

**Final Report of the Hearing Officer <sup>(1)</sup>****Case AT.40522 – Metal Packaging**

(2023/C 57/05)

The draft decision, addressed to ‘Crown’ <sup>(2)</sup> and ‘Silgan’ <sup>(3)</sup> (together, ‘the Parties’), concerns a single and continuous infringement of Article 101 TFEU in the German market of metal packaging that lasted from 11 March 2011 to 18 September 2014. The infringement in question consisted of (i) regular bilateral information exchanges of the most recent past annual sales figures regarding the Parties’ customers in Germany on the market for metal closures <sup>(4)</sup>; and (ii) exchanges of information and coordination regarding surcharges and shortening of best-before dates for metal cans <sup>(5)</sup> and metal closures coated with a new, Bisphenol A-free lacquer supplied by the Parties to customers in Germany.

On 19 April 2018, the Commission initiated proceedings pursuant to Article 2(1) of Commission Regulation (EC) No 773/2004 <sup>(6)</sup> against Crown Holdings Inc., Crown Cork & Seal Deutschland Holdings GmbH, and Silgan Holdings Inc <sup>(7)</sup>.

Following settlement discussions <sup>(8)</sup> and settlement submissions <sup>(9)</sup> in accordance with Article 10a(2) of Regulation (EC) No 773/2004, the Commission adopted a statement of objections (the ‘Statement of Objections’) addressed to the Parties on 19 May 2022.

In their respective replies to the Statement of Objections, the Parties confirmed, pursuant to Article 10a(3) of Regulation (EC) No 773/2004, that the Statement of Objections reflected the contents of their settlement submissions and that they therefore remained committed to following the settlement procedure.

Pursuant to Article 16 of Decision 2011/695/EU, I have examined whether the draft decision deals only with objections in respect of which the Parties have been afforded the opportunity of making known their views. I conclude that it does so.

In view of the above, and taking into account that the Parties have not addressed any requests or complaints to me pursuant to Article 15(2) of Decision 2011/695/EU, <sup>(10)</sup> I consider that the effective exercise of the procedural rights of the Parties to the proceedings in this case has been respected.

Brussels, 12 July 2022.

Eric GIPPINI FOURNIER

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<sup>(1)</sup> Pursuant to Articles 16 and 17 of Decision 2011/695/EU of the President of the European Commission of 13 October 2011 on the function and terms of reference of the hearing officer in certain competition proceedings (OJ L 275, 20.10.2011, p. 29).

<sup>(2)</sup> The relevant legal entities are Crown Holdings Inc. and Crown Cork & Seal Deutschland Holdings GmbH.

<sup>(3)</sup> The relevant legal entities are Silgan White Cap Manufacturing GmbH, Silgan Metal Packaging Distribution GmbH, Silgan Holdings Austria GmbH, Silgan International Holdings B.V. and Silgan Holdings Inc. (the latter being the ultimate parent company of all above entities).

<sup>(4)</sup> That is, screw caps used to close or seal glass jars and bottles to be filled with foodstuffs (solid or liquid) for human or pet consumption by means of a twist lock mechanism.

<sup>(5)</sup> In particular, metal cans coated with Bisphenol A-free lacquers used by food manufacturers to be filled with foodstuffs (solid or liquid) for human or pet consumption.

<sup>(6)</sup> Commission Regulation (EC) No 773/2004 of 7 April 2004 relating to the conduct of proceedings by the Commission pursuant to Articles 81 and 82 of the EC Treaty (OJ L 123, 27.4.2004, p. 18).

<sup>(7)</sup> By decision adopted on 1 October 2021, the proceedings against these legal entities were closed regarding all territories of the EEA with the exception of Germany. Moreover, on 18 March 2022, the Commission initiated proceedings against the four subsidiaries of Silgan Holdings Inc. referred above (see footnote 3), as regards Germany.

<sup>(8)</sup> The settlement meetings took place between May 2021 and March 2022.

<sup>(9)</sup> The Parties submitted their formal requests to settle between [...].

<sup>(10)</sup> Under Article 15(2) of Decision 2011/695/EU, parties to the proceedings in cartel cases which engage in settlement discussions pursuant to Article 10a of Regulation (EC) No 773/2004, may call upon the hearing officer at any stage during the settlement procedure in order to ensure the effective exercise of their procedural rights. See also paragraph 18 of Commission Notice on the conduct of settlement procedures in view of the adoption of Decisions pursuant to Article 7 and Article 23 of Council Regulation (EC) No 1/2003 in cartel cases (OJ C 167, 2.7.2008, p. 1).