



EUROPEAN COMMISSION  
Competition DG

## ***CASE AT.40522 – Metal packaging***

(Only the English text is authentic)

### **CARTEL PROCEDURE Council Regulation (EC) No 1/2003**

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Article 7 Regulation (EC) 1/2003

Date: 12/07/2022

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EUROPEAN  
COMMISSION

Brussels, 12.7.2022  
C(2022) 4761 final

**COMMISSION DECISION**

**of 12.7.2022**

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

**(AT.40522 - METAL PACKAGING)**

(Only the English text is authentic)

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# COMMISSION DECISION

of 12.7.2022

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

(AT.40522 - METAL PACKAGING)

(Only the English text is authentic)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty<sup>1</sup>, and in particular Article 7 and Article 23(2) thereof,

Having regard to Commission Regulation (EC) No 773/2004 of 7 April 2004 relating to the conduct of proceedings by the Commission pursuant to Articles 81 and 82 of the EC Treaty<sup>2</sup>, and in particular Article 10a thereof,

Having regard to the Commission Decisions of 19 April 2018 and of 18 March 2022 to initiate proceedings in this case,

Having given the undertakings concerned the opportunity to make known their views on the objections raised by the Commission pursuant to Article 27(1) of Regulation (EC) No 1/2003 and Article 11(1) of Regulation (EC) No 773/2004,

After consulting the Advisory Committee on Restrictive Practices and Dominant Positions,

Having regard to the final report of the hearing officer in this case,

Whereas:

## 1. INTRODUCTION

- (1) This Decision relates to a single and continuous infringement of Article 101 of the Treaty in the sector of metal packaging.
- (2) The infringement consisted of

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

<sup>2</sup> OJ L 123, 27.4.2004, p. 18.

- a) regular bilateral exchanges of the most recent past respective annual sales volumes (*i.e.* those of the previous year) regarding the addressees' customers in Germany on the market for metal closures, 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, 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.
- (3) The infringement concerned sales in Germany and lasted from 11 March 2011 until 18 September 2014.
- (4) This 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").
- (5) The undertakings involved in this case are also referred to as the "parties" or, individually, "party".

## **2. THE INDUSTRY SUBJECT TO THE PROCEEDINGS**

### **2.1. The products**

- (6) The products concerned by the anti-competitive conduct are:
  - (a) metal closures (also referred to as "lids") coated with BPA-free lacquers ("BPA-NI closures") or BPA-containing lacquers, which are 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 (collectively referred to as "metal closures"); and
  - (b) metal cans (also referred to as "containers") coated with BPA-free lacquers which are made from two or three pieces of metal (tinplate) and are used by food manufacturers to be filled with foodstuffs (solid or liquid) for human or pet consumption ("BPA-NI metal cans").

### **2.2. The undertakings subject to the proceedings**

#### **2.2.1. CROWN**

- (7) Crown is a global manufacturer of metal packaging, including metal cans and metal closures. In 2021, its consolidated worldwide turnover amounted to USD 11 394 million (equivalent to approx. EUR 9 634 million). The ultimate parent company of Crown is Crown Holdings, Inc.
- (8) The relevant legal entity within Crown that participated directly in the infringement is Crown Commercial Deutschland GmbH, which merged into Crown Cork & Seal Deutschland Holdings GmbH after the end of the conduct.

#### **2.2.2. SILGAN**

- (9) Silgan is a global manufacturer of metal packaging, including metal cans and metal closures. In 2021, its worldwide turnover amounted to approx. USD 5 677 million

(equivalent to approx. EUR 4 800 million). The ultimate parent company of Silgan is Silgan Holdings Inc.

- (10) The relevant legal entities within Silgan that participated directly in the infringement are:
- (a) Silgan White Cap Deutschland GmbH, which was dissolved after the end of the conduct; and
  - (b) Silgan Metal Packaging Vertriebs GmbH, which was dissolved after the end of the conduct.

### **3. PROCEDURE**

- (11) By request of the German Competition Authority (the Bundeskartellamt), this case was investigated by the Commission. On 19 April 2018, the Commission initiated proceedings pursuant to Article 2(1) of Regulation (EC) No 773/2004 against Crown Holdings, Inc.<sup>3</sup> and Silgan Holdings Inc. In April 2018, the Commission carried out unannounced inspections at the premises of Crown and Silgan. By Decision adopted on 1 October 2021, the proceedings were closed regarding all territories of the EEA with the exception of Germany. By Decision adopted on 18 March 2022, the Commission initiated proceedings pursuant to Article 2(1) of Regulation (EC) No 773/2004 against four subsidiaries of Silgan Holdings Inc. as regards Germany<sup>4</sup>.
- (12) On 25 April 2018, in the course of the inspections, the Commission received a leniency application from Crown.
- (13) Between June 2019 and November 2020, the Commission sent several requests for information under Article 18 of Regulation (EC) No 1/2003.
- (14) On 23 March 2021, the Commission invited the parties to engage in settlement discussions. Following the parties' confirmation of their willingness to engage in the settlement procedure, settlement meetings took place between 26 May 2021 and 31 March 2022. During those meetings, the Commission informed the parties of the objections it envisaged raising against them, and disclosed to them the main pieces of evidence that it had relied upon to establish those objections. Between 27 and 31 May 2021, the parties had access to the relevant evidence on the Commission file, including the oral statements, at the Commission's premises. Subsequently, the parties were also given a copy of this relevant evidence, as well as a list of all the documents in the file, and were offered the opportunity to access all the documents listed. The Commission also provided the parties with an estimate of the range of fines likely to be imposed.
- (15) Both parties expressed their views on the objections that the Commission envisaged raising against them. The Commission carefully considered the parties' comments and, where appropriate, took them into account. At the end of the settlement discussions, the parties concluded that there was a sufficient common understanding regarding the potential objections and the estimated range of likely fines to continue the settlement procedure.

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<sup>3</sup> Crown Cork & Seal Deutschland Holdings GmbH was the only subsidiary mentioned in the opening decision relevant for the current proceeding next to other subsidiaries of Crown Holdings, Inc.

<sup>4</sup> Silgan White Cap Manufacturing GmbH, Silgan Metal Packaging Distribution GmbH, Silgan Holdings Austria GmbH, and Silgan International Holdings B.V.

- (16) On [...], the parties submitted to the Commission their formal request to settle pursuant to Article 10a(2) of Regulation (EC) No 773/2004 (the “settlement submissions”). The settlement submission of each party contained:
- (a) an acknowledgement in clear and unequivocal terms of the party’s liability for the infringement summarily described as regards its object, the main facts, their legal qualifications, including the party’s role and the duration of its participation in the infringement;
  - (b) an indication of the maximum amount of the fine the party expects to be imposed by the Commission, and which it would accept in the framework of a settlement procedure;
  - (c) the party’s confirmation that it has been sufficiently informed of the objections the Commission envisages raising against it, and that it has been given sufficient opportunity to make its views known to the Commission;
  - (d) the party’s confirmation that it does not envisage requesting access to the file or requesting to be heard again in an oral hearing unless the Commission does not reflect its settlement submission in the statement of objections and the decision;
  - (e) its agreement to receive the statement of objections and the final decision pursuant to Articles 7 and 23 of Regulation (EC) No 1/2003 in English.
- (17) Each party made its settlement submission conditional upon the imposition of a fine by the Commission which does not exceed the amount specified in that settlement submission.
- (18) 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 this Decision reflect the contents of their settlement submissions and that they remained committed to following the settlement procedure.

## **4. DESCRIPTION OF THE EVENTS**

### **4.1. Overview of the cartel**

#### **4.1.1. General description**

- (19) The conduct consisted of two legs:
- (a) regular bilateral exchanges of the parties’ most recent past respective annual sales volumes (*i.e.* those of the previous year) - in terms of units sold - regarding the parties’ 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 BPA-free lacquer, 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 on the German market (leg II).
- (20) The overall aim of these exchanges of information 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 of the German market. Overall, this conduct enabled the parties to adapt their market behaviour and competitive efforts on the German markets for BPA-NI metal cans and metal closures coated with BPA-free or BPA-containing lacquers.

- (21) The conduct took place in the form of meetings as well as phone calls and exchanges of emails. Meetings at which BPA-NI metal cans and BPA-NI metal closures were discussed [...].

4.1.2. *Leg I: Contacts on the exchange of sales volume figures of metal closures*

- (22) Certain employees of Crown Commercial Deutschland GmbH and Silgan White Cap Deutschland GmbH exchanged information on their respective most recent (*i.e.* those of the previous year) past annual sales volume figures for metal closures regarding their German customers. This exchange of information increased transparency regarding the supply of metal closures on the German market, giving the parties a competitive advantage by means of a better understanding of the overall market in Germany regarding different customers. This exchange of information enabled the parties not to disrupt each other's relationships with certain metal closures customers in Germany.
- (23) More specifically, until May 2012 the conduct concerned exchanges of the most recent past annual sales volume figures between [senior employee of Crown] and [senior employee of Silgan]. On the occasion of these bilateral meetings, both [senior employees] would bring along detailed tables containing their companies' most recent past annual sales volume figures (the amount of metal closures sold to their customers in Germany), and corrected or complemented them by hand with the other's most recent past annual sales volume figures.
- (24) After the [departure] of Crown's [senior employee], his successor was involved in exchanges with Silgan (in meetings and/or by email and/or over the phone) regarding the same type of information.
- (25) Representatives of both parties were also in touch by email. According to the evidence on file, upon request by one of the parties in the second half of 2013 and in the first quarter of 2014, the parties exchanged tables with their most recent past annual sales volume figures covering a one-year period by email.
- (26) Silgan's representative also provided a few German colleagues within the Silgan group with information he had received from Crown during these bilateral meetings and contacts.
- (27) The information exchanged consisted of the most recent past annual sales volumes (*i.e.* of the previous year). This exchange was of interest to both parties as Silgan was the market leader, and Crown was number two regarding the supply of metal closures to customers in Germany. The importance of this information is also illustrated by the fact that Crown's [senior employee] for Germany reported these figures internally in aggregated form and produced a table with detailed sales volume forecasts for each customer.

#### 4.1.3. *Leg II: Contacts regarding BPA-NI metal cans and BPA-NI metal closures*

- (28) In the context of the association of metal packaging producers (the Verband Metallverpackungen (“VMV”)), Crown, Silgan [...] exchanged information and views regarding the introduction in Germany of metal cans and metal closures coated with a (then) new BPA-free lacquer, namely on their intention to impose a surcharge and to shorten the minimum durability recommendations made to fillers on the German market.
- (29) During those meetings the representatives of Crown, Silgan [...] informed each other of their intention to add a surcharge (expressed in per cent) to the price of BPA-NI metal cans and BPA-NI metal closures, and exchanged information and views, and coordinated their intention to pass the additional costs due to the use of BPA-free lacquers on to their customers in Germany. Furthermore, they coordinated their intention to shorten the minimum durability recommendations made to fillers on the German market sourcing BPA-NI metal cans and BPA-NI metal closures compared to similar recommendations for metal cans and metal closures coated with the BPA-containing lacquers. The specific length of the recommended durability of the concerned metal cans and metal closures ultimately varied depending on the food for which the packaging was to be used, and on the result of pack tests carried out independently by each party.
- (30) This is also evidenced by a number of handwritten notes taken during these meetings.
- (31) Foods packaged in metal cans, or in other containers closed with metal closures, are, unlike fresh foods, not intended for immediate consumption, but are purchased by consumers for the purpose of being kept in reserve for the medium or long term. On the market concerned by this case, minimum durability of the packaging is one among the various factors taken into account by fillers when deciding on the shelf life guarantees or “best before” dates to be communicated to consumers and applied to their products. During the timeframe covered by this case, the regulatory framework and practical processes that are relevant for the determination of “best before” dates varied from one Member State to another. The nature and commercial relevance of minimum durability recommendations for packaging therefore depended on the specific circumstances in each Member State. In Germany, for BPA-NI metal cans and BPA-NI metal closures, the recommendations to shorten the minimum durability of the packaging concerned a means of differentiation in the competitive process between producers in their supply of metal packaging to fillers.
- (32) In addition to these meetings, there were bilateral phone calls regarding BPA-NI metal cans and BPA-NI metal closures. The parties [...] exchanged views on their intention to apply a surcharge to BPA-NI metal cans and BPA-NI metal closures supplied to customers in Germany. The aim of these bilateral phone calls was to verify customer claims regarding the imposition of the surcharge by other producers.

#### 4.2. **Geographic scope of the conduct**

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

### **4.3. Duration**

#### *4.3.1. Duration of leg I*

- (34) Until May 2012, the relevant meetings relating to leg I of the conduct took place yearly around April or May, when the two [senior employees] met in person and exchanged information relating to their most recent past annual metal closures sales volumes (*i.e.* those of the previous year). The first list exchanged related to the year 2010<sup>5</sup> and took place in the period 9 to 11 March 2011<sup>6</sup>. Therefore, leg I of the conduct started on 11 March 2011 at the latest.
- (35) Following the [departure] of Crown's [senior employee] for Germany, two of Crown's [employees] in Germany participated in further exchanges with Silgan. Based on the available evidence, the leg I of the conduct ended on 21 March 2014, when a Crown employee sent Silgan a list of Crown's German sales volume figures for 2012/2013<sup>7</sup>.

#### *4.3.2. Duration of leg II*

- (36) The evidence demonstrates that leg II of the conduct started at the latest on 18 April 2013, when the parties attended a meeting of the VMV's closures working group (AK Nockendrehverschlüsse) in Berlin<sup>8</sup>.
- (37) Based on the available evidence, leg II ended on 18 September 2014, when the parties met in the context of the VMV board meeting in Essen, and exchanged information on the imposition of BPA-NI surcharges by manufacturers of metal cans and closures on their clients<sup>9</sup>.

#### *4.3.3. Overall duration*

- (38) Thus, the overall conduct lasted from 11 March 2011 until 18 September 2014.

## **5. APPLICATION OF ARTICLE 101(1) OF THE TREATY**

- (39) Article 101(1) of the Treaty prohibits agreements between undertakings, decisions by associations of undertakings and concerted practices which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the internal market.
- (40) Having regard to the body of evidence and facts referred to in Section 4 and the parties' clear and unequivocal acknowledgement of the facts and the legal qualification thereof contained in their settlement submissions, and their replies to the statement of objections, the legal assessment is set out as follows.

### **5.1. Agreements and concerted practices**

#### **(a) Principles**

- (41) An agreement may be said to exist when the undertakings adhere to a common plan which limits or is likely to limit their individual commercial conduct by determining the lines of their mutual action or abstention from action in the market. Although

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<sup>5</sup> [...]

<sup>6</sup> [...]

<sup>7</sup> [...]

<sup>8</sup> [...]

<sup>9</sup> [...]

Article 101(1) of the Treaty draws a distinction between the concept of *concerted practices* and that of *agreements between undertakings*, the object is to bring within the prohibition of this Article a form of coordination between undertakings by which, without having reached the stage where an agreement properly so-called has been concluded, they knowingly substitute practical cooperation between them for the risks of competition<sup>10</sup>. Thus, conduct may fall under Article 101 of the Treaty as a *concerted practice* even where the parties have not explicitly subscribed to a common plan defining their action in the market but knowingly adopt or adhere to collusive devices which facilitate the co-ordination of their commercial behaviour<sup>11</sup>.

- (42) Article 101(1) of the Treaty precludes any direct or indirect contact between economic operators of such a kind as either to influence the conduct on the market of an actual or potential competitor or to reveal to such a competitor the conduct which an operator has decided to follow itself, or contemplates following, on the market, where the object or effect of those contacts is to restrict competition.<sup>12</sup>
- (43) It is not necessary for the Commission to characterise the conduct as exclusively one or other of these forms of illegal behaviour. The concepts of *agreement* and *concerted practice* are fluid and may overlap. It would be artificial to analytically sub-divide what is clearly a continuing common enterprise having one and the same overall objective into several different forms of infringement. A cartel may therefore be an agreement and a concerted practice at the same time<sup>13</sup>.

(b) Application to this case

- (44) Based on the submissions of the parties and the other evidence obtained during the course of the Commission's investigation, the Commission has concluded that the conduct referred to in Section 4 concerns:
  - a) the 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' customers in Germany on the market for metal closures (leg I); and
  - b) in the context of the introduction of metal cans and closures coated with a (then) new Bisphenol A-free (BPA-free) lacquer, 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 on the German market. Furthermore, they communicated and coordinated their strategies in respect of metal cans and metal closures coated with BPA-free lacquer regarding their intention to impose a surcharge and to shorten the minimum durability recommendations made to fillers compared to metal cans and metal closures coated with BPA-containing lacquers on the German market (leg II).
- (45) Both legs of the infringement present all the characteristics of an agreement or concerted practice, or both, within the meaning of Article 101(1) of the Treaty, as

<sup>10</sup> *Imperial Chemical Industries v Commission* (C-48/69), ECLI:EU:C:1972:70, paragraph 64.

<sup>11</sup> See *Hercules v Commission* [1991] ECR II-1711 (T-7/89), ECLI:EU:T:1991:75, paragraph 256. See also *Imperial Chemical Industries v Commission* (C-48/69), ECLI:EU:C:1972:70, paragraph 64, and *Suiker Unie and Others v Commission* (C-40-48, 50, 54 to 56, 111, 113 and 114/73), ECLI:EU:C:1975:174, paragraphs 173-174.

<sup>12</sup> *Zucchetti v Commission* (T-396/10), ECLI:EU:T:2013:446, paragraph 56 and case law cited therein.

<sup>13</sup> See *Hercules v Commission* (T-7/89), ECLI:EU:T:1991:75, paragraph 264.

both parties had the concurring will to create greater transparency for both parties on each other's market position and its evolution over time as regards sales of metal closures to customers in Germany, and to inform each other of their intention to impose a surcharge on, and to reduce the minimum durability recommendations for BPA-NI metal closures and BPA-NI metal cans sold to customers in Germany.

- (46) The anti-competitive conduct covered by this Decision as described in Section 4, which covered Germany, therefore qualifies as an agreement and/or concerted practice between undertakings within the meaning of Article 101 of the Treaty.

## **5.2. Single and continuous infringement**

### **(a) Principles**

- (47) A complex cartel may properly be viewed as a single and continuous infringement for the timeframe in which it existed. The General Court of the European Union has pointed out that the concept of *single agreement* or *single infringement* presupposes a complex of practices adopted by various undertakings in pursuit of a single anti-competitive economic aim<sup>14</sup>. The cartel may well be varied from time to time, or its mechanisms adapted or strengthened to take account of new developments. It would be artificial to split up such continuous conduct, characterised by a single purpose, by treating it as consisting of several separate infringements, when what was involved was a single infringement which progressively would manifest itself in both agreements and concerted practices.

### **(b) Application to this case**

- (48) The evidence on file shows that Crown and Silgan engaged in anticompetitive conduct, which formed part of an overall plan in pursuit of a common objective, which remained the same throughout the duration of the infringement. The aim was to create greater transparency regarding the conduct of one of their most important competitors in respect of supply volumes regarding metal closures and trading parameters regarding BPA-NI metal closures and BPA-NI metal cans that were essential in the circumstances of the German market, thereby reducing competition. This was achieved by exchanging precise information on the most recent past annual sales volumes of metal closures, and information in respect of BPA-NI metal cans and BPA-NI metal closures, notably regarding their intention to impose a surcharge and to reduce minimum durability recommendations made to fillers on the German market. Moreover, both legs of the infringement were committed by the same two undertakings and the same (principal) individuals. Crown and Silgan were involved in both legs of the infringement. In addition, both legs of the infringement affected the same geographic market (Germany) and took place almost concurrently.
- (49) All these elements taken together demonstrate that the addressees of this Decision participated in a single and continuous infringement of Article 101 of the Treaty.

## **5.3. Restriction of competition**

### **(a) Principles**

- (50) Article 101(1) of the Treaty expressly prohibits as incompatible with the internal market such agreements and concerted practices which have as their object or effect

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<sup>14</sup> See *Cimenteries CBR and Others v Commission*, (Joined Cases T-25/95) ECLI:EU:T:2000:77, paragraph 3699.

the restriction of competition by directly or indirectly fixing prices or any other trading conditions.

- (51) An exchange of information between competitors is liable to be incompatible with the competition rules if it reduces or removes the degree of uncertainty as to the operation of the market in question, with the result that competition between undertakings is restricted<sup>15</sup>.

(b) Application to this case

- (52) By exchanging their precise most recent (*i.e.* those of the previous year) past annual sales volume figures on the German market for metal closures over a period of at least three years, the parties created considerable transparency regarding their respective positions regarding the supply of metal closures customers in Germany. This removed uncertainties about each other's customer base and supplies to customers, thus allowing both parties to adapt their conduct and competitive efforts on the market for metal closures. In addition, this exchange of information enabled the parties not to disrupt each other's relationships with certain metal closures customers in Germany.
- (53) By exchanging information and views on the principle of a surcharge, and exchanging information on the level of such a surcharge (expressed in per cent) along with minimum durability recommendations, Crown and Silgan disclosed certain elements of their intended future conduct regarding BPA-NI metal cans and BPA-NI metal closures on the German market. This transparency removed uncertainties about how either party intended to deal with these new products, and allowed each of the parties to adapt its market behaviour in Germany accordingly.
- (54) The conduct thus had the object of restricting competition within the meaning of Article 101(1) of the Treaty and qualifies as a cartel.

#### **5.4. Effect upon trade between Member States**

(a) Principles

- (55) Article 101 of the Treaty is aimed at agreements and concerted practices which might harm the attainment of a single market between the Member States, whether by partitioning national markets or by affecting the structure of competition within the internal market.
- (56) The application of Article 101 of the Treaty to a cartel is not, however, limited to that part of the cartel members' sales that actually involve the transfer of goods from one Member State to another. Nor is it necessary, in order for this provision to apply, to show that the individual conduct of each participant, as opposed to the cartel as a whole, affected trade between Member States. It suffices that an infringement affects a Member State that constitutes a substantial part of the internal market<sup>16</sup>.

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<sup>15</sup> *Dole Food Company* (T-588/08), ECLI:EU:T:2013:130 paragraph 62, *T-Mobile Netherlands and Others* (C-8/08), ECLI:EU:C:2009:343, paragraph 35, *Deere v Commission* (C-7/95 P), ECLI:EU:C:1998:256, paragraph 90, and *Thyssen Stahl v Commission* (C-194/99 P) ECLI:EU:C:2003:527, paragraph 81.

<sup>16</sup> Commission Notice, Guidelines on the effect on trade concept contained in Articles 81 and 82 of the Treaty (2004/C 101/07), OJ C 101, 27.4.2004, p. 81, point 78. See also *Erste Bank der österreichischen Sparkassen v Commission* (C-125/07 P), ECLI:EU:C:2009:576, paragraph 39, *ING Pensil v Consiliul Concurentei* (C-172-14), ECLI:EU:C:2015:272, paragraphs 48-49, *API e.a.* (C-184/13 to 187/13, C-194/13, C-195/13, C-208/13), ECLI:EU:C:2014:2147, paragraph 44.

(b) Application to this case

- (57) As for leg I of the infringement, Crown and Silgan discussed the most recent past annual sales volumes of their German entities to customers in Germany. Similarly, regarding leg II of the infringement, their conduct was coordinated by way of contacts between their German entities. In other words, the focus of their anti-competitive conduct lay on the German market.
- (58) As such, 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<sup>17</sup>.

### 5.5. Inapplicability of Article 101(3) of the Treaty

- (59) The provisions of Article 101(1) of the Treaty may be declared inapplicable pursuant to Article 101(3) of the Treaty where an agreement or concerted practice contributes to improving the production or distribution of goods or to promoting technical or economic progress, while it allows consumers a fair share of the resulting benefit, does not impose on the undertakings concerned restrictions that are not indispensable to the attainment of those objectives and does not afford the undertakings concerned the possibility of eliminating competition in respect of a substantial part of the products in question.
- (60) There is no indication that the parties' behaviour entailed any efficiency gains, or otherwise promoted technical or economic progress.
- (61) Accordingly, it is concluded the conditions for exemption provided for in Article 101(3) of the Treaty are not met in this case.

## 6. LIABILITY

- (62) Union competition law refers to the activities of undertakings and the concept of an undertaking covers any entity engaged in an economic activity, irrespective of its legal status and the way in which it is financed<sup>18</sup>.
- (63) When such an entity infringes these competition rules, it falls, according to the principle of personal liability, to that entity to answer for that infringement. The conduct of a subsidiary can be imputed to the parent company where the parent company exercises a decisive influence over it, namely where that subsidiary does not decide independently upon its own conduct on the market but carries out, in all material respects, the instructions given to it by the parent company. In effect, as the controlling company in the undertaking, the parent is deemed to have itself committed the infringement of Article 101 of the Treaty<sup>19</sup>.

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<sup>17</sup> *SCK and FNK* (T-213/95 and T-18/96), ECLI:EU:T:1997:157, paragraph 179.

<sup>18</sup> *Versalis v Commission* (C-511/11 P), ECLI:EU:C:2013:386, paragraph 51.

<sup>19</sup> *Akzo Nobel and others v Commission* (C-97/08), ECLI:EU:C:2009:536, paragraph 61, *Elf Aquitaine v Commission* (C-521/09 P), ECLI:EU:C:2011:620, paragraphs 57 and 63, *Alliance One International and Standard Commercial Tobacco v Commission and Commission v Alliance One International and Others* (C-628/10 P and C-14/11 P), ECLI:EU:C:2012:479, paragraphs 43 and 46, *ENI v Commission* (C508/11 P), ECLI:EU:C:2013:289, paragraph 47, *Stora Kopparbergs Bergslags v Commission* (C-286/98 P), ECLI:EU:C:2000:630, paragraph 29, *Evonik Degussa et AlzChem v Commission* (T-391/09),

- (64) The Commission cannot merely find that a legal entity is able to exert decisive influence on another legal entity, without checking whether that influence was actually exerted. On the contrary, it is, as a rule, for the Commission to demonstrate such decisive influence on the basis of factual evidence, including, in particular, any management power one of the legal entities may have over the other<sup>20</sup>.
- (65) However, in particular in those cases where one parent company holds all or almost all of the capital in a subsidiary which has committed an infringement of Union competition rules, there is a rebuttable presumption according to which that parent company in fact does exercise a decisive influence over its subsidiary. In such a situation, it is sufficient for the Commission to prove that all or almost all of the capital in the subsidiary is held by the parent company in order to take the view that that presumption applies<sup>21</sup>.
- (66) In addition, when an entity which has committed an infringement of the competition rules is subject to a legal or organisational change, this change does not necessarily create a new undertaking free of liability for the conduct of its predecessor which infringed the competition rules, when, from an economic point of view, the two entities are identical. Where two entities constitute one economic entity, the fact that the entity that committed the infringement still exists does not as such preclude imposing a penalty on the entity to which its economic activities were transferred. In particular, applying penalties in this way is permissible where those entities have been under the control of the same person and have, therefore, given the close economic and organisational links between them, carried out, in all material respects, the same commercial instructions<sup>22</sup>.
- (67) Where several legal entities may be held liable for the participation in an infringement of one and the same undertaking, they must be regarded as jointly and severally liable for that infringement.
- (68) Having regard to the body of evidence and the facts referred to in Section 4, the parties' clear and unequivocal acknowledgements of the facts and the legal qualification thereof contained in their settlement submissions, as well as their replies to the statement of objections, this Decision should be addressed to the following legal entities which should be held liable for the infringements described in Sections 6.1. and 6.2 in this Decision.

#### **6.1. Crown**

- (69) The following legal entities of Crown should be held liable for the single and continuous infringement described in this Decision.
- (70) During the infringement, Crown Commercial Deutschland GmbH directly participated in the infringement. Throughout the period of the infringement, it was

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ECLI:EU:T:2014:22, paragraph 77, *Commission v Stichting Administratiekantor Portielje* (C-440/11 P), ECLI:EU:C:2013:514, paragraph 41.

<sup>20</sup> *Saint-Gobain Glass France and others v Commission* (T-56/09 and T-73/09), ECLI:EU:T:2014:160, paragraph 311.

<sup>21</sup> *Akzo Nobel and others v Commission* (C-97/08 P), ECLI:EU:C:2009:536, paragraph 60.

<sup>22</sup> *Commission v Parker Hannifin Manufacturing and Parker-Hannifin* (C-434/13 P), ECLI:EU:C:2014:2456, paragraphs 40-41.

wholly owned<sup>23</sup> by Crown Cork & Seal Deutschland Holdings GmbH, which was wholly owned by Crown Holdings, Inc.

- (71) In January 2016, Crown Commercial Deutschland GmbH was merged with its parent Crown Cork & Seal Deutschland Holdings GmbH, which is wholly owned by Crown Holdings, Inc.

## **6.2. Silgan**

- (72) The following legal entities of Silgan should be held liable for the single and continuous infringement described in this Decision.

### *6.2.1. Silgan White Cap Deutschland GmbH*

- (73) During the infringement, Silgan White Cap Deutschland GmbH directly participated in the infringement. Throughout the period of the infringement, it was directly and wholly owned by Silgan International Holdings B.V., which was wholly owned by Silgan Holdings Inc.

- (74) On 27 October 2016, Silgan International Holdings B.V. became the 100% shareholder in newly founded Silgan Closures GmbH. On 3 November 2016, Silgan Closures GmbH became the 100% shareholder in newly founded Silgan White Cap Manufacturing GmbH<sup>24</sup>.

- (75) On 22 December 2016, Silgan White Cap Deutschland GmbH was transformed into a *Kommanditgesellschaft* (limited partnership) named Silgan White Cap Deutschland GmbH & Co. KG. Silgan White Cap Manufacturing GmbH was the sole *Komplementärin* (general partner) of Silgan White Cap Deutschland GmbH & Co. KG.

- (76) In December 2016, Silgan White Cap Deutschland GmbH & Co. KG ceased to exist and accrued to its sole remaining partner Silgan White Cap Manufacturing GmbH.

- (77) Silgan White Cap Manufacturing GmbH is wholly owned by Silgan Closures GmbH. Currently, Silgan Closures GmbH is wholly owned by Silgan International Holdings B.V., which in turn is wholly owned by Silgan Holdings Inc.

### *6.2.2. Silgan Metal Packaging Vertriebs GmbH*

- (78) Silgan Metal Packaging Vertriebs GmbH directly participated in the infringement.

- (79) At the time of the infringement, Silgan Metal Packaging Vertriebs GmbH was wholly owned by Silgan Holdings Austria GmbH. Silgan Holdings Austria GmbH was wholly owned by Silgan Holdings B.V., which in turn was wholly owned by Silgan Holdings Inc.

- (80) On 24 May 2017, Silgan Metal Packaging Vertriebs GmbH was transformed into a *Kommanditgesellschaft* (limited partnership) named Silgan Metal Packaging Vertriebs GmbH & Co. KG. Silgan Metal Packaging Vertriebs GmbH & Co. KG ceased to exist and accrued to its sole remaining partner Silgan Metal Packaging Distribution GmbH.

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<sup>23</sup> Crown Holdings, Inc. held all shares of Crown Commercial Deutschland GmbH via a number of wholly owned subsidiaries throughout the entire infringement.

<sup>24</sup> The original name of this entity was Silgan White Cap Deutschland Verwaltungs GmbH. It changed to Silgan White Cap Manufacturing on 2 March 2017.

- (81) Currently, Silgan Metal Packaging Distribution GmbH is wholly owned by Silgan Metal Packaging Germany GmbH, which is wholly owned by Silgan Holdings Austria GmbH.
- (82) On 30 October 2018, Silgan Holdings B.V., which wholly owned Silgan Holdings Austria GmbH, merged with Silgan International Holdings B.V., which is wholly owned by Silgan Holdings Inc.

### **6.3. Conclusion on liability**

- (83) Having regard to the body of evidence and the facts described above, the following legal entities should be held liable for the infringement of Article 101(1) of the Treaty:

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

- (a) Crown Cork & Seal Deutschland Holdings GmbH (as the parent and successor of Crown Commercial Deutschland GmbH);
- (b) Crown Holdings, Inc. (as the ultimate parent of Crown Commercial Deutschland GmbH at the time of the infringement).

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)).

## **7. DURATION OF THE INFRINGEMENT**

- (84) As explained in Section 4.3 above, the first exchange of lists took place in the period 9 to 11 March 2011. Therefore, the Commission considers that the conduct described in section 4 started on 11 March 2011.
- (85) The Commission considers that the infringement ended on 18 September 2014, when the parties met in the context of the VMV board meeting in Essen, and exchanged information on the imposition of BPA-NI surcharges by manufacturers of metal cans and closures on their clients.
- (86) On this basis, the infringement is considered to have started on 11 March 2011 and have ended on 18 September 2014.

## **8. REMEDIES**

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

- (87) Where the Commission finds that there is an infringement of Article 101 of the Treaty, it may by decision require the undertakings concerned to bring such infringement to an end in accordance with Article 7 of Regulation (EC) No 1/2003.
- (88) Given the secrecy in which cartel arrangements are usually carried out and the gravity of such infringements, it is appropriate for the Commission to require the undertakings to which this Decision is addressed to bring the infringement to an end (if they have not already done so) and to refrain from any agreement or concerted practice which may have the same or a similar object or effect.

### **8.2. Article 23(2) and (3) of Regulation (EC) No 1/2003 – Fines**

- (89) Under Article 23(2) of Regulation (EC) No 1/2003, the Commission may by decision impose fines on undertakings and associations of undertakings where, either intentionally or negligently, they infringe Article 101 of the Treaty. For each undertaking participating in the infringement, the fine must not exceed 10% of its total turnover in the preceding business year.
- (90) In this case, on the basis of the facts described in Section 4, it is considered that the infringement was committed intentionally or at least negligently.
- (91) Fines should therefore be imposed on the undertakings to which this Decision is addressed.
- (92) Pursuant to Article 23(3) of Regulation (EC) No 1/2003, the Commission must, in fixing the amount of the fine, have regard to the gravity and duration of the infringement. In doing so, the Commission sets the fines at a level sufficient to ensure deterrence. Moreover, the role played by each undertaking party to the infringement is assessed on an individual basis. The fine imposed must reflect any aggravating and attenuating circumstances pertaining to each undertaking.
- (93) In setting the fines to be imposed, the Commission also refers to the principles laid down in its Guidelines on the method of setting fines imposed pursuant to Article 23(2)(a) of Regulation (EC) No 1/2003<sup>25</sup> (the “Guidelines on fines”). Finally, the Commission applies, as appropriate, the provisions of the Commission Notice on Immunity from fines and reduction of fines in cartel cases<sup>26</sup> (the “Leniency Notice”) and the 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<sup>27</sup> (the “Settlement Notice”).

### **8.3. Setting of the fines**

- (94) In accordance with the Guidelines on fines, the basic amount of the fine to be imposed on the undertakings concerned is to be set by reference to the value of their sales, that is the value of the undertakings' sales of goods or services to which the infringement directly or indirectly related in the relevant geographic area during the last full business year of their participation in the infringement.

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<sup>25</sup> OJ C 210, 1.9.2006, p. 2.

<sup>26</sup> OJ C 298, 8.12.2006, p. 17.

<sup>27</sup> OJ C 167, 2.7.2008, p. 1.

### 8.3.1. The value of sales

- (95) The infringement concerns different products, which is reflected in the use of different values of sales for setting the fines of leg I and leg II of the infringement.
- (96) For both legs of the infringement, the relevant value of sales is based on the last full business year of the parties' participation in the infringement, *i.e.* 2013.
- (97) Regarding leg I, the relevant value of sales for the purpose of setting the fine is the sales of metal closures by Crown and Silgan to customers in Germany in 2013. The value of sales for Silgan has been adjusted to take account of the fact that due to the creation of a new subsidiary, Europe Commerce Verschlussysteme GmbH (ECV), which started its activities on 8 March 2013, the value of sales increased as of that date. Therefore, in order to avoid overvaluation, a proportion of the value of sales of ECV in 2013, reflecting its presence in the Silgan group, was determined and only this value was added to the turnover made by the other Silgan entities involved in the infringement.
- (98) Regarding leg II, the relevant value of sales for the setting of the fines is the sales of metal closures and metal cans by Crown and Silgan 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 purpose of setting the fines.
- (99) In fact, leg II concerns the transition from metal closures and metal cans coated with traditional lacquers (those containing BPA) to products coated with BPA-free lacquers. BPA-NI metal closures and BPA-NI metal cans became *de facto* mandatory for the packaging of food for human consumption in 2018. 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 cans and metal closures sold to customers in Germany. The proportion used for determining the value of sales relating to the conduct constituting leg II should be different for metal closures and metal cans due to the different uptick in BPA-NI metal closures and BPA-NI metal cans sales in the years until the use of BPA-NI closures and cans became *de facto* mandatory in 2018. In 2018, the proportion of metal cans coated with traditional lacquers (those containing BPA) was around [...]%, and that of such metal closures was [...]%. Considering that the Commission uses the value of sales of the last full business year covered by the infringement, *i.e.* 2013, [...]% 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.

**Table 1: Value of sales in EUR**

|                                   | Crown                   | Silgan                  |
|-----------------------------------|-------------------------|-------------------------|
| Leg I – Closures                  | [10 000 000-12 000 000] | [31 000 000-33 000 000] |
| Leg II – “Closures” <sup>28</sup> | [6 000 000-8 000 000]   | [23 000 000-25 000 000] |
| Leg II – “Cans” <sup>29</sup>     | [27 000 000-29 000 000] | [8 000 000-10 000 000]  |

<sup>28</sup> Value of sales as calculated according to the methodology set out in recitals 98 and 99.

<sup>29</sup> Value of sales as calculated according to the methodology set out in recitals 98 and 99.

- (100) In its settlement submission, each party has confirmed the relevant value of sales for the setting of its fine.

#### 8.3.2. *Determination of the basic amount of the fines*

- (101) The basic amount consists of an amount of up to 30% of an undertaking's relevant value of sales, depending on the degree of gravity of the infringement and multiplied by the number of years of the undertaking's participation in the infringement, and an additional amount of between 15% and 25% of the value of an undertaking's relevant sales, irrespective of the duration of the undertaking's participation in the infringement<sup>30</sup>.

##### 8.3.2.1. Gravity of the infringement

- (102) The gravity of the infringement determines the percentage of the value of sales taken into account in setting the fine. Pursuant to points 19-23 of the Guidelines on fines, when assessing the gravity of the infringement and setting the percentage for gravity within the scale of up to 30% of the value of sales, the Commission may have regard to a number of factors, such as the nature of the infringement, the combined market share of all the undertakings concerned, the geographic scope of the infringement and/or whether or not the infringement has been implemented.<sup>31</sup> The relevant elements in this case are assessed as follows.
- (103) A cartel is, by its very nature, among the most harmful restrictions of competition. Therefore, the proportion of the value of sales taken into account for such infringements will generally be set at the higher end of the scale of the value of sales.<sup>32</sup> Cartels generally warrant a starting percentage of at least 15%. Further, the Commission takes into account the fact that this was a multi-faceted cartel.
- (104) Given the specific circumstances of this case, taking into account the nature and the geographic scope of the infringement, the proportion of the value of sales to be taken into account should be 16%.

##### 8.3.2.2. Duration of the infringement

- (105) According to point 24 of the Guidelines on fines, in order to take fully into account the duration of the participation of each undertaking in the infringement, the amount determined on the basis of the value of sales is to be multiplied by the number of years of participation in the infringement<sup>33</sup>.
- (106) For the application of point 24 of the Guidelines on fines, the starting and ending dates for the participation in leg I and leg II of the infringement by the parties are described in Section 4.3.
- (107) The duration to be taken into account for the purposes of setting the fine and the resulting multipliers for duration are set out in Table 2.

**Table 2: Duration**

#### *Leg I*

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<sup>30</sup> Points 19-26 of the Guidelines on fines.  
<sup>31</sup> Points 21 and 22 of the Guidelines on fines.  
<sup>32</sup> Point 23 of the Guidelines on fines.  
<sup>33</sup> Point 24 of the Guidelines on fines.

| Undertaking | Duration (days) | Multipliers |
|-------------|-----------------|-------------|
| Crown       | 1107            | 3.03        |
| Silgan      | 1107            | 3.03        |

## ***Leg II***

| Undertaking | Product                  | Duration (days) | Multipliers |
|-------------|--------------------------|-----------------|-------------|
| Crown       | “Closures” <sup>34</sup> | 181             | 0.49        |
|             | “Cans” <sup>35</sup>     | 519             | 1.42        |
| Silgan      | “Closures” <sup>36</sup> | 181             | 0.49        |
|             | “Cans” <sup>37</sup>     | 519             | 1.42        |

### ***8.3.3. Determination of the additional amount***

- (108) Point 25 of the Guidelines on fines provides that, irrespective of the duration of the undertaking's participation in the infringement, the basic amount will include a sum of between 15% and 25% of the value of sales, on the basis of the factors listed in recitals (102) to (104) with respect to the variable amount, in order to deter undertakings from even entering into such illegal practices.<sup>38</sup>
- (109) Taking into account those factors, the percentage to be applied for the purposes of calculating this additional amount is 16%.

### ***8.3.4. Calculations and conclusions on basic amounts***

- (110) Based on the criteria explained in this section, the basic amount of the fine to be imposed on each party is set out in Table 3.

**Table 3: Basic amounts of the fines in EUR**

|                                   | Crown | Silgan |
|-----------------------------------|-------|--------|
| Leg I – Closures                  | [...] | [...]  |
| Leg II – “Closures” <sup>39</sup> | [...] | [...]  |
| Leg II – “Cans” <sup>40</sup>     | [...] | [...]  |

<sup>34</sup> As referred to in Table 1.

<sup>35</sup> As referred to in Table 1.

<sup>36</sup> As referred to in Table 1.

<sup>37</sup> As referred to in Table 1.

<sup>38</sup> Point 25 of the Guidelines on fines.

<sup>39</sup> As referred to in Table 1.

<sup>40</sup> As referred to in Table 1.

|                    |       |       |
|--------------------|-------|-------|
| Total basic amount | [...] | [...] |
|--------------------|-------|-------|

#### **8.4. Adjustments to the basic amount: aggravating or mitigating circumstances**

- (111) The basic amount of the fine may be increased where the Commission finds that there are aggravating circumstances. Point 28 of the Guidelines on fines sets out a non-exhaustive list of such circumstances. The basic amount of the fine may be reduced where there are mitigating circumstances. Point 29 of the Guidelines on fines sets out a non-exhaustive list of such circumstances.
- (112) The Commission considers that there are no aggravating or mitigating circumstances relevant for the purposes of this Decision.

#### **8.5. Application of the 10% turnover limit**

- (113) Article 23(2) of Regulation (EC) No 1/2003 provides that the fine imposed on each undertaking must not exceed 10% of its total turnover in the preceding business year.
- (114) None of the fines calculated in this Decision exceeds 10% of the total turnover of any of the undertakings in 2021.

#### **8.6. Application of the Leniency Notice**

- (115) On 25 April 2018, Crown applied for a reduction of fines based on the Leniency Notice. Crown was the first undertaking to provide with its leniency application important new evidence as well as corroborating information, thereby substantially strengthening the Commission's ability to prove the case and adding significant value to the Commission's investigation within the meaning of points 24 and 25 of the Leniency Notice. Crown's cooperation fulfilled the requirements of point 12(a) of the Leniency Notice. Consequently, a reduction of the fine of 50% is granted to Crown.

#### **8.7. Application of the Settlement Notice**

- (116) As provided in point 32 of the Settlement Notice, the reward for settlement results in a reduction of 10% of the amount of the fine to be imposed on a party after the 10% turnover cap has been applied having regard to the Guidelines on fines. Pursuant to point 33 of the Settlement Notice, when settled cases involve leniency applicants, the reduction of the fine granted to them for settlement is to be added to their leniency reward.
- (117) Consequently, the amount of the fines to be imposed on each party should be further reduced by 10%.

#### **8.8. Conclusion: final amount of individual fines to be imposed in this Decision**

- (118) The fines to be imposed pursuant to Article 23(2) of Regulation (EC) No 1/2003 are set out in Table 4.

**Table 4: Fines in EUR**

|                          | Crown     | Silgan     |
|--------------------------|-----------|------------|
| Final amount of the fine | 7 670 000 | 23 852 000 |

HAS ADOPTED THIS DECISION:

*Article 1*

The following undertakings infringed Article 101 of the Treaty on the Functioning of the European Union by participating, between 11 March 2011 and 18 September 2014, in a single and continuous infringement consisting of regular bilateral exchanges of the most recent past respective annual sales volumes regarding the parties' customers in Germany on the market for metal closures, and in the context of the introduction of BPA-NI metal cans and BPA-NI metal closures in Germany, exchanges of information and views regarding the intention to impose a surcharge and to shorten the minimum durability recommendations made to fillers compared to BPA-containing lacquers on the German market:

- (a) Crown Holdings, Inc. and Crown Cork & Seal Deutschland Holdings GmbH;
- (b) Silgan Holdings Inc., Silgan White Cap Manufacturing GmbH, Silgan Metal Packaging Distribution GmbH, Silgan Holdings Austria GmbH, and Silgan International Holdings B.V.

*Article 2*

For the infringement referred to in Article 1, the following fines are imposed:

- (a) On Crown Cork & Seal Deutschland Holdings GmbH and Crown Holdings, Inc., jointly and severally liable: EUR 7 670 000;
- (b) On Silgan White Cap Manufacturing GmbH, Silgan Metal Packaging Distribution GmbH, Silgan Holdings Austria GmbH, Silgan International Holdings B.V., and Silgan Holdings Inc., jointly and severally liable: EUR 23 852 000.

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

BANQUE CENTRALE DU LUXEMBOURG  
2, Boulevard Royal  
L-2983 Luxembourg

IBAN: LU27 9990 0001 1400 100E  
BIC: BCLXLULL  
Ref.: EC/BUFI/AT.40522

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

Where an undertaking referred to in Article 1 lodges an appeal, that undertaking shall cover the fine by the due date, either by providing an acceptable financial guarantee or by making a provisional payment of the fine in accordance with Article 108 of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council<sup>41</sup>.

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<sup>41</sup> Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013,

### *Article 3*

The undertakings listed in Article 1 shall immediately bring to an end the infringement referred to in that Article insofar as they have not already done so.

They shall refrain from repeating any act or conduct described in Article 1, and from any act or conduct having the same or similar object or effect.

### *Article 4*

This Decision is addressed to:

- (a) Crown Holdings, Inc., 770 Township Line Road, Yardley, PA 19067, United States of America;
- (b) Crown Cork & Seal Deutschland Holdings GmbH, Fritz-Züchner-Strasse 8, 38723 Seesen, Germany;
- (c) Silgan Holdings Inc., 4 Landmark Square, Suite 400, Stamford CT 06901, United States of America;
- (d) Silgan White Cap Manufacturing GmbH, Hansastrasse 4, 30419 Hannover, Germany;
- (e) Silgan Metal Packaging Distribution GmbH, Zscheilaer Strasse 45, 01662 Meissen, Germany;
- (f) Silgan Holdings Austria GmbH, Landskrongasse 5/2, 1010 Vienna, Austria;
- (g) Silgan International Holdings B.V., Woudenbergseweg 11, 3953 ME Maarsbergen, The Netherlands.

This Decision shall be enforceable pursuant to Article 299 of the Treaty on the Functioning of the European Union.

Done at Brussels, 12.7.2022

*For the Commission*  
*Margrethe VESTAGER*  
*Executive Vice-President*

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(EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012 (OJ L 193, 30.7.2018, p. 1).