SUMMARY OF COMMISSION DECISION
of 12 July 2022
relating to a proceeding under Article 101 of the Treaty on the Functioning of the European Union
(CASE AT.40522-Metal packaging)
(notified under document number C(2022)4761 final
(Only the English text is authentic)
(2023/C 57/04)

On 12 July 2022, the Commission adopted a decision relating to a proceeding under Article 101 of the Treaty on the Functioning of the European Union. In accordance with the provisions of Article 30 of Council Regulation (EC) No 1/2003 (1), the Commission herewith publishes the names of the parties and the main content of the decision, including any penalties imposed, having regard to the legitimate interest of undertakings in the protection of their business secrets.

1. INTRODUCTION

(1) On 12 July 2022, the Commission adopted a Decision concluding that the addressees of this Decision participated in a single and continuous infringement of Article 101 of the Treaty on the Functioning of the European Union ('the Treaty') in the sector of metal packaging in Germany which lasted from 11 March 2011 until 18 September 2014.

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

(a) Crown Holdings, Inc. and Crown Cork & Seal Deutschland Holdings GmbH (collectively referred to as ‘Crown’);

(b) Silgan Holdings Inc., Silgan White Cap Manufacturing GmbH, Silgan Metal Packaging Distribution GmbH, Silgan Holdings Austria GmbH and Silgan International Holdings B.V. (collectively referred to as ‘Silgan’).

(3) The undertakings involved in this case are also referred to as the ‘parties’ or, individually, ‘party’.

2. CASE DESCRIPTION

2.1. Procedure

(4) The case was investigated by the Commission at the request of the Bundeskartellamt, the German Competition Authority.

(5) In April 2018, the Commission conducted unannounced inspections and initiated proceedings against Crown and Silgan pursuant to Article 2(1) of Regulation (EC) No 773/2004. By Decision adopted on 1 October 2021, the proceedings were closed regarding all territories of the EEA with the exception of Germany.

(6) Crown submitted a leniency application and cooperated with the Commission under the Leniency Notice.

(7) Subsequently, Crown and Silgan submitted formal requests to settle the case to the Commission pursuant to Article 10a(2) of Regulation (EC) No 773/2004. In their settlement submissions, each party acknowledged its liability for the infringement and gave an indication of the maximum amount of the fine it expects to be imposed by the Commission, and which it would accept in the framework of a settlement procedure.

On 19 May 2022, the Commission issued a statement of objections addressed to the parties, who replied to the statement of objections by confirming that the facts and the legal assessment of the infringement as set out in the Decision reflect the contents of their settlement submissions and that they remained committed to following the settlement procedure.

The Advisory Committee on Restrictive Practices and Dominant Positions issued a favourable opinion on 05 July 2022. On 8 July 2022, the Hearing Officer issued his final report.

2.2. Summary of the infringement

The infringement consisted of

a) regular bilateral exchanges of the most recent past respective annual sales volumes (i.e. those of the previous year) –in terms of units sold- regarding the parties’s customers in Germany on the market for metal closures (leg I), and

b) in the context of the introduction in Germany of metal cans and metal closures coated with a (then) new Bisphenol A-free (BPA-free) lacquer ('BPA-NI cand' and 'BPA-NI closures'), exchanges of information and views regarding their intention to impose a surcharge and to shorten the minimum durability recommendations made to fillers compared to BPA-containing lacquers (leg II).

The overall aim of these exchanges was to create greater transparency on the German market. These contacts allowed the parties to obtain detailed data on the most recent past annual sales volumes (i.e. those of the previous year) of metal closures regarding their customers in Germany in the previous year, and to gain insight into some German trading conditions regarding BPA-NI metal cans and BPA-NI metal closures to customers in Germany. For metal closures, these exchanges of information removed uncertainties about the other party's customer base and its supplies to its customers, and for BPA-NI metal cans and BPA-NI metal closures about each other's commercial conduct regarding trading parameters that were essential in the circumstances on the German market. Overall, this conduct enabled the parties to adapt their market behaviour and competitive efforts on the German market for BPA-NI metal cans and metal closures coated with BPA-free or BPA-containing lacquers.

The conduct took place in the form of meetings as well as phone calls and exchanges of emails.

Based on the evidence, leg I of the conduct started on 11 March 2011 and ended on 21 March 2014. Leg II of the conduct started at the latest on 18 April 2013 and ended on 18 September 2014. Thus, the overall conduct lasted from 11 March 2011 until 18 September 2014.

The decision considers the exchanges of information and coordination to be a single and continuous infringement of Article 101 of the Treaty and qualifies as a cartel.

The conduct concerns metal closures and BPA-NI metal cans supplied to customers in Germany. The geographic scope of the conduct is thus Germany.

Both legs of the infringement affected competition between the two parties on the entire territory of a Member State, that is to say Germany, which constitutes a substantial part of the internal market. The infringement was therefore capable of having an appreciable effect on trade between Member States within the meaning of Article 101(1) of the Treaty.
2.3. **Addressees**

For the participation of Crown in the conduct, the following legal entities should be held jointly and severally liable:

i) Crown Holdings, Inc.

ii) Crown Cork & Seal Deutschland Holdings GmbH

For the participation of Silgan in the conduct, the following legal entities should be held jointly and severally liable:

(a) Silgan White Cap Manufacturing GmbH (as the successor of Silgan White Cap Deutschland GmbH);

(b) Silgan Metal Packaging Distribution GmbH (as the successor of Silgan Metal Packaging Vertriebs GmbH);

(c) Silgan Holdings Austria GmbH (as the parent of Silgan Metal Packaging Vertriebs GmbH at the time of the infringement);

(d) Silgan International Holdings B.V. (as the parent of Silgan White Cap Deutschland GmbH at the time of the infringement);

(e) Silgan Holdings Inc. (as the ultimate parent of the legal entities listed above (a) to (d)).

2.4. **Remedies**

The decision applies the 2006 Guidelines on Fines.

2.4.1. **Basic amount of the fine**

The infringement concerns different products, which is reflected in the use of different values of sales for setting the fines for leg I and leg II of the infringement. For both legs of the infringement, the fines are based on the value of sales of the parties achieved in Germany in 2013, i.e. the last full business year of their participation in the infringement as follows.

Regarding leg I, the relevant value of sales for the calculation of the fine is that of sales of metal closures to customers in Germany in 2013.

Regarding leg II, the relevant value of sales for the calculation of the fine is that of sales of metal closures and metal cans to customers in Germany in 2013. However, due to the specific circumstances of this case, it is appropriate to take into account only a proportion of these sales for the calculation of the fines. Leg II concerns the transition from metal closures and metal cans coated with traditional (those containing BPA) lacquers to products coated with BPA-free lacquers. During the period of leg II of the infringement, sales of BPA-NI metal closures and BPA-NI metal cans were gradually growing and represented a limited percentage of the metal closures and cans sold to customers in Germany. The Commission considers that [...]% of the 2013 value of sales made with metal cans, and [...]% of the 2013 value of sales made with metal closures is an appropriate proxy for the relevant value of sales for leg II.

A cartel is, by its very nature, among the most harmful restrictions of competition. Cartels generally warrant a starting percentage of at least 15%. Further, the Commission takes into account that this was a multi-faceted cartel. The proportion of the value of sales to be taken into account is 16%.
(24) For leg I, the duration taken into account is that of 1 107 days (multiplier 3.03). For leg II, the relevant duration and multipliers are as follows:

<table>
<thead>
<tr>
<th></th>
<th>Duration (days)</th>
<th>Multiplier</th>
</tr>
</thead>
<tbody>
<tr>
<td>‘Closures’</td>
<td>181</td>
<td>0.49</td>
</tr>
<tr>
<td>‘Cans’</td>
<td>519</td>
<td>1.42</td>
</tr>
</tbody>
</table>

(25) The Commission applies a percentage of 16 % of the value of sales for the purposes of calculating the additional amount (‘entry fee’).

2.4.2. Adjustments to the basic amount

(26) No aggravating or mitigating circumstances were found.

2.4.3. Application of the 10 % turnover limit

(27) None of the fines calculated for any of the parties exceeds 10 % of the undertaking's total turnover in 2021.

2.4.4. Application of the 2006 Leniency Notice: reduction of fines

(28) Crown was the first undertaking to provide with its leniency application important new evidence as well as corroborating information. A reduction of the fine of 50 % is granted to Crown.

2.4.5. Application of the Settlement Notice

(29) In application of the Settlement Notice, the amount of the fines imposed on each party were further reduced by 10 %.

3. CONCLUSION

(30) The Commission imposes a fine of EUR 7 670 000 upon Crown and of EUR 23 852 000 on Silgan.