which is not common in the industry. Moreover, it is not costly to hold this excess capacity. At current prices, Crown covers its fixed costs in its Antwerp plant with a capacity utilization of [< 40 %] (5). This shows that there is not a strong incentive to fully load capacities at a low price, in order to depart from parallel behaviour.

(101) There are significant imports from France and Germany into Benelux, in the order of more than 30 % of internal consumption. Although CMB is the market leader in France (market share: [40 to 50 %] (6)) and Schmalbach and CMB are the two biggest firms in Germany (combined market share 70 to 80 %), competitors like Ferembal, located outside Benelux but at a distance from the borders that allows economic shipments into its territory,

(1) Figure not disclosed: confidential information.
(2) Figure not disclosed: confidential information.
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could react promptly and efficiently to any increase of prices that the leading firms might try to implement.

For this reason it can be excluded that the merger will bring about the creation of an oligopolistic dominant position in the Benelux market for food cans.

C. **Beverage can ends**

(102) On a Community-wide basis, the parties estimate their shares of the beverage can ends market to be approximately [15 to 25 %] (1) and [< 5 %] (2), respectively, for CMB and Crown. These market share estimates are generally in line with data provided from third-party sources.

(103) There are at least two other major producers for this product in Europe: Nacanco, which belongs to the Pechiney Group, and Schmalbach's Continental Can (Europe) subsidiary. Each of these competitors has a market share that is roughly equivalent to that of the parties' combined share.

(104) The vast majority of beverage-can manufacturers, including CMB, also make beverage can ends and sell both parts to their customers as a single unit. Most can manufacturers satisfy their requirements for beverage can ends through their own production. However, some also purchase a portion of their requirements from outside manufacturers, such as Crown. In this regard, Crown is in an exceptional position, in that it only produces and sells beverage can ends in Europe, but not can bodies. Thus Crown functions as a third party supplier offering European beverage can manufacturers an outside source for can ends to round out their production needs. Among Crown's largest customers are Nacanco, CMB and Continental Can (Europe).

(105) It does not appear that a vertical competitive concern arises in regard to Crown's sales of beverage can ends, however, because of the leverage that its customers can apply in this market. Actually, Crown's customers are powerful can manufacturers which only use outside supply as a means to finely tune their own production of beverage cans (both body and end). These companies could expand their capacities in can ends at any time if they felt it to be appropriate. Thus, the acquisition is unlikely to create any appreciable potential for vertical foreclosure. Similarly, this increment in market share (approximately [< 5 %] (3)), when added to CMB's EEA-wide share of [15 to 25 %] (4), would not in itself appear to threaten to create a dominant position in the market for beverage can ends.

(1) Precise figure not disclosed: business secret.
(2) Precise figure not disclosed: business secret.

D. **Metal crowns**

(106) For 1994, the parties estimate that the combined firm would have a market share of approximately [35 to 45 %] (5) in metal crowns (Crown [35 to 45 %] (6), CMB [< 5 %] (7)). However, since CMB recently sold its metal crown manufacturing operations in Spain and only retains metal crown operations in Finland, the current product overlap between the parties would be lower than in 1994. The parties' estimates of market shares for other firms in the market include Tapon ([10 to 20 %] (8)), Pelliconi ([10 to 20 %] (9)) and Brüninghaus ([5 to 15 %] (10)).

(107) Industry members generally confirms these estimates (although Crown's market share is generally estimated to be somewhat higher than the parties' assessment). In addition, they concur with the parties' statement that there is excess capacity in the market, although other estimates of capacity utilization are again higher than that of the parties (who estimate it to be about 50 %). Finally, they confirm that there is a structural decline in demand that is expected to continue, due to the use of alternative packaging (cans and returnable plastic (PET) bottles) which do not use crowns. This factor has exerted a downward pressure on prices, while costs have been increasing due to a rise in tinplate prices.

(108) In addition to the fact that CMB's market share is small, Crown itself has lost approximately [5 to 15 %] (11) of its market share in the past five years, with its share declining to its current level of [35 to 45 %] (12) from [45 to 55 %] (13) five years ago. In light of the market features discussed and the combined firm's position, this operation is not likely to lead to the creation of a dominant position in the market for metal crowns.

(3) Precise figure not disclosed: business secret.
(4) Precise figure not disclosed: business secret.
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(6) Precise figure not disclosed: business secret.
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(9) Precise figure not disclosed: business secret.
(10) Precise figure not disclosed: business secret.
(11) Precise figure not disclosed: business secret.
(12) Precise figure not disclosed: business secret.
(13) Precise figure not disclosed: business secret.

E. Threaded plastic beverage closures

(109) According to the parties' estimates, that the market shares of the other main competitors in the industry are: Crown with [25 to 35 %] (1), CMB with [5 to 10 %] (2), Novembal with [10 to 20 %] (3), Berg with [10 to 20 %] (4), and MCG Closures with [5 to 15 %] (5). These numbers are roughly in line with other estimates received, as well as with the results of the Commission's investigation.

Crown's acquisition of CMB, by increasing Crown's share from [25 to 35 %] (6) to [30 to 40 %] (7), is not likely to change its position appreciably relative to its next three competitors (Novembal, Berg and MCG). The plastic beverage closure market is a relatively new market and has been characterized by growth (the market volume has doubled in the past four years), as have the sales volume and market shares of these three firms. In contrast, Crown's growth in this market has been below the industry's level, with a consequent loss of share from [30 to 40 %] (8) to [25 to 35 %] (9) of sales during this same four-year period.

(110) While most types of plastic beverage closures are patented today — and the parties hold some of the major patents, in particular in the two-piece closure area — it does not appear that patents have significantly impeded entry into the market. Licences are readily available and licensing fees typically are not very high (generally, 2 to 4 % of sales, including Crown's fees).

Crown holds patents under the Obrist and PolyVent trade names and it both produces under these patents and licenses to competitors (including CMB). CMB is a licensee of Owens-Illinois (OI), another major patent-holder in plastic beverage closures, although it does not produce closures under this licence for technical reasons.

Many new entrants into the closure market have begun by obtaining a licence to one of the available technologies in order to immediately begin producing closures. Subsequently, some have proceeded to develop new patented products. This has been the route taken by at least four competitors (Berg, Betts, Borimioli, and OI). Berg originally licensed Crown's PolyVent patents, Betts was an Obrist licensee, Borimioli licensed VEM's Plastivit closures, and OI was (and still is) an Alcoa licensee. Each of these firms subsequently developed their own closures. There are a number of other competitors who both sell their own closures and license to other firms.

Furthermore, producers of plastic beverage closures face a relatively concentrated demand-side market structure and highly sophisticated price-conscious customers. These large, powerful beverage customers (including the ranks of Coca-Cola, Pepsico, Perrier and Pernod-Ricard) tend to follow a multi-sourcing purchasing strategy in order to better control their sourcing choices and options. Such multi-sourcing policies would tend to preserve the existence of competitors as alternative sources.

In view of the market structure, and the resulting size of the combined entity within this market, it does not appear that the transaction would create or strengthen a dominant position in the market for threaded plastic beverage closures.

F. Aluminium bottle closures

(111) For 1994, the parties estimate the market volume at 26 billion units, giving them a combined share of the market at the EEA-wide level of approximately [30 to 40 %] (10) (Crown: [25 to 35 %] (11), CMB: [< 5 %] (12)).

(112) However, data submitted in the Commission investigation show that the parties overestimated some of their competitors' sales volumes. After examining the actual sales volumes submitted by the competitors identified by the parties, the Commission concludes that the market universe is in the range of 18 billion units. This estimate is identical to the estimate of two major competitors (with a third placing the market total far lower at 14 billion units). The market size of about 18 billion units is consistent with the actual sales reported by the various players in the market.

(1) Precise figure not disclosed: business secret.
(2) Precise figure not disclosed: business secret.
(3) Precise figure not disclosed: business secret.
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(6) Precise figure not disclosed: business secret.
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(8) Precise figure not disclosed: business secret.
(9) Precise figure not disclosed: business secret.
(10) Precise figure not disclosed: business secret.
(11) Precise figure not disclosed: business secret.
(12) Precise figure not disclosed: business secret.

Based on a total market of 18 billion units, the parties would have a combined market share of [45 to 55 %] (1). The market shares of the major competitors are, accordingly: Alcoa [25 to 30 %] (2); Cebal, part of the Pechiney group [< 10 %] (3); and MCG Closures [< 10 %] (4).

(113) Based on information submitted by both the parties and other industry participants, it appears that the aluminium bottle closure industry is suffering from declining demand, as well as substantial overcapacity, due to moves by fillers from glass to plastic bottles and therefore to plastic caps. Returnable PET bottles have taken substantial market share from glass bottles in the past two years; and one-way PET bottles, in the market since the 1970s, started with aluminium closures, but switched to Obrist when those closures became available.

(114) These latter structural features, together with the presence of a strong competitor also active in plastic closures (Alcoa) appear to be sufficient to constrain a threat of dominance by the combined entity.

VI. COMMITMENTS PROPOSED BY CROWN CORK & SEAL

(115) Crown Cork & Seal has offered to modify the original concentration plan as notified, by entering into the following commitments:

(...)

'Crown hereby declares that it is prepared to modify the effect of the operation notified to the Commission on 23 June 1995 on the basis of the following undertakings.

3. In order to meet the requirements of the Commission to facilitate the entry of a credible competitor with adequate resources into the EEA aerosol market and/or the increase in the capacity of an existing competitor so that in either case such competitor could effectively compete on the EEA aerosol market with Crown, Crown undertakes that after the successful completion of its exchange offer, it will irrevocably make available for sale, as a going concern, the aerosol business (i.e. the shares of one or more legal entities containing the following elements: plant facilities — except as set forth in paragraph 5 below — equipment, machinery and fixtures, raw materials, finished products, inventories and goods in process, employees, commercial agreements and all rights to contracts entered into in the regular course of business with customers and all other assets related to aerosol can production, distribution and sales, rights to any aerosol can trade-marks, patents, inventions, trade secrets, technology, know-how and design of Crown and CarnaudMetalbox SA ("CMB"), as described in the information provided to the Commission on "Aerosol Plants") in the following locations (the "divestiture package"):

Aerosol business of Crown at Southall and Tredegar, United Kingdom

Aerosol business of Crown at Voghera, Italy

Aerosol business of CMB at Reus, Spain

Aerosol business of CMB at Laon, France

Aerosol business of CMB at Schwedt, Germany.

4. With regard to the present operations of Crown in Southall, immediately after the successful completion of its exchange offer and, if time allows, prior to the sale of the divestiture package to the purchaser of the divestiture package (the "purchaser"), Crown will remove from such operations the elements of Crown's metal-crown business at such location so that such operations become a stand alone and ongoing aerosol business. Such removal shall be conducted so as not to impair the aerosol business as presently conducted.

5. With regard to the present operations of Crown in Voghera, Crown will, if desired by the purchaser, establish Crown's aerosol business in another facility as an ongoing aerosol business, whether it be stand alone or incorporated with other operations of the purchaser. In moving its aerosol business to such other facility, Crown shall take the necessary steps to cause as little production disruption as practically possible, for instance by moving production lines one at a time. [...] (5).

6. Crown also agrees to provide the purchaser with any licences, know-how and technical assistance relating to production of compartmented cans (i.e., the bag in can

(1) Precise figure not disclosed: business secret.
(2) Precise figure not disclosed: confidential information of Alcoa.
(3) Precise figure not disclosed: confidential information of Pechiney.
(4) Precise figure not disclosed: confidential information of MCG.

(5) Deleted: confidential information.

technology under the "bi-can" trademark and piston cans), to the extent it is permitted by existing contractual arrangements in relation to the piston cans binding Crown. Crown may charge the purchaser a market-based fee for any such licence, know-how or technical assistance. The market-based fee shall be that normally obtainable on the market at the time that any licence, know-how or technical assistance is provided. The obligation to provide technical assistance will continue for a period of one year following the acquisition of the divestiture package and Crown will provide, at a market-based fee, technical assistance for a further period of up to one year at the request of the purchaser, provided that such request is made not later than one month before the expiry of the first one-year period.

7. Crown will undertake, for a period of [...] (1) after the closing of the sale of the divestiture package, not to compete with the purchaser for the sales of aerosol cans to customers at the specific customer locations which were served by businesses in the divestiture package, except to the extent that such customers at those specific customer locations already purchase aerosol cans from retained CMB or Crown operations, and except, with Commission approval, in situations where the prospective customer declines in good faith to deal with the purchaser of the divestiture package.

8. Crown recognizes the Commission's two-fold objectives to maintain the viability, marketability and competitiveness of the businesses in the divestiture package and to provide sufficient management services and functions for this purpose. In order to accomplish these objectives, Crown undertakes to do the following:

(a) to ensure that the businesses in the divestiture package are legally held separate and are maintained as distinct and saleable businesses and to ensure that production capacity and selling activities are maintained, pursuant to good business practices, at their current level, and that all contracts necessary to preserve the businesses are entered into or continue in accordance with their terms, consistent with past practice and the ordinary course of business. This will include in particular all contracts and arrangements related to all aspects of the aerosol business as specified under paragraph 3;

(b) to maintain all administrative and management functions relating to the divestiture package which have been carried out at all appropriate headquarters levels in Crown and/or CMB in order to maintain the viability, marketability and competitiveness of the divestiture package, until the divestiture is completed or until such time as the trustee advises Crown that such functions are no longer necessary, whichever occurs earlier;

(c) As soon as is practical after the Commission has notified a favourable decision to Crown under Regulation (EEC) No 4064/89 and in any event no later than 10 days after Crown acquires control of CMB, to appoint a trustee (the "trustee"), such as an investment bank, subject to approval by the Commission (such approval shall not be withheld without good cause). Subject to approval by the Commission (such approval shall not be withheld without good cause): (a) should Crown determine at any time after the appointment of the trustee that the trustee does not perform its duties properly, Crown will terminate the trustee agreement and (b) Crown will replace the trustee by another trustee; and

(d) to establish and facilitate the management structure selected by the trustee as set out under subparagraph 9 (a).

9. The trustee will:

(a) in consultation with appropriate personnel at Crown and CMB, the trustee will determine the best management structure to ensure the viability, marketability and competitiveness of the divestiture package and of each legal entity comprising this package [...] (2). In particular the trustee shall ensure that any restructuration of any of the plants to be divested shall be carried

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out in such a way as to guarantee the viability, marketability and competitiveness of any such plant;

(b) monitor the operation and management of the divestiture package to ensure its continued viability, marketability and competitiveness. For the purpose of, and to the extent necessary for such monitoring, the trustee will have access to the personnel and facilities as well as the documents, books and records of Crown and CMB's aerosol business, including those which do not form part of the divestiture package. The trustee will also have access to such other personnel, facilities, books and record which may have an impact on the conduct of the aerosol operations (in particular central purchasing and ongoing R&D related to aerosol businesses);

(c) act as Crown's investment banker in conducting good-faith negotiations with interested third parties with a view to selling the divestiture package "en bloc" by the later of [...] (1) or [...] (2) after Crown acquires control of CMB (the "target date"). In the event that the trustee at any time prior to the target date determines in conjunction with the Commission that it is not possible to identify an acceptable purchaser for the divestiture package "en bloc", the trustee, Crown and the Commission will discuss appropriate alternatives to the divestiture "en bloc";

(d) the trustee shall be remunerated by Crown. As an incentive to the trustee to use its best efforts in arranging a prompt value-maximizing sale of the divestiture package, the trustee's remuneration will provide incentives for a prompt divestiture;

(e) provide a written report either before a binding contract is to be signed and in any event every month on relevant developments in its negotiations with third parties interested in purchasing the divestiture package, and that such reports, together with supporting documentation, shall be furnished to the Commission, with a copy to Crown;

(f) provide to the Commission, with a copy to Crown, a written report every two months concerning the monitoring of the operation and management of the divestiture package;

(g) at any other time, provide the Commission, at its request, a written or oral report on the matters referred to in subparagraphs (e) and (f). Crown shall receive a copy of such written reports and shall be informed of the content of oral reports; and

(h) cease to perform its duties as trustee with regard to the divestiture package after the closing of the sale of the divestiture package. The purchaser may retain after this date the trustee's services at its own expense.

10. Crown undertakes to give all reasonable assistance requested by the trustee to sell the divestiture package by the target date. Crown shall be deemed to have complied with its divestiture undertaking if by such date it has entered into a binding letter of intent or a binding contract for the sale of the divestiture package to a purchaser approved by the Commission, provided that such sale is completed within a reasonable time limit agreed to by the Commission.

11. The Commission may, upon Crown's request and upon showing good cause, extend the period granted to Crown for divestiture by [...] (3) after the target date. In such case, Crown shall give the trustee an irrevocable mandate to sell the divestiture package, on best possible terms and conditions, [...] (4).

12. In its reports referred to in subparagraphs 9 (e) and (g), the trustee shall indicate whether it believes that a purchaser with which it is proposed to sign a letter of intent would satisfy the requirements set forth in paragraph 3 and whether it considers that negotiations with such a purchaser should continue. If within 10 working days of the receipt of such indications from the trustee the Commission does not formally express its disagreement

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with the trustee's favourable assessment of a purchaser, negotiations with such person as a valid purchaser may proceed. The Commission may disagree with the assessment of the proposed purchaser by the trustee if the proposed purchaser would not be a credible competitor and would be unlikely to compete effectively with Crown.

13. Up to the target date, and provided that the offers concerned have been received from purchasers recognized as being valid pursuant to the procedure set forth in the preceding paragraph, Crown shall be free to accept any offer or to select the offer it considers best in case of a plurality of offers.'

(116) The Commission is satisfied that, once complied with, Crown's offer to divest a business constituted of five tinplate aerosol plants widely spread from a geographical point of view — and all related assets (including a supporting plant in Tredegar in the United Kingdom), employees and rights — will prevent Crown from acquiring a dominant position in the EEA market for tinplate aerosol cans.

(117) Post concentration and post-divestment of the divestiture package, Crown/CMB will operate five tinplate aerosol plants in five Member States, representing [...] (1) assembly lines (including one production line in a food can plant in Greece) and a market share of [35 to 45 %] (2), to be compared to the current market share of CMB of [35 to 45 %] (3) with five plants and 36 production lines. The increase in market share is attributable to the Mijdrecht plant of Crown which is dedicated to one customer through a long-term supply agreement.

The divestiture package comprises stand alone ongoing businesses representing an overall market share of 22 %. The divestiture package will enjoy geographical as well as technical flexibility as it includes five aerosol production units in five different Member States and [...] (4) production lines. In addition, the divestiture package includes related state-of-the-art printing, coating and cutting machineries.

The aforedescribed divestiture effectively implies that the new group will operate less production lines than CMB formerly did and will have a market share relatively close to the previous market share of CMB, the increase being related to one long-term supply agreement. The Commission has therefore concluded that the commitments offered by Crown, are sufficient to prevent the creation or the strengthening of a dominant position in the EEA market for tinplate aerosol cans.

(118) If the sale of the businesses to be divested has not taken place by the end of the period set out in the Crown's commitment or after the [...] (5) extension that the Commission may grant upon Crown's request, the Commission reserves its rights pursuant to Article 8 (4) of the Merger Regulation.

Furthermore, if any of the obligations accepted by Crown in its commitment are breached, before the divestiture is completed, the Commission reserves the rights pursuant to Article 8 (5) to revoke its decision.

These actions will be taken without prejudice to the Commission's right to impose fines pursuant to Article 14 (2),

HAS ADOPTED THIS DECISION:

Article 1

Subject to the full compliance with all conditions and obligations contained in Crown Cork & Seal's commitment *vis-à-vis* the Commission as set forth in paragraph 115 above, the concentration notified by Crown Cork & Seal on 23 June 1995 relating to the acquisition of CarnaudMetalbox is declared compatible with the common market and the functioning of the EEA Agreement.

Article 2

This Decision is addressed to:

Crown Cork & Seal
9300 Ashton Road
Philadelphia, PA 19136
USA.

Done at Brussels, 14 November 1995.

For the Commission

Karel VAN MIERT

Member of the Commission

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(3) Precise figure not disclosed: business secret.
(4) Figure deleted: confidential information.

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