



EUROPEAN COMMISSION

## ***CASE AT.39563 – Retail Food Packaging***

(Only the German, English, French and Italian texts are authentic)

### **CARTEL PROCEDURE**

### **Council Regulation (EC) 1/2003**

---

Article 7 Regulation (EC) 1/2003

Date: 24/06/2015

This text is made available for information purposes only. A summary of this decision is published in all EU languages in the Official Journal of the European Union.

Parts of this text have been edited to ensure that confidential information is not disclosed. Those parts are replaced by a non-confidential summary in square brackets or are shown as [...].

Brussels, 24.6.2015  
C(2015) 4336 final

**COMMISSION DECISION**

**of 24.6.2015**

**relating to a proceeding under Article 101 of the Treaty on the Functioning of the  
European Union and Article 53 of the EEA Agreement**

**(AT.39563 – Retail Food Packaging)**

(Only the German, English, French and Italian texts are authentic)

## TABLE OF CONTENTS

1.	Introduction .....	7
2.	The industry subject to the proceedings .....	9
2.1.	The products covered by the infringement .....	9
2.2.	The market players involved in the cartels .....	10
2.2.1.	Linpac .....	10
2.2.2.	Vitembal .....	11
2.2.3.	Sirap-Gema .....	11
2.2.4.	Coopbox .....	12
2.2.5.	Silver Plastics .....	14
2.2.6.	Magic Pack .....	14
2.2.7.	Nespak .....	15
2.2.8.	Huhtamäki .....	15
2.2.9.	Propack .....	16
2.2.10.	Ovarpack .....	16
2.2.11.	Distributors .....	16
2.3.	Description of the sector .....	17
2.4.	Trade within EEA .....	17
3.	Procedure .....	18
3.1.	The Commission's investigation .....	18
4.	Description of the events .....	21
4.1.	Italy (18 June 2002 – 17 December 2007) .....	21
4.1.1.	Basic principles and structure of the cartel .....	21
4.1.1.1.	General price increases and exchange of information .....	21
4.1.1.2.	Allocation of clients .....	22
4.1.1.3.	Bid rigging of tenders organised by some major GDO clients .....	23
4.1.2.	Anti-competitive activities in the 1980's and 1990's .....	24
4.1.3.	Chronology of events .....	25
4.1.3.1.	Year 2002 .....	25
4.1.3.2.	Year 2003 .....	33
4.1.3.3.	Year 2004 .....	37
4.1.3.4.	Year 2005 .....	46
4.1.3.5.	Year 2006 .....	58
4.1.3.6.	Year 2007 .....	68
4.1.3.7.	Year 2008 .....	74

4.2.	South-West Europe (2 March 2000 – 13 February 2008).....	75
4.2.1.	Basic principles and structure of the cartel .....	75
4.2.2.	The cartel history.....	76
4.2.3.	Chronology of events .....	77
4.2.3.1.	The price increases in Spain in 2000.....	77
4.2.3.2.	Coopbox's entry into the Portuguese market (2000-2001).....	79
4.2.3.3.	Contacts between 2001 and 2008.....	79
4.3.	North-West Europe (13 June 2002 – 29 October 2007) .....	79
4.3.1.	Basic principles and structure of the cartel .....	79
4.3.2.	The cartel history.....	79
4.3.3.	Chronology of events .....	79
4.3.3.1.	The price increase in spring/summer 2002 .....	79
4.3.3.2.	The price increase in summer/autumn 2004 .....	79
4.3.3.3.	Bilateral exchange of information and kick off for the MAP IK in 2005.....	79
4.3.3.4.	Bilateral exchange of information in 2006.....	79
4.3.3.5.	The price increase in the Netherlands in 2006.....	79
4.3.3.6.	The price increase in autumn 2006 .....	79
4.3.3.7.	Agreement in the framework of the MAP IK in autumn 2007 .....	79
4.3.3.8.	Bilateral and smaller multilateral contacts between competitors 2007.....	79
4.4.	Central and Eastern Europe (5 November 2004 – 24 September 2007).....	79
4.4.1.	Basic principles and structure of the cartel .....	79
4.4.2.	The cartel history.....	79
4.4.3.	The chronology of events.....	79
4.5.	France (3 September 2004 – 24 November 2005) .....	79
4.5.1.	Basic principles and structure of the cartel .....	79
4.5.2.	The cartel history.....	79
4.5.3.	Chronology of events .....	79
4.6.	Discussion and findings regarding the evidence.....	79
5.	Application of Article 101 of the Treaty and Article 53 of the EEA Agreement .....	79
5.1.	Relationship between the Treaty and the EEA Agreement.....	79
5.2.	Jurisdiction .....	79
5.3.	Application of competition rules.....	79
5.3.1.	Article 101(1) of the Treaty and Article 53(1) of the EEA Agreement .....	79
5.3.2.	Agreements and concerted practices.....	79
5.3.2.1.	Principles.....	79

5.3.2.2. Findings – Italy .....	79
5.3.2.3. Findings – South West Europe (SWE).....	79
5.3.2.4. Findings – North-West Europe (NWE).....	79
5.3.2.5. Findings – Central and Eastern Europe (CEE) .....	79
5.3.2.6. Findings - France.....	79
5.3.3. Single and continuous infringement.....	79
5.3.3.1. Principles.....	79
5.3.3.2. Arguments of the parties .....	79
5.3.3.3. Discussion and findings .....	79
5.3.3.4. Single and continuous infringement – Italy .....	79
5.3.3.5. Single and continuous infringement – South-West Europe (SWE) .....	79
5.3.3.6. Single and continuous infringement –North-West Europe (NWE) .....	79
5.3.3.7. Single and continuous infringement – Central and Eastern Europe (CEE) .....	79
5.3.3.8. Single and continuous infringement – France.....	79
5.3.4. Restriction of competition.....	79
5.3.5. Effect upon trade between EU Member States .....	79
5.4. Application of Article 101(3) of the Treaty .....	79
6. Addressees of this decision .....	79
6.1. General principles .....	79
6.2. Italy .....	79
6.2.1. Linpac.....	79
6.2.2. Sirap-Gema .....	79
6.2.3. Nespak.....	79
6.2.4. Vitembal.....	79
6.2.5. Magic Pack.....	79
6.2.6. Coopbox .....	79
6.3. South-West Europe (SWE) .....	79
6.3.1. Linpac.....	79
6.3.2. Vitembal.....	79
6.3.3. Coopbox .....	79
6.3.4. Huhtamäki/ONO Packaging.....	79
6.3.5. Ovarpack .....	79
6.4. North-West Europe (NWE).....	79
6.4.1. Linpac.....	79
6.4.2. Vitembal.....	79

6.4.3.	Huhtamäki .....	79
6.4.4.	Silver Plastics .....	79
6.5.	Central and Eastern Europe (CEE) .....	79
6.5.1.	Linpac.....	79
6.5.2.	Sirap-Gema/Petruzalek .....	79
6.5.3.	Coopbox .....	79
6.5.4.	Propack.....	79
6.6.	France.....	79
6.6.1.	Linpac.....	79
6.6.2.	Sirap-Gema .....	79
6.6.3.	Vitembal.....	79
6.6.4.	Huhtamäki .....	79
6.6.5.	Silver Plastics .....	79
7.	Duration of the infringements .....	79
7.1.	Starting and end dates .....	79
7.1.1.	Italy .....	79
7.1.2.	South-West Europe .....	79
7.1.3.	North-West Europe .....	79
7.1.4.	Central and Eastern Europe.....	79
7.1.5.	France.....	79
8.	Remedies .....	79
8.1.	Article 7 of Regulation (EC) No 1/2003 .....	79
8.2.	Article 23(2) of Regulation (EC) No 1/2003 and Article 15(2) of Regulation No 1779	
8.3.	Article 25 of Regulation (EC) No 1/2003 .....	79
8.4.	Calculation of the fines .....	79
8.4.1.	The value of sales.....	79
8.4.1.1.	Italy .....	79
8.4.1.2.	South-West Europe .....	79
8.4.1.3.	North-West Europe .....	79
8.4.1.4.	Central and Eastern Europe.....	79
8.4.1.5.	France.....	79
8.4.2.	Determination of the basic amount of the fines .....	79
8.4.2.1.	Determination of the variable amount of the fines.....	79
8.4.2.2.	Duration.....	79
8.4.2.3.	Determination of the additional amounts .....	79

8.4.3.	Adjustments to the basic amount .....	79
8.4.3.1.	Aggravating circumstances .....	79
8.4.3.2.	Mitigating circumstances .....	79
8.4.4.	Deterrence .....	79
8.5.	Application of the 10% turnover limit .....	79
8.6.	Leniency.....	79
8.6.1.	Linpac.....	79
8.6.2.	Vitembal.....	79
8.6.3.	Sirap-Gema .....	79
8.6.4.	Coopbox .....	79
8.6.5.	Silver Plastics.....	79
8.6.6.	Ovarpack .....	79
8.6.7.	Magic Pack.....	79
8.7.	Reduction of the fines due to lapse of time.....	79
8.8.	Ability to Pay .....	79
8.8.1.	Introduction .....	79
8.8.2.	[Company name].....	79
8.8.3.	[Company name].....	79
8.8.4.	[Company name].....	79
8.8.5.	Conclusion.....	79
8.9.	Final amount of the fines.....	79

# COMMISSION DECISION

of 24.6.2015

**relating to a proceeding under Article 101 of the Treaty on the Functioning of the European Union and Article 53 of the EEA Agreement**

**(AT.39563 – Retail Food Packaging)**

(Only the German, English, French and Italian texts are authentic)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union<sup>1</sup>,

Having regard to the Agreement on the European Economic Area,

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>2</sup>, and in particular Article 7 and Article 23(2) thereof,

Having regard to the Commission Decision of 21 September 2012 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 12 of 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 Treaty<sup>3</sup>,

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

Having regard to the final report of the hearing officer in this case<sup>4</sup>,

Whereas:

## **1. INTRODUCTION**

- (1) This Decision is addressed to: LINPAC Group Ltd - LINPAC Packaging Verona S.r.l. - LINPAC Packaging Holdings S.L. - LINPAC Packaging Pravia S.A. - LINPAC Packaging GmbH - LINPAC Packaging Polska Sp zo.o. - LINPAC

---

<sup>1</sup> OJ, C 115, 9/5/2008, p. 47.

<sup>2</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 ("TFEU"). The two sets of provisions are, in substance, identical. For the purposes of this Decision, references to Articles 101 and 102 of the TFEU should be understood as references to Articles 81 and 82, respectively, of the EC Treaty when where appropriate. The TFEU also introduced certain changes in terminology, such as the replacement of "Community" by "Union" and "common market" by "internal market".

<sup>3</sup> OJ L 123, 27.4.2004, p. 18.

<sup>4</sup> Final report of the Hearing Officer of 22 June 2015.



Packaging Kereskedelmi Korlátolt Felelősségű Társaság - LINPAC Packaging Spol S.r.o. - LINPAC Packaging S.r.o. - LINPAC France SAS - LINPAC Distribution SAS - Ovarpack Embalagens S.A. - CCPL S.c. - Coopbox Group S.p.A. – Poliemme S.r.l. - Coopbox Hispania S.l.u. - Coopbox Eastern s.r.o. - Huhtamäki Oyj - Huhtamäki Flexible Packaging Germany GmbH & Co. KG - ONO PACKAGING PORTUGAL S.A. - COVERIS RIGID (AUNEAU) FRANCE SAS - Magic Pack Srl - GROUPE GUILLIN SA - NESPAK S.p.A. - Bunzl plc - PROPACK Kft. - Johannes Reifenhäuser Holding GmbH & Co. KG - Silver Plastics GmbH & Co. KG - Silver Plastics GmbH - Silver Plastics S.à r.l - Italmobiliare S.p.A. – Sirap-Gema S.p.A. - Petruzalek GmbH - Petruzalek Kft. - Petruzalek s.r.o. - Petruzalek Spol. s.r.o. - Sirap France S.A.S. - VITEMBAL HOLDING SAS - VITEMBAL SOCIETE INDUSTRIELLE SAS - VITEMBAL GmbH Verpackungsmittel - VITEMBAL España, S.L.

- (2) This Decision relates to five cartels concerning polystyrene plastic trays ("foam trays") and, in respect of one cartel, also polypropylene plastic trays ("rigid trays") used for retail packaging of fresh food such as meat, poultry and fish.
- (3) The five distinct cartels are delineated on the basis of their geographic scope, namely: Italy, South-West Europe ("SWE"),<sup>5</sup> North-West Europe ("NWE"),<sup>6</sup> Central-East Europe ("CEE"),<sup>7</sup> and France. For each of these cartels, the illegal practices consisted of taking part in a network of multilateral (often held on the fringe of official and legitimate industry meetings) and bilateral (physical, e-mail or telephone) contacts. The main objectives of the anticompetitive arrangements were to maintain high prices, to pass on the rising price of raw material in a coordinated manner and to preserve the status quo with regard to the historically allocated clients and markets. The below table illustrates the cartels in which the addressees of this Decision were involved.

**Table 1**

Undertaking	Italy	SWE	NWE	France	CEE
Linpac	✓	✓	✓	✓	✓
Vitembal	✓	✓	✓	✓	
Huhtamäki		✓	✓	✓ <sup>8</sup>	

\* *Parts of this text have been edited to ensure that confidential information is not disclosed. Those parts are replaced by a non-confidential summary in square brackets or are shown as [...].*

<sup>5</sup> This cartel covers Spain and Portugal.

<sup>6</sup> This cartel covers: Belgium, Denmark, Finland, Germany, Luxembourg, the Netherlands, Norway and Sweden.

<sup>7</sup> This cartel covers: the Czech Republic, Hungary, Poland and Slovakia.

<sup>8</sup> Huhtamäki France SAS, which was directly involved in the French infringement, was sold to [non-addressee], an affiliate of [non-addressee], on 22 December 2010. The company was renamed to Paccor France SAS on 7 February 2011. Paccor France SAS changed its name to Coveris Rigid (Auneau) France SA on 4 February 2014. See further footnote 40 and Section 0.

Sirap-Gema	✓			✓	✓
Coopbox	✓	✓			✓
Nespak	✓				
Magic Pack	✓				
Silver Plastics			✓	✓	
Ovarpack		✓			
Propack					✓ <sup>9</sup>

- (4) Although originating most probably from a similar background and taking place in largely overlapping periods, the main common denominator of the five different cartels is the participation of the immunity applicant, Linpac, and the fact that foam trays were the object of all five cartels. Nevertheless, the objective elements and the evidence linking the anticompetitive behaviour of the parties across all five regions are not sufficient to establish one single and continuous infringement at EEA level or a single and continuous infringement covering more than one of the five individual cartels. Therefore, the illegal practices undertaken in the five regions are regarded as five separate cartels<sup>10</sup> (see further in Section 5.3.3).
- (5) Given the similarity in a number of elements of the separate cartels, the Commission has however, for reasons of administrative effectiveness and expediency, treated the five cartels in one single administrative procedure. Whilst some of the addressees of this Decision are not involved in some of the cartels, this Decision permits each involved undertaking to obtain a clear picture of the Commission's finding against it.<sup>11</sup>

## 2. THE INDUSTRY SUBJECT TO THE PROCEEDINGS

### 2.1. The products covered by the infringement

- (6) The products covered by this Decision are expanded and extruded (EPS/XPS) foam polystyrene plastic trays ("foam trays") and, as far as the NWE cartel is concerned, PP rigid polypropylene plastic trays ("rigid trays") used for retail food packaging. Foam and rigid trays serve amongst other things to protect food products (such as cheese, meat, fish, fruit, vegetables, bakery goods, ice cream, ready-to-serve foods) during transportation; provide a barrier against potential spoilage agents and ensure hygienic and appealing appearance during retail. Foam and rigid plastic trays offer a very wide range of solutions due to the diversity of materials, flexibility, manufacturing process and printing options.<sup>12</sup>

<sup>9</sup> Only insofar as Hungary is concerned.

<sup>10</sup> See Case COMP/E-1/37.512 — Vitamins, paragraph 579.

<sup>11</sup> Ibid paragraphs 583-584 and Joined Cases 40/73 to 48/73, etc. *Suiker Unie and others v Commission* ECLI:EU:C:1975:174, paragraph 111.

<sup>12</sup> ID [...]; The French Plastic and Flexible Packaging Association (Elipso) at <http://www.elipso.org/?lang=uk>; The information in this Section has been reported in ID [...]; ID [...];

## 2.2. The market players involved in the cartels

- (7) The individuals representing the market players in the cartel arrangements and who are relevant for the purpose of this Decision are listed in Annex I.

### 2.2.1. Linpac

- (8) The Linpac group specialises in the supply of a variety of food packaging products. The Linpac group companies operate in a large number of EEA countries and beyond.<sup>13</sup> In this Decision, and unless otherwise specified, companies of the Linpac group which participated in or are held liable for the collusive actions described in this Decision will be collectively referred to as "Linpac".
- (9) During the infringement periods described in this Decision, LINPAC Group Ltd<sup>14</sup> was the ultimate parent of the Linpac group. In respect of the legal entities relevant for this Decision, LINPAC Group Ltd was the ultimate 100% indirect parent of the following Linpac legal entities: LINPAC Distribution SAS, LINPAC France SAS, LINPAC Packaging Ltd<sup>15</sup>, LINPAC Packaging GmbH<sup>16</sup>, LINPAC Packaging Polska Sp zo.o.<sup>17</sup>, LINPAC Packaging Kereskedelmi Korlátolt Felelősségű Társaság<sup>18</sup>, LINPAC Packaging Spol S.r.o.<sup>19</sup>, LINPAC Packaging S.r.o.<sup>20</sup>, LINPAC Packaging Holdings S.L. and LINPAC Packaging Verona S.r.l.<sup>21</sup>. In addition, as of 9 November 2006, LINPAC Group Ltd became a 100% indirect parent of LINPAC Packaging Pravia S.A.<sup>22</sup>.
- (10) In the business year 2014, the Linpac group had a consolidated worldwide turnover of EUR [390 000 000 – 730 000 000].

---

ID [...] and ID [...]; ID [...] (Huhtamäki - reply to RFI); ID [...]; ID [...]; ID [...]; ID [...] (Nespak - reply to RFI); ID [...] ([non-addressee] - reply to RFI); ID [...].

<sup>13</sup> The EEA countries are the Contracting Parties to the EEA Agreement.

<sup>14</sup> LINPAC Group Ltd was originally incorporated under the name of PICNAL Ltd. It was renamed LINPAC Group Holdings Ltd on 22 August 2003 and then LINPAC Group Ltd on 13 February 2004. Due to the financial restructuring on 21 December 2009, LINPAC Senior Holdings Ltd purchased 100% of the shares in LINPAC Group Ltd. LINPAC Senior Holdings Ltd is in turn currently controlled by Strategic Value Partners LLC.

<sup>15</sup> LINPAC Packaging Ltd was previously named LINPAC Plastics Ltd. The change of name took place on 14 February 2008.

<sup>16</sup> LINPAC Packaging GmbH was previously named LINPAC Plastics GmbH. The change of name took place on 19 March 2008.

<sup>17</sup> LINPAC Packaging Polska Sp zo.o. was previously named LINPAC Plastics Polska Sp. z.o.o. The name change of name took place in 2008.

<sup>18</sup> LINPAC Packaging Kereskedelmi Korlátolt Felelősségű Társaság, which was referred to in the SO as LINPAC Packaging Hungária Kft, was previously named LINPAC Plastics Hungária Kft. The change of name took place on 6 August 2008.

<sup>19</sup> LINPAC Packaging Spol s.r.o. was previously named LINPAC Plastics Spol s.r.o. The change of name took place in 2008.

<sup>20</sup> LINPAC Packaging s.r.o. was previously named LINPAC Plastics s.r.o. The change of name took place on 20 March 2008.

<sup>21</sup> LINPAC Packaging Verona Srl was previously named LINPAC Plastics Verona Srl. The change of name took place on 16 May 2008.

<sup>22</sup> LINPAC Packaging Pravia S.A. was previously named LINPAC Plastics Pravia S.A. The change of name took place on 4 September 2008. Before 9 November 2006, LINPAC Packaging Holdings SL (a wholly owned subsidiary of LINPAC Group Ltd) held a 76.72% stake in LINPAC Packaging Pravia S.A. (then LINPAC Plastics Pravia S.A.). On 9 November 2006, LINPAC Packaging Holdings SL acquired an outstanding minority shareholding of 23.28%.

### 2.2.2. *Vitembal*

- (11) The Vitembal group specialises in the supply of a variety of food packaging products. The Vitembal group companies operate in many countries of the EEA. In this Decision, and unless otherwise specified, the legal entities of the Vitembal group which participated in or are held liable for the anticompetitive conduct described in this Decision will be collectively referred to as "Vitembal".
- (12) During the infringement periods described in this Decision, VITEMBAL HOLDING SAS was the ultimate parent company of the Vitembal group. VITEMBAL HOLDING SAS held the following shareholdings in the legal entities that are addressees of this Decision: 98% in VITEMBAL Italia S.r.l.<sup>23</sup>; 99% in VITEMBAL SOCIETE INDUSTRIELLE SAS<sup>24</sup>; 99.5% in VITEMBAL España, S.L.<sup>25</sup> and 100% in VITEMBAL GmbH Verpackungsmittel.
- (13) In the business year 2014, the Vitembal group had a consolidated worldwide turnover of EUR 23 627 271.

### 2.2.3. *Sirap-Gema*

- (14) Sirap-Gema is an undertaking belonging to the Italmobiliare group. Sirap-Gema specialises in the supply of a variety of food packaging products and operates in a number of EEA countries through different legal entities. In this Decision, and unless otherwise specified, the legal entities of the Sirap-Gema group which participated in or are held liable for the anti-competitive conduct of Sirap-Gema as described in this Decision will be collectively referred to as "Sirap-Gema" or, in relation to CEE, also as "Sirap-Gema/Petrzalek" or "Petrzalek".
- (15) During the infringement periods described in this Decision, Italmobiliare S.p.A. was the ultimate parent of the Italmobiliare group and hence also of the Sirap-Gema group. In respect of the entities relevant for this Decision, Italmobiliare S.p.A. was a 100% (or almost 100%) indirect parent of the following entities: Sirap France S.A.S., Sirap-Gema S.p.A., Petruzalek GmbH<sup>26</sup>, Petruzalek Kft.<sup>27</sup>, Petruzalek s.r.o. and Petruzalek Spol. s.r.o.
- (16) In the business year 2014, the Italmobiliare group had a consolidated worldwide turnover of EUR 4 451 330 000.

---

<sup>23</sup> VITEMBAL Italia S.r.l entered into a voluntary liquidation scheme on 31 January 2012. The company has been dissolved.

<sup>24</sup> VITEMBAL SOCIETE INDUSTRIELLE SAS was put in judicial liquidation on 11 May 2015, see **ID** [...] (Jugement, Tribunal de Commerce de Nîmes).

<sup>25</sup> VITEMBAL España, S.L. entered into liquidation in September 2013. Its liquidation is at an advance stage but not yet completed.

<sup>26</sup> During the period of the infringement, Petruzalek GmbH was the direct 100% parent of Petruzalek Kft, Petruzalek s.r.o., Petruzalek Spol. s.r.o. ("the Petruzalek group"). The Petruzalek group, which specialised in the production and distribution of food packaging products in Central and Eastern Europe, was acquired by the Sirap-Gema group on 3 December 2003. During the period of the infringement, the Petruzalek group was 100% indirectly owned by Italmobiliare S.p.A. and 99.97% owned by Sirap-Gema S.p.A. (the remaining 0.03% was held by Intermobiliare S.p.A. which was a 100% subsidiary of Italmobiliare S.p.A.).

<sup>27</sup> Petruzalek Kft. held a 69.8% shareholding in Hungaropack Kft. The remaining 30.2% shareholding was acquired by Sirap-Gema Finance S.A. on 7 October 2004. Hungaropack was merged into Petruzalek Kft in 2007.

#### 2.2.4. Coopbox

- (17) Coopbox is an Italian group within the Consorzio Cooperative di Produzione e Lavoro S.c. ("CCPL S.c."). CCPL S.c. is the ultimate parent company of the group which is active in the fresh food packaging sector, along with other sectors such as energy, facility management and other services. In this Decision, and unless otherwise specified, the legal entities within the Coopbox group which participated in or are held liable for the cartels will be collectively referred to as "Coopbox".
- (18) Both during and after the infringement periods, Coopbox's corporate structure has changed on numerous occasions. The Coopbox entities that are considered for the purpose of this Decision are the following:
- (1) **CCPL S.c.:** until 2004 this entity was called CCPL S.c.r.l.<sup>28</sup>
  - (2) **CCPL S.p.A.:** this entity was created on 23 December 2003 as a directly and wholly owned subsidiary of CCPL S.c. Between 18 April 2006 and the end of the infringement periods, CCPL S.c. held 93.86% of CCPL S.p.A.. CCPL S.c. currently holds 90.79% of CCPL S.p.A.
  - (3) **Coopbox Group S.p.A.:** this entity is currently wholly owned by CCPL S.p.A.. Coopbox Group S.p.A. holds all the subsidiaries active in the CCPL group's food packaging business. The entity is in existence since 4 February 2009 as the legal successor of Coopbox Italia S.r.l. (for the purpose of this Decision from now on referred to in the Recitals as "Coopbox Italia S.r.l. (ex-Isolex)" to distinguish it from another previously existing legal entity named Coopbox Italia S.r.l.)<sup>29</sup>, Coopbox Europe S.p.A.<sup>30</sup> and Very Pack S.r.l.<sup>31</sup>.
  - (4) **Poliemme S.r.l.:** for the purpose of this Decision and in order to distinguish this entity from one of its predecessors having the same name, this entity will from now on in the Recitals be referred to as "**Poliemme S.r.l. (ex-Turris Pack)**". This entity is based in Italy and currently wholly owned by Coopbox Group S.p.A., which is in turn wholly owned by CCPL S.p.A. Poliemme S.r.l.

---

<sup>28</sup> Following the company law reform in Italy of 2003, the legal form "S.c.r.l." was replaced with the legal form "S.c.".

<sup>29</sup> Coopbox Italia S.r.l. (ex-Isolex) was created on 27 March 2006 as the result of an asset transfer from the then existing Coopbox Italia S.p.A. to Isolex S.r.l., which in turn was renamed Coopbox Italia S.r.l. (in the Recitals of this Decision referred to as "Coopbox Italia S.r.l. (ex-Isolex)"). Coopbox Italia Srl (ex-Isolex) was wholly owned by Coopbox Europe S.p.A., in turn wholly owned by CCPL S.p.A. On 15 September 2008, Coopbox Italia S.r.l. (ex-Isolex) absorbs Coopbox Europe S.p.A., thus being directly owned by CCPL S.p.A. On 4 February 2009, Coopbox Italia S.r.l. (ex-Isolex) changes its corporate form and is renamed Coopbox Group S.p.A..

<sup>30</sup> From 25 October 2002, Coopbox Europe S.p.A. was a wholly and directly owned subsidiary of CCPL S.c. and, as of 23 December 2003, when the intermediate parent company CCPL S.p.A. was created, an indirectly owned subsidiary of CCPL S.c. through CCPL S.p.A. On 15 September 2008, Coopbox Europe S.p.A. is absorbed into Coopbox Italia S.r.l. (ex-Isolex) which in turn, on 4 February 2009, changes its corporate form and is renamed Coopbox Group S.p.A.

<sup>31</sup> From 1 January 2000 until 17 December 2000, Very Pack S.r.l. is a subsidiary held by Brenta S.r.l., which in turn is held by 95% by CCPL S.c. On 18 December 2000, Brenta S.r.l. was reverse-merged into Very Pack S.r.l., the latter thus being directly owned by 95% by CCPL S.r.l. On 25 October 2002, Coopbox Europe S.p.A., at the time a directly wholly owned subsidiary of CCPL S.c., acquires 100% of Very Pack S.r.l. From this date Very Pack S.r.l. became indirectly wholly owned by CCPL S.c.. On 27 February 2003, Very Pack S.r.l. is incorporated into Coopbox Europe S.p.A. Very Pack S.r.l.'s legal successor is therefore the same as Coopbox Europe S.p.A.'s legal successor, i.e. Coopbox Group S.p.A.

(ex-Turris Pack) was created on 27 April 2006 as the legal successor of Coopbox Italia S.p.A.<sup>32</sup>, Poliemme S.r.l.<sup>33</sup> and Turris Pack S.r.l.<sup>34</sup>.

- (5) **Coopbox Hispania S.l.u.:** This entity was created as the result of intra-group restructurings concerning the Spanish Coopbox subsidiaries at the end of 2005. Coopbox Hispania S.l.u. is the economic successor of Coopbox Ibérica S.A. Between 1 January 2000 and 23 July 2003, Coopbox Ibérica S.A. was held 90% by Coopbox Group S.p.A. (legal successor of Very Pack S.r.l. and Coopbox Europe S.p.A.).<sup>35</sup> On 24 July 2003, Coopbox Group S.p.A. acquired the remaining 10% of Coopbox Ibérica S.A.'s share capital which therefore became indirectly wholly owned by the ultimate parent company, CCPL S.c. On 20 December 2004 the shareholding of Coopbox Ibérica S.A. became split between Coopbox Group S.p.A. (60%) and Real Gest S.p.A. (40%), both 100% indirectly owned by CCPL S.c. Between November and December 2005, Coopbox Ibérica S.A. changed its legal form into Coopbox Ibérica S.L. This legal entity was split, with the creation of a new company, Coopbox Hispania S.l.u. which continued the food packaging business while Coopbox Ibérica S.L. remained in the CCPL group as a real estate company, its entire capital being transferred to Real Gest S.p.A., ultimately wholly owned by CCPL S.c.

---

<sup>32</sup> On 1 January 2003 Coopbox Italia S.p.A. existed as "Coopbox Italia S.r.l.", and was an entity wholly owned by CCPL S.c. On 23 December 2003, when the intermediate parent CCPL S.p.A was created, Coopbox Italia S.r.l. was indirectly wholly owned by CCPL S.c. through CCPL S.p.A. On 31 December 2003, 50% of Coopbox Italia S.r.l. is transferred to CCPL Real Estate S.r.l. (wholly owned by CCPL S.p.A., in turn wholly owned by CCPL S.c.). The other 50% of Coopbox Italia S.r.l. is transferred to Isolex S.p.A., which on that date is only 19% owned by Coopbox Europe S.p.A (in turn fully owned by CCPL S.p.A., in turn wholly owned by CCPL S.c.). On 30 September 2004, Coopbox Italia S.r.l. is transformed into Coopbox Italia S.p.A. From 20 December 2004 until 26 March 2006, Isolex S.p.A. (from 2006 Isolex S.r.l), still detaining 50% of Coopbox Italia S.p.A., is entirely or almost entirely (98-100%) owned by Coopbox Europe S.p.A. On 27 March 2006, Isolex S.r.l. acquires a big part of Coopbox Italia S.p.A.'s assets and changes its name into Coopbox Italia S.r.l., for ease of reference in this Decision referred to as "Coopbox Italia S.r.l. (ex-Isolex)". However, despite the asset transfer, Coopbox Italia S.p.A. remains in existence until 27 April 2006 when it is merged into Turris Pack S.r.l., which in turn changes its name into Poliemme S.r.l., in this Decision referred to as Poliemme S.r.l. (ex-Turris Pack).

<sup>33</sup> On 18 June 2002, Poliemme S.r.l. is owned by 90% by Very Pack S.r.l., which in turn is owned by 95% by CCPL S.c. (Very Pack Srl is indirectly wholly owned by CCPL S.c. as of 25 October 2002 as described above). On 28 October 2002, Very Pack S.r.l. acquires the remaining shares in Poliemme S.r.l. On 27 February 2003, Poliemme S.r.l. is transferred to Coopbox Italia S.p.A. (which at that time was still "Coopbox Italia S.r.l."). Poliemme S.r.l. remains a wholly owned subsidiary of Coopbox Italia S.p.A until 27 April 2006, when it is absorbed into Turris Pack S.r.l., which in turn changes its name into Poliemme S.r.l., in this Decision referred to as Poliemme S.r.l. (ex Turris Pack).

<sup>34</sup> On 18 June 2002, Turris Pack S.r.l. is owned by 53% by Very Pack S.r.l. which in turn is owned by 95% by CCPL S.c. (Very Pack S.r.l. is indirectly wholly owned by CCPL S.c. as of 25 October 2002 as described above). On 9 July 2002, Very Pack S.r.l. increases its ownership thus holding 70% of Turris Pack S.r.l. On 27 February 2003, this 70% shareholding of Turris Pack S.r.l. is transferred to Coopbox Italia S.p.A. (which at that time was still "Coopbox Italia S.r.l."), in turn wholly owned by CCPL S.c. On 6 August 2003, Coopbox Italia S.p.A increases its share in Turris Pack S.r.l., thus holding 86,25%. This shareholding remains unchanged until 15 March 2006, when Coopbox Italia S.p.A. acquires the remaining shares in Turris Pack S.r.l., thus holding 100%. On 27 April 2006, Turris Pack S.r.l. absorbs the entities Poliemme S.r.l. and Coopbox Italia S.p.A and changes its name into Poliemme S.r.l. Therefore Turris Pack S.r.l.'s legal successor is Poliemme S.r.l., in the Recitals of this Decision referred to as Poliemme S.r.l. (ex Turris Pack).

<sup>35</sup> See preceding Recitals. The remaining 10% was held by other Spanish shareholders.

- (6) **Dynaplast Ibérica de Embalaje S.L.U.:** This entity was created as the result of intra-group restructurings concerning the Spanish Coopbox subsidiaries at the end of 2005. Dynaplast Ibérica de Embalaje S.L.U. is the economic successor of Dynaplast S.A. which on 18 January 2002 was acquired by Coopbox Group S.p.A. (at the time Very Pack S.r.l.). Therefore, Dynaplast S.A. became indirectly 100% owned by CCPL S.c. on 25 October 2002. On 20 December 2004 the shareholding of Dynaplast S.A. became split between Coopbox Group S.p.A. (60%) and Real Gest S.p.A. (40%), both 100% indirectly owned by CCPL S.c. Between November and December 2005, Dynaplast S.A. changed its legal form into Dynaplast S.L. This entity was split, with the creation of a new company, Dynaplast Ibérica de Embalaje S.L.U. which continued the food packaging business. Dynaplast S.L. remained in the CCPL group as a real estate company, its entire capital being transferred to Real Gest S.p.A., ultimately wholly owned by CCPL S.c. On 24 September 2014, Dynaplast Ibérica de Embalaje S.L.U. was absorbed by Coopbox Hispania S.l.u. The latter is therefore the legal successor of Dynaplast Ibérica de Embalaje S.L.U.
- (7) **Coopbox Eastern s.r.o.:** This entity's entire shareholding was acquired on 8 December 2004 by Coopbox Europe S.p.A (Coopbox Europe S.p.A. was absorbed into Coopbox Italia S.r.l. on 15 September 2008, which in turn, on 4 February 2009, changed its corporate form and was renamed Coopbox Group S.p.A.). Before being acquired by Coopbox Europe S.p.A., Coopbox Eastern s.r.o. was owned by a third party.

#### 2.2.5. *Silver Plastics*

- (19) During the infringement periods described in this Decision, Johannes Reifenhäuser Holding GmbH Co. KG owned [96-100%] of Silver Plastics GmbH and [96-100%] of Silver Plastics GmbH & Co. KG. Silver Plastics GmbH owned the remaining [0-4%] of Silver Plastics GmbH & Co. KG.<sup>36</sup> Silver Plastics GmbH managed operationally and strategically Silver Plastics GmbH & Co. KG.<sup>37</sup> Silver Plastics S.à r.l. is a [96-100%] direct subsidiary of Silver Plastics GmbH.<sup>38</sup> In this Decision, and unless otherwise specified, Johannes Reifenhäuser Holding GmbH Co. KG, Silver Plastics GmbH, Silver Plastics GmbH & Co. KG and Silver Plastics S.à r.l. will be collectively referred to as "Silver Plastics".
- (20) Silver Plastics manufactures both foam and rigid trays and sells, amongst other countries, in Germany and France.<sup>39</sup>
- (21) In the business year 2014, Silver Plastics had a consolidated worldwide turnover of EUR [200 000 000 – 370 000 000].

#### 2.2.6. *Magic Pack*

- (22) The Magic Pack group specialises in the supply of a variety of food packaging products. The Magic Pack group operates in a number of EEA countries.

---

<sup>36</sup> ID [...] and ID [...] (Silver Plastics - replies to RFIs).

<sup>37</sup> Silver Plastics GmbH is a "general partner" (Komplementär-GmbH) of Silver Plastics GmbH & Co. KG. Johannes Reifenhäuser GmbH & Co. KG, is a "limited partner" (Kommanditist), see ID [...]; ID [...] and ID [...] (Silver Plastics - replies to RFIs).

<sup>38</sup> ID [...] and ID [...] (Silver Plastics - reply to RFIs).

<sup>39</sup> ID [...] (Silver Plastics - reply to SO).

(23) Magic Pack Srl is the only Magic Pack entity relevant for this Decision. In this Decision, and unless otherwise specified, this legal entity will be referred to as "Magic Pack".

(24) In the business year 2014, the Magic Pack had a consolidated worldwide turnover of EUR 49 000 089.

#### 2.2.7. *Nespak*

(25) The Guillin group is an undertaking specialised in the supply of a variety of food packaging products in a number of EEA countries. In this Decision, and unless otherwise specified, the legal entities within the Guillin group which participated in or are held liable for the anticompetitive conduct described in this Decision will be collectively referred to as "Nespak".

(26) During the infringement period described in this Decision, GROUPE GUILLIN SA was the ultimate parent within the Guillin group. In particular, GROUPE GUILLIN SA was the 100% parent of NESPAK S.p.A.

(27) In the business year 2014, the Guillin group had a consolidated worldwide turnover of EUR 497 172 730.

#### 2.2.8. *Huhtamäki*

(28) The Huhtamäki group specialises in the supply of a variety of food packaging products. The Huhtamäki group companies operate in a number of EEA countries and beyond. In this Decision, and unless otherwise specified, the legal entities within the Huhtamäki group which participated in or are held liable for the collusive actions described in this Decision will be collectively referred to as "Huhtamäki" or "Huhtamäki/Polarcup".

(29) During the periods of the infringements described in this Decision, Huhtamäki Oyj was the ultimate parent of the Huhtamäki group. In respect of the entities relevant for this Decision, Huhtamäki Oyj was a 100% indirect parent of the following entities: COVERIS RIGID (AUNEAU) FRANCE SAS<sup>40</sup>, Huhtamäki Flexible Packaging Germany GmbH & Co. KG<sup>41</sup> and ONO PACKAGING PORTUGAL S.A.<sup>42</sup>

---

<sup>40</sup> ID [...] (Huhtamäki- reply to RFI). Paccor France SAS was named Polarcup France S.A. until 2001 and Huhtamäki France S.A. until 21 December 2007. Since the sale of its foam business to ONO Packaging SAS on 19 June 2006, the entity ceased to be active in the foam trays business. Huhtamäki France SAS was a wholly owned indirect subsidiary of Huhtamäki Oyj until the sale of all of its shares to [non-addressee], an affiliate of [non-addressee], on 22 December 2010. The company was renamed to Paccor France SAS on 7 February 2011. Paccor France SAS changed its name to COVERIS RIGID (AUNEAU) FRANCE SAS on 4 February 2014.

<sup>41</sup> Huhtamäki Deutschland GmbH & Co. KG (HRA 4055) changed its name to Huhtamäki Flexible Packaging Germany GmbH & Co KG in August 2012 following a series of internal restructurings: the foodservice and films businesses of Huhtamäki Deutschland GmbH & Co KG were transferred to two new Huhtamäki legal entities, namely Huhtamäki Foodservice Germany GmbH & Co KG and Huhtamäki Films Germany GmbH & Co KG, respectively. Huhtamäki Deutschland GmbH & Co KG retained the flexible packaging business and was renamed to Huhtamäki Flexible Packaging Germany GmbH & Co KG. Huhtamäki Foodservice Germany GmbH & Co KG, Huhtamäki Films Germany GmbH & Co KG, Huhtamäki Flexible Packaging Germany GmbH & Co KG, and Huhtamäki Germany GmbH are all wholly owned (indirect) subsidiaries of Huhtamäki Oyj (ID [...]) (Huhtamäki-reply to RFI)). Huhtamäki Deutschland GmbH & Co. KG (HRA 4055) had been Huhtamäki's operating company in Germany since 9 June 2005. From 31 December 2001 to 9 June 2005, Huhtamäki's operating company in Germany was Huhtamäki Deutschland GmbH & Co. KG (HRA 4207). On 9 June



- (30) In the business year 2014, the Huhtamäki group had a consolidated worldwide turnover of EUR 2 235 700 000.

#### 2.2.9. *Propack*

- (31) The Bunzl group is active in the distribution of food packaging products. In this Decision, and unless otherwise specified, the legal entities of the Bunzl Group which participated in or are held liable for the anti-competitive conduct described in this Decision will be collectively referred to as "Propack".
- (32) Since the acquisition dated 1 July 2005, and during the remaining time period of its involvement in the collusive actions described in this Decision, Bunzl plc was the ultimate 100% indirect parent of PROPACK Kft.<sup>43</sup>
- (33) In the business year 2014, the Bunzl group had a consolidated worldwide turnover of EUR 7 617 320 019.

#### 2.2.10. *Ovarpack*

- (34) Ovarpack Embalagens S.A. is a company specialised in the distribution of food packaging products. In this Decision, and unless otherwise specified, Ovarpack Embalagens S.A. will be referred to as "Ovarpack".
- (35) Since 18 July 2008, Ovarpack has been part of the Linpac group.
- (36) In the business year 2014, Ovarpack Embalagens S.A. had a consolidated worldwide turnover of EUR [6 650 000 – 12 350 000].

#### 2.2.11. *Distributors*

- (37) Ovarpack and [non-addressee] (independent distributors in SWE), Petruzalek (a distributor belonging to and fully integrated within Sirap-Gema in CEE) and Propack (an independent distributor in CEE) took part in the collusive conduct described in this Decision as distributors of foam trays. The Commission finds that, although they were not foam trays manufacturers, they contributed, through their direct

---

2005, Huhtamäki Deutschland GmbH & Co. KG (HRA 4207) was merged into Huhtamäki Deutschland GmbH & Co. KG (HRA 4055), another 100% indirect subsidiary of Huhtamäki Oyj. Huhtamäki Deutschland GmbH & Co. KG (HRA 4055) was called 4P Verpackungsgruppe B.V. & Co. Holding KG until 30 April 2002 when the name was changed to Huhtamäki Deutschland B.V. & Co. Holding KG. On 30 September 2004, the name was changed to Huhtamäki Deutschland Holding GmbH & Co. KG. This name lasted until 9 June 2005 when the subsidiary acquired the name Huhtamäki Deutschland GmbH & Co. KG (**ID [...]** (Huhtamäki- reply to RFI)). According to **ID [...]** (Huhtamäki- reply to RFI) from 2000 until 31 December 2002, Huhtamäki Oyj indirectly owned 75.1% of Huhtamäki Deutschland GmbH & Co. KG (HRA 4055). Two external shareholders owned the remaining 24.9%, namely [non-addressees]. On 31 December 2002, Huhtamäki Oyj acquired the participations of [non-addressees] and became the ultimate [96%-100%] parent of Huhtamäki Deutschland GmbH & Co. KG (HRA 4055).

<sup>42</sup> ONO Packaging Portugal S.A. is the successor of Huhtamäki Embalagens Portugal SA which was a wholly owned subsidiary of Huhtamäki Oyj. All shares of Huhtamäki Embalagens Portugal SA were sold to ONO Packaging SAS on 19 June 2006, date on which it also changed its name to ONO Packaging Portugal S.A. Huhtamäki Embalagens Portugal SA's name was Polarcup-Embalagens SA in 2000 – 2001. Huhtamäki Portugal SGPS Lda, a wholly owned subsidiary of Huhtamäki Oyj, owned 100% of Huhtamäki Embalagens Portugal SA until its sale to ONO Packaging SAS.

<sup>43</sup> [Description of Propack Kft.'s ownership structure]

participation, to the implementation and monitoring of the anticompetitive arrangements. [Non-addressee] is not an addressee of this Decision.<sup>44</sup>

### **2.3. Description of the sector**

- (38) Both foam trays and rigid trays are used in the food packaging industry (mainly for meat, poultry, cheese, fruits and fish). In particular, the trays are used by food retailers (including supermarkets), distributors and the fast food industry. Distributors are the main suppliers of foam trays used by the catering and fast food industry.
- (39) The use of foam trays and rigid trays is influenced by regional preferences. In NWE, there has been a steady shift from foam trays to rigid trays since the 1990s. By contrast, in SWE demand for foam trays has remained stable and rigid trays started becoming popular only in the mid-2000s. In CEE, the markets have traditionally been more attached to foam trays and only recently has there been a gradual shift towards rigid trays.<sup>45</sup> The demand for foam trays has been declining in the EEA also due to the changing consumer preferences, such as lower consumption of meat, greater environmental awareness, etc.<sup>46</sup>
- (40) Based on the data available to it, the Commission is unable to credibly estimate the market shares within each of the five separate cartels. The Commission nevertheless notes that within each of the five separate cartels, the relevant participating undertakings were responsible for most of the cartelised product(s) supplies.

### **2.4. Trade within EEA**

- (41) There are significant trade flows within the EEA. Both foam and rigid trays are standardised products which, owing to their low weight and volume, can be easily transported. Customers (for example large supermarket chains) source foam and rigid trays on the cross-border basis.<sup>47</sup>
- (42) According to Huhtamäki, the foam and rigid trays businesses are mainly local businesses<sup>48</sup>. As a result, customers tend to buy locally, namely on a national level and rarely cross-border. At the same time, based on the information provided by Huhtamäki, it is clear that its customers were frequently based outside Member States in which Huhtamäki had its production facilities and/or sales offices. This indicates that Huhtamäki has been selling both foam and rigid trays cross-border.
- (43) Sirap-Gema makes a distinction between industry clients and large retailers (GDOs). According to Sirap-Gema, industry clients tend to buy locally, while GDO clients also buy cross-border as long as the distance does not exceed 500 km for foam trays

---

<sup>44</sup> [Non-addressee] was not an addressee of the SO either given that at that point in time it was under liquidation (see SO paragraph 62).

<sup>45</sup> ID [...] (Linpac – reply to RFI).

<sup>46</sup> The above information has been reported in ID [...]; ID [...] (Linpac – reply to RFI); ID [...] (Huhtamäki – reply to RFI); ID [...] (Vittembal – reply to RFI); ID [...] (ONO Packaging – reply to RFI); ID [...] (Coopbox – reply to RFI); ID [...] (Sirap-Gema – reply to RFI); ID [...] (Magic Pack – reply to RFI); ID [...] ([non-addressee] – reply to RFI); ID [...] (Silver Plastics – reply to RFI).

<sup>47</sup> This has been reported in ID [...] (Linpac – reply to RFI); ID [...] (Vittembal – reply to RFI); ID [...] (ONO Packaging – reply to RFI); ID [...] (Coopbox – reply to RFI); ID [...] (Magic Pack – reply to RFI); ID [...] ([non-addressee] – reply to RFI); ID [...] (Sirap-Gema – reply to RFI); ID [...] and [...] (Nespak – replies to RFI).

<sup>48</sup> ID [...] (Huhtamäki – reply to RFI).

and 800 km for rigid trays.<sup>49</sup> Nespak distinguishes between foam trays and rigid trays. According to Nespak, foam trays have high transport costs (which can amount to 30% of the total cost of the product) and are therefore acquired locally; in contrast, rigid trays have low transport costs and can be bought cross-border.<sup>50</sup>

- (44) In its reply to the Statement of Objections ("SO"), Silver Plastics stated that markets for food packaging were national. At the same time, Silver Plastics confirmed that in addition to selling within its primary markets – France and Germany – Silver Plastics also sold quantities of foam and rigid trays through its distributors into a number of other countries such as [country], the Benelux countries, Denmark, [country], [country], Norway and Sweden.<sup>51</sup>
- (45) The Commission considers that evidence in its possession, including the parties' replies to the request for information on the trading patterns of foam and rigid trays, demonstrate that there are significant trade flows within the EEA as far as foam and/or rigid trays are concerned.

### 3. PROCEDURE

#### 3.1. The Commission's investigation

- (46) The Commission's investigation began as a result of information received in an immunity application by Linpac under the Leniency Notice.<sup>52</sup> Linpac filed the application on 18 March 2008 and supplemented it by several corporate statements and by documentary evidence. On 4 June 2008, the Commission granted Linpac conditional immunity<sup>53</sup> for all five infringements covered in this Decision.
- (47) On 4 and 6 June 2008, the Commission carried out unannounced inspections under Article 20(4) of Regulation (EC) No 1/2003 at the premises of Coopbox (Italy and Spain), [non-addressee] (the Netherlands), Huhtamäki (Germany), Nespak (Italy), Silver Plastics (Germany), Sirap-Gema/Petruzalek (Italy) and Vitembal (France, Italy and Germany). In parallel with the inspections, the Commission sent out Requests for Information pursuant to Article 18(2) of Regulation (EC) No 1/2003 to other entities not subject of the inspections.
- (48) Following the inspections, the Commission received six applications under the Leniency Notice from Vitembal on 6 June 2008<sup>54</sup>; from Sirap-Gema on 1 July 2008<sup>55</sup>; from Coopbox on 5 August 2008<sup>56</sup>; from Ovarpack on 17 December 2008<sup>57</sup>, from Silver Plastics on 22 December 2008<sup>58</sup> and from Magic Pack on 1 February 2010<sup>59</sup>. Huhtamäki, Nespak and Propack have not applied for leniency.

---

<sup>49</sup> ID [...] (Sirap-Gema – reply to RFI).

<sup>50</sup> ID [...] and [...] (Nespak – replies to RFI).

<sup>51</sup> ID [...] (Silver Plastics – reply to SO).

<sup>52</sup> Commission notice on immunity from fines and reduction of fines in cartel cases (OJ C 298, 8.12.2006, p. 17).

<sup>53</sup> ID [...] (Conditional immunity decision).

<sup>54</sup> ID [...]

<sup>55</sup> ID [...]

<sup>56</sup> ID [...]

<sup>57</sup> ID [...]

<sup>58</sup> ID [...] and ID [...]

<sup>59</sup> ID [...]

- (49) During the course of the investigation, the Commission has sent several requests for information pursuant to Article 18 of Regulation (EC) No 1/2003 ("RFI"s) or point 12 of the Leniency Notice to the addressees of this Decision as well as to third parties. The Commission has also used its power under Article 19 of Regulation (EC) No 1/2003 to take statements from a former employee of Sirap-Gema, who participated in the collusive contacts but who no longer works at Sirap-Gema, and whose testimony the Commission has not and could not obtain in the form of Sirap-Gema's leniency application.
- (50) The Commission addressed decisions dated 13 September 2012 to Vitembal, Sirap-Gema, Coopbox, Ovarpack, Silver Plastics and Magic Pack, informing them that they were not eligible for immunity from fines and, pursuant to point 29 of the Leniency Notice, of its intention to apply a reduction of the fine to eventually be imposed on them, within a specified band as provided for in paragraph 26 of the Leniency Notice. With regard to Silver Plastics, the Commission also informed the applicant that it did not qualify for a reduction of fines with regard to the NWE cartel.
- (51) On 21 September 2012, the Commission initiated proceedings and adopted the SO in respect of the following legal entities: LINPAC Group Ltd - LINPAC Packaging Verona S.r.l. - [non-addressee] - [non-addressee] - [non-addressee] - LINPAC Packaging Holdings S.L. - LINPAC Packaging Pravia S.A. - [non-addressee] - [non-addressee] - [non-addressee] - LINPAC Packaging GmbH - LINPAC Packaging Polska Sp. z o.o. - [non-addressee] - LINPAC Packaging Spół. z o.o. - LINPAC Packaging S.r.o. - [non-addressee] - [non-addressee] - LINPAC France SAS - LINPAC Distribution SAS - [non-addressee] - [non-addressee] - [non-addressee] - Ovarpack Embalagens S.A. - CCPL S.c. - Coopbox Group S.p.A. - Poliemme S.r.l. - Coopbox Hispania S.l.u. - Dynaplast Ibérica de Embalaje S.L.U. - CCPL S.p.A. - Coopbox Eastern s.r.o. - [non-addressee] - [non-addressee] - [non-addressee] - [non-addressee] - Huhtamäki Oyj - [non-addressee] - [non-addressee] - [non-addressee] - [non-addressee] - Huhtamäki Deutschland GmbH & Co. KG - [non-addressee] - [non-addressee] - [non-addressee] - [non-addressee] - [non-addressee] - [non-addressee] - [non-addressee] - [non-addressee] - [non-addressee] - Magic Pack Srl - GROUPE GUILLIN SA - NESPAK S.p.A. - [non-addressee] - ONO Packaging S.A.S. - ONO Embalagens Portugal SA - Paccor France SAS - Bunzl plc - [non-addressee] - [non-addressee] - [non-addressee] - [non-addressee] - PROPACK Kft. - Johannes Reifenhäuser Holding GmbH Co. KG - Silver Plastics GmbH & Co. KG - Silver Plastics GmbH - Silver Plastics S.p.A. - Italmobiliare S.p.A. - Sirap-Gema S.p.A. - Petruzalek GmbH - Petruzalek Kft. - Petruzalek s.r.o. - Petruzalek Spół. z o.o. - Sirap France S.A.S. - VITEMBAL HOLDING SAS - VITEMBAL Italia s.r.l. - VITEMBAL SOCIETE INDUSTRIELLE SAS - VITEMBAL España, S.L. - VITEMBAL GmbH Verpackungsmittel.
- (52) All addressees of the SO were provided with a CD-ROM which gave them access to the accessible parts of the Commission's investigation file. In addition, legal representatives of the addressees made use of their rights of access to the parts of the Commission's file that were only available at the Commission's premises.

- (53) All addressees of the SO made known in writing to the Commission their views on the objections raised against them by the prescribed deadlines and participated<sup>60</sup> in the Oral Hearing on 10-12 June 2013. The Commission also made available, before and after the Oral Hearing, a selection of extracts from the non-confidential versions of the replies to the SO from [non-addressee], Silver Plastics, Huhtamäki, ONO Packaging, Sirap-Gema and [non-addressee] to several parties when this was considered relevant for the exercise of those parties' rights of defence or could have helped to further clarify factual and legal issues of relevance for the case.<sup>61</sup>
- (54) In its reply to the SO, Johannes Reifenhäuser Holding GmbH Co. KG (JRH)<sup>62</sup> has claimed that its rights of defence have been infringed because it only learned about the alleged infringements following the Commission's inspection at the premises of Silver Plastics and all RFIs sent by the Commission were addressed solely to Silver Plastics GmbH & Co. KG, including the request of 3 August 2011, on the relationship between Silver Plastics GmbH & Co. KG and JRH. It has also argued that it was not involved in the administrative proceedings until 23 July 2012, when the Commission contacted JRH for the first time and that it was not informed of the possibility to file a leniency application before that date. Due to the time that elapsed between the inspections in 2008 and 2012, many documents, which JRH could have submitted to rebut the 100% presumption, were no longer available. Finally, JRH has stated that it agreed to submit the leniency application together with Silver Plastics GmbH & Co. KG, out of extreme precaution and in order to be in line with the Commission's decision-making practice, although it believes that it does not form an economic entity with Silver Plastics GmbH & Co. KG.
- (55) The Commission notes that it is clear from the written declaration dated 10 December 2009 that was included in the written statement of Silver Plastics GmbH & Co. KG of that date, that JRH had been aware of the investigation since the inspection in June 2008 and had even requested Silver Plastics GmbH & Co. KG to cooperate with the Commission under the Leniency Notice.<sup>63</sup> JRH has confirmed that it provided Silver Plastics GmbH & Co. KG with the information needed to submit the statement dated 10 December 2009 as well as subsequent RFIs concerning parental liability issues. The Court has confirmed that the Commission cannot be held responsible for the limited extent of an applicant's cooperation or for its tardiness as these factors are imputable to the applicant itself,<sup>64</sup> as the above written declarations and confirmations of JRH show. Therefore, the Commission considers that JRH's rights of defence have not been infringed.

---

<sup>60</sup> Except for [non-addressee].

<sup>61</sup> Extracts of the listed replies to the SO were notably submitted on 23, 24 and 27 May as well as on 3 June 2013.

<sup>62</sup> ID [...] (Johannes Reifenhäuser Holding – reply to SO).

<sup>63</sup> ID [...]

<sup>64</sup> See in particular Case T-214/06 *Imperial Chemical Industries v Commission* ECLI:EU:T:2012:275, paragraph 248.

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

##### **4.1. Italy (18 June 2002 – 17 December 2007)**

###### *4.1.1. Basic principles and structure of the cartel*

(56) The cartel in Italy concerned foam trays and involved Linpac, Coopbox, Sirap-Gema, Vitembal, Nespak and Magic Pack. Those competitors participated in a network of multilateral and bilateral meetings and other contacts with the overall aim of restricting competition by agreeing on concerted general price increases, allocating clients and volumes, and rigging tenders organised by some major supermarkets (further referred to as GDO clients). The coordination of price increases was typically made in order to pass on raw material price increases. The customer allocation and rigging of tenders ensured that the status quo in Italy concerning customers and market shares was maintained. The parties also exchanged commercially sensitive information in order to keep each other apprised about their pricing policy and their relations with their respective customers and to monitor the implementation of the agreements and concerted practices.<sup>65</sup>

###### *4.1.1.1. General price increases and exchange of information*

(57) The competitors coordinated price policies and exchanged commercially sensitive information regularly. In the period between 2002 and May 2008, the main concerted price increases on the Italian market took place in summer 2002, autumn 2004 and autumn 2006. The participants subsequently monitored the implementation of the price increases, including how and when these were communicated to the clients. This was described in detail to the Commission by [company name] who also provided the template price increase letters used in 2002, 2004 and 2006 to communicate the increases to its customers. [Company name] explained that these increases were the result of a prior discussion and agreement between competitors.<sup>66</sup>

(58) The price increases were typically set taking into account the effect of the rising costs of raw material on the final sales price. The coordinated price increases were typically either agreed on a fixed basis by setting minimum prices or by reference to a general percentage. In the first case, the competitors tried to fix a minimum price based on the price of expanded polystyrene per kilo. In the second case, they identified a basket of the most common products and agreed to increase prices by a certain percentage in relation to such products.<sup>67</sup>

(59) The procedure was similar for every price increase. The competitors first agreed on the need to introduce a general price increase in a coordinated manner. Those talks were usually held four to six months after the raw material prices had been increased. The competitors thereafter agreed on the increase (expressed as new minimum prices or as a percentage) to be implemented within the next two to three months. The competitors sometimes also determined the type of clients receiving the increase. Finally, they agreed upon the modalities (such as who would be the first to communicate the increase) and the time for the introduction of the increase.<sup>68</sup> Detailed accounts of the meetings aimed at coordinating price increases are

---

<sup>65</sup> ID [...]; ID [...]; ID [...]

<sup>66</sup> ID [...]; ID [...]

<sup>67</sup> ID [...]; ID [...]

<sup>68</sup> ID [...]; ID [...]; ID [...]; ID [...]; ID [...]

described, amongst others, in Recitals (80)-(93), (143)-(153), (216)-(236) and (258)-(279).

- (60) In order to conceal the coordination, the communication and implementation of the agreed price increases by each producer did not occur simultaneously, but were generally spread over a period of about 15 days to one month. There was a common understanding between the competitors that the first producer applying the increase was not to be "attacked" by others, offering lower prices. Price lists and letters announcing increased prices were often sent to the competitors for information and account.<sup>69</sup>
- (61) Once the increase was agreed and communicated, a series of contacts and multilateral meetings usually took place to monitor the effective implementation of the agreed increase and, where appropriate, to address the need for adjustments or corrections. Competitors were also able to monitor the implementation of the price increase by collecting information directly from the clients.
- (62) In relation to major customers supplied by two producers, price increases were discussed and agreed on a bilateral basis between the producers. The increases agreed between the parties were always higher than those actually applied to the big clients since the latter had a strong negotiating power vis-à-vis the producers. In order to counter these pressures for price reductions, the competitors tried to offer a different range of products to the customer.<sup>70</sup>
- (63) A detailed description of contacts aimed at monitoring price increases is provided below in Recitals (94)-(97), (123)-(124), (154)-(162), (191)-(199) and (280)-(286).

#### 4.1.1.2. Allocation of clients

- (64) The coordination of commercial policies and the allocation of clients concerned all three types of clients, namely GDO, distributors and industry clients (such as producers of meat, fish, poultry and agricultural products).
- (65) GDO clients and distributors usually needed very standard and technically simple food packaging products. Therefore the price was their main competition parameter. On the other hand, industry clients require much more technically advanced packaging products, often developed for their particular needs, and a much higher level of service. Therefore price represents only one of the elements of competition that they take into account.
- (66) Consequently the allocation of industry clients, which have difficulties in switching their suppliers, was discussed between the competitors only sporadically and in specific circumstances. On the other hand, protection and attribution of distributors and GDO clients was a common topic of discussions between the competitors. A detailed description of such contacts on industrial clients can be found in Recitals (120), (137), (175)-(190), (237)-(249), (299)-(318) and (321)-(336).<sup>71</sup>
- (67) The allocation of customers was based on the idea that none of the cartel participants was to "attack" clients "traditionally" supplied by others. This idea was shared by all the producers. There were mainly two types of criteria for identifying the customers

---

<sup>69</sup> ID [...]

<sup>70</sup> ID [...]; ID [...]

<sup>71</sup> ID [...]

"attributed" to each of the participants: historical relations with the customers (de facto or stemming from earlier arrangements - concerning mostly GDO clients) and fidelity links (concerning industry clients).<sup>72</sup>

- (68) Based on the competitors' historical relationships with customers, the allocation of major GDOs, for which also an agreement on the volumes to be supplied was made, was the following:
- Coop Italia: Coopbox;
  - Esselunga: Linpac and Sirap-Gema;
  - Carrefour: Coopbox and Vitembal;
  - Auchan: Sirap-Gema and Coopbox;
  - Bennet: Sirap-Gema;
  - Pam Panorama: Nespak and Sirap-Gema.<sup>73</sup>
- (69) The other important criterion to allocate customers was the existence of loyalty links with industry clients. Industry clients, such as meat and poultry producers, often required personalised products which in turn created a natural loyalty link with the producer, respected by other producers.<sup>74</sup>
- (70) In that context, if a producer managed to gain a client originally belonging to another competitor, that competitor would try to compensate its lost volumes by selling his products to another client instead of attempting to regain the same client by means of price reductions. Implementation of concrete compensation measures was discussed and agreed between interested competitors through informal contacts (often telephone conversations). Such practice of ad hoc compensations made it possible to avoid price wars and decreases in prices.<sup>75</sup>

#### 4.1.1.3. Bid rigging of tenders organised by some major GDO clients

- (71) In the period between 2002 and 2007, Sirap-Gema, Vitembal, Nespak, Coopbox, Linpac and, to a lesser extent, also Magic Pack, coordinated their offers during the tenders for foam trays organised by the major GDO clients in Italy, namely Auchan, Pam Panorama and Carrefour.<sup>76</sup>
- (72) The coordination of the participation in the tenders focused on maintaining the customer allocation previously agreed (according to the criterion of "historical customer") and on preventing undertakings not party to the agreements from being awarded contracts, as this would break the pre-established equilibrium and would lead to a decrease of prices. In some cases this coordination was also intended to implement price increases agreed by the parties.<sup>77</sup>
- (73) The tenders of the three major GDO clients always took place in November and December and in the same chronological order: first the Auchan tender, then the Pam Panorama tender and finally the Carrefour tender. As a consequence, the discussions

---

<sup>72</sup> ID [...]

<sup>73</sup> ID [...]

<sup>74</sup> ID [...]

<sup>75</sup> ID [...]; ID [...]

<sup>76</sup> ID [...]; ID [...]; ID [...]

<sup>77</sup> ID [...]



concerning the Auchan tender usually concerned also the other two tenders, as the allocated quotas were mutually dependent.<sup>78</sup>

- (74) As indicated in Recital (68), Auchan was considered as belonging to Sirap-Gema (main supplier) and Coopbox (secondary supplier). Pam Panorama belonged to Nespak and Sirap-Gema and Carrefour belonged to Coopbox as regards the Supermarkets channel and to Vitembal as regards the Hypermarkets channel. Linpac was also part of the arrangements: it refrained from formulating aggressive offers in order to maintain the overall client status quo agreement in Italy and to be allocated the Hypermarkets lot of the Carrefour tender in France.<sup>79</sup>
- (75) The coordination of the tenders took place according to the following mechanism: during the first meeting concerning the Auchan tender, Sirap-Gema, Coopbox, Nespak, Vitembal and Linpac agreed on their respective offers and behaviour during this and the subsequent tender. The competitors identified the undertaking or the undertakings that were to win the tender up-front, in general by agreeing to leave each customer to the respective historical suppliers. The latter communicated the amount they would bid (the final price, increased, if necessary according to the price increase arrangements), while the others prepared so called "supporting offers" which kept the tender going for a while until they stopped bidding at an agreed price, thus voluntarily renouncing from winning the tender. The same mechanism applied in the other tenders and for other clients.
- (76) In most tenders the competitors first presented their offers and then took part in an inverted race, lowering their prices to win. Therefore the parties to the client allocation agreement agreed beforehand on the price level at which undertakings other than the designated winner stopped submitting their bids, allowing the winner to take the contract at the agreed price.<sup>80</sup>

#### 4.1.2. *Anti-competitive activities in the 1980's and 1990's*

- (77) [...] a structured anti-competitive arrangement existed on the Italian food packaging market at least since the 1980's.<sup>81</sup> [Information pre-dating the infringement].<sup>82</sup> [Information pre-dating the infringement].<sup>83</sup>
- (78) [Information pre-dating the infringement].<sup>84</sup> [Information pre-dating the infringement].<sup>85</sup> [Information pre-dating the infringement].<sup>86</sup>
- (79) As of 2002 the main competitors at that time, namely Sirap-Gema, Coopbox, Nespak, Linpac and Vitembal, threatened by the entry of a new competitor – Magic Pack, resumed more structured anticompetitive contacts.

---

<sup>78</sup> ID [...]  
<sup>79</sup> ID [...]; ID [...]; ID [...]  
<sup>80</sup> ID [...]; ID [...]  
<sup>81</sup> ID [...]; ID [...]; ID [...]  
<sup>82</sup> [...]  
<sup>83</sup> [...]  
<sup>84</sup> [...]  
<sup>85</sup> [...]  
<sup>86</sup> [...]

### 4.1.3. Chronology of events

#### 4.1.3.1. Year 2002

##### *Price increase introduced in the summer of 2002*

- (80) [...] in March 2002 prices of raw materials started to rise steeply. As a consequence, the cartel participants decided to introduce a general price increase. In the period between March and July 2002 a series of meetings between the parties took place in order to reach an agreement on the percentage of increase to be introduced on prices in July as well as on the modalities of its implementation. [...] the companies participating in the meetings concerning the introduction of a price increase in 2002 were Sirap-Gema, Coopbox, Linpac, Nespak and Vitembal.<sup>87</sup> [...] both the content of [company name's] statement and the identities of the companies participating in the price increase agreement [are corroborated].<sup>88</sup> [...] the identity of the companies which were regular participants in these contacts [is confirmed].<sup>89</sup>
- (81) [...] a list of the individuals who generally attended these meetings, notably [company representative], [company representative], [company representative] for Sirap-Gema, [company representative], [company representative], [company representative] and [company representative] for Coopbox, [company representative] for Linpac, [company representative] for Nespak, [company representative] and [company representative] for Vitembal [is provided]. [...] the first bilateral meeting aimed at reaching an agreement on the introduction of a general price increase took place on **19 March 2002** between Sirap-Gema and Coopbox. [Company name] has not found any record of its participation in that meeting. However, [company name] has generally acknowledged that the contacts aiming to coordinate the introduction of a price increase started in March/April 2002.<sup>90</sup>
- (82) [...] a multilateral meeting in Cremona which took place on **4 April 2002**, involving Sirap-Gema, Coopbox, Linpac, Nespak and Vitembal. Even though [company representative] ([company name]) has indicated that he did not specifically remember the meeting, [company name] has produced evidence of a motorway ticket showing that [company representative] went to Cremona that day. [Company name] has considered it likely that [company representative] also took part in the meeting.<sup>91</sup>
- (83) On **18 June 2002**, a multilateral meeting took place at the Hotel San Marco in Parma. The Commission considers that this is proven by the mutually corroborating statements of [company names] and also by contemporaneous documents. [Company name] has provided a calendar entry for [company representative] showing "Hotel San Marco", [company name] has provided expense receipts of [company representative] from the hotel bar and [company name] has provided the calendar entry and expense record of [company representative]. The participants were [company representative] (Sirap-Gema), [company representative] (Coopbox) and [company representative] (Linpac).<sup>92</sup>

---

<sup>87</sup> ID [...]; ID [...]

<sup>88</sup> ID [...]

<sup>89</sup> ID [...]; ID [...]

<sup>90</sup> ID [...]; ID [...]

<sup>91</sup> ID [...], ID [...], ID [...]

<sup>92</sup> ID [...]; ID [...]; ID [...]; ID [...]; ID [...]; ID [...]

- (84) These meetings were aimed at reaching a consensus concerning the coordinated introduction of a general price increase. Prior to the meeting Linpac had already sent out a price increase letter and appears to have informed at least Vitembal about its intention to communicate such an increase.<sup>93</sup> In this regard, in an internal e-mail from Vitembal dated **31 May 2002**, [company representative] ([function of company representative]) revealed to [company representative] ([function of company representative]) that: *"According to [company representative], Linpac Italy is now communicating to their clients a price increase which, for Linpac, will be applied in a discretionary manner (0%, 5%, 10% depending on a client). He believes that other producers will do the same".*<sup>94</sup> The Commission considers that the meeting on 18 June 2002 was the starting date of the Italian cartel and marked the beginning of a series of multilateral and bilateral meetings between the cartel participants.
- (85) On **3 July 2002** a bilateral meeting took place at the Hotel San Marco in Parma between [company representative] and [company representative] (both of Coopbox) and [company representative], [company representative] and [company representative] (all of Sirap-Gema) to further discuss the price increase. This has been confirmed by [company name], who also provided travel records of the relevant persons and the receipt from the hotel.<sup>95</sup>
- (86) The discussions on the introduction of a price increase continued during a meeting which [...] took place on **5 July 2002** in Cremona. The participants were at least [company representative], [company representative] (Sirap-Gema) and [company representative] (Vitembal). [...]. [Company name's] expense records, which contain the writing *"Brescia/S.G."*, and restaurant bill, suggest that the meeting might have taken place in Brescia.<sup>96</sup> [Company name] has not confirmed its participation, based on [company representative's] agenda and travel records.<sup>97</sup> [Company name] also ruled out its participation in this particular meeting on the basis of the travel records of its employees.<sup>98</sup>
- (87) The evidence shows that the cartel participants reached an agreement on the introduction of a price increase, as can be deduced from an e-mail sent on **10 July 2002** by [company representative] (from Poliemme of Coopbox) to [company representative] (Coopbox), where [company representative] reported problems with Sirap-Gema not respecting the agreement concerning the increase of prices reached in Parma. In this context, [company representative] wrote that: *"(...) in spite of the meeting in Parma, actions taken by our competitors continue to be strongly ambiguous (...) clients [of Coopbox] have received from Sirap-Gema price indications (...) which in the phase of implementing the increases become more competitive than ours (...) At this point, I believe it is absolutely logical to insist on our strategy to introduce the increase, also because different behaviour could*

---

<sup>93</sup> ID [...]; ID [...]; ID [...]; ID [...] - price increase letter [...] dated 10/06/2002 – increase introduced immediately.

<sup>94</sup> ID [...] (Vitembal inspection documents): (Original in French: *"D'après [company representative] Linpac Italie est en train d'informer leur clientèle sur la hausse de prix que, pour Linpac, sera appliqué de façon discrétionnaire (0%,5%, 10% ça dépend du client). Il pense que les autres producteurs vont agir de la même façon."*).

<sup>95</sup> ID [...]; ID [...]; ID [...]; ID [...]

<sup>96</sup> ID [...]; ID [...]; ID [...]; ID [...]; ID [...]; ID [...]; ID [...]

<sup>97</sup> ID [...]

<sup>98</sup> ID [...]

*jeopardize our efforts and, at the same time, we could open the door to potential accusations of not respecting the agreement. It is nevertheless evident that if what I am writing proves true, in September Poliemme could find itself with three clients less and a regret to have foreseen it".<sup>99</sup>*

- (88) [...] the competitors indeed reached an agreement concerning a coordinated introduction of a price increase in July 2002.<sup>100</sup>
- (89) Competitor contacts also took place **later in July 2002** at the Hotel San Marco in Parma. The existence of these contacts and their location has been confirmed by [company name]. [Company name] [...] provided mutually corroborating statements and contemporaneous documents showing that they took part in a meeting between competitors on **11 July 2002**. [Company name] [...] indicated that [company name] participated in this meeting. However, [company name] [...] maintained that a bilateral meeting with [company name] took place on 17 July 2002 and that it did not participate in the meeting on 11 July.<sup>101</sup>
- (90) [...] expense records and calendar entries of [company representative] and [company representative] (both of [company name]) as evidence of their participation in a meeting with [company name] on 11 July 2002. [Company name] has provided the expense record of [company representative] ([company name]), notably a receipt from the bar of Hotel San Marco dated 11 July 2002, as well as the travel record of [company representative].<sup>102</sup> In [company name's] recollection, it did not participate in any meeting on 11 July 2002. Instead [company name] has provided a bill dated 17 July 2002 from the restaurant of the San Marco hotel, at which, according to [company name], [company representative] and [company representative] (both of [company name]) met with representatives of [company name].<sup>103</sup>
- (91) Regardless of the exact date, the Commission has obtained evidence indicating that during a meeting between Coopbox and Sirap-Gema, attended shortly after Coopbox wrote the e-mail of 10 July 2002 (see Recital (87)), the parties clarified certain ambiguities and agreed on modalities of implementation of the price increase. In particular they agreed that the increase would in principle amount to 10% of the price lists with possible oscillation of 8-10%. They agreed to announce the increase by the end of July and committed to signal to each other possible exceptions to the terms of increase agreed by the beginning of August.
- (92) The terms of the agreement as reported in handwritten notes taken by [company representative] (Coopbox) during the meeting, indicate that:

---

<sup>99</sup> ID [...] (Coopbox inspection documents): (Original in Italian: "*nonostante l'incontro avvenuto a Parma, i comportamenti dei nostri interlocutori di quell'incontro continuano a essere fortemente ambigui (...) clienti [di Coopbox] hanno ricevuto da S.G. indicazioni di prezzo (...) che nella fase di applicazione degli aumenti diventano più competitive delle nostre (...) Al punto in cui siamo, credo sia assolutamente logico insistere sulla nostra strategia di far passare l'aumento, anche perché comportamenti diversi potrebbero vanificare i nostri sforzi e nello stesso tempo potremmo dare adito ad accuse di inadempienza. E' però evidente, che se quanto scrivo troverà corrispondenza nei fatti, a Settembre Poliemme potrebbe trovarsi con tre clienti in meno e con il rammarico di averlo previsto in anticipo*").

<sup>100</sup> ID [...]

<sup>101</sup> ID [...]; ID [...]; ID [...]; ID [...]; ID [...]; ID [...]; ID [...]

<sup>102</sup> ID [...]; ID [...], ID [...]

<sup>103</sup> ID [...]; ID [...]

"SG

1) Increase of the price lists of 10 %

(admissible oscillation of 8-10% but with increase of +3% or +5%)

if there are exceptions: identify them, taking the new price lists in EUR/1000 and confront them with our prices for Coop)

2) Implementation latest as of the end of July

(exceptions: defined and known by the beginning of August)

No implementation in September (e.g. Fruit sector)

3) Where we have clients in "common", define beforehand together new prices and the programme of visits to the client:

Example Auchan +10% (with +3% traditional and +7% absorbent) and latest implementation beginning of August".

- (93) Further, such notes show that the cartel participants also discussed other clients, such as Pam Panorama and Esselunga.<sup>104</sup> [...].<sup>105</sup>
- (94) In **autumn 2002** several bilateral and multilateral meetings took place between the parties to the price agreement. According to [company name], the aim of those meetings was to verify the actual implementation by all the producers of the price increases agreed upon in Parma. In this context, at least one meeting took place in Parma on **17 October 2002** between [company name] and [company representative] ([company name]) and two meetings on **15 November 2002**: one in Cremona between [company representative] ([company name]) and [company representative] ([company name]) and the other in Modena between [company representative] ([company name]) and a representative of [company name].<sup>106</sup>
- (95) [Company name] has provided travel records of the people present at the meetings on **15 November 2002**.<sup>107</sup> The presence of [company name] at the meeting on **17 October 2002** in Parma has been confirmed by the travel records of [company representative] ([company name]),<sup>108</sup> while for the other meetings [company name] found no evidence.
- (96) [Company name] has confirmed the meeting of **15 November 2002** in Cremona. [Company name] has also provided a calendar entry of [company representative] ([company name]) where this meeting was marked with the references "[company representative]" and "Hotel Hermes Crema".
- (97) [...], the parties aimed at finding "a common line" on how to avoid market disruption and a spread of low prices in relation to the first tender projects which customers, such as Auchan and Carrefour, started to organise in Italy in 2002 for the procurement of foam trays. According to [company representative] ([company

---

<sup>104</sup> ID [...] (Coopbox inspection documents): (Original in Italian: "*Sirap-Gema 1) Incrementi dei listini del 10 % (ammissibile oscillazione 8-10% ma con incrementi +3% o +5%) se ci sono eccezioni: conoscerle, avendo i listini nuovi in €/1000 confrontarli con i ns a Coop. 2) Decorrenza al più tardi fine luglio (eccezione: definite e conosciute per inizio agosto) Niente decorrenza da Settembre (es. Avicolo) 3) Laddove si è in "condominio" definire prima insieme i nuovi prezzi ed il programma delle visite al cliente: es. Auchan +10% (con +3% trad e +7% dren) e decorrenza ultima inizio Agosto*").

<sup>105</sup> ID [...]

<sup>106</sup> ID [...]; ID [...] – clarification that on 15/11/2002 two meetings took place: in Cremona between [company name] and [company name] and in Modena between [company name] and [company name].

<sup>107</sup> ID [...]

<sup>108</sup> ID [...]

name]), during the meeting of 15 November 2002 in Cremona, the parties also discussed their possible competitive behaviour in the upcoming Auchan tender in Italy.<sup>109</sup>

*Client allocation – status quo concerning supermarkets (GDO) – bid rigging*

- (98) In 2002 some of the main Italian GDO clients started organising tenders for yearly supplies of food packaging products. While the aim for the customers was to get the best price possible, the cartel participants had an interest in not letting the bidding procedures lead to excessively low prices. The prices established in these tenders could drive down the price level on the rest of the market, given that Auchan and Carrefour tenders could each be worth up to 10% of the overall Italian market for plastic foam trays. As a consequence, important subjects of discussion during the meetings held between the cartel participants in 2002 were the upcoming first tenders organised by Auchan, Carrefour and possibly also other large retailers in Italy. These discussions laid down the basis for future bid rigging, establishing methods of cooperation between competitors.<sup>110</sup>

*Carrefour tender on 13 March 2002*

- (99) Carrefour Italia (in the hypermarkets market segment) "belonged" to Vitembal according to the historical client allocation status quo agreement. Thus the aim of this coordination was to guarantee that the winner of the Carrefour Italia tenders remained Vitembal, its traditional supplier.<sup>111</sup>
- (100) On **13 March 2002** the first e-tender, launched by Carrefour, took place in Italy. At that time Vitembal was supplying Carrefour while Coopbox was supplying GS (in the supermarket market segment within the Carrefour group). Vitembal, which towards the end of the '90s had started supplying trays from its home country, France, into Italy, wanted to retain Carrefour as its customer not only in France, but also in Italy. Therefore, Vitembal gave a commitment to the other cartel participants to respect the *status quo* and "refrain from disturbing" the historical suppliers of other customers if they let it win the e-tender to supply Carrefour in Italy.
- (101) In order to make sure that the other cartel participants accepted Vitembal's claims, [company representative] (Vitembal) spoke over the phone to [company representative] (Coopbox) and to [company representative] (Sirap-Gema) before the tender to coordinate their bids. As a consequence, the supply of trays for hypermarkets market segment was indeed awarded to Vitembal. In its reply to the SO, [company name] confirms the contacts but points out that the contact person acting on behalf of [company name] was [company representative] and not [company representative]. This is plausible given that [company representative] joined [company name] only as of 2003.<sup>112</sup>
- (102) [...] the discussions in 2002 focused particularly on GDO tenders, and [...] [company name] took a keen interest in those discussions because it wanted to secure its two customers in France (Carrefour and Auchan) also in Italy.<sup>113</sup>

---

<sup>109</sup> ID [...]; ID [...]; ID [...]

<sup>110</sup> ID [...]

<sup>111</sup> ID [...], ID [...]

<sup>112</sup> ID [...]; ID [...]

<sup>113</sup> ID ; ID [...]; ID [...]; ID [...]

- (103) The suppliers of Auchan and SMA at the time were Sirap-Gema and Coopbox.<sup>114</sup> In order to maintain the status quo, several meetings took place between Sirap-Gema and Coopbox in order to agree on the outcome of the tender.
- (104) In this context, on **14 October 2002** a meeting took place between [company representative] (Coopbox) and [company representative] (Sirap-Gema).<sup>115</sup>
- (105) During that meeting the two competitors agreed on the modalities for rigging the tender. They agreed to make Vitembal and Nespak participate in the tender under the condition that they would refrain from winning. Had they cheated, Coopbox and Sirap-Gema would have retaliated against their clients. The competitors also agreed on a common strategy towards Magic Pack, in the event that it took part in the tender. Finally, they agreed on the products to offer as well as on the percentage increase on the prices to be quoted on the basis of the latest pricelists.
- (106) This is evidenced by handwritten notes taken by [company representative] (Coopbox) in preparation of the meeting and during the meeting. The notes read as follows:
- "1) - It is not foreseen who will win the tender (whether 1 or more than 1 will be chosen by the client and by what criteria).  
- It is necessary to participate.  
- Take 50/50 to preclude any different choice (I will give back other trays on the same conditions).  
- Otherwise we take 35% and if Auchan chooses SG [Sirap-Gema] over us, SG will compensate us on another client (GDODO) on the same terms.  
2) The adjudication price will be - 2% compared to new prices on average and will be articulated differently on the different models on tender".*<sup>116</sup>
- (107) The handwritten notes of [company representative] (Coopbox) also included filled-in tables with the prices that each of them would offer for specific models. Those tables even indicated the detailed prices of Vitembal. This demonstrates, that, whether or not Vitembal was present at the meeting, its data were made available for the purpose of coordinating the competitors' price offers in the tender, which proves Vitembal's participation in the anticompetitive conduct.<sup>117</sup>
- (108) Moreover, [company representative's] (Coopbox) notes from the meeting stated:

*"1) The shared objective for SG [Sirap-Gema] and CX [Coopbox] is to impede the entrance of new suppliers to Auchan. With this aim SG → will make sure that V. [Vitembal] stays out (participates but does not compete) CX → will make sure that N. [Nespak] does the same (under the threat of "revenge" on Pam and departure*

---

<sup>114</sup> ID [...]

<sup>115</sup> ID [...] (Coopbox - inspection document); ID [...]; ID [...]; ID [...]

<sup>116</sup> ID [...] (Coopbox inspection documents): (Original in Italian: "Non è previsto chi si aggiudicherà l'asta (se 1 o più di uno verrà scelto dal cliente e su quali criteri di scelta). Occorre partecipare. Aggiudicarsi 50/50 per non dare modo di scelta diversa (Restituirò altri vassoi su condizioni pari). Alternativamente, mi aggiudico 35% e se Auchan mi penalizza a favore di Sirap-Gema, Sirap-Gema mi compensa su altro cliente (GDODO) a pari condizioni. 2. Il prezzo di aggiudicazione sarà - 2% vs. i nuovi prezzi in media e sarà articolato diversamente sui vari modelli all'Asta").

<sup>117</sup> ID [...] (Coopbox inspection documents).

from the status quo). In case MAGIC takes part (on traditional) both SG and CX will impede its entrance with the help of: UNIVERSAL(SG) and POLIEMME (CX)

2) SG and CX commit to determine the following issues for the Auchan tender

a) the starting price of the tender will be the new prices (+5 % given that the supply period is 2003)

b) the adjudication standards for: quality (absorbent), gamma service (traditional and absorbent)

c) the number of references proposed in the tender (and for "others"?)

d) the numbers of winners (2) among the participants

e) the criteria of adjudication of the platforms /Cedis (Milan, Padova, Marche, Rome, Palermo)

3) To the meeting with Auchan they will send the managers responsible for sales and client/channel."<sup>118</sup>

- (109) The context and the meaning of the handwritten notes have been confirmed [...].<sup>119</sup> [...] the technical details of the tender were discussed at a later date.<sup>120</sup> However, [company representative's] (Coopbox) notes from the meeting were dated and the Commission considers that the contemporaneous evidence shows that the purpose of the discussion was to reach an agreement on the Auchan tender.
- (110) The Commission also notes that [company representative's] (Coopbox) reference to a possible "revenge" on Pam Panorama and a threat of "departure from the *status quo*" indicates that Nespak was in contact with its competitors, notably to protect its status of supplier to Pam Panorama.
- (111) On **25 October 2002**, a meeting took place at the Hotel President in Roncadelle (Brescia) between [company representative] (Vitmbal) and [company representative] and [company representative] (both of Sirap-Gema). In that period several of Sirap-Gema's industry clients, such as AIA, received competitive offers from Vitmbal. The competitors met to discuss this, and Vitmbal reiterated its commitment to respect Sirap-Gema's clients. The two competitors also discussed the offers they intended to present in the Auchan auction that was planned for 22 November 2002, and Vitmbal gave a commitment to let Sirap-Gema win that auction, provided Sirap-Gema agreed to refrain from winning the Carrefour auction.

---

<sup>118</sup> ID [...] (Coopbox inspection documents): (Original in Italian: "1) L'obiettivo x Sirap-Gema e CX, condiviso, è di non fare entrare nuovi fornitori in Auchan. A questo scopo Sirap-Gema → verificherà che V. si tenga fuori (aderisca ma non concorra) CX → verificherà che N. idem (pena "rivalsa" su Pam e venir meno status quo). Nel caso partecipi MAGIC (sul Tradizionale) sia Sirap-Gema che CX ne respingeranno l'ingresso servendosi di: UNIVERSAL(Sirap-Gema) e POLIEMME (CX)

2) Sirap-Gema e CX si impegnano a far sì che con Auchan si definisca: a) il prezzo base di partenza d'asta siano i nuovi prezzi (+5 % visto che il periodo di fornitura è il 2003)

b) gli standards di aggiudicazione d'asta per: qualità (drenante), servizio Gamma (Tradiz. e Assorbenti)

c) il numero delle referenze sottoposte ad asta (e per gli "altri"?)

d) il numero degli aggiudicanti (2) tra i partecipanti

e) criterio di assegnazione delle piattaforme/Cedis (Milano, Padova, Marche, Roma, Palermo)

3) Ad incontrare Auchan andranno il Resp. commerciale e Cliente/canale").

<sup>119</sup> ID [...]

<sup>120</sup> ID [...]



- (112) That meeting has been reported by [company name] [...] as well as the travel records of [company representative] and [company representative] ([company name]).<sup>121</sup>
- (113) Further proof that Vitembal was part of the arrangements can be found in an internal Coopbox e-mail sent from [company representative] to [company representative], [company representative] and [company representative] (all of Coopbox) on **12 November 2002**, entitled "Tender Auchan", in which he wrote as follows: "*1) Participants: Confirmed that there will be three of us: us, Sirap-Gema and Vitembal (...)*" On the print-out, [company representative] made a comment on the participation of Vitembal: "*they said that it will be a PRO-FORMA*".<sup>122</sup>
- (114) On **15 November 2002** a meeting took place in Modena between [company representative] and [company representative] (both of Sirap-Gema) and [company representative] (Coopbox). During that meeting they agreed on the prices they would offer during the Auchan tender in order to maintain the existing levels of volumes supplied to Auchan and SMA. In particular, as already agreed during the meeting on 14 October 2002, they determined the minimum levels per product reference at which each of them would stop bidding.
- (115) The above meeting has been reported to the Commission by [company name], which has also provided the relevant travel records and the detailed description of the content of the meeting. [Company name] claimed that it could not confirm its participation in the meeting, after checking the travel records of [company representative], [company representative], [company representative] and [company representative], which did not show any movement entry that day. [Company name] did not provide indications as to the travel records of [company representative], who according to [company name] took part in the meeting. However, the Commission considers that the analysis made by [...], sufficiently proves the involvement of [company name] in the rigging of the Auchan tender.<sup>123</sup>
- (116) The tender for Auchan took place on 22 November 2002. Vitembal and Nespak did not take part in it. As a result of their agreement, Sirap-Gema and Coopbox maintained their positions, and were adjudicated respectively 65% and 35% of the supplies.<sup>124</sup>

#### *Allocation of other clients – GDO and industry*

- (117) When coordinating the outcome of the Auchan tender, the competitors also allocated the remaining GDO clients. Evidence of this is found in the handwritten notes of [company representative] (Coopbox), together with the notes concerning the Auchan tender (see Recitals (106) and (108)). The notes give proof of the following allocation and volumes agreed for each competitor:

<u>"GDO</u>	<u>IPER</u>	<u>CEDI</u>	<u>TOTALE</u>
-------------	-------------	-------------	---------------

<sup>121</sup> ID [...]; ID [...]; ID [...]

<sup>122</sup> The wording of the e-mail, and in particular the reference to a "*pro-forma*" participation of Vitembal, indicates that Vitembal would only formally participate into the tender. ID [...] (Coopbox inspection documents): (Original in Italian: "*1) Partecipanti Ha confermato che saremo in tre: noi, Sirap-Gema e Vitembal" (...) "ha detto che sarà un PRO-FORMA"*).

<sup>123</sup> ID [...] (Coopbox inspection documents); ID [...]; ID [...]; ID [...]; ID [...]; ID [...]

<sup>124</sup> ID [...] (Coopbox – inspection documents); ID [...]

CARREFOUR	38 (V)	62 (CX)	100
FINNIPER	13 (SG)	2 (L)	15
GIGANTE			15
COOP	35 (V) 145 (CX)	180	
AUCHAN	25 (SG)	45 (CX)	70
PAM-SUPERM.	40 (N)	20(SG)60	130
PANORAMA			
ESSELUNGA	25 (L)	50 (SG)	75
SELEX	40 (L)	45	115
AGORA <sup>125</sup>			

- (118) The notes indicate that in 2002 Nespak was involved in the GDO tender arrangement on the basis of which it was guaranteed to maintain its customer, Pam Panorama.

*Client allocation – Food industry clients*

- (119) The handwritten notes of [company representative] (Coopbox) mentioned in Recital (117) provide evidence of the discussions on volumes of sales concerning major food industry clients, also covered by the client allocation agreement. Those clients were often co-supplied by two producers. Therefore, the more specific price discussions concerning those clients usually took place on a bilateral basis between the suppliers.<sup>126</sup>
- (120) During the year 2002, [company representative] (Sirap-Gema) and [company representative] (Coopbox) met on a bilateral basis at least three times to discuss the implementation of the agreement on allocation of clients other than GDO: on **18 June 2002** at the Hotel San Marco in Parma, on **14 October 2002** in Reggio Emilia (see also Recital (104)) and on **17 December 2002** at the restaurant Arnaldo in Rubiera (Reggio Emilia). Those meetings concerned in particular industry clients who were interested in modified atmosphere packaging ("MAP").
- (121) The meetings have been described by [company name]. This evidence is also confirmed by contemporaneous travel records of the relevant persons as well as by the handwritten notes (see Recital (117)) taken by [company representative] (Coopbox) during the meeting on 14 October 2002.<sup>127</sup>

4.1.3.2. Year 2003

- (122) During the year 2003 the cartel participants had several contacts, especially over the phone. They also often met bilaterally for diverse reasons: meeting new directors and managers of the cartel participants, discussing the market situation in general and exchanging information on competitors or clients. An important subject of discussion between the cartel participants in 2003 was the implementation of a common strategy in relation to the new competitor on the Italian market, Magic Pack, whose aggressive market behaviour was threatening the equilibrium reached between the cartel participants. Those contacts allowed the cartel participants to monitor their

<sup>125</sup> ID [...] (Coopbox inspection documents). The letters stand for the following competitors: Sirap-Gema=Sirap-Gema, L=Linpac, V=Vitembal, CX=Coopbox and N=Nespak; ID [...]

<sup>126</sup> ID [...]; ID [...]

<sup>127</sup> ID [...] (Coopbox inspection documents); ID [...]; ID [...]; ID [...]; ID [...]

compliance with the client allocation agreement and ensure the maintenance of the equilibrium between the cartel participants.<sup>128</sup>

*Monitoring of the price increase introduced in autumn 2002.*

- (123) The cartel participants continued monitoring the implementation of the price increase in 2003. In this context, two bilateral meetings took place between [company representative], [company representative] and [company representative] (all of Coopbox) and [company representative], [company representative] and [company representative] (all of Sirap-Gema) on 21 July 2003 and on 17 November 2003 in Cremona.
- (124) These facts have been [...] further corroborated by travel records of the persons concerned. [...].<sup>129</sup>

*Client allocation – GDO*

*Carrefour tender on 19 November 2003*

- (125) In the year 2003 Auchan did not organise any tender but confirmed Sirap-Gema and Coopbox as their suppliers for the year 2004 with the same volume percentages of supplies.<sup>130</sup>
- (126) Consequently all the GDO negotiations took place in preparation of the Pam Panorama and Carrefour tenders in 2004.<sup>131</sup> On **1 October 2003** [company representative] (Coopbox) sent an e-mail to his colleagues [company representative] and [company representative] (both of Coopbox) containing the following fragment: *"Within one month the [Carrefour] tender for trays for 2004 will take place. Probable invitees will be: Coopbox and Vitembal (current suppliers) and Sirap-Gema (supplier until the last tender) and maybe Linpac and Nespak. We need to find out quickly about the intentions of our competitors (...). There shouldn't be any outsiders. We should meet to discuss in particular this last point (...)."*<sup>132</sup>
- (127) A relevant indication of the coordination relating to the tender can also be found in an e-mail from [company representative] (Coopbox) to [company representative] (Linpac) dated **27 October 2003** in which [company representative] invites [company representative] to meet in order to discuss a common competitors' strategy in the upcoming Carrefour tender. The email contains the following text: *"As you may be aware we are working on some issues regarding Carrefour Italy that might have implications also at the international level. Therefore I am wondering if we could get together in the near future to discuss this matter more in details as well as for the signature of the confidential agreement."*<sup>133</sup>
- (128) On **7 October 2003** [company representative] (Coopbox) met with [company representative] (Nespak) to discuss their respective intentions concerning the

---

<sup>128</sup> The contacts in 2003 were described in general terms by [company name], see **ID [...]**

<sup>129</sup> **ID [...]; ID [...]; ID [...]; ID [...]; ID [...]**

<sup>130</sup> **ID [...]**

<sup>131</sup> **ID [...]**

<sup>132</sup> **ID [...]** (Coopbox inspection documents) (Original in Italian: *"Entro un mese sarà effettuata l'asta vassoi 2004. I probabili invitati saranno: Coopbox e Vitembal (attuali fornitori) e Sirap-Gema (fornitore fino alla precedente asta) e forse Linpac e Nespak. Sarà opportuno comprendere rapidamente le intenzioni dei concorrenti (...) Non dovrebbero esserci outsiders. Sarebbe opportuno un incontro per discutere in particolar modo quest'ultimo punto (...)."*).

<sup>133</sup> **ID [...]** (Coopbox inspection documents).

Carrefour tender. They discussed in particular the need to find a common strategy in case Magic Pack took part in the tender. This meeting [...] has not been denied by Nespak, which has provided the relevant travel records. During the inspections, the Commission found a relevant note in the calendar of [company representative] (Coopbox).<sup>134</sup>

- (129) During the month of October, the cartel participants agreed that in the tender period they would communicate with each other by phone to make sure that the lots were awarded to the right cartel participants. This is confirmed in an internal Vitembal e-mail of **17 October 2003** sent from [company representative] to [company representative] and [company representative], confirming that the cartel participants had agreed to rig the tender and to remain in contact over the telephone during the tender in order to implement the agreement. That e-mail states in particular: *"the actions which our colleagues will put in place will be communicated to you by phone"*.<sup>135</sup>
- (130) On **13 November 2003** a meeting took place at Malpensa airport in Milan between [company representative] and [company representative] (both of Vitembal), [company representative], [company representative] and [company representative] (all of Linpac) and [company representative] (Coopbox) for the same purpose of jointly determining the offers that each competitor would make, and the modalities and the outcome of the Carrefour tender.<sup>136</sup> [...] [company representative] (Sirap-Gema) was also present at the meeting. However, in its reply to the SO, Sirap-Gema contested [company representative's] presence at that specific meeting [...].<sup>137</sup>
- (131) The discussions in November on the allocation of the Carrefour lots soon derailed when Sirap-Gema communicated to Vitembal that it intended to obtain part of the Carrefour tender. This represented a breach of the agreement made between the cartel participants during the previous Auchan tender in 2002. At that time Sirap-Gema gave a commitment to Vitembal that it would let it win the Carrefour tender provided that Vitembal withdrew from the Auchan tender.
- (132) The Commission finds proof of the agreement and the ensuing dispute in an internal Coopbox e-mail from [company representative] to [company representative] (both of Coopbox) of **14 November 2003**. The message reads as follows: *"The situation got even more complicated than what was discussed yesterday (in attachment). I was called by [company representative], very upset, who informed me about a meeting/dispute which had taken place between [company representative] and [company representative], during which SG would have taken back the promise it had given at the time of the tenders for Auchan and Lombardini (non-belligerence of Vitembal in those two tenders in exchange for the same behaviour of SG in the coming Carrefour tender), declaring that they intended to win the Hypermarket lot in the Carrefour tender (...) [Company representative] was in panic, he said that Vitembal Italy can absolutely not afford to lose Carrefour; that if they are attacked on the Hypermarket lot, they will not only fight it till the very end but they will also*

---

<sup>134</sup> ID [...] (Coopbox inspection documents); ID [...]; ID [...] and ID [...] (Nespak - reply to RFI); ID [...]

<sup>135</sup> ID [...] (Vitembal inspection documents): (Original in French: "(...) les actions que nos confrères mettront en place, vous seront communiquées par téléphone").

<sup>136</sup> ID [...]

<sup>137</sup> ID [...]

*fight for the Supermarket lot; (...) that Sirap-Gema's behaviour was completely irresponsible (how about that of Linpac ?) and that it would definitely jeopardise any possibility of dialogue between the competitors; that it will lead to a situation of war of everyone against everyone; that they were even thinking of disclosing publicly the events behind the scene of the first tenders etc."*<sup>138</sup>

- (133) In order to "save" the Italian market and preserve the cooperation between the cartel participants as well as to prevent any leak of information on the bid rigging of the GDO tenders in Italy, Coopbox intervened as mediator between Sirap-Gema, Linpac (who counted on seizing the opportunity to gain a part of the tender) and Vitembal. Evidence hereof can be found in the e-mail from [company representative] (Coopbox), which states: *"I don't know if there is still time to intervene at the highest levels of SG - Linpac - Vitembal but I believe that we at least have to try to bring everyone back to reason, otherwise we risk destroying the Italian market both in terms of prices and in terms of negotiation rules."*<sup>139</sup>
- (134) Finally Sirap-Gema and Linpac did not attempt to win the Carrefour tender thus preserving the pre-existing equilibrium concerning clients in Italy. The tender took place on 19 November 2003. The Hypermarket lot of the tender was finally awarded to Vitembal.<sup>140</sup>
- (135) However, the arrangements made by the cartel participants concerning the final price at which the Carrefour tender was to be awarded did not work out as intended because a new competitor, Magic Pack, which was not part of the agreements, took part in the tender forcing other competitors to lower the prices. This was the reason why the cartel participants invited Magic Pack to join the cartel in 2004. Magic Pack took part in the meeting between the cartel participants on **13 September 2004** (see Recital (146) below).
- (136) The above circumstances are confirmed in an internal Coopbox report by [company representative] (Coopbox) dated **20 November 2003** in which he analysed facts and

---

<sup>138</sup> ID [...] (Coopbox inspection documents): (Original in Italian: *"La situazione si ulteriormente complicata rispetto allo scenario discusso ieri (allegato). Ho ricevuto una telefonata da [company representative] molto alterato, che mi ha messo al corrente di un incontro/scontro avvenuto tra [company representative] e [company representative], nel quale Sirap-Gema si sarebbe rimangiata la parola data all'epoca delle aste Auchan e Lombardini (non belligeranza di Vitembal in queste due situazioni in cambio di pari atteggiamento di Sirap-Gema nella futura asta Carrefour), dichiarando la propria volontà di aggiudicarsi il canale per di Carrefour. [Company representative] sosterebbe che Sirap-Gema necessita di un referenziamento Carrefour Italia per potersi presentare ai Carrefour Est Europa che, con l'acquisizione di Petruzalek, sono diventati un loro obiettivo irrinunciabile (!?!). [Company representative] era nel panico, ha detto che Vitembal Italia non si può assolutamente permettere di perdere Carrefour; che se viene attaccata sul canale per oltre a difendersi fino all'ultimo entrerà in competizione anche sul canale super; (...) che l'atteggiamento di Sirap-Gema era assolutamente irresponsabile (e quello di Linpac ?) e che questo avrebbe compromesso definitivamente ogni possibilità di dialogo tra competitors; che si sta configurando uno scenario di guerra tutti contro tutti; che potrebbero anche arrivare a pubblicizzare i retroscena delle prime aste (?), ecc."*).

<sup>139</sup> ID [...] (Coopbox inspection documents): (Original in Italian: *"Non so se c'è ancora il tempo per intervenire ai massimi livelli di Sirap-Gema - Linpac - Vitembal ma credo sia indispensabile almeno tentare di ricondurre tutti a più miti consigli perché, in caso contrario, si rischia davvero di distruggere il mercato Italia, sia come prezzi che come regole di contrattazione"*).

<sup>140</sup> ID [...] (Vitembal inspection documents); ID [...]; ID [...] (Coopbox inspection documents).

the behaviour of the cartel participants during the Carrefour tender and in the comments made in Vitembal's budgetary report for 2003. [...].<sup>141</sup>

#### *Client allocation – industry clients*

- (137) The allocation agreement continued to be applied also in 2003. This is evidenced in a report from [company representative] to [company representative] (both of Coopbox) following an internal meeting held on 24 April 2003, in which he summarises the situation in his area. In the report, [company representative] explains: *"I would like to point out that we are not going to attack Sirap-Gema but will only take the volumes which they [clients] have offered us in the same way they will offer them to Vitembal or Linpac or others"*. The Commission finds that the aim was thus to maintain the status quo on industry clients while at the same time taking advantage of those clients which no longer wished to be supplied by only one producer. [...].<sup>142</sup>
- (138) The Commission finds confirmation of the existence of a "non-aggression pact" concerning certain clients in contemporaneous notes taken by [company representative](Coopbox) on **9 and 10 April 2003**. Those notes show contacts and exchanges of sensitive commercial information between cartel participants. The notes show, in particular, the mechanism for maintaining the *status quo* for cross-supplies outside Italy, as well as an agreement between Coopbox and Sirap-Gema to protect their respective positions in case Linpac tried to take some of their market share. In particular, the notes contain the following fragment: *"SG will have preference for CX, unless they have no choice/have to prefer someone for reasons of "non-belligerence" (eg. it takes from [non-addressee] because for the same price, in exchange for the supply, [non-addressee] commits to not disturb for example in France)"*.<sup>143</sup>
- (139) [Company name] reported two bilateral meetings with [company name], both held in Cremona at the Hermes Hotel. The first meeting took place on **24 January 2003**, the second on **3 June 2003**. The participants were [company representative] and [company representative] (both of Sirap-Gema) and [company representative] and [company representative] (both of Magic Pack). They discussed the management of their "shared" customers, notably Aia and Finiper. [Company name] provided evidence of the meeting of 3 June 2003 in the form of a calendar entry of [company representative] and a receipt from the hotel bar.<sup>144</sup>

#### 4.1.3.3. Year 2004

- (140) In 2004, at the initiative of Sirap-Gema and Coopbox, cartel participants engaged in bilateral or trilateral meetings where they exchanged information about specific clients and discussed the increase of prices in raw materials and the need to agree and introduce a coordinated price increase. They also discussed the market entry of Magic Pack, in order to find a common strategy that would limit its penetration and

---

<sup>141</sup> ID [...] (Vitembal inspection documents); ID [...] (Coopbox inspection documents); ID [...]; ID [...]

<sup>142</sup> ID [...] (Coopbox inspection documents): (Original in Italian: *"Vorrei precisare che non andiamo ad attaccare Sirap, ma ci prenderemo quelle quote che come hanno offerto a noi offriranno a Vitembal o a Linpac o ad altri"*); ID [...]

<sup>143</sup> ID [...] (Coopbox inspection documents): (Original in Italian: *"Sirap-Gema (...) sceglierà CX, a meno che sia dettata alla scelta/preferenza da ragioni di "non belligeranza" (es. prende da [non-addressee] perché anche se a pari prezzo di cessione, dietro questa fornitura, [non-addressee] si impegna a non fare azioni di disturbo, ad es. in Francia)"*).

<sup>144</sup> ID [...]; ID [...]

aggressive pricing strategies. The ultimate goal of these meetings was to preserve the *status quo ante* in relation to market shares and customer allocation and to restrict competition by preventing a price war.

- (141) The venues of those cartel meetings were usually the following: trilateral meetings between Sirap-Gema, Linpac and Coopbox (usually concerning common defensive strategies vis-à-vis Magic Pack) were held in Bologna, at the Sheraton Hotel near the airport or at a restaurant near the A1 exit for Modena; multilateral meetings between all cartel participants (concerning client allocation and price fixing) were held on the fringes of official meetings at the Italian Packaging Institute (Istituto Italiano dell'Imballaggio), in Milan and Cremona or at the Hotel San Marco in Parma.
- (142) The above facts were reported to the Commission by [company name].<sup>145</sup> The Commission finds confirmation of such circumstances in several contemporaneous documents showing anticompetitive multilateral contacts and exchange of sensitive information between cartel participants, which are further corroborated by statements by other leniency applicants and by the set of events described below.

#### *Price increase in 2004*

- (143) In 2004 the cartel participants, concerned by the rising cost of raw materials (an approximate increase of 60%), decided to agree on a price increase to be applied in autumn 2004. In preparation for this price increase, several bilateral and multilateral meetings took place in 2004, where the cartel participants discussed the possibility of linking the sales price increases directly to the increases in the cost of raw materials, given that the price increase of a specific raw material (styrene) was the key concern for the cartel participants. In particular, one of the mechanisms discussed was to use the price of polystyrene per kilo as the reference to fix the sales price increases.<sup>146</sup>
- (144) Two contemporaneous documents found during the inspections provide evidence of those discussions. The first one is an internal e-mail sent by [company representative] (Coopbox) to his colleagues on **17 August 2004**, in which he wrote: *"In the past few days I either met or spoke over the phone with all our competitors except Prima. They all worry about their balance sheets and are quite pessimistic about the future cost of raw materials, therefore they all agree on the need to implement price increases from 6% (minimum of Sirap) to 15 of Linpac."* The second document is another internal e-mail sent by [company representative] (Coopbox) to his colleagues on **30 August 2004**, in which he informs them of the following: *"I have just spoken with [company representative] [Vitembal] (...) the main reason for his phone call was to let us know – as increase coordinators – that Vitembal will take part in the increase but if in this phase it were to be attacked (especially by Sirap) it will lower its prices for all the clients rather than increase them".*<sup>147</sup>

---

<sup>145</sup> ID [...]; ID [...]

<sup>146</sup> ID [...]

<sup>147</sup> ID [...] (Coopbox inspection documents): (Original in Italian: *"In questi giorni mi sono incontrato ed ho telefonato a tutti i nostri concorrenti, tranne Prima. Tutti sono preoccupati per i propri bilanci e pessimisti sul futuro dei costi delle materie prime, quindi concordi sulla necessità di applicare aumenti dal 6%(minimo di Sirap) al 15 di Linpac."*); ID [...] (Coopbox inspection documents) (Original in Italian: *"Ho appena parlato con [company representative] (...) il motivo principale della telefonata era di farci sapere, in quanto coordinatori dell'aumento, che Vitembal partecipa all'aumento ma se in questa fase dovesse subire un attacco (in particolare da Sirap) procederà a ribassare piuttosto che alzare i prezzi su tutti i clienti"*).

- (145) [...].<sup>148</sup>
- (146) On **13 September 2004**, a meeting took place in Bologna between [company representative], [company representative] (both of Linpac), [company representative], [company representative] (both of Vitembal), [company representative], [company representative], [company representative], [company representative] (all of Coopbox), [company representative], [company representative] (both of Nespak), [company representative] (Sirap-Gema), [company representative] and [company representative] (both of Magic Pack). The meeting was probably originally scheduled to take place in Parma but since a trade fair in the sector was taking place in Bologna on 13 September 2004, the cartel participants decided to meet in Bologna.
- (147) The meeting has been reported to the Commission by [company name]. Similarly, the meeting is corroborated by the travel records of most of the relevant persons, including [company representative] and [company representative] (both from Nespak). Confirmation can also be found in the agenda of [company representative] ([company name]) and [company representative] ([company name]).<sup>149</sup> The content of the meeting is described in Recitals (151)-(153). In addition, in its reply to the SO, [company name] confirms the meeting and provides handwritten notes which show that the price increase was discussed.<sup>150</sup>
- (148) This was the first multilateral cartel meeting to which Magic Pack was also invited.
- (149) On **15 September 2004** a meeting took place at the Hotel San Marco in Parma between [company representative], [company representative] and [company representative] (all of Sirap-Gema) and [company representative], [company representative] and [company representative] (all of Coopbox) where they further discussed the price increase to be implemented in autumn.<sup>151</sup>
- (150) The Commission finds confirmation of the above meeting in contemporaneous travel records of relevant people participating on behalf of Sirap-Gema and Coopbox. [...].
- (151) At the two meetings the cartel participants discussed the price increases to be applied in Italy as of October/November 2004. In particular, the cartel participants reached a consensus to, in principle, raise foam tray prices by 18% in the course of October 2004.<sup>152</sup>
- (152) In particular, [...], the participants at the meetings decided to adopt a common price list increase of 18% as opposed to an increase of price per kilo of 18%. Coopbox increased its prices in line with the agreement reached with competitors: by 18% for traditional and absorbent foam trays and by 15% for barrier foam trays. Sirap-Gema also applied an increase of 18% on average. Most of the competitors, including Linpac and Coopbox, applied the price increase from October-November 2004. Sirap-Gema decided to split the increase in two tranches: the first to be applied in autumn 2004 and the second in January 2005.



- (153) The above [...] are confirmed by the price letters sent by the cartel participants to their clients at the time [...].<sup>153</sup>
- (154) [...], the agreement reached at the meeting held on 13 September 2004 was monitored through subsequent contacts that took place between September and December 2004. The parties to the agreement were also able to monitor its implementation through the information gathered directly from their clients.<sup>154</sup>
- (155) Handwritten notes taken by [company representative] (Coopbox) on **27 September 2004** during an internal meeting confirm that Coopbox received information from the cartel participants on the state of implementation of the agreed price increase. The note states that Sirap-Gema would introduce the increase as of 1 November 2004, that Magic-Pack would apply the increase only for some clients, at a level of 8-10%, and that Nespak would introduce the increase in very diverging time-schemes, at the level of 8-15%.<sup>155</sup>
- (156) The Commission also finds proof that the cartel participants closely monitored the implementation of the agreed price increase in an internal Coopbox e-mail from [company representative], dated **22 November 2004**. In that e-mail [company representative] wrote the following: *"I dare anyone to claim that our quotes create disturbance in the market; I am in regular personal contact with Linpac and Sirap, and apart from one already clarified case, I am ready for any discussion."*<sup>156</sup>
- (157) A meeting aiming at monitoring the implementation of the coordinated price increase took place on **8 November 2004** at the San Marco Hotel in Parma. Documents on the file confirm the participation of [company representative], [company representative] and [company representative] (all of Sirap-Gema), [company representative], [company representative] and [company representative] (all of Coopbox), [company representative], [company representative] and [company representative] (all of Linpac), [company representative], [company representative] and [company representative] (all of Vitembal) and [company representative] and [company representative] (both of Nespak).
- (158) The main purpose of the meeting was to review the price increase agreed in the previous meetings. In the previous meeting several issues were discussed. Coopbox referred to the upcoming Auchan-Carrefour auctions and informed the other parties that it was going to apply a price increase of 7 to 8%, to be effective in January 2005. It also complained about the excessively low prices of the distributor [non-addressee]. Sirap-Gema complained about the loss of sales in respect of one of the distributors, Hortofrutticola, in favour of at least Coopbox. Vitembal complained about the attacks of distributor Di Constanzo on its clients. The parties agreed that the problem would be resolved through the application of a common price increase to that distributor. Nespak complained about the situation in Sardinia, where each time it tried to increase prices, the cartel participants maintained their own prices at the

---

<sup>153</sup> ID [...]; ID [...]; ID [...]; ID [...]; ID [...], ID [...]; ID [...]

<sup>154</sup> ID [...]; ID [...]

<sup>155</sup> ID [...] (Coopbox inspection documents).

<sup>156</sup> ID [...] (Coopbox inspection documents): (Original in Italian: *"Sfido chiunque ad affermare che le ns. quotazioni creano turbative di mercato, e personalmente mi sento con Linpac e Sirap regolarmente, e a parte un caso già chiarito sono pronto a qualsiasi confronto"*).

existing levels. Finally, Vitembal informed the others that it did not consider a price freeze for the year 2005.

- (159) The meeting is evidenced by several contemporaneous documents, namely travel records and bills from the hotel and handwritten notes taken by [company representative] ([company name]).<sup>157</sup> The meeting is also confirmed in an internal Coopbox note from **19 November 2004** summarizing the events of the meeting with the cartel participants on 8 November 2004.<sup>158</sup>
- (160) [...]. [Company name] has provided a very detailed description of the meeting, based both on the notes taken by [company representative] ([company name]) under the date of the meeting in his agenda as well as on his declaration.<sup>159</sup> The meeting has been confirmed by [company name], while Nespak has been unable to exclude its participation.<sup>160</sup>
- (161) The implementation of the agreed price increase was also discussed at a meeting on **15 November 2004** at the Sheraton Hotel in Bologna between [company representative] and [company representative] (both of Linpac) and [company representative] (Vitembal). According to [company name], [company representative] (Nespak), [company representative], [company representative] and/or [company representative] (all of Coopbox), [company representative], [company representative] and/or [company representative] (all of Sirap-Gema) and [company representative] and [company representative] (both Magic Pack) were also present.<sup>161</sup> However, Sirap-Gema and Nespak both deny having taken part in it and Coopbox and Magic Pack have no recollection of such a meeting. Nespak provided motorway toll records and a restaurant receipt to show that [company representative] and [company representative] were elsewhere on that date. Even though there are indications of the presence of other cartel participants, the Commission concludes that only Linpac and Vitembal attended this meeting.<sup>162</sup>
- (162) Finally, a bilateral meeting between Sirap-Gema and Coopbox took place in Cremona on **17 November 2004**, where the parties discussed the possibility of introducing a further price increase as of January 2005. The meeting has been reported to the Commission by [company name], who also provided relevant travel records.<sup>163</sup>

#### *Client allocation – GDO clients*

##### *Auchan tender*

- (163) The Auchan tender was the first tender in 2004. Also in this case, the cartel participants met and agreed on the outcome of the tender.
- (164) On **22 November 2004** Magic Pack was invited to a meeting by Sirap-Gema, at which the latter asked Magic Pack not to compete during the internet tender

---

<sup>157</sup> ID [...]; ID [...]; ID [...], and ID [...]

<sup>158</sup> ID [...] (Coopbox inspection documents). The date corresponds to the indicated date of modification of the document on the inspected computer (ID [...]) Coopbox inspection documents).

<sup>159</sup> ID [...]; ID [...]; ID [...]; ID [...]

<sup>160</sup> ID [...]; ID [...]; ID [...]; ID [...] (Nespak - reply to RFI).

<sup>161</sup> ID [...]; ID [...]; ID [...]; ID [...]

<sup>162</sup> ID [...]; ID [...]; ID [...]; ID [...]; ID [...] (Nespak - reply to RFI); ID [...] (Nespak – reply to RFI); ID [...] (Nespak reply to the SO); ID [...]

<sup>163</sup> ID [...]; ID [...]; ID [...]

organised by Auchan on 2 December 2004. In exchange, it offered a friendly solution to the trademark litigation pending between Sirap-Gema and Magic Pack. That meeting was reported to the Commission by [company name].<sup>164</sup>

- (165) A similar meeting took place between Coopbox and Magic Pack sometime between the end of **November** and **6 December 2004**. Two internal Coopbox documents corroborate such a meeting. The first is an e-mail, dated **26 November 2004**, making reference to the meeting planned with Magic Pack concerning the tender, which was found during the inspection at the premises of Coopbox Italy. In that email [company representative] invited his colleagues to report any issues "pending" between Coopbox and Magic Pack, explaining that he needed the information as a bargaining chip, because during the meeting Coopbox would have had to "*obtain their [Magic Pack's] neutrality in the Auchan tender and possibly a less conflicting relationship in 2005*". The second document is an internal memo of **6 December 2004** which makes reference to a meeting with [company representative] (Magic Pack) where they agreed prices for a common client.<sup>165</sup>
- (166) [Company name] has confirmed to the Commission that the Auchan tender of 2 December 2004 was rigged.<sup>166</sup> The Commission considers that there is sufficient proof that this tender was rigged between the cartel participants.

#### *Pam Panorama tender*

- (167) The Commission has established that the outcome of the Pam Panorama 2004 tender concerning the supplies for 2005 was also agreed beforehand between the cartel participants. [Company representative] (Coopbox), who made quotes during the tender on behalf of Coopbox, had received clear instructions from [company representative] and [company representative] (both of Coopbox) to make higher offers than those of Nespak and Sirap-Gema, who were designated by the cartel participants as winners of the tender. As a consequence, before the tender [company representative] (Coopbox) agreed over the phone with [company representative] (Sirap-Gema) and [company representative] (Nespak) that Coopbox's offers would be higher by some 5-10% than the offers of Nespak and Sirap-Gema.
- (168) The above circumstances have been reported to the Commission by [company name] in a statement made on the basis of information provided by [company representative] ([company name]).<sup>167</sup> In its reply to the SO, [company name] has confirmed that its contacts with [company representative] ([company name]) occurred, despite the fact that the tender never took place.<sup>168</sup> Nespak contends that [company name's] statement is insufficient to prove this cartel contact.<sup>169</sup> However, on the basis of the precise statement by [company name] together with the fact that

---

<sup>164</sup> ID [...]; ID [...]; ID [...]; ID [...]

<sup>165</sup> ID [...] (Coopbox inspection documents): (Original in Italian: "*Il giorno 2 dicembre, essendo stata posticipata l'asta, ci incontreremo con Prima; prego pertanto tutti i colleghi che hanno delle situazioni in sospeso con loro, di darmi una dettagliata analisi, in quanto in questo incontro dobbiamo ottenere la loro neutralità nell'asta Auchan e possibilmente un rapporto meno conflittuale nel 2005*"; ID [...]) (Coopbox inspection documents): (Original in Italian: "*Prezzi Aligrup In seguito ad un incontro con [company representative] di Prima sono emersi i seguenti prezzi (...)*").

<sup>166</sup> ID [...]

<sup>167</sup> ID [...]

<sup>168</sup> ID [...]

<sup>169</sup> ID [...] (Nespak reply to the SO).

Pam Panorama was traditionally supplied by Sirap-Gema and Nespak, the Commission finds that there is sufficient evidence to conclude that these anti-competitive contacts actually took place.

#### *Carrefour tender*

- (169) The Carrefour tender was particularly important for Coopbox, who thus took the initiative to contact the other cartel participants in advance in order to find out what their bidding intentions were and to make sure that Coopbox would win one of two lots covered by the tender.<sup>170</sup>
- (170) The Commission finds proof of the above in an internal Coopbox note of **26 November 2004**. In that note [company representative] shared information received from his competitors in the context of preparation of the tender's outcome. He informed his colleagues that Nespak was aiming at winning the lot for hypermarkets, that Linpac would only run for transparent rigid trays, and that Sirap-Gema would take medium prices of all offers in Auchan tender as its starting point and that Vitembal would fight to get the hypermarkets in retaliation for the loss of Pianeta Cospea in Lombardy.<sup>171</sup>
- (171) On **2 December 2004** a multilateral meeting took place at the Hermes Hotel in Cremona. The cartel participants present at the meeting were the following: [company representative] and [company representative] (both of Magic Pack), [company representative], [company representative] and [company representative] (all of Sirap-Gema), [company representative], [company representative] and [company representative] (all of Coopbox), [company representative], [company representative] and [company representative] (all of Linpac), [company representative] and [company representative] (both of Nespak) and [company representative] and [company representative] (both of Vitembal).
- (172) The meeting was reported by [company name] and confirmed by [company name], [company name] and [company name]. [Company name] also provided relevant travel records corroborating the fact that the meeting took place.<sup>172</sup> In its reply to the SO, Nespak claimed that the Commission did not prove its participation in this meeting.<sup>173</sup> However, given that all the other participants in the meeting either firmly state or find it likely that Nespak attended, the Commission considers that it is sufficiently proven that also Nespak took part in the meeting.
- (173) The Commission has established that the purpose of the meeting was to agree on the winner of the tender for foam trays organised by Carrefour Italy on 20 December 2004. During the meeting the competitors agreed that Vitembal would win the hypermarkets lot of the Carrefour tender. In exchange Vitembal gave a commitment not to make offers to the competitors' clients active in the poultry sector (including AIA who was supplied by Sirap-Gema).<sup>174</sup>
- (174) The two lots were eventually awarded to Vitembal and Coopbox.<sup>175</sup>

---

<sup>170</sup> ID [...]  
<sup>171</sup> ID [...] (Coopbox inspection documents).  
<sup>172</sup> ID [...]; ID [...]; ID [...]; ID [...]; ID [...]; ID [...]  
<sup>173</sup> ID [...] (Nespak - reply to the SO).  
<sup>174</sup> ID [...]  
<sup>175</sup> ID [...]

### *Client allocation – industry clients*

- (175) On **21 December 2004**, a multilateral meeting took place at the San Marco Hotel in Parma. The participants at that meeting were [company representative] (Sirap-Gema), [company representative] (Nespak), [company representative] and [company representative] (both of Magic Pack), [company representative] and [company representative] (both of Coopbox) and [company representative] and [company representative] (both of Linpac).
- (176) The Commission finds confirmation of such a meeting in the statements of [company name]. [Company name] provided contemporaneous travel records.<sup>176</sup> While [company name] specifically confirmed the presence of [company representative] (Nespak) at the meeting, Nespak has claimed that they could not confirm their presence at the meeting but could not exclude their presence either.<sup>177</sup>
- (177) The meeting was organised by Sirap-Gema and Coopbox to discuss prices, volumes and client allocation. The meeting was related to the price increase introduced in Italy in autumn 2004. [...] the meeting concerned in particular the fruit and vegetables packaging sector, which had been identified by the competitors as a low margin sector. Therefore they decided it needed a targeted coordinated action to introduce a price increase and establish the suppliers for each client in order to reach an "acceptable level of profitability" in the sector.<sup>178</sup>
- (178) During the meeting the competitors also reached an agreement on the volumes of sales allocated to each of them, with minimum prices for some clients. They also agreed on the date of implementation of the price increase in this sector, which was set for 1 February 2005.
- (179) This meeting was described in detail in handwritten notes taken by [company representative] ([company name]) during the meeting [...].<sup>179</sup>

### *Other examples of the status quo agreement on client allocation*

- (180) To maintain the *status quo* of their allocation agreement, the cartel participants concerted their price policies and commercial actions towards shared customers usually in the framework of bilateral contacts and only on an opportunistic basis when the need arose. The Commission has found several examples of such anticompetitive practices carried out in 2004, in particular with regard to the volume allocation and the coordination of prices between competitors, aiming at maintaining the *status quo*, as illustrated below. Some also give evidence of compensation claims between cartel participants when volumes or customers were taken by one of the cartel participants in breach of the client allocation agreement.
- (181) The information about these practices has been reported to the Commission by [company name]. The Commission's file also includes contemporaneous documents,

---

<sup>176</sup> ID [...]; ID [...]; ID [...]; ID [...]; ID [...]. ID [...] refers to a meeting held on 21.12.2004 but the date was subsequently corrected and [company name] claims that it [...] referred to the meeting that took place on 2.12.2004 instead.

<sup>177</sup> ID [...] (Nespak - reply to RFI).

<sup>178</sup> ID [...]. [...] [company name] does not specify whether the discussion concerning the fruit and vegetables packaging sector concerned foam or rigid trays.

<sup>179</sup> ID [...]; ID [...]; ID [...]; ID [...]

such as in particular internal reports and emails, which corroborate the existence of the described anti-competitive practices related to customer allocation in 2004.

#### *Client Pianeta Cospea*

- (182) In September 2004 the client Pianeta Cospea contacted Coopbox. As a result, Coopbox made an offer in line with the prices that Pianeta Cospea had paid in 2003. A supply contract was concluded and Coopbox became the client's supplier. Vitembal, who had been the previous supplier of Pianeta Cospea, accused Coopbox of violating the "non-aggression" agreement and threatened Coopbox with retaliation during the upcoming Auchan tender.
- (183) This incident and the client allocation practice is evidenced in a contemporaneous commercial report prepared by [company representative] (Coopbox) for his managers [...].<sup>180</sup>

#### *Client AIA*

- (184) In September 2004, the poultry producer AIA, who was at the time a Coopbox client, received a more interesting supply offer from Sirap-Gema. Coopbox took contact with Sirap-Gema to make them withdraw their offer.
- (185) This episode emerged from an internal Coopbox email dated **6 September 2004** sent by [company representative] to [company representative](both of Coopbox). In that email [company representative] promised he would talk to [company representative] from Sirap-Gema to make them withdraw their offer. [...] Coopbox managed to keep its level of supplies to AIA unchanged.<sup>181</sup>
- (186) [...] the contact was limited to barrier foam trays and [...] Sirap-Gema continued its negotiations with AIA on this product in spite of Coopbox's complaints. However, AIA ultimately chose to maintain Coopbox as a supplier of barrier foam trays.<sup>182</sup>

#### *Client Aligroup*

- (187) In December 2004, Coopbox and Magic Pack concerted their pricing policies towards their common client Aligroup (Despar Sicilia). Evidence of that agreement can be found in an internal Coopbox email dated **13 December 2004**, where [company representative] (Coopbox) provided evidence of a meeting with [company representative] (Magic Pack) during which they discussed prices offered to that client.<sup>183</sup>
- (188) [...] as a consequence of this concertation Magic Pack increased the prices offered to Aligroup in order to align them to the prices of Coopbox.<sup>184</sup>

#### *Client Grandi Orizzonti*

- (189) On **18 June 2004**, [company representative] (Sirap-Gema) sent an email to [company representative] (Coopbox) with the prices that Sirap-Gema had offered to Grandi Orizzonti, a historical client of Coopbox. In that period Sirap-Gema had made a competitive offer to that client and had managed to take it. In response,

---

<sup>180</sup> ID [...]; ID [...] (Coopbox inspection documents).

<sup>181</sup> ID [...] (Coopbox inspection documents); ID [...]

<sup>182</sup> ID [...]

<sup>183</sup> ID [...] (Coopbox inspection documents).

<sup>184</sup> ID [...]

Coopbox made some aggressive offers to some of Sirap-Gema clients in the region of Lazio. Afraid of a price war and willing to come back to the status quo, Sirap-Gema sent Coopbox details of their offer to Grandi Orizzonti in order to let Coopbox match the offer and win back the client.<sup>185</sup>

- (190) The Commission considers that the above-mentioned episode provides an example of the way in which the cartel participants implemented the *status quo* agreement on the Italian market. Although the cartel participants repeatedly declared their intention to maintain the *status quo*, they also violated that commitment by making aggressive offers to gain clients allocated to other cartel participants. In response, to regain the lost market shares, the damaged cartel participants made aggressive offers to the clients of the other cartel participants. The threat of a price war led to a series of bilateral or multilateral meetings, at which, after reciprocal accusations and compensation claims, the cartel participants eventually agreed on the terms of their future conduct. Such agreements would usually be transgressed again in their attempt to increase their market share.<sup>186</sup>

#### 4.1.3.4. Year 2005

##### *Implementation of the price increase*

- (191) During the first semester of 2005 the cartel participants continued to meet regularly, both on a bilateral and a multilateral basis, to monitor the effective implementation of the price increase agreed in September 2004 and to take the necessary measures, if needed, to correct their behaviour.
- (192) Also, the parties exchanged detailed price information concerning specific clients to show that they were actually implementing the agreed price increase.
- (193) In this context Sirap-Gema and Coopbox, as market leaders, often met on a bilateral basis. They also regularly exchanged sensitive price information to coordinate the introduction of the second step of the price increase, which they spread over autumn 2004 and the first semester of 2005.
- (194) An example of such bilateral coordination can be found in an e-mail from Sirap-Gema to Coopbox dated **20 January 2005** with prices "already increased" for two common clients, Cepre and Fior and a follow-up email of **3 March 2005**, concerning only Cepre, with further increased prices to be applied to the client as of 14 March 2005. [...]<sup>187</sup>
- (195) The cartel participants also monitored the implementation during multilateral meetings held regularly at least until June 2005. During those meetings each competitor would disclose to the others their average prices for their top selling products, both standard trays and absorbent foam trays.
- (196) The Commission has obtained evidence of one meeting between competitors in this context, which took place at Malpensa airport in Milan on **11 January 2005**. The meeting was attended by [company representative], [company representative] and [company representative] (all of Linpac), [company representative] and [company representative] (both of Vitembal), [company representative] and [company

---

<sup>185</sup> ID [...] (Coopbox inspection documents) and ID [...]

<sup>186</sup> ID [...]

<sup>187</sup> ID [...] (Coopbox inspection documents); ID [...] (Coopbox inspection documents); ID [...]; ID [...]

representative] (both of Coopbox), [company representative] (Sirap-Gema) and [company representative] and [company representative] (both of Nespak).

- (197) Most of the participants confirmed the date, place and participants of the meeting. Most of the travel records, bills and/or agendas have been found or submitted by the concerted undertakings. Nespak was unable to exclude having taken part in the meeting.<sup>188</sup>
- (198) The Commission understands that the background for the meeting was that Linpac had implemented a very aggressive price policy towards customers historically belonging to other competitors. Because of this aggressive policy, the implementation of the price increase was not proceeding as agreed. The aim of the meeting was thus to discuss the measures which needed to be taken to restore the previous competition equilibrium, that is to say, to return to the status quo on client allocation. In particular, Sirap-Gema proposed, similarly to what was done in Spain, to assign to the market leader the role of coordinator of the commercial policies of the different cartel participants. Such a coordinator would be responsible for taking initiatives, proposing or coordinating modalities (such as fixing percentage and timing) for introducing a general price increase for example in case of a steep rise of raw material costs. Each participant would thus adjust to the pricing policies established by the leaders of the respective national markets (namely Sirap-Gema in Italy, Linpac in Spain and Vitembal in France).<sup>189</sup>
- (199) In addition, the Commission understands that monitoring also took place outside bilateral and multilateral meetings. An internal report of Vitembal dated **17 February 2005** provides evidence of the existence of regular information exchanges and disputes between cartel participants. The report describes the state of implementation of the price increase and the problems that Vitembal encountered with the other cartel participants with regard to specific clients.<sup>190</sup>

*Agreement on fixing minimum prices for foam trays in Italy*

- (200) Between April and July 2005 the cartel participants met regularly, every two to three weeks, in order to agree on minimum prices and on a way to implement them that would be easy to monitor. The intensity and frequency of the meetings shows that the cartel participants did not fully trust each other at that time.
- (201) During multilateral meetings the cartel participants would first exchange detailed information on the respective average, minimum and maximum prices on the basis of their top selling products, both for standard foam trays and for absorbent foam trays, and on the basis of the distribution channel, that is to say, wholesalers, supermarkets and meat and poultry producers. Then, on the basis of the price statistics, they would agree on recommended minimum prices. Having selected a basket of top selling products, the competitors compared the average price applied by each of them.<sup>191</sup>
- (202) A meeting took place on **18 April 2005** at the San Marco Hotel in Parma between [company representative] and [company representative] (both of Linpac), [company

---

<sup>188</sup> ID [...]; ID [...]; ID [...]; ID [...]; ID [...]; ID [...]; ID [...]; ID [...]; ID [...] (Nespak - reply to RFD); ID [...] (Nespak inspection documents).

<sup>189</sup> ID [...]; ID [...]; ID [...]

<sup>190</sup> ID [...] (Vitembal inspection documents).

<sup>191</sup> ID [...]; ID [...]



representative] and [company representative] (both of Vitembal), [company representative] (Sirap-Gema), [company representative], [company representative], [company representative] and [company representative] (all of Coopbox), [company representative] and [company representative] (both of Magic Pack) and [company representative] and [company representative] (both of Nespak). The purpose of the meeting was to prepare the next concerted price increase.

- (203) [...] the undertakings concerned have confirmed the meeting and [...] have submitted relevant travel records.<sup>192</sup>
- (204) During the meeting the cartel participants discussed various issues related to the coordinated price increase agreed in autumn 2004 and updated each other on the state of its implementation in Italy. In advance of the meeting, they had prepared lists of their customers with the sale conditions applied to them, and disclosed to each other the average prices applied for each of their top selling products, both standard trays and absorbent foam trays. In this context particular clients "belonging" to cartel participants were discussed, for example Coop Italia, Agricola Berica and GS belonging to Coopbox.<sup>193</sup>
- (205) Another multilateral meeting took place on **2 May 2005** again at the Hotel San Marco in Parma between [company representative] and [company representative] (both of Linpac), [company representative], [company representative] and [company representative] (all of Sirap-Gema), [company representative], [company representative], [company representative] and [company representative] (all of Coopbox), [company representative] and [company representative] (both of Vitembal), [company representative] and [company representative] (both of Nespak) and [company representative] and [company representative] (both of Magic Pack).
- (206) [...] the cartel participants have confirmed the meeting and provided the Commission with the relevant travel records.<sup>194</sup>
- (207) For this meeting the cartel participants had again prepared lists of clients and prices which served as a basis for the agreement between the competitors. [Company name] confirmed that [company representative] had brought an excel sheet with him, into which, following the meeting, he inserted the prices and conditions agreed with competitors for the specific clients.<sup>195</sup>
- (208) Evidence in the Commission's file indicates that the other cartel participants had also prepared similar sheets with the prices agreed between them and that at a later stage they exchanged their respective lists in order to confirm the agreements made during the meeting and to amend the lists to the extent that a consensus still needed to be reached.<sup>196</sup>
- (209) [Company representative's] excel sheet also indicated that during the meeting competitors shared volumes and allocated major fruit clients (for instance, it was decided that Fruittal would belong to Nespak and Magic Pack, Dole would belong to

<sup>192</sup> ID [...]; ID [...]; ID [...]; ID [...]; ID [...]; ID [...]; ID [...]; ID [...] (Nespak - reply to RFI).

193 **ID [...]** and **ID [...]; ID [...]; ID [...]**

194 **ID [...]** and **ID [...]**, **ID [...]**, **ID [...]**  
**ID [...]**; **ID [...]**; **ID [...]**; **ID [...]**; **ID [...]**; **ID [...]**; **ID [...]**; **ID [...]** (Nespak - reply to RFI); **ID [...]**  
(Nespak inspection documents); **ID [...]**

195 ID [...]; ID [...]

196 **ID [...]** (Coopbox inspection documents): Coopbox list sent to Magic Pack; **ID [...]** (Vitembal inspection documents): tables with prices prepared by Nespak and sent to Vitembal.



customers (all of Coopbox MAP clients), to whom Coopbox was forced to lower the prices to match aggressive offers of Linpac. He also mentioned two clients lost by Linpac to Sirap-Gema and Coopbox. [Company representative] concluded that even with the loss of those two clients, Linpac still owed Coopbox some volumes. As to Vitembal, [company representative] reported some "attacks" made on Coopbox clients in Veneto and informed [company representative] that it still had not implemented the increase to Coop Italia (the biggest client of Coopbox, shared with Vitembal).

*Coordinated price increase in the second semester of 2005*

- (216) In June 2005 the cartel participants started planning a new price increase to be implemented – in a more coordinated manner this time – in the second semester of 2005.
- (217) A multilateral meeting took place at the restaurant "Locanda del Re" in Modena on **20 June 2005** between [company representative] and probably [company representative] (both of Linpac), [company representative], [company representative] and [company representative] (all of Sirap-Gema), [company representative], [company representative] and [company representative] (all of Coopbox), [company representative] and [company representative] (both of Vitembal) and [company representative] and [company representative] (both of Nespak). The meeting had at the last moment been moved to Modena from Parma, where it was originally planned. [...] the reason for this change was to move closer to Nespak, which has its seat in Massa Lombarda, near Ravenna.
- (218) During the meeting the competitors verified the effective implementation of the price increase agreed in autumn 2004 in preparation of the new increase. [...].<sup>202</sup> Nespak could not confirm having taken part in the meeting and questions the strength of the evidence regarding the location and content of the meeting.<sup>203</sup> However, both [company name] and [company name] indicate that Nespak took part in the meeting. As regards the location, the Commission considers that the evidence is sufficient to conclude that the meeting was originally scheduled to take place in Parma but was moved to Modena. In fact, motorway toll records provided by [company name] as well as expenditure records submitted by [company name] all show that their representatives went to Modena. Moreover, [company name] provided a calendar entry in which the handwritten indication "*Parma S. Marco*" is crossed out and which contains the writing "*MODENA Rist del RE*". As for the content of the meeting, [company name] has provided information indicating that the price increase was discussed, [company name] supposes that price coordination was the topic of the meeting, [company name] confirms that this was an anti-competitive meeting and [company name] submits that it concerned the Italian market for foam trays. The Commission considers that the above elements are sufficient to conclude that an anti-competitive meeting took place on 20 June 2005 between the indicated participants, including Nespak.
- (219) Another multilateral meeting took place on **13 July 2005** at the premises of the Italian Institute of Packaging in Milan, at which the following competitors were

---

<sup>202</sup> ID [...], ID [...]; ID [...]; ID [...]; ID [...]; ID [...]; ID [...]; ID [...]; ID [...] (Nespak - reply to RFI); ID [...]; ID [...]

<sup>203</sup> ID [...] (Nespak - reply to RFI) and ID [...] (Nespak - reply to the SO).

present: [company representative] and [company representative] (both of Linpac), [company representative], [company representative] and [company representative] (all of Sirap-Gema), [company representative], [company representative], [company representative] and [company representative] (all of Coopbox), [company representative] and [company representative] (both of Vitembal), [company representative] (Nespak) and [company representative] and [company representative] (both of Magic Pack).

- (220) During the meeting the competitors again exchanged information on the implementation of the price increase and discussed how to prepare the new increase, also considering the possibility to apply minimum prices based on the average prices. The meeting was reported to the Commission by [company name] and [company name], and confirmed by [company name], which also provided relevant travel records.<sup>204</sup>
- (221) Evidence of this meeting can be found in an internal Coopbox email of **11 July 2005** entitled "Competition", in which [company representative] (Coopbox) asked his colleagues to provide him with all the relevant information concerning clients in advance of the upcoming meeting with the competitors. He warned them that the competitors would surely accuse each other of various disloyal behaviours, as always, and asked them to signal to him cases that concerned Coopbox clients. In his email he wrote as follows: *"In preparation for the meeting on Wednesday, in which I foresee that we will as always accuse each other of various disloyal behaviours, I would kindly ask you to make a list with those cases that concern us, directly or indirectly."*<sup>205</sup>
- (222) [...] during this meeting the competitors agreed to prepare a common table with detailed data concerning their prices, in order to establish minimum prices which were to be calculated on the basis of the average prices of each of the top selling products. Those minimum prices were to be used as a basis for the introduction of the concerted price increase. Such tables were to assure more transparency in the implementation of the new coordinated price increase, as agreed during the meeting.<sup>206</sup>
- (223) In particular, [...] on 31 May 2005, Nespak created a CD-ROM with tables containing the relevant average prices of all participants to the price increase agreements. Those tables were sent to each of the competitors by courier and amended by everyone with their own sensitive commercial data. [...] in the weeks after the meeting held on 13 July 2005, the detailed price information provided by each competitor in the meetings was summarised in the common excel spreadsheet prepared by Nespak and later sent to all the competitors on CD-ROM format. Those tables served as a basis for [company name] to prepare, on 5 October 2005, new tables fixing minimum prices which were subsequently distributed to all the competitors involved with the indication of the minimum prices which were to be applied in Italy for the period 2005/2006 (with the heading: "recommended prices

---

<sup>204</sup> ID [...]; ID [...]; ID [...]; ID [...]; ID [...]; ID [...]; ID [...]; ID [...] (Nespak - reply to RFI).

<sup>205</sup> ID [...] (Coopbox inspection documents): (Original in Italian: *"In preparazione per l'incontro di mercoledì, in cui prevedo che come al solito ci si accuserà vicendevolmente di episodi sleali vari, fatemi per cortesia avere una lista dei casi che ci riguardano, direttamente od indirettamente"*).

<sup>206</sup> ID [...]; ID [...]

per each undertaking"). Those tables constituted the basis for the 2006 price increase.<sup>207</sup>

- (224) During the inspections, the Commission found several versions of these tables [...]. The tables bear the name of Nespak and contain detailed sensitive price data, fixed separately for each group of customers, namely distributors, industry clients and GDO, and by type of product, namely standard foam trays and absorbent foam trays. On this basis 6 tables with different minimum prices were prepared and distributed.<sup>208</sup>
- (225) In particular, the tables contain the 2005 average prices of each cartel participant for each top-selling foam tray, divided into two general categories: (i) standard foam trays, which are indicated in the second column from the left titled "Modello" ("model") and (ii) absorbent foam trays, indicated in the fifth column from the left under the title "Modelli Drenanti" ("absorbent models").
- (226) The prices for both standard and absorbent trays were further divided according to each of the three main distribution channels: supermarkets, wholesalers and meat/poultry producers. The Italian definitions of these three channels appear in the titles of the excel columns and are (i) GD and DO which respectively stands for "grande distribuzione" and "distribuzione organizzata" (that is to say, the supermarkets), (ii) "grossisti" (that is to say, the wholesalers), and (iii) "industria" (that is to say, the food industry which includes the meat/poultry producers).
- (227) The names of the cartel participants to which the prices refer appear in specific coded letters, under the first column from the left for the standard trays and under the sixth column from the left for the absorbent trays. The company names behind such code letters are as follows: C stands for Coopbox; Pol stands for Poliemme, a second brand for foam trays used by Coopbox; S stands for Sirap-Gema; V stands for Vitembal; P stands for Prima, which is the group to which Magic Pack belongs; L stands for Linpac; and N stands for Nespak.
- (228) The above circumstances were reported to the Commission by [company name] independently, with very detailed information. Although [company name] claims that the tables were never completed, the documents in the Commission's file mentioned in Recital (224) are complete tables for top selling basket of foam products with minimum prices recommended for all the participants in the concerted price increase agreement, namely Linpac, Sirap-Gema, Coopbox, Nespak, Vitembal and Magic Pack.<sup>209</sup>
- (229) The cartel participants met again on **7 October 2005** at the premises of the Italian Packaging Association in Milan. The following undertakings took part in that meeting: [Company representative] and [company representative] (both of Linpac), [company representative], [company representative] and [company representative] (all of Sirap-Gema), [company representative] and [company representative] (both of Coopbox), [company representative] and [company representative] (both of Vitembal), [company representative] and [company representative] (both of Nespak) and [company representative] and [company representative] (both of Magic Pack).

---

<sup>207</sup> ID [...]; ID [...]; ID [...]; ID [...] (Coopbox inspection documents); ID [...]

<sup>208</sup> ID [...]; ID [...] (Coopbox inspection documents); ID ; ID [...] (Vitembal inspection documents); ID [...] (Nespak inspection documents).

<sup>209</sup> ID [...]; ID [...]; ID [...]; ID [...]

- (230) [Company name], [company name] and [company name] have indicated to the Commission that the meeting, although organised as an official meeting at the premises of the Association, also had an anticompetitive aim. [...] participants confirmed their presence at the meeting and [...] provided the relevant travel records.<sup>210</sup>
- (231) The meeting was officially organised to discuss the technical issue of traceability. However a fringe meeting was held on the same occasion between the representatives of Linpac, Sirap-Gema, Coopbox, Magic Pack, Vitembal and Nespak. The main purpose of this meeting was to continue with the price analysis and to finalise the mechanism for the future coordinated price increases. In that meeting, Linpac stated that since there would be only a slight increase in prices for materials, this time it intended to only slightly raise its prices (by some 2%) to small and medium clients. Linpac also declared that it planned to regain volumes from Vitembal in particular with regard to the client Coop Italia.
- (232) The content of the meeting is confirmed in handwritten notes taken during the meeting by [company representative] ([company name]) and by the statements of [company name] and [company name].<sup>211</sup> In its reply to the SO, Magic Pack claims that it did not take part in the anti-competitive part of the meeting. The presence of [company representative] (Magic Pack) is however recalled by both [company name] and [company name].<sup>212</sup> On the basis of the evidence, the Commission concludes that the second part of the meeting was of an anti-competitive nature.
- (233) A further meeting at the premises of the Italian Packaging Association was held on **9 November 2005** in Milan, as reported by [company name]. [Company name] could not rule out the participation of [company representative] and possibly [company representative] and [company representative] (all of [company name]) in the meeting, as evidenced by [company representative's] travel records which show his presence in Milan. [...] [company representative] (Nespak) and [company representative] ([company name]) were also present. The meeting was used as an occasion to discuss foam tray prices.<sup>213</sup>
- (234) The last multilateral meeting in 2005 between the cartel participants took place on **5 December 2005** at the Sheraton Hotel in Bologna between [company representative] (Linpac), [company representative], [company representative] and [company representative] (all of Sirap-Gema), [company representative] and [company representative] (both of Coopbox), [company representative] and [company representative] (both of Nespak), and [company representative], [company representative] and [company representative] (all of Vitembal). Most of the participants have confirmed their presence at the meeting and some of them provided the relevant travel records. Nespak was unable to exclude having taken part in the meeting.<sup>214</sup>

---

<sup>210</sup> ID [...]; ID [...]; ID [...]; ID [...]; ID [...]; ID [...]; ID [...]; ID [...]; ID [...] (Nespak - reply to RFI); ID [...] (Nespak inspection documents).

<sup>211</sup> ID [...]; ID ; ID [...]

<sup>212</sup> ID [...]; ID [...]; ID [...]

<sup>213</sup> ID [...]; ID [...]; ID [...]; ID [...]; ID [...]; ID [...]

<sup>214</sup> ID [...]; ID [...]; ID [...]; ID [...] (Nespak - reply to RFI); ID [...]; ID [...]

(235) During the meeting the cartel participants discussed the implementation of the coordinated price increase agreed earlier in 2005, which was implemented after the summer holidays. The cartel participants also discussed the Carrefour tender concerning supplies of foam trays in Italy which was to take place on 20 December 2005.

(236) [...].<sup>215</sup>

#### *Client allocation – industry clients*

(237) In 2005, a number of disputes arose between cartel participants concerning concrete clients also in the context of the client allocation *status quo* agreement. On such occasions cartel participants would contact each other in order to find a satisfactory solution and to avoid attacks on other clients in retaliation (concerning also clients in other countries).

#### *Coopbox versus Linpac*

(238) The above context finds confirmation in several internal Coopbox documents which corroborate such discussions and conflicts.

(239) On **23 and 25 March 2005**, an email exchange took place concerning Linpac's attacks on Coopbox's clients and Coopbox's envisaged retaliations on some Linpac clients. In particular, in the email of 23 March 2005, [company representative] (Coopbox) wrote to his colleagues, reporting "another instance" of Linpac's aggressive policy and pleading for reaction: *"At this point I would push for getting back the clients which Linpac took us away: see Pastificio Novella – Caseificio Longo – Simcal – Centro Carni Genova – Massironi carni – Società Avicola Ligure"*.<sup>216</sup>

(240) With regard to the client AIA, the Commission finds confirmation of the dispute between Coopbox and Linpac in an internal email from Coopbox of **4 April 2005** concerning the continuing aggressive pricing policy of Linpac, in which [company representative] (Coopbox) wrote to his colleagues: *"The attacks of Linpac continue; I have already spoken to [company representative], but they keep pretending they don't get it; we have to talk to the [...] guy [meaning [company representative] (Linpac), the superior of [company representative] (Linpac)] and if you agree, we start attacking AIA or some of their clients abroad"*.<sup>217</sup>

(241) This tense situation is also reflected in an internal Coopbox report of **27 June 2005** concerning the situation of the market and relations with cartel participants, which states that *"today there are no conditions to find an agreement with Linpac (...) it is not trustworthy"*.<sup>218</sup>

#### *Vitembal versus Coopbox*

---

<sup>215</sup> ID [...]; [...]; ID ; ID [...]

<sup>216</sup> ID [...] (Coopbox inspection documents): (Original in Italian: "A questo punto forzerei la ripresa di clienti che Linpac ci ha portato via: vedi Pastificio Novella – Caseificio Longo – Simcal – Centro Carni Genova – Massironi carni – Società Avicola Ligure").

<sup>217</sup> ID [...] (Coopbox inspection documents); ID [...] (Coopbox inspection documents): (Original in Italian : "Continuano gli attacchi di Linpac, io ho già discusso con [company representative], ma continuano a fare i finti tonti dobbiamo parlare con lo [...] e se sei d'accordo iniziamo un attacco in ALA, o da loro clienti nei paesi esteri").

<sup>218</sup> ID [...] (Coopbox inspection documents).

- (242) In a similar context of disputes over clients allocated to Coopbox, a meeting took place on **23 February 2005** at the Malpensa Airport in Milan between [company representative], [company representative] and [company representative] (all of Vitembal) and [company representative], [company representative] and possibly [company representative] (all of Coopbox).<sup>219</sup> During that meeting cartel participants discussed in particular the common client, Coop, in Italy and mutually accused each other of "attacks" on a number of clients. As a result of the meeting, the two cartel participants agreed on the way to proceed to resolve the dispute.
- (243) The above facts are confirmed in an internal memo of [company representative] (Vitembal), dated 17 February 2005, presenting the issues later discussed with Coopbox during the meeting (see also Recital (199)). [...].<sup>220</sup> It is apparent from that memo that, due to the client allocation agreement in place, Vitembal did not "attack" the clients of Coopbox with offers concerning foam trays, even when such offers were requested. In particular the clients mentioned were the following: Fileni, Leclerc, hypermarkets of Coop Toscana Lazio, Vigo Italo Coop Nord Ovest.<sup>221</sup>

#### *Other examples of industry clients' allocation*

##### *Garbini*

- (244) Garbini Consulting S.r.l. ("Garbini") was an independent trader whose commercial conduct was causing disagreements between Vitembal, Linpac, Magic Pack, Coopbox and Sirap-Gema. In particular, through Garbini, Sirap-Gema started supplying a company from Cremona called Visco, gaining more market share than allocated and "subtracting" the client from Vitembal, Linpac and Magic Pack. This provoked a wave of protests from the affected suppliers.
- (245) In order to prevent cartel participants from adopting aggressive strategies to regain lost volumes, [company representative] (Sirap-Gema) organised a meeting in **September 2005** to find an agreement on the issue. At that meeting Sirap-Gema committed to stop supplying Garbini if the others agreed to do the same. After having consulted their hierarchy the cartel participants agreed to this solution.
- (246) This conflict and the agreement reached following the meeting are described in an internal Sirap-Gema document that consists of handwritten notes of [company representative] (Sirap-Gema) dated **6 and 21 September 2005**. The notes contain the following fragment: "[Company representative] has assembled everyone. He spoke of Garbini. He committed not to supply Garbini in the next transactions, but others would have to do the same".<sup>222</sup>
- (247) The Commission believes that the subsequent behaviour of the cartel participants towards Garbini confirms the above statements. Indeed, when Garbini later proposed to Sirap-Gema to supply a completely new client, Quaia Veneta, Sirap-Gema refused, in order to "honour the agreement made during the meeting with the

---

<sup>219</sup> ID [...]

<sup>220</sup> ID [...]

<sup>221</sup> ID [...] (Vitembal inspection documents).

<sup>222</sup> ID [...] (Sirap-Gema inspection documents): (Original in Italian: "[Company representative] ha convocato tutti. Ha parlato della Garbini. Si è impegnato a non fornire Garbini nella prossime operazioni, ma anche altri avrebbero fatto così"); ID [...]



*competitors"* and not to imbalance the market. This can be deduced from the notes of [company representative] referred to in Recital (246) [...].<sup>223</sup>

#### *Vittorio Malocco*

- (248) Vittorio Malocco was a customer traditionally supplied by Sirap-Gema. In September 2005 it requested an offer from Linpac. [Company representative] (Linpac) contacted [company representative] (Sirap-Gema) to forewarn him and coordinate the offer. This episode is reported in contemporaneous handwritten notes dated **5 October 2005** and made by [company representative] ([company name]). The notes contain the following fragment: "*Malocco has asked [company name] the price of their 14P (similar to [...] 25 but higher) and [company name] quoted 70,38 €/1000 (information given by [company representative] to [company representative])*".<sup>224</sup>
- (249) As a result, Sirap-Gema made a slightly better offer to the client than the one made by Linpac and kept the client. The aim of this coordination between Linpac and Sirap-Gema was to honour the *status quo* agreement on client allocation. The background, the context of the notes and the outcome of the contact have been explained by [company name].<sup>225</sup>

#### *Client allocation – GDO clients*

##### *Carrefour tender on 20 December 2005*

- (250) In relation to the December 2005 Carrefour tender procedure for supplies for 2006, [company representative] (Linpac), [company representative], [company representative] and [company representative] (all of Sirap-Gema) and [company representative], [company representative] and [company representative] (all of Coopbox) met on **4 November 2005** at the Hotel San Marco in Parma.
- (251) The attendance at the meeting has been confirmed by [company name]. [Company name] and [company name] provided the relevant travel records and [company name] also submitted an extract from the agenda of [company representative].<sup>226</sup> Although [company name] claims that Vitembal was the organiser of the meeting, the latter denies having taken part in it.<sup>227</sup> Nespak has claimed that [company representative] did not remember this meeting and that [company representative] was on vacation in that period.<sup>228</sup> The Commission therefore considers that the evidence is not sufficient to conclude that Vitembal and Nespak attended this specific meeting. Nonetheless, the Commission considers that there is sufficient evidence to conclude that these two cartel participants participated in the anti-competitive discussions concerning the tender, see Recitals (252)-(255).

---

<sup>223</sup> ID [...] (Sirap-Gema inspection documents) and ID [...]

<sup>224</sup> ID [...]: (Original in Italian: "*Malocco ha chiesto alla LINPAC il prezzo del loro 14P (simile al [...] 25 ma più alto) e Linpac ha fatto prezzo di 70,38 €/1000 (informazione data da [company representative] a [company representative])*").

<sup>225</sup> ID [...]

<sup>226</sup> ID [...], ID [...]; ID [...]; ID [...]; ID [...]; ID [...]

<sup>227</sup> ID [...]; ID [...]: with regard to [company representative], [...] the travel expenses of November do not indicate the date 4/11 and the marathon in New York took place on 6/11. As far as [company representative] is concerned, [...] he was at a meeting with a client but does not indicate where such meeting took place.

<sup>228</sup> ID [...] (Nespak- reply to RFI).

- (252) During a meeting held in the period immediately preceding the tender, Coopbox offered Linpac, Sirap-Gema, Vitembal and Nespak mobile phones and prepaid sim-cards in order to facilitate the coordination between the competitors during the tender and avoid any problems of detection. Sirap-Gema did not accept that offer. Coopbox and Vitembal asked Sirap-Gema to abstain from participating in the Carrefour tender which was to take place on 20 December 2005. The indication given by Coopbox to the other companies was to submit bids until a certain price level had been reached and then stop bidding in order to leave the lot to Coopbox. The mobile phone should have served to communicate secretly during the online bidding process.
- (253) The above arrangement has been reported to the Commission by [company name] and confirmed by [company name] and [company name].<sup>229</sup> The Commission considers that a table it has found at the premises of Vitembal corroborates the conclusion that the cartel participants agreed on concrete figures. [...], the Commission considers that the table constitutes evidence of the described contacts between the competitors.<sup>230</sup>
- (254) As mentioned in Recital (234), on **5 December 2005** Vitembal, Nespak, Sirap-Gema, Coopbox and Linpac met at the Hotel Sheraton in Bologna to discuss the Carrefour tender and agree on details. The following persons were present: [Company representative], [company representative] and [company representative] (Vitembal), [company representative] and [company representative] (Nespak), [company representative] (Sirap-Gema), [company representative] and [company representative] (Coopbox) and [company representative] and [company representative] (Linpac). On that occasion, the parties also discussed the implementation of the price increases agreed earlier in 2005 and implemented after the summer holidays. This was reported to the Commission by [company name] and confirmed by [company name] and [company name]. [Company name] provided a restaurant bill paid by [company representative].<sup>231</sup>
- (255) During the tender the cartel participants were in phone contact with each other in order to make sure that Coopbox and Vitembal would win the tender in accordance with the client allocation *status quo* agreement. For Linpac, [company representative] was following the tender on the computer and bidding online whilst [company representative] was sitting next to him speaking on the phone with the other cartel participants in order to coordinate the prices to be offered in the course of the tender.
- (256) As previously agreed, the two lots were eventually awarded to Coopbox and Vitembal. The adjudication price for the Supermarkets lot was only slightly higher than that of the preceding year (2%) while the price for the Hypermarkets lot was about 10% lower than the 2004 price. The reason for such a decrease was the participation of Magic Pack, which did not adhere to the agreement with the cartel participants concerning the tender and was particularly aggressive on the Hypermarkets lot.

---

<sup>229</sup> ID [...], ID [...]; ID [...], ID [...], ID [...]; ID [...]

<sup>230</sup> ID [...] (Vitembal inspection document) and [...]

<sup>231</sup> ID [...]; ID [...]; ID [...]; ID [...]; ID [...]

- (257) The above circumstances have also been confirmed in the statements of [company name] and [company name].<sup>232</sup>

#### 4.1.3.5. Year 2006

##### *Coordinated price increase to be applied as of October 2006*

- (258) In the first semester of 2006 several multilateral and bilateral meetings took place between Linpac, Sirap-Gema, Coopbox, Nespak, Vitembal and Magic Pack in order to discuss a coordinated price increase that was eventually agreed to be implemented as of October 2006. This is evidenced in mutually corroborating statements [...]. [...] the initiative for this increase came from Nespak.<sup>233</sup>
- (259) On **7 March 2006** the cartel participants met in the context of the Italian Packaging Association in Milan. The evidence on the file indicates that the following cartel participants were present at the meeting: Linpac ([company representative]), Vitembal ([company representative]), Coopbox ([company representative] and [company representative]), Sirap-Gema ([company representative], [company representative] and [company representative]), Nespak (company representative) and Magic Pack (company representative).
- (260) At the meeting the cartel participants discussed the possibility of introducing the price increase in a coordinated manner. The anticompetitive content of the meeting has been confirmed by [company name] and [company name]. While [company name] claimed that its employees did not remember the exact content of the discussion, it considered that it is likely that it concerned the Italian market for foam trays.<sup>234</sup>
- (261) [...] on that occasion [company representative] officially declared that Magic Pack would no longer participate in illegal contacts with the cartel participants and that it did not intend to discuss price strategies nor to participate in allocating clients between the cartel participants.<sup>235</sup> In its reply to the SO, [company name] confirmed [company representative's] announcement that Magic Pack would no longer participate in these types of meetings between the cartel participants.<sup>236</sup> Therefore, as explained in Recital (975), the Commission considers that Magic Pack publicly distanced itself from the cartel at that meeting.
- (262) Another multilateral meeting took place on **17 March 2006** at the San Marco Hotel in Parma between Linpac ([company representative]), Sirap-Gema ([company representative], [company representative] and [company representative]), Coopbox ([company representative] and [company representative]), Vitembal ([company representative]) and Nespak ([company representative]).
- (263) While most of the participants have confirmed their presence at the meeting and provided the relevant travel documents, Nespak has claimed that it could not exclude having attended the meeting but it has not provided the Commission with any proof hereof such as relevant travel records. However, the Commission had already found

---

<sup>232</sup> ID [...]; ID [...]

<sup>233</sup> ID [...]; ID [...]; ID [...]

<sup>234</sup> ID [...]; ID [...]; ID [...]; ID [...]; ID [...]; ID [...]

<sup>235</sup> ID [...], ID [...]

<sup>236</sup> ID [...]

such travel records during the inspections.<sup>237</sup> Finally, both [company names] have confirmed that Nespak took part in the meeting.<sup>238</sup> Therefore the Commission considers that Nespak's attendance at the meeting is sufficiently proven.

- (264) During the meeting the cartel participants discussed the implementation of the coordinated price increase, with differentiated price increases depending on the category of clients, namely supermarkets, industry clients and distributors. However, according to [company name], on that occasion no agreement was found on the issues discussed.<sup>239</sup> The Commission considers that those discussions were anti-competitive irrespective of the fact that they did not result in a final agreement.
- (265) The meeting was followed by several other multilateral meetings, during which the cartel participants further discussed the details of the planned increase. [...] a multilateral meeting took place on **26 May 2006** in Modena and/or on **29 May 2006** in Parma. However, Coopbox ruled out its participation in the meeting on 26 May, based on the motorway toll records of [company representative] and [company representative].<sup>240</sup> [Company name] could not find evidence of any meeting but confirmed that at that point in time there were multilateral contacts between the cartel participants.<sup>241</sup>
- (266) The meeting may in fact have taken place on 29 May 2006 in Parma and attended by at least [company representative] and [company representative] (both of Sirap-Gema) and [company representative] (Coopbox). [...] [company representative] was in Parma that day, based on his motorway toll record.<sup>242</sup> [Company name] has [...] confirmed its attendance and provided the motorway toll records and calendar entry of [company representative].<sup>243</sup>
- (267) In May 2006 the cartel participants also discussed client allocation and levels of sales. Evidence of this can be found in a contemporaneous Vitembal document dated **26 May 2006**, which contains a comparison between two separate lists of clients: GDO and industry, with indication of their supply levels and information on who supplies which clients. The data in the tables concerns Vitembal, Sirap-Gema, Linpac, Coopbox and Nespak.<sup>244</sup>
- (268) Another meeting took place on **23 June 2006** at the San Marco Hotel in Parma between [company representative] and [company representative] (both of Linpac), [company representative] and [company representative] (both of Sirap-Gema), [company representative] and [company representative] (both of Coopbox), [company representative] and [company representative] (both of Vitembal) and [company representative] and [company representative] (both of Nespak).
- (269) The Commission finds that the meeting is proven by the rental receipt of the conference room in the San Marco Hotel and some travel records. [Company name]

---

<sup>237</sup> ID [...]; ID [...]; ID [...]; ID [...]; ID [...]; ID [...] (Nespak inspection documents); ID [...] (Nespak - reply to RFI).

<sup>238</sup> ID [...]; ID [...]; ID [...]

<sup>239</sup> ID [...]; ID [...]; ID [...]; ID [...]

<sup>240</sup> ID [...] (Coopbox - reply to RFI).

<sup>241</sup> ID [...]

<sup>242</sup> ID [...]; ID [...]; ID [...]

<sup>243</sup> ID [...], ID [...]; ID [...] (Coopbox inspection documents).

<sup>244</sup> ID [...] (Vitembal inspection documents).



distributors at 20% while postponing the decision on the percentage concerning industry clients. According to [company name], the cartel participants could not reach an agreement during the meeting.<sup>251</sup> However, the Commission finds that the notes from [company representative] indicate that, either in that or in another meeting, the cartel participants eventually agreed on the basic increase amount for all three types of customers at a rate between 10 and 15%.

- (275) [Company name] has indicated that the cartel participants eventually agreed on a minimum increase for standard and absorbent foam trays of 15% and of at least 8% for barrier trays.<sup>252</sup>
- (276) In order to introduce the increase, the cartel participants agreed on a common text of the price increase letter concerning certain models of trays. [Company name] submitted examples of price increase letters sent to their clients in October announcing the increase effective as of 16 and 23 October 2006 respectively.<sup>253</sup>
- (277) [...] at the meeting on 6 September 2006 the cartel participants also fixed a new minimum price, which was the same for all types of clients and which led to an increase in real terms of 5% to 8%, to be applied in October-November 2006.<sup>254</sup>
- (278) Although the cartel participants formally agreed to raise their prices in a concerted manner and agreed on modalities of this increase, many of them eventually did not implement the price increase in the way they had promised.
- (279) [...].<sup>255</sup>

#### *Monitoring of the price increase*

- (280) The Commission has obtained evidence that the cartel participants monitored the progress of the price increase agreed and were aware of the fact that the other competitors were not behaving according to what was agreed. This is confirmed in several contemporaneous Coopbox documents, including commercial reports and internal emails. [...].<sup>256</sup>
- (281) Moreover, a Coopbox internal report dated September 2006 contains under the title "Competition" the following fragment: *"Unlike other times, this time Magic Pack seems the most determined to make the most of this increase. The other competitors, and in particular Linpac, do not seem to be under any particular pressure to introduce the increase. Let's see what happens in these days."*<sup>257</sup> The same report, under the heading "Competitors", includes the sentence: *"we are awaiting the increase discussion"*.<sup>258</sup>

---

<sup>251</sup> ID [...]

<sup>252</sup> ID [...]

<sup>253</sup> ID [...]; ID [...]; ID [...]; ID [...]

<sup>254</sup> ID [...]; ID [...]

<sup>255</sup> ID [...]

<sup>256</sup> ID [...]; ID [...] (Coopbox inspection documents).

<sup>257</sup> ID [...] (Coopbox inspection document): (Original in Italian: *"La concorrente MAGIC PACK, a differenza delle altre volte, sembra la più intenzionata a realizzare il più possibile da questo aumento. Gli altri concorrenti e in particolare Linpac non sono particolarmente ansiosi di fare l'aumento. Vedremo in questi giorni cosa accade."*).

<sup>258</sup> ID [...] (Coopbox inspection documents). Original in Italian: *"Concorrenti: Stiamo attendendo il discorso aumenti."*

- (282) On **2 November 2006** [company representative] (Coopbox) sent an email to [company representative] (Coopbox) where he wrote: *"Nobody is moving as regards the increases. I repeat that only Magic Pack has apparently made some effort so far."*<sup>259</sup>
- (283) On **12 December 2006** [company representative] (Coopbox) sent another email to his superior, expressing his hope that the cartel participants would implement the increase. This email contained the report for December 2006, which under the heading "Competition" stated as follows: *"The competition is under control. Apart from some uncomfortable situations and attacks by the "monster" distributors like Trade & Marketing, the situation is calm. It looks like the competitors have behaved on the increase just like the last time"*.<sup>260</sup>
- (284) [...] even though the cartel participants had made an agreement to introduce a price increase on 6 September, they were delaying the announcement of the increase to their own clients obviously hoping to increase their market share by making offers to the clients of others.<sup>261</sup>
- (285) On **20 October 2006** [company representative] (Coopbox) sent an internal e-mail to his colleagues to update them on the progress made by the cartel participants. In this context he wrote the following: *"to give you some indication of what the competitors are doing I inform you that Linpac implements an increase between 7 and 10%, Sirap around 10%, and we ourselves are also between 7 and 10% starting from November and December"*.<sup>262</sup>
- (286) In the same context of monitoring the implementation of the price increase, on **23 October 2006** an e-mail was sent by [company representative], an individual working for an agent used by Nespak, to [company representative] (Coopbox). Through that email [company representative] sent an excel sheet containing a list of Nespak's products with indication of prices, price increases and implementation date. [Company representative], inter alia, explained that the traditional trays still needed to be increased from 7% to 15%. Internal emails in Coopbox further indicate that there were exchanges on prices between Coopbox and Nespak in November 2006. Although the exact circumstances of the exchanges are unclear, there is, amongst others, an internal email of 15 November 2006 in which [company representative] (Coopbox) informed [company representative] (Coopbox) that Nespak had established an increase of 15% from 4 December 2006.<sup>263</sup>

#### *Client allocation- GDO clients*

##### *Pam Panorama*

---

<sup>259</sup> ID [...] (Coopbox inspection documents): (Original in Italian: *"Sono tutti fermi in merito all'aumento prezzi. Ripeto che solo la Magic Pack avrebbe fatto qualche tentativo"*).

<sup>260</sup> ID [...] (Coopbox inspection documents): (Original in Italian: *"La concorrenza è sotto controllo. Tranne le situazioni di disagio e attacchi da parte dei grossisti "mostri" come Trade & Marketing, la situazione tranquilla. La concorrenza sugli aumenti pare si sia comportata come la volta scorsa"*).

<sup>261</sup> ID [...]

<sup>262</sup> ID [...]; ID [...] (Coopbox inspection documents): (Original in Italian: *"Per darvi indicazioni di come si sta muovendo la concorrenza vi comunico che Linpac applica da un 7 a un 10%, Sirap circa un 10%, per quanto ci riguarda stiamo anche noi tra un 7 e un 10%, con decorrenza Novembre Dicembre"*).

<sup>263</sup> ID [...] (Coopbox inspection documents); ID [...] (Coopbox inspection documents).

- (287) With regard to the Pam Panorama tender for the years 2006 and 2007, [company representative] (Coopbox) received from his superior, [company representative], similar instructions to those received the previous year, that is to present offers higher than those of Nespak and Sirap-Gema in order to allow the latter companies to win the tender. To make this possible, [company representative] (Nespak) and [company representative] (Sirap-Gema) contacted [company representative] (Coopbox) in the days preceding the Pam Panorama tender. Making reference to the agreements previously reached, they asked Coopbox to confirm that it would only make a "supportive" offer and informed it of the offers they intended to make, so that Coopbox would be in the position to make its losing offer. That information was later passed on to [company representative]. [...].<sup>264</sup>
- (288) In its reply to the SO, Nespak has contended that the Commission cannot rely merely on the statements of [company name] to conclude that the Pam Panorama tender was discussed between cartel participants.<sup>265</sup> [...].<sup>266</sup> Further indications that the Pam Panorama tender was discussed between cartel participants can also be found in a submission by [company name] made accessible to the parties to this procedure after the adoption of the SO. [Company representative] ([company name]) has submitted that he recalled having been contacted by Nespak ([company representative] or [company representative]) to know about [company name's] intentions in the Pam Panorama tender of 22 December 2006. However, [company representative] ([company name]) did not provide Nespak with that information.<sup>267</sup>

*Carrefour tender on 19 December 2006*

- (289) The Carrefour tender covered Italy, France and Belgium. For that tender Sirap-Gema, Coopbox, Vitembal, Linpac and ONO Packaging agreed on the offers that each of them was to present, in order to let the current suppliers keep their pre-existing business with Carrefour. The agreement covered not only the Italian lots but also the French and Belgian lots.
- (290) The agreement concerning the Carrefour tender is evidenced by contemporaneous handwritten notes taken by [company representative] (Vitembal) following phone calls with the other cartel participants on the tender.<sup>268</sup> The issue discussed was the maintenance of the current client allocation in all the countries concerned, namely (i) the Hypermarkets lot in northern France and Belgium to Linpac, (ii) the Hypermarkets in southern France to Vitembal, (iii) the Supermarkets Champion in France to ONO Packaging, (iv) the Supermarkets GS in Italy to Coopbox and (v) the Hypermarkets in Italy to Vitembal. In this context [company representative] noted down possible scenarios to maintain the overall equilibrium and he took detailed note of the offers to be made by everyone. In particular, in order to make sure that the outcome of the tender would be as agreed, the cartel participants gave a commitment to each other that for the lots that they were supposed to lose, they would only make "supporting" offers. As to the bidding technique, the cartel participants agreed on a rule defining the maximum amount by which the starting offer could be decreased during the bidding.

---

<sup>264</sup> ID [...]

<sup>265</sup> ID [...] (Nespak reply to the SO).

<sup>266</sup> ID [...]

<sup>267</sup> ID [...]

<sup>268</sup> ID [...] (Vitembal – inspection documents).



- (291) The above circumstances have been confirmed to the Commission by [company representative]. [Company representative] has also explained in detail the meaning of the notes of [company representative].<sup>269</sup>
- (292) In the context of the mutual commitments with regard to the Carrefour tender, a bilateral meeting between [company representative] and [company representative] (both of Sirap-Gema) and [company representative] (Coopbox) took place in Fidenza on **12 December 2006**. During that meeting the cartel participants discussed the allocation of various clients. In the same period, [company representative] gave [company representative] a list of GDO clients of Sirap-Gema with figures on the volumes supplied and the prices applied to each of those clients. As for the Carrefour tender: Sirap-Gema promised to make unattractive offers in that tender in order for Vitembal and Linpac to keep their historical client, provided that the other competitors respected Sirap-Gema's clients. They also agreed that Coopbox would win the Supermarkets lot (GS).
- (293) The above facts [...] have been [...] confirmed in the handwritten notes of [company representative] (Vitembal) [...].<sup>270</sup>
- (294) Furthermore, the Commission has obtained evidence that, in order to prevent any deviation from the agreement, [company representative] and [company representative] (Vitembal) constantly called [company representative] (Coopbox) in the period shortly preceding the tender. They were convinced that Coopbox was in a plot with Magic Pack concerning the latter's participation in the tender for the Hypermarkets lot. They warned Coopbox that every time Magic Pack would lower the offer for the Hypermarkets lot allocated to Vitembal, Vitembal would make lower offers on the Supermarkets lot assigned to Coopbox, forcing the latter to lower its margins.<sup>271</sup>

#### *The results of the tender*

- (295) With regard to the Hypermarkets lot, Magic Pack presented a particularly low offer. In order to maintain the *status quo* on clients, other cartel participants had to beat this offer to prevent Magic Pack from winning. [...] [company representative] from Linpac and [company representative] from Vitembal spoke on the phone during the tender to coordinate their reaction to Magic Pack's bidding. Magic Pack's low offer led to a price decrease of 8% in comparison to the previous year.
- (296) With regard to the Supermarkets lot (GS), on the basis of the agreement made in Fidenza between Sirap-Gema and Coopbox described in Recital (292), Coopbox won this lot.
- (297) The evidence of the above circumstances can be found in the handwritten notes of [company representative] (Sirap-Gema), concerning the tender. They have been confirmed by [company name] and [company name]. [...] the agreement made with the [...] cartel participants, namely Coopbox, Vitembal, Linpac and Nespak, was the

---

<sup>269</sup> ID [...]. [Company representative] gives this statement to the Commission in his capacity of [function of company representative], at which [company representative] was [function of company representative] at the time of the described tender. It follows from the statement that [company representative] consulted [company representative] on these notes.

<sup>270</sup> ID [...]; ID [...]; ID [...] (Vitembal inspection documents)[...]; ID [...]

<sup>271</sup> ID [...]

reason why Sirap-Gema stopped bidding at some point of the tender in order to leave the bidding to Vitembal and Coopbox, who were supposed to win the tender.<sup>272</sup>

- (298) The above facts are confirmed in quoted contemporaneous documents [...].<sup>273</sup>

*Client allocation - industry clients*

- (299) The Commission considers that the implementation of the *status quo* agreement concerning clients, known also as "non-aggression pact", can be noticed in two contexts: when disputes arose about some clients and second when the cartel participants concerted their offers to prevent customers from changing supplier.

- (300) As mentioned in Recital (292), on **12 December 2006** a bilateral meeting took place between [company representative] (Coopbox) and [company representative] and [company representative] (Sirap-Gema) in Fidenza. During that meeting Coopbox gave Sirap-Gema a list of their industry customers which included figures concerning volumes of sales made in the first 8 months of 2006 and prices applied to these clients. That list had the purpose of indicating to Sirap-Gema the clients to whom they should not make offers. This was aimed at maintaining the existing allocation of clients, especially in the phase of the introduction of the price increase.

- (301) [...].<sup>274</sup>

- (302) [...] these examples show the concrete application of an anticompetitive practice aiming at volume allocation and coordination of prices between the competitors concerning specific clients.<sup>275</sup>

*Client Vernocchi*

- (303) The Commission considers that some [...] notes show that Sirap-Gema coordinated its offers and price policies with cartel participants in order to maintain the clients' *status quo* allocation. The evidence on the file demonstrates the coordination concerning one of Coopbox's clients, Vernocchi, in the period between February 2006 and January 2007.

- (304) A [...] note of **14 February 2006** explained that Sirap-Gema offered higher prices for a certain type of foam tray "*because this way they left Coopbox the possibility to sell standard foam trays while Sirap-Gema would supply it in barrier trays*". The last note, dated **31 January 2007**, reported that Sirap-Gema aligned the prices fully to the prices offered by Coopbox, discouraging the client from changing supplier.

- (305) [...].<sup>276</sup>

*Client Nerviano Carni and Molteni*

- (306) The Commission understands that the same type of offers and price coordination took place between Sirap-Gema and Coopbox in relation to the client Nerviano Carni in the period between March and May 2006 as well as in relation to the client Molteni between October 2006 and September 2007.

---

<sup>272</sup> ID [...] (Sirap-Gema inspection documents); ID [...]; ID [...]

<sup>273</sup> ID [...]; ID [...]; ID [...] (Vitembal inspection documents); ID [...]

<sup>274</sup> ID [...]; ID [...]; ID [...]; ID [...]

<sup>275</sup> ID [...]

<sup>276</sup> ID [...]; ID [...], ID [...]

- (307) This has been reported to the Commission by [company name], who has also provided relevant contemporaneous documents. An internal email from Coopbox, found at the company's premises further confirms those anticompetitive contacts.<sup>277</sup>

#### *Client Dole*

- (308) Dole was a client belonging to Sirap-Gema. Whenever other cartel participants approached Dole, thereby infringing the non-aggression pact, Sirap-Gema would make contact with the cartel participants and induce them to withdraw their offer.
- (309) This was in particular the case with Coopbox in March 2006 and with Linpac in April 2006. As a consequence of Sirap-Gema's intervention, both cartel participants informed the client they were not able to supply the product in question, making Dole return to its "traditional" supplier.
- (310) The Commission finds that an internal note from [company name], dated **14 March 2006**, illustrates well these interventions: *"An agent from [company name] passed by [...] to offer prices [...] that were very low. [...] When we left, [company representative] called the representative from [company name] explaining to him what had just happened [...]"*. On **10 April 2006**, an internal note from [company name] further confirms the above: *"[Company representative] spoke to [company name] to whom they requested the trays they had cancelled with us. [Company name] has to supply only the black ones. For this reason they said that they didn't have any tray in stock. [Company representative] then reactivated the order with us"*.<sup>278</sup>

#### *Client Pessina Carni*

- (311) In April 2006, Sirap-Gema and Coopbox exchanged their respective price offers to their common client Pessina Carni. That exchange allowed both cartel participants to maintain unaltered both prices and volumes supplied to the client. On that occasion they also agreed on the types of products that each of them would supply to the client.
- (312) The above episode is documented in a [...] [company name] note dated on **11 April 2006** which contains the following fragment: *"after the explanation [between] [company representative] and [company representative] and an exchange of price offers, [we are] left with the following price offers: (...)"* and then a list of products and prices quoted to the client by both cartel participants follows. The note concludes by the following: *"we are thus more convenient on the B6 trays and since we had made the offer before [company name] came back (i.e. when Linpac was there), we could sell B6 trays while [company name] would sell B5"*.<sup>279</sup>

#### *Client Cooperativa Terre Emerse*

---

<sup>277</sup> ID [...]; ID [...]; ID [...] (Coopbox inspection documents).

<sup>278</sup> ID [...]: (Original in Italian: *"E' passato un agente di POLIEMME [...] ad offrire prezzi [...] molto bassi. Quando usciti, [company representative] ha chiamato responsabile della Poliemme dicendo quanto accaduto"* and *"[Company representative] ha sentito Linpac alla quale avevano chiesto i vassoi annullati a noi. Linpac deve servire solo i neri. Allora detto che non avevano vassoi. [Company representative] ha poi riattivato da noi ordine"*). ID [...]

<sup>279</sup> ID [...]; ID [...]: (Original in Italian: *"Dopo chiarimento [company representative] e [company representative] e scambio quotazioni rimasti con le seguenti quotazioni: [...]"* and later: *"noi quindi siamo più convenienti sui vassoi B6 e poiché abbiamo fatto offerta prima che tornasse Coopbox (cioè nel momento in cui c'era Linpac), noi potremmo vendere i B6 e Coopbox B5"*).

- (313) Between April 2006 and April 2007 Linpac, Sirap-Gema and Coopbox coordinated their commercial behaviour towards their common client Cooperativa Terre Emerse. Coopbox and Linpac were supplying that client with barrier trays while Sirap-Gema was its supplier for foam standard trays. The coordinated behaviour between those three cartel participants is documented in several [...] notes dated **26 April, 3 May, 9 and 24 October 2006** as well as a note of **16 April 2007**. [...].<sup>280</sup>
- (314) The Commission finds that the note dated **24 October 2006** gives evidence of the agreed client allocation, the concerted price increase and the monitoring of the price increase implementation to common clients. When Linpac and Coopbox introduced the agreed price increase, the client asked Sirap-Gema for an offer for barrier trays. Sirap-Gema consulted Linpac and then refused to supply the client with the excuse of having insufficient production capacity. The note contains the following fragment: "*I have spoken with [company representative] who had spoken to [company representative] [from [company name]]. The reason why the latter asks for a meeting is that [company name] has already implemented the increase to the client and thus [the client] wants us to make [him] a price offer. [Company name] is implementing the increase of 7% [to the client]. We are implementing the increase of 7% as of 1 December. As regards its [the client's] request for the quote for the barrier trays, [...] [there is not] the necessary production capacity. We will come back to the issue in March 2007, this way we will have seen what the competitors have done. If everything goes well, we will make a higher offer. If they don't respect the agreements, we will consider the content of the offer [to make]*".<sup>281</sup>
- (315) [...] the aim of that coordination was to respect the *status quo* agreement on clients with Coopbox and Linpac.

#### *Clients Rama, Zaro and Aliprandi*

- (316) Rama, Zaro and Aliprandi were clients belonging to Coopbox. At the end of 2006 they decided to coordinate their supplies in order to get more favorable conditions from Coopbox. They also asked Sirap-Gema for a price offer. Coopbox and Sirap-Gema coordinated their offers in order to dissuade the clients from changing supplier. They also agreed that if the clients still chose Sirap-Gema, the latter would give up some other clients to Coopbox to compensate it for the volumes hereby lost to Sirap-Gema.
- (317) That episode is documented in several contemporaneous [...] documents. One of them is a note dated **18 December 2006** which states as follows:

*"[Company representative] [[company name]] has spoken to [company representative] [[company name]]. [Company representative] told him that:*

*RAMA*

<sup>280</sup>

**ID [...]; ID [...]**

<sup>281</sup>

**ID [...]**: (Original in Italian: "*Parlato con [company representative] il quale ha sentito [company representative]. Il motivo per cui chiede l'incontro e' dovuto al fatto che Linpac gli ha già fatto l'aumento prezzi e quindi vuole farsi fare l'offerta da noi. La Coopbox gli fa aumento di 7%. Noi facciamo l'aumento del 7% dal 1/12. Per quanto concerne la sua richiesta di vassoi barriera, diremo che per ora non abbiamo la capacità produttiva. Ne riparleremo da Marzo 2007, così che avremo visto cosa avranno fatto concorrenti. Se tutto ok quoteremo più alto. Se non avranno rispettato gli accordi, valuteremo il tenore dell'offerta*").

*ZARA (it is Coopbox client)*

*ALIPRANDI (we sell only pack it and Cx [Coopbox] sells barrier trays)*

*They are making an agreement for [common] acquisitions. They have exchanged price [information] and it turned out that Rama pays much less for the B6 than the others, so when CX went to Zaro and Aliprandi to [communicate] the price increase, it was sent to hell.*

*We need to find a solution: either we keep Zaro and pass volume to Cx elsewhere. But where? Maybe even if it is not about barrier we could think about Marfisi."*<sup>282</sup>

- (318) The above fragment shows that the coordination on single clients was part of a broader client and quota allocation agreement. [...].<sup>283</sup>

#### 4.1.3.6. Year 2007

- (319) For the year 2007 there is evidence that the cartel participants continued to bilaterally concert price offers for specific clients in an overall client allocation scheme and to implement price increases with respect to shared clients. They also continued to rig the tenders for the Italian GDO clients.
- (320) This is confirmed in several contemporaneous documents which will be described in the following Recitals [...].<sup>284</sup>

#### *Industry clients*

- (321) The Commission finds that the episodes described in the following Recitals show the implementation of anticompetitive practices aiming at the allocation of volumes and the coordination of prices between the cartel participants, mainly on a bilateral basis, with regard to specific clients.
- (322) On **4 June 2007** [company representative] (Linpac) and [company representative] (Sirap-Gema) met at the premises of Sirap-Gema Italy in Verolanuova, to discuss the common client AIA, which was also a client of Vitembal. Vitembal Italy wished to increase its supplies to that customer. The discussion aimed at exchanging information available about Vitembal Italy's conduct and at preserving the *status quo ante* concerning volumes of sales.
- (323) The above has been reported to the Commission by [company name], which has also provided the relevant entry in [company representative's] agenda. Confirmation of that meeting can also be found in [company representative's] personal agenda found during the inspections.<sup>285</sup> In its reply to the SO, [company name] submits that according to [company representative's] recollection the meeting did not concern the

---

<sup>282</sup> ID [...] (Original in Italian: "[Company representative] ha sentito [company representative]. [Company representative] gli ha detto che:

RAMA

*ZARA (e' cliente di Coopbox)*

*ALIPRANDI (noi vendiamo solo i pack it e Cx vende i barriera)*

*Stanno facendo un accordo per gli acquisti. Si sono scambiati i prezzi ed e' saltato fuori che rama paga i B6 notevolmente meno rispetto agli altri cosi' che quando CX si e' presentata da Zaro e da Aliprandi per l'aumento prezzo, si e' sentita mandare a quel paese.*

*Si deve trovare una soluzione: o teniamo no Zaro e cediamo quote a Cx da altre parti. Ma dove? Nonostante non sia barriera si poteva pensare a Marfisi ).*

<sup>283</sup> ID [...]; ID [...]

<sup>284</sup> ID [...]; ID [...]

<sup>285</sup> ID [...]; ID [...]; ID [...]; ID [...]; ID [...] (Sirap-Gema inspection documents); ID [...]; ID [...]

client AIA. [...], the meeting concerned Magic Pack and possible attempts to hire Magic Pack's employees.<sup>286</sup>

- (324) [...] a follow up bilateral meeting took place on **7 August 2007** between Lincac and Vitembal ([company representative]) at the request of [company representative]. After a general discussion concerning the market, [company representative] started discussing AIA, [...] Italian client as regards meat products. Since March 2007, Vitembal Italy had started discussions with AIA to become one of its suppliers (at that time, AIA's suppliers were Lincac, Sirap-Gema, Coopbox and Magic Pack). [Company representative] tried to extract further information on Vitembal's plans for AIA. However, [company representative] refused to provide such information.<sup>287</sup>
- (325) On **22 June 2007** Sirap-Gema ([company representative]) met with Lincac ([company representative]) in Desenzano to discuss a possible price increase to be introduced from January 2008. The two cartel participants exchanged information on their respective pricing strategies as well as the strategies of their cartel participants. Lincac informed Sirap-Gema that they planned a price increase of 2%. They also proposed to introduce a concerted price increase to the common clients which would allow them to raise prices by 5% if all the others were to introduce the increase and thus to gain additional margin. However, Lincac intended to make sure that Sirap-Gema would not take advantage of the increase planned by Lincac to take over common clients. Moreover, Lincac informed Sirap-Gema that it wanted to make an aggressive offer to Brendolan – a customer of Magic Pack at that time.
- (326) Finally, the two cartel participants discussed the behaviour of other cartel participants, such as Coopbox, that had decreased its prices to Coopitalia.
- (327) Those discussions were documented in handwritten notes taken by [company representative] during the meeting with [company representative]. The notes state as follows:

*"[Company representative] 22.06.07*

*Lincac -> Brendolan (Prima)*

*- hypothesis of the price increase as of January 2008 of 2%*

*(possibly 5% if everyone)*

*- Coopbox diminished by 8% to CoopItalia in March 07 the line of absorbent trays (about 160 million of pieces)".<sup>288</sup>*

- (328) [...].<sup>289</sup>

- (329) On **30 August 2007** [company representative] (Sirap-Gema) met [company representative] (Lincac) in Desenzano. The two cartel participants agreed to raise their prices by 2 %, starting from 2 November 2007 for most of the products they offered to their clients, including AIA. [...].<sup>290</sup>

---

<sup>286</sup> ID [...]

<sup>287</sup> ID [...]; ID [...]; ID [...]

<sup>288</sup> ID [...] (Sirap-Gema inspection documents): (Original in Italian: "[Company representative] 22.06.07; Lincac -> Brendolan (Prima); - ipotesi aumento prezzi da gennaio 2008 del 2%; (eventuale 5% se tutti); - Coopbox ha diminuito dell'8% a CoopItalia nel marzo 07 la linea dei vassoi drenanti (circa 160 mpz)").

<sup>289</sup> ID [...]; ID [...]; ID [...]; ID [...]

<sup>290</sup> ID [...]; ID [...]; ID [...]

- (330) The evidence of the contents of the agreement made during the meeting can be found in the handwritten notes of [company representative] taken during the meeting. The notes state the following:

*"Linpac in AIA (50 mpz)*

*Increase of prices as of 1 November + 2%"*<sup>291</sup>

- (331) During the same meeting, Linpac updated Sirap-Gema on the situation in Italy and France. It informed Sirap-Gema of its investments but assured that it had no intention to increase its market share in Italy. Linpac also informed Sirap-Gema of its intention to raise prices by 2% from November 2007. The cartel participants also discussed the French and Central Eastern European markets, as well as the tender for Carrefour.
- (332) Evidence of this exchange of information can also be found in the handwritten notes of [company representative].<sup>292</sup>

#### *Sirap-Gema and Coopbox*

- (333) On **9 February 2007**, a meeting took place between Sirap-Gema ([company representative], [company representative] and [company representative]) and Coopbox in Cremona. This meeting was convened to discuss respective clients both in industry and GDO. In particular they discussed the client Rama, to whom Sirap-Gema had made an offer which was too low according to Coopbox.
- (334) Evidence of the meeting can be found in a contemporaneous Coopbox internal report which contains the following fragment: *'Sirap: They have made price offers to a client in Lombardia (RAMA) which are impacting the market, creating big problems for us, appointment on 09/02/07 concerning this issue'. [...]* [company representative's] calendar entry on that date showing *'CX c/o Hermes'*.<sup>293</sup>

#### *Other bilateral contacts*

- (335) The Commission's file contains other examples of similar coordination of offers for several other clients such as Cepre, Inalca, Castel Carni, Fruttital Firenze and Bananai.
- (336) These examples have been reported to the Commission by [company name] which has also provided the relevant contemporaneous documents. The evidence concerns the period between 2005 and end 2007.<sup>294</sup>

#### *GDO clients*

##### *Client Coop Italia*

- (337) In 2007, Coop Italia decided that the associated meat producers had to use foam trays produced by Coopbox. As a consequence, Sirap-Gema lost some of its industry clients which distributed their products through Coop Italia. Sirap-Gema thus decided to retaliate against Coopbox. In the context of a previous agreement between

---

<sup>291</sup> ID [...] (Sirap-Gema inspection documents): (Original in Italian: *"Linpac in AIA (50Mpz) aumento prezzi dal 1 novembre + 2%"*).

<sup>292</sup> ID [...] (Sirap-Gema inspection documents).

<sup>293</sup> ID [...] (Coopbox inspection documents): (Original in Italian: *"Sirap: Hanno effettuato su un cliente in Lombardia (RAMA) delle quotazioni che si stanno ripercuotendo sul mercato, creandoci grossi problemi, app.to il 09/02/07 in merito a ciò"*); ID [...], ID [...][...]; ID [...]

<sup>294</sup> ID [...]; ID [...]

the two cartel participants, according to which Sirap-Gema was to refrain from selling barrier trays to certain clients, Coopbox had provided Sirap Gema with a complete list of its "exclusive" barrier trays clients. On the basis of that list, Sirap-Gema presented offers to all of Coopbox's exclusive clients of barrier trays. Evidence of this event can be found in a [...] note dated on **14 June 2007**.<sup>295</sup>

- (338) On **26 October 2007** a meeting took place at the Hotel Hermes in Cremona between [company representative] and [company representative] (Sirap-Gema) and [company representative] and [company representative] (Coopbox) to discuss industry clients supplied by Sirap-Gema. During that meeting Sirap-Gema demanded compensation from Coopbox for volumes lost by Sirap-Gema due to the commercial initiative of Coop Italia. The same topic was discussed again on **12 November 2007** in Fidenza.
- (339) Those discussions are evidenced by the handwritten notes made during those two meetings and found during the inspection at the premises of Sirap-Gema. [...].<sup>296</sup>

#### *Client Esselunga*

- (340) Esselunga was a common foam tray client of Linpac, Sirap-Gema and Magic Pack. In the course of 2007, Magic Pack wanted to increase its sales to Esselunga, a behaviour that Linpac and Sirap-Gema obviously did not like.
- (341) In **January 2007**, [company representative] (Sirap-Gema) and [company representative] (Linpac) exchanged information over the phone about Magic Pack's commercial behaviour. [...] the two cartel participants were trying to preserve the *status quo*.<sup>297</sup>
- (342) Similarly, on **14 September 2007** a meeting took place between [company representative] (Linpac) and [company representative] (Sirap-Gema) in Cremona on Esselunga and on Magic Pack's commercial behaviour and, in particular, on how to prevent the latter from increasing its share of supplies. [...].<sup>298</sup> [...] Sirap-Gema has denied [company representative's] presence at the meeting. [...] the meeting instead took place on **17 September 2007** in Verona and concerned only Magic Pack. [...].<sup>299</sup> The Commission considers that irrespective of the exact date, [...] Linpac and Sirap-Gema met and discussed a common position on the market behaviour of Magic Pack.

#### *Carrefour tender on 17 December 2007*

- (343) In December 2007, a number of collusive contacts took place between the cartel participants in order to agree on the upcoming tenders for Carrefour and Pam Panorama. The Carrefour tender took place on 17 December 2007.
- (344) On **7 December 2007** a meeting took place in Fidenza (Parma) between [company representative] and [company representative] (both of Sirap-Gema), [company representative] (Vitembal), [company representative] and [company representative] (Coopbox) and [company representative] (Magic Pack).

<sup>295</sup>

ID [...]

<sup>296</sup>

ID [...] (Sirap-Gema inspection documents); ID [...]; ID [...]

<sup>297</sup>

ID [...]; ID [...]

<sup>298</sup>

ID [...]; ID [...]; ID [...]

<sup>299</sup>

ID [...]; ID [...]



- (345) The Commission finds converging indications of this meeting taking place and of the identity of its participants [...].<sup>300</sup> This was Magic Pack's first presence at a meeting between the cartel participants since 7 March 2006.
- (346) During the meeting the upcoming tenders for Carrefour and Pam Panorama in Italy were discussed. The cartel participants undertook to respect the non-aggression pact and to maintain their supplies at the time without attacking each other. According to [company name], Linpac and Nespak were not present but were kept informed by telephone and agreed with the main elements of the agreement.<sup>301</sup>
- (347) In particular, the cartel participants agreed that the Pam Panorama tender should be won by Nespak and Sirap-Gema at the same prices as the year before, while the Carrefour tender for foam trays should be won by Coopbox and Vitembal at a slightly higher price than the year before. To achieve that objective, the other companies agreed to submit "supportive" preliminary offers.<sup>302</sup>
- (348) [...].<sup>303</sup>
- (349) [Company name] has maintained that a deal was struck according to which, in exchange for Magic Pack's withdrawal from the Carrefour foam trays tender, Vitembal would give back Magic Pack one of its clients, and in addition both Vitembal and Linpac would stop making aggressive offers to snatch away Magic Pack's clients.<sup>304</sup> According to [company name], however, during the meeting, Magic Pack proposed a deal according to which it would be passive in the Carrefour tender in exchange for restitution by Vitembal of two major clients. Faced with Vitembal's refusal, Magic Pack declared that it would compete aggressively in the Carrefour tender.
- (350) For its part, Magic Pack has claimed that during the meeting it refused to make any deal on the Carrefour tender and that it went to the meeting to reiterate to the cartel participants that it would not participate in the cartel.<sup>305</sup> [...] faced with the competitors' pressure to not compete in the tender, [company representative], in a purely provocative and ironic way, invited Vitembal to give it two of its most important customers in terms of volume. After having reiterated Magic Pack's intention to not take part in any agreement, [company representative] left the meeting before the others.<sup>306</sup>
- (351) A few days before the Carrefour tender for the supplies for the calendar year 2008 in Italy, [company representative] (Coopbox) contacted the cartel participants by phone in order to agree on the preliminary quotes formulated by them for the Supermarket and Hypermarket lots. Those preliminary quotes were compiled in an electronic document which was found by the Commission during the inspections. That

---

300 ID [...]; ID [...]; ID [...]; ID [...]; ID [...]; ID [...]  
 301 ID [...]; ID [...]  
 302 ID [...]  
 303 ID [...]; ID [...]; ID [...].  
 304 ID [...]  
 305 ID [...]; ID [...]  
 306 ID [...]

document includes preliminary quotes of Coopbox, Nespak, Sirap-Gema, Vitembal and Magic Pack.<sup>307</sup>

- (352) In the following days, Coopbox developed a new strategy for the tender, as it suspected that the cartel participants might have cheated on their commitments regarding the preliminary offers. To enact that strategy, Coopbox relied on Magic Pack and Sirap-Gema, which pledged to make the further offers requested by Coopbox which were sent by email to Magic Pack and communicated over the phone to Sirap-Gema on **14 December 2007**. In its reply to the SO, [company name] confirmed that [company representative] had telephone contacts with [company representative] (Coopbox) regarding the Carrefour tender.<sup>308</sup> Although Magic Pack has denied having received such an e-mail from Coopbox,<sup>309</sup> the Commission finds the circumstances sufficiently established.
- (353) On **16 December 2007** [company representative] (Coopbox) contacted [company representative] (Linpac) to discuss the forthcoming Carrefour tender in Italy, scheduled for 17 December 2007. Coopbox Italy wanted to know if there were any “tricks”, that is deviations which would jeopardise the fruitful talks so far.<sup>310</sup>
- (354) The evidence of this can be found in an email sent by [company representative] (Coopbox) to [company representative] (Linpac), stating that: *"my [...] colleagues have asked me to contact you about tomorrow's Carrefour tender since they cannot get to talk to the local director and they were wondering if there is some sneaky trick behind it which would jeopardise our fruitful talks of the last (?) days"*.<sup>311</sup>
- (355) In fact, contrary to what was done in the past, this time Linpac intended to win a lot of the tender and tried to steal away the client from Coopbox by quoting a very low price. Eventually, Coopbox matched Linpac's offer and preserved its Carrefour supplies but at a much lower price, namely offering a 15% decrease instead of an increase of 5%. [...].<sup>312</sup>
- (356) The Carrefour tender did not end as agreed between the cartel participants. Magic Pack attacked Vitembal by presenting a very low offer, and won both the Hypermarkets and Supermarkets lots, in what was considered by the cartelists a blatant breach of the company's previous commitments.<sup>313</sup> Coopbox managed to maintain the client for foam trays but had to decrease its prices by 16% in comparison to the prices of the previous year, due to Linpac's aggressive bidding.
- (357) The Commission understands that the Pam Panorama tender, by contrast, went as agreed, with Nespak and Sirap-Gema retaining their previous business.
- (358) After the tender, Coopbox complained to Linpac about the results of the tender. As showed in the following email exchanges [...], [company representative] (Coopbox)

---

<sup>307</sup> ID [...]; ID [...]; ID [...] (Coopbox inspection documents) – contemporaneous document with data on offers presented. ID [...]

<sup>308</sup> ID [...]; ID [...]

<sup>309</sup> ID [...] (Magic Pack reply to the SO).

<sup>310</sup> ID [...]

<sup>311</sup> ID [...]: (Original in Italian: “mi chiedono i miei colleghi [...] di contattarti in vista dell'asta carrefour di domani in quanto non riescono a parlare con il direttore locale e si chiedono se non ci sia sotto qualche tiro mancino che vanifichi le positive chiacchierate dei giorni (?) scorsi”).

<sup>312</sup> ID [...] ID [...]

<sup>313</sup> ID [...]; ID [...]

informed [company representative] (Linpac) that Coopbox's managers were very angry with Linpac because they felt betrayed by Linpac. In their view Linpac had damaged the Carrefour tender in relation to plastic foam trays.<sup>314</sup>

- (359) On **20 December 2007**, [company representative] (Coopbox) wrote the following email to [company representative] (Linpac): "I must inform you that in Italy, from where I have just come back, they told me that they were extremely angry with Linpac because they claim that they had been deceived during the tender which took place last Monday and they do not understand the reason. Eventually the thing ended as planned for us, but with a reduction of 15% rather than an increase of 5-7 % as it should have been. In my mother company they say we should prepare for total war with you. I suggested we talk first before making any moves, which I by the way do not share, especially when decided under the effects of rage; therefore I ask you to investigate quickly to try and find a way out which would make it possible to lower the tension."<sup>315</sup>
- (360) [...] [company representative] wrote the following: *"I knew that they took a lot away from Vitembal but I did not know that you too had problems. Nor did I know that [company name] was responsible for this. I will speak to my bosses today and will let you know. As to the possible war I will not express my opinion. You know what I think. Obviously in such a case we would have to react but I am certain that we will not reach that point"*.<sup>316</sup>
- (361) [...] [company representative] (Linpac) had clarified that the aggressive bids had been imposed by Linpac France, and that Linpac was prepared to compensate Coopbox by giving it some other clients.<sup>317</sup>
- (362) In the context of the above conflict, a meeting took place in Verona on **9 January 2008** between [company representative] and [company representative] (both of Coopbox) and [company representative] and [company representative] (both of Linpac).<sup>318</sup>

#### 4.1.3.7. Year 2008

##### *Price increase to be introduced in the summer or in autumn 2008*

- (363) In the first semester of 2008 there are indications that bilateral meetings took place namely between Sirap-Gema, Linpac and Coopbox. [...]. [Company name] considers

---

<sup>314</sup> ID [...]

<sup>315</sup> ID [...]: (Original in Italian: "devo informarti che in Italia, da dove sono appena rientrato, mi hanno detto di essere estremamente irritati con LP perché ritengono di essere stati ingannati in occasione dell'asta svoltasi lunedì e non ne capiscono il motivo. la cosa infine si e' conclusa come previsto per noi, però con una riduzione di quasi 15 punti anziché un aumento di 5-7 come avrebbe dovuto essere. Dalla mia casa madre si dice di preparare la guerra totale con voi. Ho suggerito di parlare prima di fare mosse che peraltro non condivido, soprattutto se decise sotto gli effetti della rabbia, e ti chiedo pertanto di indagare rapidamente per vedere di cercare una via di uscita che consenta di abbassare la tensione").

<sup>316</sup> ID [...]: (Original in Italian: "sapevo che alla Vitembal gli avevano tolto il loro lotto ma non sapevo che anche voi avevate avuti dei problemi. Nemmeno che la [company name] ci fosse in mezzo. Oggi stesso parlerò con i capi e ti farò sapere. Su una possibile guerra non ti do' la mia opinione. Sai come la penso. Ovviamente, in quel caso, noi dovremmo reagire ma sono sicuro che non arriveremo a quella situazione").

<sup>317</sup> ID [...]

<sup>318</sup> ID [...], ID [...]; ID [...]

it likely that it held bilateral meetings with Sirap-Gema, based on its travel records.<sup>319</sup>

- (364) [Company name] has mentioned that, to a lesser extent, it was also in contact with Vitembal.<sup>320</sup> However, in its reply to the SO, Vitembal denies having had any contacts in 2008 concerning potential price increases.<sup>321</sup> The Commission will not consider Vitembal as having taken part in these contacts.
- (365) [...] bilateral meetings or contacts took place with [...] Linpac and Coopbox, to discuss the possibility of introducing another concerted general price increase in 2008 for standard and barrier foam trays. Given the preliminary stage of the discussions, the cartel participants did not manage to reach any concrete agreement as the attempts were interrupted by the inspections of the Commission in June 2008.<sup>322</sup>

#### **4.2. South-West Europe (2 March 2000 – 13 February 2008)<sup>323</sup>**

##### **4.2.1. Basic principles and structure of the cartel**

- (366) The undertakings involved in the cartel were Linpac, Coopbox, Vitembal, Huhtamäki, Ovarpack and [non-addressee]. The group was sometimes referred to as 'the mafia' (see Recital (403)) or as 'the general board' (see Recital (457)).
- (367) The cartel participants participated in multilateral meetings and took part in a series of bilateral contacts with the overall aim of restricting competition for foam trays by agreeing on price increases or minimum prices, allocating customers and exchanging commercially sensitive information.<sup>324</sup>
- (368) As of 1996, Linpac proposed to hinder new entrants from entering the market in order not to destabilise market shares. Linpac took charge of organising multilateral meetings but also of keeping a good network of bilateral relations with all participating competitors.<sup>325</sup>
- (369) The cartel participants in the meetings were usually the same persons for Spain and Portugal and the two countries were often discussed together (see the meetings and contacts on 6 March 2001 (see Recitals (407)-(409)), 3 July 2002 (see Recitals (415)-(417)), 29 July 2002 (see Recitals (418)-(420)), 10 March 2003 (see Recitals (421)-(422)), 6 April 2003 (see Recitals (423)-(425)), 29 July 2004 (see Recitals (438)-(442)), 7 October 2004 (see Recitals (443)-(446)), 12 January 2005 (see Recitals (453)-(455)), 18 January 2005 (see Recitals (456)-(458)), March 2007 (see Recitals (472)-(474)), 18 May 2007 (see Recital (480)), 6-8 September 2007 (see Recital (487)), 3 October 2007 (see Recital (491)), 6 November 2007 (see Recital (497)), 5 and 11 December 2007 (see Recital (498)) and 13 February 2008 (see Recitals (500)-(502)).
- (370) In certain cases, the distributors in Portugal (Ovarpack for Linpac and [non-addressee] for Coopbox) would ask for help or instructions on implementation of the

---

<sup>319</sup> ID [...]; ID [...]; ID [...] and ID [...] and ID [...]

<sup>320</sup> ID [...]

<sup>321</sup> ID [...] (Vitembal reply to the SO).

<sup>322</sup> ID [...]

<sup>323</sup> See Recital (3).

<sup>324</sup> ID [...]

<sup>325</sup> ID [...] and ID [...]

agreements (see for instance Recitals (480), (487) or (491)). It was their role to follow the instructions given by Linpac Spain and Coopbox Spain in relation to the Portuguese market.<sup>326</sup>

- (371) The implementation of the cartel decisions is documented by the cooperation between Linpac and Coopbox, who regularly informed each other about their business policy and customer relations.<sup>327</sup>
- (372) The participants in the cartel met in different places such as hotels, airports and highway restaurants across Portugal and Spain. They also exchanged emails and had contacts over the phone.<sup>328</sup>
- (373) The secrecy under which some of the contacts took place may not only have been related to the illegality of the contacts and the risk of this information being detected by public authorities. Handwritten notes of [company representative] (Coopbox) after the meeting in the Tryp Hotel Barcelona in **March 2007** read as follows: '*1) meeting reserved for directors 2) We do not communicate to anybody of our head offices (CX Europa, LP Europa) the details that we tell each other (tariffs, etc.)[...] No other hidden means of sales [...].*' Linpac had asked Coopbox to initiate a series of bilateral meetings between Coopbox ([company representative]) and Linpac ([company representative]). Linpac wanted to exclude [company representative] (Linpac) from the meetings and to avoid any information reaching Linpac Europe. Therefore it also asked [company representative] (Coopbox) to keep the information confidential within Coopbox. [Company representative] (Linpac) wanted to make Linpac Europe believe that they were the uncontested market leader in Spain and that there was no need for contacts with the cartel participants.<sup>329</sup>
- (374) [...] Linpac also had bilateral contacts with Vitembal and Huhtamäki/ONO Packaging on a systematic basis.<sup>330</sup>

#### 4.2.2. The cartel history

- (375) Evidence in the Commission's possession would suggest that collusive activities in Spain may have started as early as the 90's. [Information pre-dating the infringement]<sup>331</sup>, [information pre-dating the infringement].<sup>332</sup> [Information pre-dating the infringement].<sup>333</sup> [Information pre-dating the infringement].<sup>334</sup>
- (376) [Information pre-dating the infringement].<sup>335</sup> [Information pre-dating the infringement].<sup>336</sup>
- (377) [Information pre-dating the infringement].<sup>337</sup>

---

<sup>326</sup> ID [...]

<sup>327</sup> ID [...]

<sup>328</sup> ID [...]

<sup>329</sup> ID [...] (Coopbox inspection document); (Original in Spanish: *1) Encuentros reservados a la gerencia 2) no comunicamos a NADIE de NUESTRAS DIRECCIONES (CX Europe, LP Europe) los pormenores que nos decimos (tarifas etc). [...] NO HAY otros instrumentos de venta ocultos [...]*) explained ID [...]

<sup>330</sup> ID [...]

<sup>331</sup> [...]

<sup>332</sup> [...]

<sup>333</sup> [...]

<sup>334</sup> [...]

<sup>335</sup> [...]

<sup>336</sup> [...]

- (378) [Information pre-dating the infringement].<sup>338</sup>
- (379) [Information pre-dating the infringement].<sup>339</sup>
- (380) [Information pre-dating the infringement].<sup>340</sup>
- (381) [Information pre-dating the infringement].<sup>341</sup>
- (382) [Information pre-dating the infringement]. As of 2000 the anticompetitive arrangements started encompassing Portugal as well.

#### 4.2.3. Chronology of events

##### 4.2.3.1. The price increases in Spain in 2000

- (383) On **2 March 2000** a meeting took place in Valencia between [company representative] and [company representative] (both of Linpac) and [company representative] and [company representative] (both of Coopbox). The meeting [...] <sup>342</sup> [...] is considered as the starting date of the SWE cartel. [Information pre-dating the infringement].<sup>343</sup>
- (384) The handwritten notes of [company representative] ([company name]) taken during the meeting read as follows:

*'to draft a letter announcing price increases – send copy to [company representative] /([company name])'*

This is followed by a list of eight clients, four of them marked with the word 'we' (namely [company name]), four of them marked with the word '[first name]' (namely [company representative], [company name]).

*'PVC -> 1 May + 12%'*<sup>344</sup>

- (385) [...] the cartel participants agreed on a 12% price increase for foam trays in Spain. They also decided to draft price increase letters for their respective clients and to inform each other of the content of such letters. In addition, they allocated eight customers in Spain between each other.<sup>345</sup> [...] a price increase for all customers in Spain for trays and film was discussed.<sup>346</sup>
- (386) On **28 March 2000** a meeting took place in Madrid between [company representative] and [company representative] (both of Linpac) and [company representative] and [company representative] (both of Coopbox). The purpose of the meeting was to decide on the application of minimum prices per groups of clients.

---

337 [...]   
338 [...]   
339 [...]   
340 [...]   
341 [...]   
342 ID [...]; ID [...]; ID [...]; and ID [...]   
343 [...]   
344 ID [...]; [(Original in Spanish: 'preparar carta subida precios -> enviar cifra a MC' [...] 'PVC -> 1 mayo + 12%)]   
345 ID [...]   
346 ID [...]

The meeting is evidenced by handwritten notes and an internal report found at the premises of Coopbox [...].<sup>347</sup>

(387) The handwritten notes read as follows:

'28/03/2000

28/ meeting with Linpac

Cuenca Logrono

79

2.97

User

63

4.18

70

2.64

Fruit vegetables

80

3.08

Envasadores

89

4.60

85

3.96

100

4.07

Carnicos sada

70

2.24

Polleros

69

3.52

increase +10%

80

2.99

+10%

already done

86

3.58

for small

89

4.70

deliveries

90

4.38

14.M

3.95

T.3

3.20

AGROVIC new prices which we will pass on Monday 3

Guinona: LP will send the prices

Others: COREN etc. – LIKE AGROVIC (or small variation)<sup>348</sup>

(388) The internal Coopbox report on the meeting refers to the following issues: 'minimum prices per customer groups' in Spain; 'certain exceptional situations where the increase could reach 40% that need to be carefully evaluated in order to prevent other producers getting in'; 'Retailers: CX has drawn up a list of minimum prices.' and 'LP committed itself to pass on a list of minimum prices which we have not received yet.'<sup>349</sup>

(389) [...] those notes demonstrate that the cartel participants agreed on minimum prices for foam trays for groups of clients, more specifically a price increase of 5 % for customer Eroski as of 1 July 2000 and of 10 % for SADA. The upcoming price increases for Agrovic, Guissona and Coren and the prices to be applied to customer

<sup>347</sup> ID [...]; [...]; ID [...] (Coopbox inspection document); ID [...] (Coopbox inspection documents).

<sup>348</sup> ID [...] (Coopbox inspection document); (Original in Italian/Spanish: 'incontro con Linpac [...] Cliente utilizzatore [...] Frutta verdura [...] incremento +10% già fatto [...] + 10% per piccole consegne [...] nuovi prezzi che passeremo noi lunes 3 [...] Guinona: LP manderà i prezzi [...] Altri. : COREN etc – COME AGROVIC (o piccola variante)').

<sup>349</sup> ID [...] (Coopbox inspection document); (Original in Italian: 'prezzi minimi per gruppi di clienti' [...] 'alcune situazioni eccezionali, dove l'aumento arriverebbe anche al 40% devono essere valutate attentamente con l'obiettivo di evitare l'intromissione di altri produttori' [...] 'Distributori: CXI ha stilato un listino di prezzi minimi' [...] 'LP si è impegnata a passare un listino minimo che a oggi non abbiamo ricevuto').

Mercadona were also discussed. In addition, the companies agreed to exchange price lists in order to monitor the application of the price increases.<sup>350</sup>

- (390) An internal Coopbox report of **April 2000** reports that (1) *'Linpac is overall respecting the minimum prices but is playing some tricks with clients where the supply shares are in favour of Coopbox';* (2) *'Vitembal, which is in desperate need of increasing its market share, is following the two market leaders and increases, always trying to delay the implementation of agreed price increases or by implementing them to a lesser extent';* and (3) *'Polarcup is sporadically implementing increases and does not renounce actions which could give it temporary presence in areas where it is not present.'* The note also refers to a meeting that was to take place on 8 June 2000 (see Recital (392)) which would have as objective the *'timing and amount of a new and inevitable increase, given the ever more difficult situation concerning the price of raw materials'*.<sup>351</sup>
- (391) [...] that report describes the behaviour of the cartel participants concerning a price increase which was agreed between them beforehand. [...] Linpac had bilateral contacts on this subject with the other competitors, including Vitembal, Huhtamäki/Polarcup and Coopbox.<sup>352</sup> [...] Linpac, Coopbox and Vitembal participated in the anti-competitive arrangements in relation to Spain in 2000.<sup>353</sup>
- (392) On **8 June 2000** a meeting took place in Madrid between Linpac and Coopbox. It is evidenced by an internal report found during the inspections at the premises of Coopbox [...].<sup>354</sup>
- (393) The internal Coopbox report concerns the meeting and specifies the different topics which were discussed, including the *'situation in Portugal'*. The report also reads as follows: *'In the meeting [...] the following was agreed: 1) Mercadona/Sada + 10% deadline 1/7/00 2) Eroski/El Corte Ingles + 5% deadline 1/7/00 3) LP sends CI a proposal for minimum prices for stretch film in pesetas/m<sup>2</sup> 4) LP sends CI a proposal for minimum prices for trays of the type Linstar or Lintray 5) CXI sends a proposal for minimum prices for barrier trays [...]'*.<sup>355</sup>
- (394) [...] they decided on price increases in Spain as of 1 July 2000, totalling 10% for customers Mercadona and Sada and 5% for customers Eroski and El Corte Ingles.

350

ID [...]

351

ID [...]; ID [...] (Coopbox inspection documents); (Original in Italian: *'Linpac sta sostanzialmente rispettando i livelli minimi di prezzo con qualche furbata in clienti dove le quote sono sbilanciate verso Coopbox. [...] Vitembal, che ha bisogno disperatamente di prendere quote, va a rimorchio delle due aziende leader di mercato, e aumenta, cercando sempre di ritardare e di aumentare meno degli altri [...] Polarcup applica sporadicamente aumenti e non rinuncia a operazioni che gli possono dare presenza temporanea in zone dove non è presente [...] determinare tempi e entità di un nuovo e inevitabile aumento, data la situazione sempre più difficile col prezzo delle materie prime.'*)

352

ID [...]

353

ID [...]

354

ID [...] and ID [...]; ID [...] (Coopbox inspection document).

355

ID [...] (Coopbox inspection document); (Original in Italian: *'NELLA RIUNIONE [...] SI È PATTUITO LO SEGUENTE: 1) MERCADONA / SADA + 10% DECORRENZA 1/7/00 2) EROSKI / EL CORTE INGLES + 5% DECORRENZA 1/7/00. 3) LP CI MANDA UNA PROPOSTA DI PREZZI MINIMI DELLO STRETCH FILM IN TERMINI DI PESETAS/ METRO QUADRATO. 4) LP CI MANDA UNA PROPOSTA DI PREZZI MINIMI DEL VASSOIO TIPO LINSTAR O LINTRAY. 5) CXI MANDA PROPOSTA DI PREZZI MINIMI PER VASSOI BARRIERA.'*)



They also decided that Coopbox would send proposals for minimum prices for other customers. [...] Linpac had informed Vitembal about the price increases.<sup>356</sup>

- (395) On the basis of the meetings held on 2 March, 28 March and 8 June 2000, Coopbox and Linpac agreed on a price increase for trays in Spain and decided to inform each other about their attempts to implement it. In order to monitor this, the cartel participants agreed to send each other the invoices for the clients.<sup>357</sup>
- (396) On **12 June 2000** [company name] sent out price increase letters to its customers in Spain and Portugal. [...] the price increases concerned traditional, absorbent and barrier foam trays. Coopbox implemented the price increase agreed upon with Linpac, which was the first general price increase agreed upon between cartel participants. The price increase letter itself was found at the premises of Coopbox during the inspections.<sup>358</sup>

#### 4.2.3.2. Coopbox's entry into the Portuguese market (2000-2001)

- (397) During the year 2000 Coopbox was in the process of entering the Portuguese market where Linpac was already active. Although Linpac, Vitembal, Coopbox and Huhtamäki were on good terms in Spain, Linpac initially indicated to Coopbox that it intended to compete fiercely in order to defend itself on the Portuguese market.<sup>359</sup>
- (398) On **7 December 2000** a multilateral meeting took place in Lisbon. [...] the meeting took place at Hotel Melia, between Linpac ([company representative] and [company representative]), Ovarpack ([company representative] and [company representative]), Coopbox ([company representative]), [non-addressee] ([company representative]) and Huhtamäki ([company representative]).<sup>360</sup>
- (399) The calendars of [company representative] ([company name]) confirm the date of the meeting as well as the participating undertakings, including Vitembal ([company representative]). The calendars however indicate the Hotel Meridien and not the Hotel Melia (both in Lisbon) as the meeting venue.<sup>361</sup> In one of the two calendar entries, Ovarpack is also listed amongst the participants.<sup>362</sup>
- (400) [Company name] confirmed that the meeting took place and indicated the Hotel Meridien as the venue; however, [company name] could not be more specific as regards either the participants or the content.<sup>363</sup> [Company representative] (Vitembal) denied his own participation and expressed doubts that anyone else from Vitembal participated in the meeting.<sup>364</sup> Huhtamäki cannot remember,<sup>365</sup> but [company representative] (now ONO Packaging) confirms that he participated on behalf of Huhtamäki in a meeting between cartel participants on that date. However, he indicates that according to his recollection it was a bilateral meeting between

---

<sup>356</sup> ID [...] and ID [...] ID [...] (Coopbox inspection document).

<sup>357</sup> ID [...] (Coopbox inspection document) and ID [...]

<sup>358</sup> ID [...] (Coopbox inspection document); ID [...]

<sup>359</sup> ID [...]

<sup>360</sup> ID [...]; ID [...]

<sup>361</sup> ID [...]; ID [...] The only difference to [...] is that [company name] believes that [company representative] (and not [company representative]) represented Huhtamäki in that meeting.

<sup>362</sup> ID [...]

<sup>363</sup> ID [...].

<sup>364</sup> ID [...]

<sup>365</sup> ID [...] (Huhtamäki - reply to RFI).

Huhtamäki ([company representative] and [company representative]) and Ovarpack ([company representative] and [company representative]) where a price increase for Portugal was agreed.<sup>366</sup> [Company name] provided detailed information about the meeting based on the statements of two direct attendees, [company representative] and [company representative]. Whereas Huhtamäki's statement contrasts with [company name] in relation to the format of the meeting (bilateral and not multilateral), it confirms the existence and anti-competitive nature of the meeting. In the light of the further confirmation on the part of [company name] and [company name], the Commission concludes that a multilateral meeting took place on 7 December 2000 between the participants listed in Recital (398).

- (401) The content of the meeting is evidenced by [company name]. Both participants from [company name] remember the meeting, its participants and details of its content.<sup>367</sup>
- (402) According to [company representative] and [company representative] (both of [company name]), this was the first meeting after Coopbox had entered the Portuguese market through its distributor, [non-addressee]. [...] the latter, Linpac and Huhtamäki made it clear that they were unhappy about this. Linpac made it clear to the representatives of Coopbox that any agreement already in existence for other countries, in particular Spain, would not be extended to Portugal. [Company name] further indicated that, following Coopbox's entry into the market, the commercial margins for Linpac and Huhtamäki had decreased: one of the key issues of the meeting was therefore to prevent prices from decreasing below a certain level, and thus to find an agreement on prices to be applied to certain customers.<sup>368</sup>
- (403) On **17 August 2001** a meeting took place at the Meliá Castilla, Madrid, between [company representative] and [company representative] (Linpac), [company representative] (Ovarpack), [company representative] (Coopbox), [company representative] ([non-addressee]) and [company representative] (Huhtamäki). The meeting is evidenced by [...] and ONO Packaging.<sup>369</sup> Preparing his journey to the meeting [company representative] noted in his agenda: 'H Meliá Castilla meet-maf' which means meeting 'the mafia'.<sup>370</sup>
- (404) [...] handwritten notes of the meeting read as follows:

*'It was agreed that Coopbox would enter the Portuguese market in the vegetable sector with more or less 30 clients (see [company representative's] list) and at the same time it would get out of Kilom [...] [Company representative] will speak with his superior and [company representative] with Coopbox's superior. If they agree we will reconvene during the first week of September to define Coopbox's clients.'*<sup>371</sup>

---

<sup>366</sup> ID [...] (ONO Packaging - reply to RFI).

<sup>367</sup> ID [...]

<sup>368</sup> ID [...]

<sup>369</sup> ID [...] and ID [...] (ONO Packaging - reply to RFI).

<sup>370</sup> ID [...]; ID [...]

<sup>371</sup> ID [...] corroborated by contemporaneous document ID[...] (Original in Portuguese: 'Ficou acordado que a Coopbox entraria no mercado Português do sector hortícola +/- 30 clientes (ver a listagem do [company representative]) E ao mesmo tempo sairiam do Kilom. [...] [Company representative] ficou de falar com o seu chefe e [company representative] com o chefe da Coopbox, se estiverem de acordo vamos reunir na 1.ª semana de Setembro para definir os clientes da Coopbox.').

- (405) [Company name] explains the notes in the following manner: the arrangement for the vegetable sector concerned foam trays; during the meeting the cartel participants agreed that Coopbox - via [non-addressee] - would be allowed to enter the Portuguese market under certain conditions: it would stop supplying Kilom and would in return supply 30 smaller customers in Portugal without expanding beyond them. In total, the agreement covered 1 500 000 trays, half of which would be from [company name], half from Polarcup/Huhtamäki. In case other customers actively approached [non-addressee], it would quote higher prices than its competitors. [Company name] also explained that the agreement in the end was only accepted in a revised manner but was unable to provide further details.<sup>372</sup>
- (406) [Company name] did not remember the participation of [company representative] ([non-addressee]). However, in the handwritten notes under the name '[company representative]' a 'director from Portugal' is mentioned<sup>373</sup>; as explained by [company name], who confirmed taking part in the meeting, [company name] never had a sales director in Portugal, where its products were sold exclusively through [non-addressee].<sup>374</sup> [Company representative] (now ONO Packaging) confirmed that he participated for Huhtamäki and confirms all participants indicated by [company name], with the addition of [company representative].<sup>375</sup> Huhtamäki has claimed that its employees could not remember the meeting.<sup>376</sup> However, the Commission considers on the basis of [company representative's] statement that Huhtamäki participated in the meeting.

#### 4.2.3.3. Contacts between 2001 and 2008

- (407) On **6 March 2001** a meeting took place in Barcelona between at least Linpac ([company representative] and [company representative]), Coopbox ([company representative]) and Huhtamäki ([company representative] and [company representative]). The meeting is evidenced by the handwritten notes found at the premises of Coopbox [...].<sup>377</sup> [Company name] indicated that also Vitembal ([company representative]) was present. This is however denied by Vitembal in its reply to the SO.<sup>378</sup>
- (408) The handwritten notes of the meeting by [company representative] read as follows:

*'Problem SADA:*

*Linpac admits the bullshit [...]*

*Portugal: there are problems concerning any increases in Portugal'. 'Prices to revisit in Mcd as they are even lower.*

*Vit says that in France prices are still higher by 15-20 points. "*<sup>379</sup>

<sup>372</sup>

ID [...]

<sup>373</sup>

ID [...] and ID [...]

<sup>374</sup>

ID [...]

<sup>375</sup>

ID [...] (ONO Packaging - reply to RFI).

<sup>376</sup>

ID [...] (Huhtamäki - reply to RFI).

<sup>377</sup>

ID [...]; ID [...] (Coopbox inspection document): ID [...]

<sup>378</sup>

ID [...] (Vitembal reply to the SO).

<sup>379</sup>

ID [...] (Coopbox inspection document), (Original in Italian: *'Problema SADA: Linpac ammette la cazzata' [...]* *'Portugal' ci sono problemi x aumentare in Portugal. Prezzi da rivedere in Mcd perché sono ancora più bassi. Vit dice che in Francia i prezzi sono ancora superiori di 15-20 punti.*).

- (409) The cartel competitors discussed the failure to behave as agreed in Spain. In particular they discussed (1) the difficulties and problems in implementing the price increases they had agreed upon for foam barrier trays in Spain; (2) the discounts that Linpac offered to the two clients shared with Coopbox (Sada and Angel Rey) and (3) possible further increases in July. In addition, the cartel participants discussed the situation of the Portuguese market, which did not allow price increases at that time. Furthermore, they addressed the fact that Coopbox had to raise the prices for Mercadona because its prices were the lowest in the market. This was explained by [company name].<sup>380</sup>
- (410) Handwritten notes by Coopbox ([company representative]) taken during an internal meeting between the commercial managers on **1 June 2001** evidence the subsequent monitoring of the agreed behaviour by the other cartel participants and in particular by Linpac. The notes read as follows:
- 'Price increase*  
*Get in contact with the representative of Linpac in each zone in order to apply the increase.*  
*[Company representative] will call Polarcup*  
*Vitembal???????*  
*[...]*  
*SADA no price will be increased without an increase by Linpac. "Until the 30/6 align prices to Linpac's by means of ..... discounts on merchandise"*<sup>381</sup>
- (411) During that internal meeting Coopbox decided that each area manager would contact his counterpart at Linpac. [Company representative] would contact Polarcup/Huhtamäki. Concerning Vitembal, no decision was taken as to any initiation of contact. Furthermore Coopbox decided not to implement any price increase with regard to its client SADA until Linpac had implemented the agreed increase and to lower its prices to the level of Linpac's. [...].<sup>382</sup>
- (412) Following a request from Linpac, in an e-mail dated **29 August 2001** Coopbox ([company representative]) sent to Linpac ([company representative]) a list of its prices from January to July.<sup>383</sup>
- (413) On **26 June 2002** a meeting took place in Madrid between Linpac ([company representative] and [company representative]), Coopbox ([company representative] and [company representative]) and Huhtamäki ([company representative] and [company representative]). The purpose of the meeting was to discuss the possibility of a common price increase on the Portuguese market. The meeting and its participants are evidenced by handwritten notes copied at the premises of Coopbox. [...].<sup>384</sup>

---

<sup>380</sup> ID [...] and ID [...]

<sup>381</sup> ID [...] (Coopbox inspection document); (Original in Spanish: 'SUBIDA PRIECIOS, TOMAR CONTACTO CON EL REPRESENTANTE DE LIMPAC EN CADA ZONA PARA APLICAR LA SUBIDA. POLARCUP LE LLAMA MASSIMO' 'VITEMBAL???????' [...] 'SADA- NO SE SUBE NINGUN PRECIO SIN QUE LIMPAC SUBA. HASTA EL 30/6 IGUALAR LIMPAC A TRAVÉS DE... DESCUENTO EN MERCANCÍA').

<sup>382</sup> ID [...]

<sup>383</sup> ID [...]; ID [...]

<sup>384</sup> ID [...]; ID [...] (Coopbox inspection document).

- (414) The handwritten notes of the meeting written by Coopbox ([company representative]) read as follows: '*Portugal Increase 10% in two steps. 5 + 5. 3 July next meeting.*' During the meeting, the participating competitors decided on a price increase of 10% for foam trays in Portugal and on implementing it in two steps of 5 %. This was evidenced by [company name].<sup>385</sup> Huhtamäki has claimed its employees could not remember attending the meeting,<sup>386</sup> while [company representative] (now ONO Packaging) does not recall participating in a meeting with competitors on that date<sup>387</sup>. Since [...] is corroborated by the contemporaneous handwritten notes, the Commission considers that it is proven that Huhtamäki participated in this meeting.
- (415) On **3 July 2002** a meeting took place in Lisbon between [company name] ([company representative] and [company representative]), [company name] ([company representative] and [company representative]), Coopbox ([company representative]), [non-addressee] ([company representative]) and Huhtamäki ([company representative] and [company representative]). The purpose of the meeting was to reach an agreement on a general price increase for foam trays in Portugal.
- (416) The meeting is evidenced by [...], [company name], ONO Packaging, an entry in the agenda of [company representative] ([company name]) and [company representative's] ([company name]) motorway toll ticket.<sup>388</sup> Coopbox and Huhtamäki stated that their employees did not remember the meeting.<sup>389</sup> The Commission notes that Coopbox's and Huhtamäki's presence at the meeting is sufficiently proven by the evidence provided by [...], [company representative] (ONO Packaging) and [company name].
- (417) The Commission finds that the evidence shows that the cartel participants agreed on a price increase in Portugal of 4-5% for small customers, that is to say, companies who purchased approximately EUR 1000 worth of trays per month. In addition, after 'fights for clients' had broken out between Linpac and Coopbox, the discussion also focused on an attempt to freeze market shares in Spain.<sup>390</sup>
- (418) On **29 July 2002** a meeting took place between Linpac ([company representative], [company representative] and [company representative]) and Coopbox ([company representative] and [company representative]) at the Sheraton Paris Airport Hotel. The purpose of the meeting was to agree on the commercial policy for big customers on the Spanish and Portuguese markets. The meeting is evidenced [...] by the handwritten notes of [company representative] ([company name]).<sup>391</sup>
- (419) The handwritten notes of [company representative] read:

---

<sup>385</sup> ID [...] and ID [...]; ID [...] (Coopbox inspection document) (Original in Spanish: '*Portugal incremento 10% en 2 veces 5+5. 3 julio próxima reunión*').

<sup>386</sup> ID [...] (Huhtamäki - reply to RFI).

<sup>387</sup> ID [...] (ONO Packaging - reply to RFI).

<sup>388</sup> ID [...] and ID [...]; ID [...]; ID [...], and [...] (ONO Packaging - reply to RFI). It should be noted that, according to [company name], the meeting took place at the Hotel Tivoli Tejo in Lisbon, whereas according to both [company name] and ONO Packaging the meeting took place at the Hotel Melia in Lisbon.

<sup>389</sup> ID [...] (Coopbox - reply to RFI) and ID [...] (Huhtamäki - reply to RFI).

<sup>390</sup> ID [...] (ONO Packaging - reply to RFI); ID [...] and ID [...]

<sup>391</sup> ID [...] and [...] and ID [...]

*'Mercadona and SADA: we propose an 8% increase on current prices for Mercadona. [...]  
[Company representative] should have communicated an increase of 10% and did not do this'.<sup>392</sup>*

- (420) Coopbox [...] wanted to recover volumes concerning their customer SADA, lost due to some offers made by Linpac. Therefore, it asked Linpac to raise the prices, which Linpac had accepted, threatening to otherwise withdraw from all "non-aggression" agreements between the two companies. Following the meeting, Linpac agreed to increase prices on some products. This was explained by [company name].<sup>393</sup>
- (421) On **10 March 2003** a meeting took place in the Meliá Hotel, Lisbon, between Linpac ([company representative] and [company representative]), Coopbox ([company representative]), Ovarpack ([company representative] and [company representative]), [non-addressee] ([company representative]) and Huhtamäki ([company representative] and [company representative]). Evidence of the meeting and its participants was provided by [...], [company name] and [company representative] (now ONO Packaging). However, [company representative] claimed that he does not remember the participation of Coopbox.<sup>394</sup> [Company representative's] statement confirms Huhtamäki's participation in the meeting.
- (422) According to [company representative], the purpose of the meeting was to discuss both Spain and Portugal. Discussions concerned the agreement reached on 3 July 2002 concerning the price increase on foam trays in Portugal and particularly on the fact that cartel participants offered lower prices than agreed. Participants quoted examples of prices of the other competitors to prove this fact. During the meeting, the cartel participants reached a further agreement on minimum prices for foam trays in Portugal.<sup>395</sup>
- (423) On **6 April 2003** a meeting took place between Linpac ([company representative] and [company representative]) and Coopbox ([company representative] and [company representative]). It concerned foam trays in Spain and also general policy issues about the Portuguese market. The meeting is evidenced by handwritten notes copied at the premises of Coopbox [...].<sup>396</sup>
- (424) The handwritten notes of the meeting read as follows:

*Linpac [non-addressee] Cxi  
Color +15% ----- 20%  
Portugal?  
El Corte Ingles ----- 1 June  
Eroski----- 1 June  
[...]  
Ahol----- Which price? 4 % Reminders (6 % Reminders)  
[...]*

<sup>392</sup> ID [...] (Original in Italian: *'Mercadona e SADA: proponiamo un 8% di aumento sugli attuali prezzi mercadona [...][Company representative] doveva comunicare un aumento del 10% e non lo ha fatto.'*).

<sup>393</sup> ID [...]

<sup>394</sup> ID [...] (ONO Packaging - reply to RFI), ID [...] and ID [...]

<sup>395</sup> ID [...] ID [...] and ID [...] (ONO Packaging - reply to RFI).

<sup>396</sup> ID [...]; ID [...] (Coopbox inspection document).

*Supermarkets Piedra IFA 2% PP*

*8% reminders*

*Coren?*

*Exploitation Redondo no increase*

*Primitivo Garcia 2 lorries old price*

*Embalajes Griñon 8% + (old distributor -20%)IFA Industria<sup>397</sup>*

- (425) [...] Linpac had asked for the meeting and for Coopbox to stop 'attacks' at Linpac's clients in Spain under the threat of counterattacks on Coopbox's clients. They also discussed the timetable of their upcoming price increases. They agreed to set the price difference between traditional trays and colour trays at 15% to 20%. For the clients El Corte Ingles and Eroski they decided to implement the price increase as of 1 June 2003. For the client Ahold they discussed a common policy on how to implement their agreed price increase via a common discount policy. Finally, for other clients, they discussed different actions depending on the specific situation of each client.<sup>398</sup>
- (426) In **March 2004** a meeting took place in a hotel at Avenida da Liberdade, Lisbon, between Linpac ([company representative] and [company representative]), Ovarpack ([company representative]), [non-addressee] ([company representative]) and Huhtamäki ([company representative]).<sup>399</sup> Huhtamäki claimed that its employees did not remember the meeting.<sup>400</sup> [...]. The Commission therefore considers that the information on this meeting, including its participants, merely constitutes an indication that the reported discussions took place.
- (427) [...] the meeting concerned the [...] Portuguese customer [...] which represented [35-45%] of foam tray sales in Portugal and had always been supplied by Huhtamäki and Ovarpack. That customer had chosen to purchase foam trays from more than one supplier in the future in order to have them competing against each other. The cartel participants were alarmed and discussed how to avoid a price war. They reached the conclusion that there was no alternative but to compete to become [...] sole supplier. However, the cartel participants exchanged general price levels below which they should not offer in order to maintain an "acceptable" price level.<sup>401</sup>
- (428) On **16 March 2004** Coopbox sent a fax to Linpac. It referred to the 'management of Coopbox clients' and listed some of Coopbox's clients in Spain (Lomesa, Jose Luis Gaucedo, Bolsas Vicente, Margo and Encesa). It also described how each client had been taken over, whether or not it was shared with Linpac, and the volumes supplied.<sup>402</sup>
- (429) On **20 April 2004** a meeting took place at the Meliá Hotel, Barcelona between [company representative], [company representative] and [company representative] of

---

<sup>397</sup> ID [...] (Coopbox inspection document); (Original in Spanish/French: 'Linpac [non-addressee] Cxi Color +15% ----- 20% Portugal? El Corte Ingles ----- 1 Junio. Eroski----- 1 junio [...] Ahol----- ¿Qué precio? 4 % Rappells (6% Rappells) [...] Supermercados Piedra IFA 2% PP 8% rappels. Coren? Explotaciones Redondo no subida. Primitivo Garcia 2 camiones precio antiguo. Embalajes Griñon 8% + (Distribuidor antigua -20%)IFA Industria').

<sup>398</sup> ID [...]

<sup>399</sup> ID [...]

<sup>400</sup> ID [...] (Huhtamäki - reply to RFI).

<sup>401</sup> ID [...]

<sup>402</sup> ID [...]

Linpac, [company representative] of Coopbox and possibly other representatives of those two companies. [...] contemporaneous evidence ([company representative's] handwritten notes) support that the meeting took place.<sup>403</sup>

- (430) The handwritten notes of [company representative] read as follows:

*'raw material ↑  
raise prices'*<sup>404</sup>

- (431) The cartel participants discussed price increases, raw materials and methods to improve communication between the cartel participants in Spain.<sup>405</sup>

- (432) On **4 May 2004** a meeting took place at the Meliá Barajas Hotel, Madrid between Linpac and Coopbox.<sup>406</sup>

- (433) The handwritten notes read as follows:

*'Our bosses said:[...]  
armistice – armistice – armistice – armistice;  
next meeting: will be when the situations of Caprabo and Ahorramas and Embutidos Martinez and Pa de Sa are resolved  
stop new aggressions Ex. [non-addressee] (offer to Agr. Villena) he has a copy!!!!!!  
Fax'.<sup>407</sup>*

- (434) The cartel participants made it clear that they would work together and not attack each other. They agreed to discuss details at the next meeting on 24 May 2004 (see Recital (435)).<sup>408</sup>

- (435) On **24 May 2004** a meeting took place at the Meliá Barajas Hotel, Madrid between Linpac ([company representative] and [company representative]) and Coopbox ([company representative], [company representative] and [company representative]). The purpose of the meeting was to discuss a possible allocation of big customers.<sup>409</sup>

- (436) The handwritten notes of the meeting read as follows:

*'1 Propose CXI, to offer a 5% dto [discount], on some references, which should guarantee the required volume for CXI (30%), rest of the references higher than LP  
2 During the next meeting LP will prepare a list of accounts and volumes which they want to share in order to compensate for a possible loss  
3 Reaffirm the armistice, non-aggression  
4 SADA: CXI proposes an increase 6 – 7% on the net invoice 1/7/2004 to*

---

<sup>403</sup> ID [...]; ID [...]

<sup>404</sup> ID [...] (Original in Spanish: '*materia prima ↑ subir precios*').

<sup>405</sup> ID [...]

<sup>406</sup> ID [...]; ID [...] (Coopbox inspection document).

<sup>407</sup> ID [...] (Coopbox inspection document); (Original in Spanish: '*1 Nuestros jefes dijeron: [...] tregua-tregua- tregua- tregua; siguiente reunión: será cuando se resuelvan las situaciones de Caprabo y Ahorramas y de Embutidos Martinez y Pa. de Sa. 2 Parar agresiones nuevas ej. [non-addressee] (oferta a Agr. Villena) tiene copia!!!!!!Fax*').

<sup>408</sup> ID [...]

<sup>409</sup> ID [...] and ID [...]; ID [...] (Coopbox inspection document).



*communicate before 1/6*  
*5 Proposal other increases (list)'.<sup>410</sup>*

- (437) Coopbox wanted to raise its market share for big wholesale clients to 30 %. It asked Linpac to share some of those clients with Coopbox in exchange for some other Coopbox volumes. Although Linpac was interested and proposed to draw up lists in order to discuss possible compensations, the suggestion never materialised. At the meeting the two cartel participants also reaffirmed their previously agreed commitment not to take away each other's customers. Coopbox proposed a price increase for the customer SADA as of 1 July 2004 to be communicated before 1 June.<sup>411</sup>
- (438) On **29 July 2004** a meeting took place at the Meliá Barajas Hotel, Madrid, between Linpac ([company representative] and [company representative]) and Coopbox ([company representative], [company representative] and [company representative]). The purpose of the meeting was to assess the possibility of a price increase. The participants at the meeting are indicated in an inspection document found at the premises of Coopbox. [...].<sup>412</sup>
- (439) The handwritten notes mention an '*increase 8%*' and the '*freezing of positions*'.<sup>413</sup>
- (440) The cartel participants discussed whether they should introduce a price increase of 8 % for foam trays. They agreed that this would apply to all customers in Spain and Portugal except for those towards whom they had committed not to raise prices in the year 2004. In addition, the cartel participants again agreed on the *status quo* concerning customers. Finally, the cartel participants discussed the situation in France and agreed not to implement a price increase there.<sup>414</sup>
- (441) On **29 July 2004** Coopbox sent out price increase letters to all its clients in Spain and Portugal announcing a price increase for foam trays as of 1 October 2004, valid until the end of the year 2004.<sup>415</sup>
- (442) [...] this price increase letter was prepared after the meeting with Linpac on 29 July 2004. The price increase was the result of a wider agreement to which also Vitembal and Huhtamäki were parties. This is evidenced by the fact that those cartel participants were also present at the follow-up meeting on 7 October 2004 (see Recital (443)).<sup>416</sup>
- (443) On **7 October 2004** a meeting took place at the Calderon Hotel, Barcelona, between Linpac ([company representative], [company representative] and [company representative]), Vitembal ([company representative], [company representative] and [company representative]), Coopbox ([company representative]) and Huhtamäki

---

<sup>410</sup> ID [...] (Coopbox inspection document); (Original in Spanish: '*1 Propone CXI, ofertar un 5% de dto, en algunas referencias, que garanticen el volumen requerido por CXI (30%), resto de referencias más altas que LP 2 En las próximas reuniones LP prepara una relación de clientes y volúmenes que quieren compartir, para compensar la posible pérdida 3 Reafirmar la tregua, de no agresiones 4 SADA: CXI propone subida 6 – 7% sobre el neto factura 1/7/2004 comunicar antes del 1/6 5 Propuesta "otras subidas" (listado)*').

<sup>411</sup> ID [...] and ID [...]; ID [...] (Coopbox inspection document).

<sup>412</sup> ID [...] and ID [...]; ID [...] (Coopbox inspection document).

<sup>413</sup> ID [...] (Coopbox inspection document); (Original in Spanish: '*subida 8%'; 'congelar posiciones*').

<sup>414</sup> ID [...] and ID [...] and ID [...]

<sup>415</sup> ID [...] (Coopbox inspection document).

<sup>416</sup> ID [...]

([company representative] and [company representative]). The purpose of the meeting was to discuss price increases for traditional trays, MAP<sup>417</sup> trays and film for all customers in Spain and Portugal.

- (444) The participants at the meeting were indicated by [...] ONO Packaging as well as by contemporaneous handwritten notes.<sup>418</sup> [...] though the notes carry the date 'September 2004' – they are actually the notes of the meeting held on 7 October 2004.<sup>419</sup> [...] it was a follow up meeting to the price increase agreed between the cartel participants during the summer 2004 (see Recitals (438)-(442)).<sup>420</sup> Huhtamäki claims that it cannot remember anything.<sup>421</sup>
- (445) The handwritten notes of [company representative] ([company name]) read as follows:

*'We want to know about GDO (increase Carrefour)*

*[...]*

*Vit will raise everything as of 1 November*

*[...]*

*[Non-addressee] communicated +12% per APack*

*[...]*

*A BCN and ALC Emb. Martinez +8 applied +9,2, to do, SADA +8, +9,2*

*[...]*

*Portugal: the prices are raised by 8%. We are going to raise everything no later than 15 October.*

*[...]*

*We are waiting for instructions by [company representative] on what to do after 8% done*

*[...]*

*rigid: we cannot apply the 5% that we would want.*

*[...]*

*In France we are not increasing'.<sup>422</sup>*

- (446) The participants discussed the implementation of price increases to big customers and Vitembal accused Linpac of not having increased prices for Carrefour, Auchan and Ahold. Vitembal also committed to increase its prices for all clients as of 1 November. Finally, [company name] [...] had applied a price increase of 8 % to the client Embutidos Martinez in Barcelona and Alicante, with a further increase of 9,2% to follow, while no increase was applied to the customer SADA. With regard to Portugal, they confirmed the agreed price increase of 8 % that was to be applied to all customers no later than 15 October and decided to wait for instructions from

---

<sup>417</sup> Modified atmosphere packaging.

<sup>418</sup> ID [...]; ID [...]; ID [...] and ID [...] (ONO Packaging - reply to RFI).

<sup>419</sup> ID [...]; ID [...]

<sup>420</sup> ID [...] and ID [...]

<sup>421</sup> ID [...] (Huhtamäki - reply to RFI).

<sup>422</sup> ID [...] (Original in Italian: 'Vogliamo sapere di GDO (aumenti in Carrefour)' [...] 'Vit aumenterà tutto dal 1 Novembre' [...] '[non-addressee] ha comunicato +12% per APack' [...] 'A BCN e ALC Emb. Martinez +8 applicato +9,2 da fare SADA +8, +9,2' [...] 'Portugal: i prezzi sono stati aumentati dell' 8%. Si aumenteranno a tutti entro il 15 ottobre' [...] 'Attendiamo istruzioni da [company representative] su cosa fare dopo 8% già fatto' [...] Rigido: non riusciamo ad applicare il 5% che vorremmo' [...] 'In Francia NON SI AUMENTA').

Huhtamäki/Polarcup ([company representative]) as to the possibility of a further increase.<sup>423</sup>

- (447) The possibility of a price increase was also discussed in a meeting between Coopbox and its distributor Dynaplast held on **5 November 2004**. Handwritten notes found at the premises of Coopbox read as follows:

*'Ramafruit increase 7 %, speak with Linpac  
[...]  
Grupo Dasa Upper. (speak with Linpac)'  
[...]*<sup>424</sup>

An internal report of the meeting was also found at Coopbox's premises. It contains the following agenda point:

*'Price Increase*

*Reference is made to the list of price increases. Especially, for the 80 most important clients by invoice as well in Coopbox as in Dynaplast the expected increase was done for the majority of them with some exceptions where we are waiting for Linpac to increase. [...]*<sup>425</sup>

- (448) The price increase discussed was the one agreed upon in July 2004. It was stated that the agreed price increase had been implemented for the majority of the customers, while for other customers Coopbox should wait for the increase of Linpac.<sup>426</sup>
- (449) On **22 November 2004** a meeting took place at the Hotel Mercure, Paris, between Linpac ([company representative], [company representative] and [company representative]), Vitembal ([company representative], [company representative] and [company representative]), Coopbox ([company representative]) and Huhtamäki ([company representative] and [company representative]). The meeting is evidenced by [...] ONO Packaging and by an e-mail from [company representative] (Huhtamäki) to [company representative] (Coopbox) dated 18 November 2004 found at the premises of Coopbox.<sup>427</sup>
- (450) The cartel participants discussed the low prices on the Spanish market and decided on a price increase of 5% for foam trays.<sup>428</sup>
- (451) The price increase was also discussed in an internal Coopbox meeting on **11 January 2005**. The internal report of the meeting was found at the premises of Coopbox. It contains the following agenda point:

---

<sup>423</sup> ID [...]; ID [...]

<sup>424</sup> ID [...] (Coopbox inspection documents); (Original in Spanish: *Ramafruit subida 7% hablar con Linpac [...] Grupo Dasa Upper (hablar con Linpac)'*).

<sup>425</sup> ID [...] and [...] (Coopbox inspection documents – same document); (Original in Spanish: *'[...] Subida de Precios Se hace repaso a la lista de las subidas de precios. En especial a los 80 clientes de más facturación tanto en Coopbox, como en Dynaplast, se ha hecho la subida esperada, en la mayoría de ellos, salvo algunas excepciones que se está esperando la subida de Linpac'.*).

<sup>426</sup> ID [...]

<sup>427</sup> ID [...] and ID [...]; ID [...], ID [...] (ONO Packaging reply to RFI) and ID [...] (Coopbox inspection document).

<sup>428</sup> ID [...]; ID [...] (ONO Packaging - reply to RFI).

*'Clients lost partly or completely due to the price increase  
COREN: due to the agreement with Linpac  
HNOS. SAIZ: Vitembal and Linpac did not raise as agreed  
[...]*

*ESP COSTA: due to the increase, mainly Vitembal  
[...]*<sup>429</sup>

(452) [...] <sup>430</sup>

(453) On **12 January 2005** a meeting took place at the Hotel Tivoli Tajo, Lisbon, between Linpac ([company representative] and [company representative]), Ovarpack ([company representative] and [company representative]), Coopbox ([company representative]), [non-addressee] ([company representative]) and Huhtamäki ([company representative] and [company representative]). The meeting is evidenced by handwritten notes [...] and was confirmed by [...] ONO Packaging.<sup>431</sup>

(454) The handwritten notes of [company representative] ([company name]) taken during the meeting read as follows:

*'LINPAC/OVARPACK  
HUHT  
CXI/[non-addressee]*

*there is the problem with avipronto/the [non-addressee] offer.  
Did the client deceive us? And CXI/Linpac went for the bait.*

*What to do?*

*Huhtamäki: says that it keeps sales levels constant. 6 million trays in Spain, same in Portugal.*

*[Company representative]: we increased by +8%. Cannot go any higher.  
If [non-addressee] keeps the factory in Valencia then Vitembal will sell at a higher price.*<sup>432</sup>

(455) The meeting concerned foam trays in Portugal. At that time, the participating companies felt that they were in the midst of a price war. The purpose of the meeting was to stop the lowering of prices practiced by some distributors and producers. Avipronto, a [...] client in the packaging of fruit in Portugal, had received an aggressive offer from [non-addressee], and threatened to change from Linpac and Coopbox to [non-addressee]. The cartel participants failed to see how this was possible (and feared that it might have been a game played by Avipronto) but still

---

<sup>429</sup> ID [...]; ID [...] (Coopbox inspection document) (Original in Spanish: '*Cientes perdidos en parte o su totalidad por la subida de precios COREN: Por el acuerdo con Linpac HNOS. SAIZ: Vitembal y Linpac no han subido lo pactado [...] ESP. COSTA: por la subida, principalmente Vitembal*').

<sup>430</sup> ID [...]

<sup>431</sup> ID [...], ID [...] and ID [...]; ID [...], and ID [...] (ONO Packaging - reply to RFI).

<sup>432</sup> ID [...]; (Original in Italian: '*C'è il problema di avipronto/offerta di [non-addressee]. Ci ha ingannato il cliente? E CXI/LINPAC hanno abboccato. Come fare? Huhtamäki: dice che mantiene i livelli di vendita costanti. . Sei milioni di vassoi in Spagna, lo stesso in Portogallo. Martin: abbiamo fatto un +8%. Non si può aumentare di più. Se [non-addressee] mantiene la fabbrica a Valencia Vitembal venderà a prezzo più alto.*').

lowered their respective offers. The cartel participants also discussed the situation of the customer Jeronimo Martins, supplied by Ovarpack: the other companies complained about the price levels that Ovarpack applied to that customer. Linpac, and its then distributor Ovarpack, were however not willing to give away their position. During the meeting Linpac also indicated that it had applied an increase of 8% in Portugal and that it was not possible for it to implement a further increase. Finally, Huhtamäki explained that its sales volume was stable at 6 million trays in Spain and Portugal. [...].<sup>433</sup> ONO Packaging confirmed that Portugal was discussed.<sup>434</sup> Huhtamäki claimed that its employees do not remember the meeting.<sup>435</sup> However, the Commission notes that Huhtamäki's attendance was confirmed by [company representative] (ONO Packaging) and [...].

- (456) On **18 January 2005** a meeting took place at the Hotel Calderon, Barcelona, between Coopbox, Linpac, Huhtamäki, Vitembal and Sirap-Gema. It was divided into a morning and afternoon session. The purpose of the meeting was to discuss the situation of plastic packaging not only on the Spanish market but also on other European markets, namely those the cartel participants came from<sup>436</sup> (France, Italy, Spain and Portugal). The meeting is evidenced by handwritten notes [...] and was confirmed by [...] ONO Packaging.<sup>437</sup> Huhtamäki claimed that its employees do not remember the meeting.<sup>438</sup> However, the Commission notes that Huhtamäki's attendance was confirmed by [company representative] (ONO Packaging) and [...]. This is one of the few meetings where the cartel participants discussed markets outside the SWE cartel.

- (457) The handwritten notes of [company representative] ([company name]) taken during the meeting read as follows concerning the morning session:

*'Barcelona 18F.*

*LP – Huhtamäki – CX – VIT – SIRAP are present*

*Paco C. LP lost 6.6 millions of normal trays each month.*

*Sirap has got 3 retailers and doesn't sell much.*

*VIT Murillo states that 18 not applied in Carrefour.*

*Sirap doesn't have big projects in Spain. They won't have direct retail.*

*The general board will meet again in 2-3 months. A meeting was held in Portugal last week.*

*France usual mess.*

*Guidelines of LP: [company representative] [function of company representative], [company representative] [function of company representative], [function of company representative] [company representative], [function of company representative]*

---

<sup>433</sup> ID [...]; ID [...] and ID [...]

<sup>434</sup> ID [...] (ONO Packaging - reply to RFI).

<sup>435</sup> ID [...] (Huhtamäki - reply to RFI).

<sup>436</sup> ID [...]

<sup>437</sup> ID [...], [...], [...] and ID [...]; ID [...] and ID [...] and ID [...] (ONO Packaging - reply to RFI).

<sup>438</sup> ID [...] (Huhtamäki - reply to RFI).

*representative] [company representative], ADM [company representative], Clearpack [company representative]*<sup>439</sup>

- (458) The session in the morning was attended by [company representative], [company representative], [company representative], [company representative] and [company representative] (all of Linpac), [company representative], [company representative] and [company representative] (all of Vitembal), [company representative] and [company representative] (all of Coopbox), [company representative] (Huhtamäki), and [company representative] (Sirap-Gema). It concerned foam trays and the competitive conditions on the French, Spanish and Portuguese markets. The participants exchanged information concerning the relative sales volumes achieved and future commercial strategies. In this respect, Sirap-Gema declared to have three distributors in Spain, to only achieve modest sales volumes in Spain and not to be interested in direct distribution in Spain. The cartel participants also discussed price increases. For instance, [company representative] (Vitembal) did not consider it viable to implement an 18% price increase regarding the customer Carrefour, because he was afraid of Linpac not doing the same. As far as Portugal is concerned, references were made to the meeting which took place the preceding week. As for the French market, the discussions involved only Linpac, Vitembal and Sirap Gema who addressed the constant 'price war' and accused each other of violating the existing agreements and approaching each other's customers.<sup>440</sup>
- (459) The handwritten notes of [company representative] ([company name]) taken during the meeting read as follows concerning the afternoon session:

*'Afternoon.*

*LIN. – GUILLIN – CXI – VIT*

*Talking about Spanish MK [market].*

*We already raised prices by 5%.*

*[Company representative]: if MP increases by 30% the impact should be 60%.*

*Since it affects on 35% , we need 10 more points.;*

*we raised at the end of October.*

*[Company representative]: In Spain there are high prices because of Guillin prices, who was selling to us at Carrefour prices and LP was adding 28 points.*

*GPI. Not increased 8% in GDO during January.*

*PP increased more, PET can reach 12% in two steps.*

*MP's prices [are] stable, but will increase,*

*[Company representative]: 90% of bakery is PET. We can find a minimum price*

*GPI: we have already increased, it is not possible to repeat (15<sup>th</sup> January)*

*[Company representative]: E. mk [Spanish market] good, we can raise prices without fearing any invasion troubles.*

---

<sup>439</sup> **ID [...]**; (Original in Italian: 'sono presenti LP – Huhtamäki – CX – VIT – SIRAP Paco C. LP ha perso 5-6 mlo di normal tray al mese. Sirap ha 3 distributori e vende poco. VIT Murillo dice che 18 non si applicato in Carrefour. Sirap non ha grandi progetti in Spagna. Non avrà distribuzione diretta. Fra 2-3 mesi si riunirà di nuovo la mesa general. In Portugal riunione la scorsa settimana. Francia soliti casini. Directivos di LP: [Company representative] [function of company representative], [function of company representative] [company representative], [function of company representative] [company representative], [function of company representative] [company representative], [function of company representative] [company representative], ADM [company representative], Clearpack [company representative].').

<sup>440</sup> **ID [...]**, **[...]** and **ID [...]**

*Sena is increasing PS [prices] by 15%.Wants to switch to PET.  
INCREASE PET BY 6% FROM THE 1<sup>ST</sup> OF MARCH.*<sup>441</sup>

- (460) [...] in the afternoon, [company representative] (Guillin) joined the group<sup>442</sup>, whereas the representatives of Huhtamäki and Sirap Gema did not participate in the session. This part of the meeting concerned PET transparent trays: [company representative] (Linpac) suggested increasing the sales prices of transparent containers twice as much as the increase in the price of raw materials. [Company representative] (Linpac) indicated that PET represented about 90% of the production sold in the bakery segment and that a further price increase would be possible by fixing a minimum price. In particular, an increase of 12% was discussed. [Company representative] (Linpac) considered that the market conditions regarding PET products would allow a price increase without the risk of new producers or distributors entering the market with lower prices. At the end of the session, the cartel participants decided to increase the PET products in Spain for all customers by 6% from 1 March 2005.<sup>443</sup>
- (461) On **20 April 2005** a meeting took place at the Melia Barajas Hotel, Madrid, between Linpac ([company representative] and [company representative]) and Coopbox ([company representative] and [company representative]). The purpose of the meeting was to discuss a potential price increase for foam trays for agricultural industry clients after Linpac had established an aggressive policy to the detriment of Vitembal, especially in France. Linpac was looking for support from Coopbox to attack Vitembal in Spain and France. The meeting is evidenced by an inspection document found at the premises of Coopbox [...].<sup>444</sup>
- (462) The handwritten notes of the meeting contain the prices that Linpac applied to the client Uve S.A. and read as follows:

*'Hijos de Manuel Lucas [company representative] sells lorries 20% lower than the ones by Cxi  
Los Frutales are given the same price Linpac as demanded by client,  
2 providers  
Agricola Villena are given the same price Linpac.  
Uvesa last week received visit by Linpac and price reduction.*<sup>445</sup>

---

<sup>441</sup> ID [...]; (Original in Italian: 'Pomeriggio. LIN. – GUILLIN – CXI – VIT. Si parla di MK spagnolo. Noi abbiamo già aumentato prezzi 5%. [Company representative]: se gli aumenti di MP sono 30% l'incidenza dev'essere 60%. Siccome incide su 35%, abbiamo bisogno di 10 punti; Si è aumentato a fine ottobre. [Company representative]: In Spagna ci sono prezzi alti perché furono i prezzi di Guillin che ci vendeva a prezzi Carrefour e LP aggiungeva 28 punti. GPI. Non ha aumentato 8% in GDO in gennaio. Il PP è aumentato di +, PET può arrivare a 12% in 2 steps. Prezzi MP in stasi, ma aumenteranno. [Company representative]: Il 90% del bakery è PET. Possiamo trovare prezzo minimo. GPI: noi abbiamo già aumentato, non è possibile ripetere (15 gennaio) [company representative]: E. mk buono, possiamo aumentare prezzi senza temere grandi problemi di invasione. Sena sta aumentando 15% PS. Vuole passare a PET. AUMENTARE PET DEL 6% DAL 1 MARZO.').

<sup>442</sup> GROUPE GUILLIN SA, a French based company, is the parent company of Nespak, a producer of plastic food packaging active in Italy.

<sup>443</sup> ID [...], [...] and ID [...]

<sup>444</sup> ID [...] and ID [...]; ID [...] (Coopbox inspection document).

<sup>445</sup> [...] (Coopbox inspection document); (Original in Spanish: 'Hijos de Manuel Lucas [company representative] vende camiones 20% por debajo de Cxi. Los Frutales se le pasa misma tarifa Linpac

- (463) [...]. Linpac disclosed to Coopbox the prices charged to the client Uve S.A. and Coopbox complained that Linpac had lowered its prices towards that client. Linpac replied that Coopbox could not get the client anyhow and asked Coopbox to refrain from aggressive counteroffers under threat of retaliation. Coopbox also complained that Linpac's agent, [company representative], sold trays to the client Hijos Lucas at a lower price than Coopbox. For the client Los Frutales, Coopbox proposed to align its prices to Linpac's in order to share the client. For the client Agrícola Villena, Coopbox communicated that it would apply the same prices as Linpac.<sup>446</sup>
- (464) In **July 2005** a meeting took place between Linpac ([company representative] and [company representative]) and Coopbox ([company representative], [company representative] and [company representative]). The purpose of the meeting was to discuss a possible price increase in Spain.<sup>447</sup>
- (465) In the context of determining minimum prices, the cartel participants exchanged sensitive information. This is evidenced by an excel sheet found at the premises of Vitembal and dated **11 October 2005** which shows a comparison between Vitembal and Linpac's prices to Carrefour.<sup>448</sup> Two days later, on **13 October 2005**, Linpac and Vitembal ([company representative]) met to discuss minimum prices for barrier foam trays ("BFT") for the customer Carrefour Espana.<sup>449</sup>
- (466) On **18 October 2005** a meeting took place at the Hotel Arts, Barcelona, between Linpac ([company representative]) and Vitembal ([company representative]). The cartel participants discussed and exchanged information on prices of foam trays.<sup>450</sup>
- (467) At the **beginning of 2006** a meeting took place, probably in Madrid, between Linpac ([company representative], [company representative] and [company representative]) and Coopbox ([company representative]). The meeting is evidenced by handwritten notes [...]. [...] the presence of [company representative], [function of company representative], makes Madrid the most probable meeting point.<sup>451</sup>
- (468) The handwritten notes by [company representative] read as follows:

'[...]  
*Argue that we must adapt the prices [...]*  
 - freight  
 - electricity  
 - and raw material  
 [...]  
*Bandesur: we'll tell them to raise prices. Will they do it?*  
 [...]

---

*por petición cliente. 2 proveedores. Agrícola Villena se le pasa misma Tarifa Linpac. Uvesa Semana pasada recibe visita Linpac y bajada de precio').*

<sup>446</sup> ID [...] and ID [...]; ID [...] (Coopbox inspection document).

<sup>447</sup> ID [...]

<sup>448</sup> ID [...] (Vitembal inspection document).

<sup>449</sup> ID [...] and ID [...]. ID [...] replaced ID [...] which is referred to in the SO. The documents referred to in the two IDs are therefore the same.

<sup>450</sup> ID [...]; [...] and [...]

<sup>451</sup> ID [...]; ID [...]



*Let's appoint OUR "control" [person] and let's make him meet periodically with their [control person]'.<sup>452</sup>*

- (469) [...] the notes refer to a market assessment that was undertaken at that meeting and to a price increase for foam trays in Spain agreed between cartel participants. Certain 'common lines of action' were agreed upon, such as: (i) the justification to customers for possible price increases, that is higher inflation rates, increased raw material costs and transport costs; (ii) the pressure to be applied on Bandesur, a Spanish producer of food packaging, so as to convince it to increase its prices, and (iii) the possible creation of a supervisory organ, composed by Linpac and Coopbox representatives, aimed at overseeing the effective implementation of the agreed price increases.<sup>453</sup>
- (470) In **September 2006** a meeting took place at the Hotel Melía Barajas, Madrid, between Linpac ([company representative] and [company representative]), Vitembal ([company representative]), Coopbox ([company representative]) and possibly ONO Packaging ([company representative]).<sup>454</sup> [Company name] claimed that they could not remember the meeting and only made reference to an entry in [company representative] agenda for 19 September 2006 in Madrid which, according to [company name], referred to a bilateral meeting with Coopbox at the Hotel Melía.<sup>455</sup> Coopbox denied that such a meeting took place and suggested that it might have been cancelled.<sup>456</sup> ONO Packaging claimed that it did not participate in any meeting after the acquisition of Huhtamäki's Portuguese subsidiary (19 June 2006), while Huhtamäki claimed that it could not remember anything.<sup>457</sup> Therefore, the Commission considers that this meeting between competitors is not sufficiently proven and that the underlying evidence merely indicates that such a meeting may have taken place.
- (471) [...], during the meeting the cartel participants agreed on a price increase for foam trays of which each cartel participant subsequently informed its clients. In **autumn 2006** Vitembal sent out price increase letters to its customers announcing the price increase agreed in September 2006. It announced a price increase of 5% for foam trays in Spain as of 6 November 2006. [...] Linpac, Coopbox and Huhtamäki (ONO Packaging) did the same.<sup>458</sup> ONO Packaging denies having made any such announcement.<sup>459</sup> The Commission therefore does not consider it sufficiently proven that ONO Packaging made such an announcement.
- (472) In **March 2007**, a meeting took place at the Tryp hotel, Madrid, between Linpac ([company representative], [company representative]) and Coopbox ([company representative]). The meeting and the participants were evidenced [...] and

---

<sup>452</sup> ID [...]; (Original in Italian: '*Argomentare che dobbiamo adeguare i prezzi [...] – trasporto – elettricità – y materia prima*' [...] '*Bandesur: gli diremo di spingere in su (i prezzi). Lo farà?*' [...] '*Mettiamo un controllo NOSTRO ed uno loro che si vedano periodicamente.*' The transcript of the document quotes as date 'possibly beginning of 2006'. The document is equivalent to ID [...] (Coopbox inspection document).

<sup>453</sup> ID [...]

<sup>454</sup> ID and ID [...]

<sup>455</sup> ID and ID [...]

<sup>456</sup> ID and ID [...]

<sup>457</sup> ID [...] (ONO Packaging - reply to RFI); ID [...] (Huhtamäki - reply to RFI).

<sup>458</sup> ID [...]; ID [...] and ID [...] (Coopbox inspection document).

<sup>459</sup> ID [...] (ONO Packaging reply to the SO).

corroborated by [company representative's] handwritten notes found at the premises of Coopbox.<sup>460</sup>

(473) The handwritten notes of [company representative] read as follows:

<i>Aerpack</i>	<i>prof. 47</i>		
<i>BS/47</i>	<i>12-47</i>		
<i>What is the market value?</i>	<i>200</i>	<i>6</i>	<i>LP</i>
<i>Total Linpac</i>	<i>950.000/1000</i>		
<i>Standard</i>	<i>660.000</i>	<i>33.</i>	<i>34,20</i>
<i>ABS</i>	<i>176.000</i>		<i>74,8</i>
<i>B5.50 LINFRESH</i>	<u><i>110.000</i></u>	<i>-115</i>	<i>99</i>
	<i>13.000 in</i>	<i>950.000</i>	
	<i>Italy</i>		
		<i>295</i>	
<i>Normal</i>	<i>345.000</i>	<i>33</i>	<i>ALYSON</i>
<i>ABS</i>		<i>31.000</i>	<i>3</i>
<i>Aerpack</i>	<i>82</i>		<i>320</i>
<i>296</i>			
<i>31</i>			
<u><i>82</i></u>			
<i>409</i>			
	<i>3.90</i>		
			<i>910</i>
	<i>2006</i>		<u><i>409</i></u>
	<i>1319</i>	<sup>461</sup>	

(474) [...] the parties exchanged their sales volumes and prices in 2006 for Spain and Portugal. Linpac produced around 950 000 units (660 000 XPS standard, 176 000 absorbent and 110 000 Linfresh) and Coopbox sold 409 000 000 units. The numbers on the right represent the prices per 1 000 pieces. On the basis of the actual sales, they then estimated the size of the whole market in Spain and Portugal.<sup>462</sup> The notes in this respect read as follows:

<i>'LIMPAC</i>	<i>910</i>	
<i>COOPBOX</i>	<i>400</i>	
<i>ALYSON</i>	<i>50</i>	
<i>VITEMBAL</i>	<i>100</i>	
<i>POLINEX</i>	<i>30-40</i>	<i>1650: 1700</i>
<i>BANDESUR</i>	<i>70</i>	
<i>ONO</i>	<u><i>100</i></u>	

<sup>460</sup> ID [...]; ID [...] (Coopbox inspection document). [...]

<sup>461</sup> ID [...] (Coopbox inspection document); (Original in Spanish/Italian: *Quanto vale mercato? [...] – Totale in Italia*).

<sup>462</sup> ID [...]

LP 107

CX 24-20

VIT 9

BSUR 2,4

ONO 1,5' <sup>463</sup>

- (475) The cartel participants then discussed the prices to be applied to specific customers for specific products. For Eroski, a client of both Linpac and Coopbox, they spoke of applying prices that were 7% lower on products delivered to a central distribution centre rather than to the single sales point. Linpac explained that the prices of its line Linfresh had risen by 6% between February 2006 and February 2007. At the end of the meeting, in order to avoid price wars between their distributors, Linpac proposed to prepare the same price lists for the distributors of both cartel participants. For that purpose, Linpac volunteered to provide Coopbox with average prices for each market area and product line together with a draft price list for their distributors in order for them to align their prices.<sup>464</sup> The notes in this respect read as follows:

*'Price*

*Eroski – 7 I Plates*

*Average prices LP Feb/Feb*

*LINFRESH + 6% 2007 over 2006*

*Standard 35€ average Feb 07*

*Prepare prices distributors*

*and average sales prices*<sup>465</sup>

- (476) In an internal e-mail from Coopbox dated **7 April 2007**, [company representative] expressed concerns that Vitembal would quote aggressive prices to the client Eroski. As a consequence, during the first days of April 2007, [company representative] (Coopbox) had phone contacts with Vitembal ([company representative]) on that issue. It follows from the email that [company representative] had reassured him that Vitembal did not intend to be aggressive because it considered that Coopbox's prices to Eroski were already low and that they would mitigate the offer when meeting directly with the customer.<sup>466</sup>
- (477) On **18 April 2007** a meeting took place in Madrid between Linpac ([company representative]) and Coopbox ([company representative]). The meeting is evidenced by handwritten notes [...] <sup>467</sup>
- (478) The handwritten notes by [company representative] read as follows:

'[...]

<sup>463</sup> ID [...] (Coopbox inspection document).

<sup>464</sup> ID [...]

<sup>465</sup> ID [...] (Coopbox inspection document); (Original in Italian: *Prezzo, Eroski - 7 in Piatta, Prezzi medi LP Feb /Feb, LINFRESH + 6% 2007 su 2006, Standard a 35 € media Feb 07, Preparare tariffe distributori, e prezzi medi di vendita*).

<sup>466</sup> ID [...] (Coopbox inspection document); ID [...]

<sup>467</sup> ID [...]; ID [...]

*Guissona – Price - €/kg – film – 3€???  
should be 4,70  
Ilfresh -20% ↓ 89 Zaragoza.*<sup>468</sup>

- (479) [...] The cartel participants discussed possible measures to keep prices at an acceptable level as well as prices applied to certain distributors. In particular, they agreed that the prices for film applied to the distributor Guisona should be raised from EUR 3.00 to EUR 4.70. In addition, Coopbox informed Linpac that it planned to reduce the price for one type of tray (reference 89) for one customer (Ilfresh) in Zaragoza.<sup>469</sup>
- (480) On **18 May 2007** Linpac and Coopbox exchanged emails. [Company representative] (Linpac) forwarded to [company representative] (Coopbox) an email exchange with [company representative] (Ovarpack), where the latter complained that '*Coopbox is attacking Ovarpack concerning our clients*', for example the customer Espagri, and asked Linpac '*What can we do?*'. [Company representative] forwarded the e-mail to [company representative] asking: '*What do we do here?*'. [Company representative] denied any such offer from Coopbox, because that customer was being supplied directly by [non-addressee] and Ovarpack. [Company representative], on the other hand, complained about attacks by Ovarpack in Portugal regarding the customer '*Kilom and surroundings*', which were supplied by [non-addressee]. [Company representative] also mentioned that he had received a price reduction request from the customer Noel according to which Coopbox's prices were above the competitive level. [Company representative] informed Linpac that: '*they are trying at all costs to obtain a price reduction, we will maintain the positions*'. [Company representative] also communicated the '*offer: 102,8/117,5/134,6*'.<sup>470</sup>
- (481) In an e-mail dated **16 April 2007** Linpac ([company representative]) sent Coopbox ([company representative]) a table with Linpac's prices of foam trays per tray reference and distributor.<sup>471</sup> In an e-mail dated **17 April 2007** Linpac ([company representative]) sent Coopbox ([company representative]) a similar table.<sup>472</sup> Each letter in the table represented a distributor. The tables were sent to compare prices before agreeing on a new price increase to be communicated to the distributors.<sup>473</sup> In response, in an e-mail dated **24 May 2007**, Coopbox ([company representative]) replied with regard to foam trays by returning the list with an additional column for possible prices to be applied by Linpac:<sup>474</sup> '*Find attached a proposal for minimum prices to be applied in various zones. I took into consideration our actual prices and yours and the possible presence of others*'.<sup>475</sup> Linpac also received the actual prices of Coopbox for foam trays.<sup>476</sup> [Company name] drew up a table comparing the prices

<sup>468</sup> ID [...]; (Original in Spanish: '*Guissona – Precio €/kg lamina – 3€??? Debería ser 4,70. Ilfresh -20% ↓ 89 Zaragoza*').

<sup>469</sup> ID [...]; ID [...]

<sup>470</sup> ID [...](Coopbox inspection document); (Original in Spanish: '*La Coopbox está atacando a Ovarpack en nuestros clientes*' [...] '*Qué podemos hacer?*' [...] '*Qué hacemos aquí?*'; Original in Italian: '*stanno cercando di forzare una riduzione, manterremo le posizioni*' [...] '*Offerta: 102,8/117,5/134,6*')

<sup>471</sup> ID [...]

<sup>472</sup> Contemporaneous document ID [...]

<sup>473</sup> ID [...]

<sup>474</sup> ID [...]

<sup>475</sup> ID [...] (Original in Italian: '*ti mando in allegato una ipotesi di prezzi minimi da applicare nelle varie zone. Ho tenuto conto dei prezzi attuali nostri e vostri e delle eventuali presenze di altri.*').

<sup>476</sup> ID [...]

of Linpac and Coopbox for foam trays.<sup>477</sup> Those e-mails served the purpose of preparing for their next meeting (see Recital (482)).<sup>478</sup>

- (482) On **28 May 2007** a meeting took place at a hotel in Madrid, between Linpac ([company representative]) and Coopbox ([company representative]). [...] the purpose of the meeting was to discuss price increases per distributor and region in Spain on the basis of the tables exchanged.<sup>479</sup>
- (483) On **18 July 2007** a meeting took place at the Hotel Melia Barajas, Madrid, between Linpac ([company representative]) and Coopbox ([company representative]). The purpose of the meeting was to discuss further price increases. The meeting is evidenced by handwritten notes [...], a calendar entry and the hotel bill.<sup>480</sup>
- (484) The handwritten notes of [company representative] taken at the meeting state: '*announcement 7/8% for 5%*'. The cartel participants discussed customers and agreed on a price increase between 7 and 8% with the aim of effectively achieving 5% as of 1 September 2007.<sup>481</sup>
- (485) On **25 July 2007** a meeting took place at the Tryp Barcelona Aeropuerto between Linpac ([company representative]), Coopbox ([company representative]) and Vitembal ([company representative]). The purpose of the meeting was to include Vitembal in Linpac and Coopbox's price increase for 2007 and to avoid competition on the Spanish market. It concerned mainly foam trays in Spain. The cartel participants agreed on a price increase of 5%. The meeting and its content was evidenced [...] by [...] contemporaneous documents such as a calendar entry and food receipts.<sup>482</sup> [...] <sup>483</sup> [...] <sup>484</sup>
- (486) In **summer 2007** Vitembal sent out price increase letters to its customers announcing the price increase agreed in July 2007. It announced a price increase of 5% for foam trays, PET trays and film in Spain.<sup>485</sup>
- (487) In an e-mail dated **6 September 2007** to Linpac ([company representative]), Coopbox ([company representative]) wrote the following: '*Portugal: If we do not start immediately it will be impossible to coordinate prices before 2008.*' Coopbox asked for indications on a number of customers in Spain in order for Coopbox to support Linpac: 'I checked that for CIngles [El Corte Ingles] our last increase is of November 2006. I give you some prices in order to see if we are aligned, I think yes.'<sup>486</sup> In an e-mail dated **8 September 2007**, Linpac confirmed that with regard to Portugal it would contact Ovarpack and that it would inform Coopbox concerning

---

<sup>477</sup> ID [...]

<sup>478</sup> ID [...] and ID [...]

<sup>479</sup> ID [...]; ID

<sup>480</sup> ID [...]; ID [...]

<sup>481</sup> ID [...]; ID [...]; (Original in Spanish: '*anuncio 7/8% por 5%*').

<sup>482</sup> ID [...] and ID [...]; ID [...]

<sup>483</sup> ID [...], [...] and [...]; ID [...] and [...] stating the wrong date, corrected in ID [...].

<sup>484</sup> ID [...]

<sup>485</sup> ID [...]

<sup>486</sup> ID [...] and [...]; ID [...] (Original in Italian: '*Portugal: se non partiamo immediatamente sera impossibile adeguare I prezzi prima del 2008.*' [...] *mi devi dare le indicazioni opportune per appoggiarti in [...] 'ho verificato chi in CIngles il nostro ultimo aumento è di novembre 2006. Ti do qualche prezzo per vedere se siamo allineati, credo di sì*').

the price increases in Spain.<sup>487</sup> In the month of September, the cartel participants exchanged their respective prices for customers in Spain via e-mail. For example, in an e-mail dated **19 September 2007** Coopbox asked urgent price information for the customer El Corte Ingles because they planned to meet it on the following day. Linpac provided the information requested. [...].<sup>488</sup>

- (488) On **2 October 2007** a meeting took place near the Carrefour Barbera del Valles, Barcelona, between Linpac ([company representative], [function of company representative]) and Coopbox ([company representative] and [company representative], [function of company representatives]). The meeting is evidenced by a contemporaneous document found at Coopbox's premises [...].<sup>489</sup>
- (489) The handwritten notes taken by Coopbox ([company representative]) during the meeting read as follows:

*'[...]  
good cooperation CX/LP  
[...]  
price increase  
[...]  
Noel stays the same + prices  
check the volume CX bought  
against Jul – Aug – Sept  
[...]  
Sirap called me, detected the increase of all between 4-6%, this is encouraging.'*<sup>490</sup>

- (490) The cartel participants discussed the Spanish market, in particular an implementation of a previously agreed price increase of 4% for their shared customer Vallespack. They also exchanged their respective prices and volumes with regard to their shared customer Noel. [Company representative] reported that he had had a telephone conversation with Sirap Gema ([company representative], [function of company representative]) who had told him that Sirap-Gema would also apply the price increase of 4-6 % which Linpac and Coopbox had implemented. In addition, Linpac provided Coopbox with a list of its prices for barrier trays in order to facilitate the application of the same prices by Coopbox. [...].<sup>491</sup> The date of the meeting suggests that it took place with a view to implementing the price increase agreed upon in July 2007 (see Recitals (483)-(484)).
- (491) In an e-mail to Coopbox ([company representative]) dated **3 October 2007**, Linpac ([company representative]) mentioned the Spanish client Avicolas Kovo: *'It will not accept any increase unless you do so as well'* and concerning Portugal: *'I am in Portugal today and they [Ovarpack] confirmed to me that they are applying a 6%*

---

<sup>487</sup> ID [...] and [...]; ID [...]

<sup>488</sup> ID [...]; ID [...]

<sup>489</sup> ID [...] and ID [...]; ID [...] (Coopbox inspection document).

<sup>490</sup> [...] (Coopbox inspection document); (Original in Spanish: *'colaboración CX/LP buena' [...] 'subida precios' [...] 'Noel se queda igual + precios verificar volumen cx comparado con Jul – Ago – Sept' 'Sirap me ha llamado, ha detectado el aumento de todos, entre 4-6%, se va a animar'*).

<sup>491</sup> ID [...] and ID [...]

increase. Tell me if you have any specific problem and I will ask.' [...] Ovarpack wanted to increase prices for all customers in Portugal (see Recital (493)).<sup>492</sup>

- (492) In an e-mail to Coopbox ([company representative]) of **17 October 2007**, Linpac ([company representative]) complained about Coopbox's distributor [non-addressee] which had snatched a customer from Linpac by offering low prices: '*as mentioned some days ago, I can't afford to lose volumes for standard trays, so I have instructed that actions should be taken. I don't want to spoil the situation overall, so this reaction will only be aimed at recapturing this customer. Please try to discipline your [non-addressee] friends.*' In the e-mail Linpac forwarded the e-mail of Linpac's distributor complaining about the situation: '*[Non-addressee] [...] after having hassled the customer for all these years, has managed to take it away from us by lowering the price [...] Even if we have agreed not to harm each other, I believe that Coopbox continues with its policy of maintaining prices when we raise our prices and therefore they steal our customers.*'<sup>493</sup>
- (493) On **25 October 2007** a meeting took place at the Hotel VIP Art's, Lisbon, between Linpac ([company representative]), Ovarpack ([company representative] and [company representative]), Coopbox ([company representative]) and [non-addressee] ([company representative]). The meeting concerned foam trays. The participating competitors agreed on a price increase of between 5 and 6% for foam trays in Portugal. [...].<sup>494</sup> The e-mail exchange in preparation of the meeting (see the Recital (494)) confirms that the meeting concerned a price increase.
- (494) In preparation of the meeting, Coopbox ([company representative]) and Linpac ([company representative]) had exchanged e-mails on proposed minimum prices and percentages of increases. On **22 October 2007**, Coopbox ([company representative]) sent an e-mail saying: '*Find attached a proposal concerning minimum prices which we set up.*' [...] '*For Portugal I have tariffs which are not in line, I will revise them tomorrow and I will propose them to you before the end of the day.*'<sup>495</sup> Linpac ([company representative]) answered that '*As per the absorbing [trays] I would like to discuss them with you on Thursday, because we think of applying different prices according to the type and the size of the absorbent instead of applying +12€ for everything. On Thursday I will show you our proposal*'<sup>496</sup> (that is, three days later, on 25 October 2007).

---

<sup>492</sup> ID [...] and ID [...]; ID [...]; (Original in Italian: '*Non vuole accettare nessun aumento finchè voi non lo fate.*' [...] '*Oggi sono nel Portogallo e mi hanno confermato che stanno facendo un aumento del 6% ma dimmi se hai qualche problema in particolare perché posso approfittare e chiedere.*'.

<sup>493</sup> ID [...]; ID [...]; (Original in Italian: '*Come ti avevo detto qualche giorno fa non posso permettermi di perder più volumi di vassoi standard per cui ho dato ordini di reagire. Non voglio rovinare il tutto per cui questa reazione sarà soltanto per riprendere questo cliente ma ti prego di "chiamare all'ordine" ai vostri amici di [non-addressee].*' Original in Spanish: '*[Non-addressee] [...] después de estar molestando durante todos estos años en el cliente ha conseguido quitárnoslo bajándole el precio [...] Si habíamos quedado en no agredirnos mutuamente, yo creo que Coopbox sigue con la misma política de siempre nosotros subimos y ellos aguantan la subida y se quedan con nuestros clientes.*').

<sup>494</sup> ID [...]; ID [...]

<sup>495</sup> ID [...]; (Original in Italian: '*Ti allego una ipotesi di tariffa minima che abbiamo messo a punto.*' [...] '*Per Portugal ho tariffe molto sfasate, le rivedo domani e te le proporrò prima di sera.*').

<sup>496</sup> ID [...]; (Original in Italian: '*Per gli assorbenti mi piacerebbe discuterne Giovedì con te perché noi pensiamo di fare prezzi diversi in funzione del tipo e della dimensione degli assorbenti invece di farne +12€ per tutti. Giovedì ti faccio vedere la nostra proposta*').

- (495) On **26 October 2007** a telephone call between Coopbox ([company representative]) and Linpac ([company representative]) took place. The two cartel participants discussed the customers Kovo/Padesam, for which Coopbox had raised prices, and Cortijo Cuavas/Catafruit, for which they agreed a price increase of 8% for a certain tray. This is evidenced by the handwritten notes in the calendar of [company representative] [...].<sup>497</sup>
- (496) On **30 October 2007** a meeting took place at Fatima, Portugal, between Ovarpack ([company representative] and [company representative]) and [non-addressee] ([company representative]) in order to follow up on the meeting of 25 October 2007 and to discuss a potential sharing of customers between Ovarpack and [non-addressee] in relation to supplies of foam trays in Portugal.<sup>498</sup>
- (497) In an e-mail of **4 November 2007** to Coopbox ([company representative]), Linpac ([company representative]) confirmed that the price level of Linpac and Coopbox was aligned: *'I checked Cortij Cuevas and Los Frutales. We are on the same level. Since the move by Vitembal in the month of May we have done nothing.'*<sup>499</sup> In an e-mail dated **6 November 2007**, [company representative] (Linpac) informed [company representative] (Coopbox) of the prices for certain trays for certain customers and asked [company representative] if he had raised his prices, since customers had told him that Coopbox's prices were better. Linpac also asked if there was any news concerning Portugal.<sup>500</sup> In an e-mail dated **8 November 2007** to Linpac ([company representative]), Coopbox ([company representative]) replied to the concerns expressed by [company representative] on a customer-per-customer basis and informed him of the respective prices. Similarly, in an email dated **13 November 2007** to Coopbox ([company representative]), Linpac ([company representative]) provided price information with regard to certain customers and certain products.<sup>501</sup>
- (498) In an e-mail exchange dated **5 and 11 December 2007** between Linpac ([company representative]) and Coopbox ([company representative]), the two cartel participants discussed the price increase in Spain and Portugal with regard to certain customers and exchanged price information.<sup>502</sup>
- (499) On **8 January 2008** a meeting took place in a hotel in Madrid between Linpac ([company representative]) and Coopbox ([company representative]). The two cartel participants discussed the information exchanged between them in the e-mails and the prices they applied to customers, [...]. The meeting is evidenced by various e-mails [...], including (i) an e-mail in which [company representative] (Linpac) asked [company representative] (Coopbox) whether he could confirm his presence at the meeting scheduled for the following day, and expressed concerns about one of Coopbox's distributors offering unreasonable prices and lowering market prices and (ii) an e-mail after the meeting in which [company representative] (Linpac)

---

<sup>497</sup> ID [...]; ID [...]

<sup>498</sup> ID [...]

<sup>499</sup> ID [...] (Original in Italian: *'Ho controllato Cortijo Cuevas e Los Frutales. Siamo allo stesso livello. Noi non abbiamo fatto niente dopo la mossa della Vitembal nel mese di Maggio.'*).

<sup>500</sup> ID [...]

<sup>501</sup> ID [...]; ID [...]

<sup>502</sup> ID [...]; ID [...]



expressed concerns that [company representative] (Coopbox) might have provided wrong information during the meeting.<sup>503</sup>

- (500) On **13 February 2008** a meeting took place at the Hotel Felix, Lisbon, between Linpac ([company representative]), Ovarpack ([company representative] and [company representative]), Coopbox ([company representative]) and [non-addressee] ([company representative]). The meeting concerned MAP and traditional foam trays in Portugal. The purpose of the meeting was to convince Coopbox that Linpac was not stealing its market share in Portugal. The meeting is evidenced by both an e-mail to Coopbox ([company representative]) from Linpac ([company representative]) [...] and the answer to such email, found at the premises of Coopbox. The meeting is also evidenced by handwritten notes [...].<sup>504</sup>
- (501) The handwritten notes of [company representative] taken during the meeting read as follows:

*'13 Feb, Lisbon – management relat. Portugal*

*[...]*

*[Company representative]: OK in E., less conflicts with respect to last year, OK the management of the relation between CXI and LP. We should do the same here in P. ONO only has the trad. range and does not enter comp with us on MAP.*

*[Company representative]: I agree with [company representative], we are dealing with Ovar and TP buys.'* [...] *[...]*

*[Company representative]: we began Aerpack. We had 100%. Then OVAR and LP started the war with the Lfresh. Today under 50% between CXI and [non-addressee].*

*Rebalance considering our vested rights 60% for us.*

*[...]*

*[Company representative]: [Non-addressee] had Mk MAP, but they lost it because of bad services [provided] We won't [don't] decrease prices.*

*[...]*

*Decision: 1) Enough for all kind of reductions*

*– Who sells the most raises less. Between 6 and 8%.'*

*[...]*<sup>505</sup>

- (502) At the meeting, Linpac ([company representative]) observed that the situation in Spain was very good after Linpac and Coopbox had reduced their conflicts the year before and that a similar approach should be followed in Portugal. However, the cartel participants expressed serious doubts about the functioning of their agreement in Portugal. [Non-addressee] accused Linpac of lowering prices when entering the

---

<sup>503</sup>

**ID [...]; ID [...]**

<sup>504</sup>

**ID [...]; ID [...]** and **ID [...]** (Coopbox inspection document); **ID [...], ID [...]** and **ID [...]**

<sup>505</sup>

**ID [...];** (Original in Italian/Spanish: ' 13 feb, Lisboa – gestione relaz. Portugal [...])[Company representative]: bene in E., dallo scorso anno conflitt. ridotta, ok gestione rel. fra CXI e LP. Dobbiamo fare lo stesso qui in P. ONO ha solo la gamma tradiz. e non entra in concurr con noi su MAP. [Company representative]: d'accordo con [company representative], stiamo trattando con Ovar e TP compra.' [...] '[Company representative]: noi iniziamo Aerpack. Avevamo 100%. Poi OVAR e LP iniziarono la guerra con il Lfresh. Oggi sotto 50% fra CXI e [non-addressee]. Riequilibrare considerando i ns diritti acquisiti 60% per noi.' [...] '[Company representative]: [Non-addressee] aveva il Mk MAP, mas lo ha perso per mal servizio Non abbassiamo i prezzi.' [...] 'Decisión: 1) basta sconti e varie – El que más vende sube menos. Entre 6 y 8%' [...]).

market with the product Linfresh, which led to a decrease of Coopbox's and [non-addressee's] market shares - with respect to their product Aerpack – to below 50 %, contrary to the 60 % they should have. These figures were strongly opposed by Linpac and Ovarpack. Ovarpack replied that it believed [non-addressee] had lost market shares due to missed supplies, and rejected the allegations of having lowered the prices. Coopbox therefore called its sales department in order to verify the figures. Ovarpack also accused [non-addressee] of providing exaggerated figures for Linpac's market share in Portugal in order to conceal its 'aggressive policy', implying that the prices offered by [non-addressee] were too low. In the end, the participating competitors agreed on stopping reductions to customers and on a price increase of between 6 and 8 % for Aerpack products (MAP foam trays). In order to rebalance the market shares of Linpac and Coopbox, they agreed that – with regard to shared customers – the cartel participant with the higher quota should raise the prices by 8 % and the cartel participant with the lower quota by 6 %.<sup>506</sup>

### 4.3. North-West Europe (13 June 2002 – 29 October 2007)

#### 4.3.1. Basic principles and structure of the cartel

- (503) The cartel in North West Europe ("NWE") comprising Belgium, Denmark, Finland, Germany, Luxembourg, the Netherlands, Norway and Sweden, related to *foam trays* and *rigid trays* used for retail food packaging and the participants involved were Linpac, Vitembal, Huhtamäki, Silver Plastics and [non-addressee].<sup>507</sup> The objective/overall aim of the cartel was to increase and maintain prices in NWE above competitive levels and to maintain the status quo in the market.
- (504) The cartel participants coordinated their behaviour through multilateral and bilateral contacts which often took place on the fringe of official industry meetings. The European Quality Assurance Association for Expanded Polystyrene Foam Manufacturers for Food Packaging ("EQA") served as a framework for multilateral anti-competitive contacts. Competitors referred to these cartel meetings as "the Club", "the Club West" or "the Mafia".<sup>508</sup> In addition, as rigid trays became gradually more important within the EQA, the working party Modified Atmosphere Packaging was set up within the Industrievereinigung Kunststoffverpackungen ("MAP IK"), in order to coordinate the behaviour on rigid trays.
- (505) The cartel participants in NWE mostly reacted when changes in the market threatened the existing status quo. When the prices of raw materials increased, participants would usually hold multilateral discussions to agree on a percentage by which they would raise the prices for foam and rigid trays. There was often a common understanding amongst participants that one competitor would "go first" with the price increases and that the rest would follow (see for example Recitals (528), (547), (568) and (572)). In this context, participants would send their price increase letters to each other in order to coordinate and monitor their price increase actions (see for example Recitals (515), (527), (541) and (567)). Smaller customers

---

<sup>506</sup> ID [...]; ID [...] and ID [...]

<sup>507</sup> [Non-addressee] was declared bankrupt on 11 November 2014 and is currently in the process of liquidation. Its name will appear in the factual part whenever it is alleged that it was involved in cartel contacts with other participants. In its reply to the SO [non-addressee] did not deny the Commission's allegations relating to an infringement in the area of foam trays. [Non-addressee] did not produce rigid trays. (ID [...]) [non-addressee] – reply to SO).

<sup>508</sup> ID [...] and ID [...]

had to accept the price increases, whereas the announced price increases would serve as a "target" price for bigger customers (see Recital (536)). The exact percentage and the time period covered by the price increases were then bilaterally negotiated with each big customer. Depending on the customer, the time period covered by the price increases would last up to six months or one year.<sup>509</sup> In addition, as bigger customers were often supplied by more than one competitor, the suppliers of bigger customers liaised to coordinate their pricing strategies in order not to disturb the status quo. Those contacts complemented the multilateral cartel price increase agreements in NWE.

#### 4.3.2. *The cartel history*

(506) Evidence in the Commission's file suggests that competitors already exchanged information and agreed on prices and customers in the 1980's. [Information pre-dating the infringement].<sup>510</sup> [Information pre-dating the infringement]<sup>511</sup> [information pre-dating the infringement].<sup>512</sup>

(507) [Information pre-dating the infringement].<sup>513</sup> [Information pre-dating the infringement].<sup>514</sup> [Information pre-dating the infringement].<sup>515</sup>

#### 4.3.3. *Chronology of events*

##### 4.3.3.1. The price increase in spring/summer 2002

(508) In **Spring 2002** raw material prices for polystyrol rose.<sup>516</sup> The competitors therefore felt a need to raise their prices. In order not to give their clients an incentive to change the supplier, they agreed, during three consecutive meetings, on a common way to proceed.

(509) On **25 April 2002** an EQA meeting took place in Düsseldorf at the Interpack trade fair. During the official meeting raw material price increases were discussed. This is recorded in the official minutes of the meeting: "*5. Market situation/Raw material prices: The participants exchange their experiences concerning the steep price increases of polystyrene on the European market*".<sup>517</sup> Afterwards the competitors met for an EQA fringe meeting with the objective to discuss raw material prices as well as a price increase. [Company representative] and [company representative] (both of Linpac), [company representative] (Silver Plastics) and [company representative]

---

<sup>509</sup> After the communication of the price increase letter, bigger customers were bilaterally contacted by the suppliers. Different conditions to individual customers applied depending on the individual purchasing volumes, see ID [...] explained in ID [...] and in ID [...]. See also ID [...] (Silver Plastics inspection document) and contemporaneous documents provided by Silver Plastics in ID [...] evidencing that the time period covered by the price increases following the price increase letters was bilaterally negotiated with each big customer after the communication of the price increase letter to the customer and would last for instance up to six months or one year (see also Silver Plastics explanations in ID [...]. Moreover, depending on the customer, a period of notice (e.g. of three months) prior to the price increase could also apply, see for instance ID [...] (Silver Plastics inspection document).

<sup>510</sup> [...]

<sup>511</sup> [...]

<sup>512</sup> [...]

<sup>513</sup> [...]

<sup>514</sup> [...]

<sup>515</sup> [...]

<sup>516</sup> E.g. EQA minutes of 25 April 2002 and 13 June 2002 ID [...] and ID [...]

<sup>517</sup> ID [...], official minutes of the General Assembly of the EQA.

([non-addressee]) attended the meeting.<sup>518</sup> The participating competitors agreed on a price increase for foam trays.<sup>519</sup> They agreed to follow the next price increase by Linpac which was decided to be due in the following months.<sup>520</sup> The focus was on foam trays, because Linpac was at that time not yet active in the rigid tray business.<sup>521</sup>

- (510) At the EQA meeting Vitembal was represented by [company representative]<sup>522</sup> and Huhtamäki was represented by [company representative].<sup>523</sup>
- (511) The fringe meeting and its content are evidenced by [company name]. Silver Plastics confirms its participation in the official EQA meeting ([company representative]), as well as the participation of [company representative] ([non-addressee]), [company representative] (Huhtamäki) and [company representative] (Linpac),<sup>524</sup> but does not remember the fringe meeting.<sup>525</sup> **Huhtamäki** denies participating in the fringe meeting.<sup>526</sup>
- (512) On **8 May 2002** a meeting took place at the Sheraton Hotel, Frankfurt, between [company representative] (Linpac), [company representative] and [company representative] (both of Vitembal) and [company representative] (Silver Plastics).<sup>527</sup> It concerned foam trays. The participants confirmed the price increase already agreed upon on 25 April 2002 and decided the details of the percentage.<sup>528</sup>
- (513) [...].<sup>529</sup> [...].<sup>530</sup> [...].<sup>531</sup>

---

518 At this meeting [company representative] introduced his successor [company representative] to "the Club".

519 **ID [...]**

520 **ID [...], ID [...]** and **ID [...]**

521 **ID [...]**

522 [...] [company representative] was not in charge for Germany and he did not talk with German competitors about a price increase **ID [...]** at the EQA meeting on 25 April 2002. [...] **ID [...]** and **ID [...]** price increases [...] announced at the end of May 2002 were agreed among competitors at the next meeting that took place on 8 May 2002 at the at the Sheraton Hotel, Frankfurt.

523 **ID [...]**. This is clear from the list of participants which is annexed to the minutes of the Official EQA meeting of 25 April 2002.

524 **ID [...]** (Silver Plastic reply to RFI).

525 Although, Silver Plastics remembers that fringe meetings generally took place, it has stated that these meetings were of a different nature than [...]. In general Silver Plastics does not recall anticompetitive contacts at fringe meetings **ID [...], ID [...], ID [...], ID [...], ID [...]** (Silver Plastics [...] reply to RFIs). See also **ID [...]** (Silver Plastics reply to the SO) where it argues that during the industry association meetings the parties simply bemoaned price increases in general, which was the industry's general lament and occasionally and sporadically discussed certain information on rates of increase and the timing of increases. The information exchanged inside and outside EQA or MAP IK meetings was, according to Silver Plastics, not of a nature to influence the independence of the market players in their decision-making nor did they have the purpose or effect of an appreciable restriction of competition.

526 **ID [...]** (Huhtamäki reply to the SO). See also **ID [...]** (Huhtamäki reply to the SO) where it argues that it was not involved in nor aware of any cartel on foam or rigid trays in NWE and according to it all contacts were on legal issues.

527 **ID [...]**

528 **ID [...]** and **ID [...]**. [...] [company representative] had been introduced to the competitors on 25 April 2002, but as [company representative] was a newcomer, competitors might have required a second meeting with [company representative] only.

529 **ID [...], ID [...]; ID [...]** and **ID [...]** and **ID [...]**

530 **ID [...]**

531 **ID [...]**

- (514) The price increase agreed upon on 25 April 2002 and 8 May 2002 concerned customers in Belgium, Denmark, Finland, Germany, the Netherlands, Norway and Sweden. The price increase decided for foam trays was approximately 10%. This is demonstrated by [company name]<sup>532</sup> and corroborated by the price increase letters that were subsequently sent out (see Recitals (515) and (516)).
- (515) Competitors informed each other about their respective price increases by sending the price increase letters to each other, or by informing each other about their prices through other means, for example on **10 May 2002** [company representative] (Linpac) sent a fax with its prices for customers in Denmark to [company representative] (Huhtamäki) for a Linpac foam tray.<sup>533</sup> On 13 May 2002 [company representative] (Silver Plastics) sent an email to [company representative] (Vitmbal) with a price increase letter of Silver Plastics "*for information*".<sup>534</sup> During the inspections many price increase letters of competitors relating to the price increase announcements to customers in May, June, July and August 2002 were found at the premises of other competitors (see Recital (516)).<sup>535</sup> Silver Plastics explains that the price increase letters of competitors found at its premises were always meant to inform it as a customer of its competitors (cross supply arrangements).<sup>536</sup> However, some of the price increase letters were not addressed to it.<sup>537</sup> In addition, in certain cases, Silver Plastics purchases only a certain type of product from a competitor whereas the price increase letters of competitors found on its premises concerned general price increases including a number of other products not related to the one Silver Plastics was purchasing (see also Recital (520)).<sup>538</sup> Moreover, contemporaneous evidence in the possession of the Commission clearly supports that the purpose of the price increase letters sent by Linpac to Silver Plastics, was to inform Silver Plastics about the level of Linpac's price increases so that Silver Plastics would announce price increases of a similar level (see Recital (569)).
- (516) After having agreed on the price increases on 25 April 2002 and 8 May 2002, competitors started communicating their price increase intentions to their customers: In **May 2002** Silver Plastics sent out price increase letters to its customers, announcing a price increase of 10.5 % for foam trays as of June 2002. It cited raw material prices as the reason for the price increase.<sup>539</sup> In **May/June 2002** Linpac sent out price increase letters to its customers announcing a price increase of 10 % for foam trays and 9% for rigid trays as of 1 July 2002. It also cited raw material prices as the reason for the price increase.<sup>540</sup> Although Linpac was not yet active in the

---

<sup>532</sup> ID [...]; ID [...], see also ID [...] for details which countries Scandinavia comprises.

<sup>533</sup> "Linstar" foam tray, ID [...] supported by ID [...]

<sup>534</sup> ID [...] Original subject of the email in German: "*zur Info*".

<sup>535</sup> E.g. ID [...], price increase letter Linpac addressed to Silver Plastics dated May 2002 (Silver Plastics inspection document), ID [...] model price increase letter Huhtamäki dated 22 April 2002 (Silver Plastics inspection document), ID [...] price increase letter [non-addressee] addressed to Silver Plastics dated 14 June 2002 (Silver Plastics inspection document), ID [...], price increase letter Vitmbal addressed to Silver Plastics dated 7 June 2002 (Silver Plastics inspection document); see also ID [...]: model price increase letter Silver Plastics sent to Vitmbal per e-mail of 13 May 2002.

<sup>536</sup> ID [...] and ID [...] (Silver Plastics reply to RFI).

<sup>537</sup> E.g. ID [...] model price increase letter Huhtamäki (Silver Plastics inspection document).

<sup>538</sup> E.g. ID [...] (Silver Plastics reply to RFI), polystyrole drinking cups (Original in German: *Polystyrol-Trinkbecher*).

<sup>539</sup> ID [...] (Silver Plastics reply to RFI).

<sup>540</sup> ID [...]

sector of rigid trays, it referred to rigid trays in a price increase letter to a customer. This was done in order to do Silver Plastics a favour namely to help Silver Plastics to show to that customer that other competitors were also demanding a price increase for rigid trays.<sup>541</sup> In **May, June, July and August 2002** Vitembal sent out price increase letters to its customers in Germany, Belgium, the Netherlands, Norway, Finland, Sweden and Denmark. It announced a price increase of 10 % for foam trays. It cited raw material prices as the reason for the price increase.<sup>542</sup> In **June 2002** [non-addressee] also sent out price increase letters, announcing a two-digit price increase for foam trays. It cited raw material prices as the reason for the price increase.<sup>543</sup>

- (517) On **13 June 2002** an EQA meeting took place at the Sheraton Hotel, Frankfurt, between [company representative] and [company representative] (both of Linpac), [company representative] and [company representative] (both of Vitembal), [company representative] and [company representative] (both of Silver Plastics), [company representative] ([non-addressee]), and [company representative] and [company representative] (both of Huhtamäki).<sup>544</sup> During the official meeting raw material prices were discussed. The invitation to the official meeting was sent by Linpac and the agenda of the items to be discussed included the "*market situation of raw materials*" and "*raw material prices*".<sup>545</sup> The invitation to the official meeting mentions 11.00 as starting time<sup>546</sup> while the minutes of the official meeting mention 9.00 as starting time.<sup>547</sup> However, as discussed in Recital (518) below, 9.00 was the starting time for a fringe meeting.
- (518) Before the EQA official meeting, an EQA fringe meeting took place at 9.00 at the lobby area of the Sheraton Hotel in Frankfurt between [company representative] (Linpac), [company representative] and [company representative] (both of Vitembal), [company representative] and [company representative] (both of Silver Plastics), [company representative] ([non-addressee]), and [company representative] and [company representative] (both of Huhtamäki).<sup>548</sup> The EQA fringe meeting is evidenced by [...] handwritten notes [...].<sup>549</sup>
- (519) [...] the participants met in order to reassure themselves that the price increases already agreed upon on 25 April and 8 May 2002 would be implemented.<sup>550</sup> [...] they confirmed their agreement to proceed with a 10 % price increase for all customers in Sweden, Denmark, Norway and Finland, Belgium and The Netherlands.<sup>551</sup> The handwritten notes [...] contain detailed tables comparing the prices of Linpac, Vitembal, Silver Plastics, Polarcup (Huhtamäki) and another competitor for Denmark, Finland, The Netherlands, Norway and Sweden.<sup>552</sup> They

---

<sup>541</sup> ID [...] and ID [...]

<sup>542</sup> ID [...] (Silver Plastics inspection document).

<sup>543</sup> ID [...] (Silver Plastics inspection document).

<sup>544</sup> See minutes of the official EQA meeting ID [...]

<sup>545</sup> ID [...] fax dated 24 May 2002 signed by [company representative] (Linpac) sent to [company representative] (Coopbox), [company representative] (Huhtamäki), [company representative] (Vitembal) and [company representative] ([non-addressee]).

<sup>546</sup> ID [...]

<sup>547</sup> ID [...]

<sup>548</sup> ID [...] and ID [...]

<sup>549</sup> ID [...]; ID [...] and ID [...]; ID [...] handwritten notes of that meeting. See also ID [...]

<sup>550</sup> ID [...] and ID [...]

<sup>551</sup> ID [...]

<sup>552</sup> ID [...]

refer to price increase announcements that Linpac and Huhtamäki agreed to make, namely to raise prices by 10% as of 1 July for Sweden and Finland and as of 15 July for The Netherlands and Belgium: "*Lin Pac + Polarcup 10% in Sweden and Finland 1/7 [1 July], will report next week, NL-B/15.July + 10% added to Status Quo*".<sup>553</sup>

- (520) Silver Plastics argues that it attended only the official EQA meeting on 13 June 2002; it submits hotel receipts for [company representative] and [company representative] and denies participation in the fringe meeting. Moreover, Silver Plastics suggests that [company name] may have received the information on Silver Plastics' prices that are included in the handwritten notes from a distributor or a customer but does not support that assumption with any evidence.<sup>554</sup> Huhtamäki also denies participation in the EQA fringe meeting and states that [company representative] participated in the official EQA meeting in order to introduce [company representative] to the EQA members.<sup>555</sup> It further argues that it had already decided to increase its prices independently and that this is shown by an internal email of 8 April 2002,<sup>556</sup> which sets out Huhtamäki's price increase action plan due to raw material price increases. That email refers to the EQA meeting of 25 April 2002 at the Interpack trade fair where the raw material prices would be the topic of discussion. According to Huhtamäki, the email shows that it proceeded independently to the implementation of those increases. This argument is not convincing, because the internal email of 8 April 2002 clearly states that "*For EPS [foam trays] a general price increase should be doable... During Interpack a EQA meeting is held, where raw material prices will be a topic*".<sup>557</sup> Therefore, it does not show that Huhtamäki decided to increase prices for foam trays independently; on the contrary it links the possibility of a general price increase for foam trays to the discussions on raw material prices with competitors at the EQA meeting on 25 April 2002 (see Recital (509)). Silver Plastics and Huhtamäki also put forward that Huhtamäki's price increase letter of the 22 April 2002<sup>558</sup> (see Recital (515)) was found at the premises of Silver Plastics because Silver Plastics was at that time Huhtamäki's customer for polystyrene cups.<sup>559</sup> However, that price increase letter has no addressee, nor does it refer specifically to polystyrene cups but generally to a price increase of raw material of around 150,00 Euros per tonne. Huhtamäki also admits that it cannot explain the fax of 10 May 2002 from Linpac to [company representative] containing Linpac's prices in Denmark (see Recital (515)).
- (521) The participation of Silver Plastics and Huhtamäki in the fringe EQA meeting on 13 June 2002 is demonstrated [...] and [...] corroborated by the handwritten notes [...] (see Recital (519)). The arguments advanced by Silver Plastics and Huhtamäki are

---

<sup>553</sup> ID [...], handwritten notes of that meeting; original in German: "*Lin Pac + Polarcup 10% in Sweden u. Finnland 1/7, melden sich Anfang der Woche, NL-B/15. Juli + 10% auf Status Quo*") and ID [...]. The notes repeatedly quote Silver Plastics (as "Silver") and Huhtamäki (as "Polar"); see also ID [...], ID [...], ID [...]

<sup>554</sup> ID [...] (Silver Plastics reply to the SO).

<sup>555</sup> ID [...] (Huhtamäki reply to the SO). See also ID [...] (Huhtamäki reply to RFI) where Huhtamäki could not remember anything.

<sup>556</sup> ID [...] (ONO Packaging reply to RFI).

<sup>557</sup> ID [...] (ONO Packaging reply to RFI). (Original in English: "*For EPS a general price increase should be doable ... During Interpack a EQA meeting is held, where raw material prices will be a topic*").

<sup>558</sup> ID [...] (Silver Plastics inspection document).

<sup>559</sup> See ID [...] (Huhtamäki reply to the SO) footnote 42 where Huhtamäki refers to Silver Plastics reply to the RFI. ID [...] (Silver Plastic reply to RFI) shows that [business secret]

not sufficient to cast doubt about the credibility of that evidence. In addition, the price increase letters found at the premises of competitors during the Commission's inspections is evidence that Linpac, Vitembal, Silver Plastics, Huhtamäki and [non-addressee] informed each other about their price increase intentions (see Recital (515)). Their involvement in the price increase discussions is also supported by the parallel timing and the nearly identical percentage of the price increase announced to their respective customers (see Recital (516)).

- (522) The Commission therefore concludes that at the latest during the meeting on **13 June 2002** at the Sheraton Hotel in Frankfurt, Linpac, Vitembal, Silver Plastics and Huhtamäki agreed on a price increase<sup>560</sup> and subsequently informed each other about the steps undertaken to implement the price increase.<sup>561</sup> The agreed prices would take effect in the months that followed (see Recital (505)). The meeting on 13 June 2002 is considered as the starting date of the NWE cartel and forms the beginning of a series of multilateral and bilateral meetings between the cartel participants (see also Recital (989)).
- (523) On **7 October 2002** [company representative] (Linpac) and [company representative], [company representative] and [company representative] (Silver Plastics) met at the Intermeat trade fair, Düsseldorf. [Company representative] complained to [company representative] that he had not stuck to the 50/50 supply quota agreed between Linpac and Silver Plastics for the customer REWE in Germany. This meeting is evidenced by [...] and is corroborated by [...] about the trade fair where [company representative] reported: *"after the discussions at the trade fair I expect [company name] to put some pressure. He is losing business with REWE more and more."*<sup>562</sup>
- (524) [Company name] admits having taken part, although it alleges that the meeting concerned cross supply between the two competitors only.<sup>563</sup> It submits that there was no such 50/50 supply quota agreement because [company name's] supplies to REWE dropped rapidly between 2002 and 2008.<sup>564</sup> It also argues that [company representative] from [company name] had close personal contacts with [company representative] from REWE who was informing him about [company name's] prices and requests for meetings. Therefore, [company representative] would have had no interest in entering into a quota agreement with [company name]. However, the contemporaneous document [...] regarding this instance clearly refers to a discussion between Linpac and Silver Plastics at the trade fair in connection with that customer.<sup>565</sup>
- (525) On **31 March 2003** a meeting took place at the Hummerstübchen, Düsseldorf, between [company representative] and [company representative] (both of Linpac) and [company representative] and [company representative] (both of Vitembal). The

---

<sup>560</sup> ID [...], ID [...], ID [...], ID [...], ID [...]; ID [...], ID [...]; ID [...], ID [...] and ID [...]

<sup>561</sup> E.g. ID [...] (Silver Plastics inspection document).

<sup>562</sup> ID [...] corroborated by ID [...] (Original in German: *"Auch nach dem Gespräch auf der Messe erwarte ich von Silver einigen Druck auf uns zukommen. Er verliert nach und nach bei der REWE."*); see also ID [...]

<sup>563</sup> ID [...] (Silver Plastics reply to RFI). In its reply to the SO ID [...] [company name] corrects the date of the meeting/discussion from 8/9 to 7 October and submits an entertainment receipt.

<sup>564</sup> ID [...]

<sup>565</sup> ID [...]



participating competitors discussed the price increases, which had already been agreed, the German market in general and specific customers, for example Linpac's lower offer to customer Wiesenhof (of the Metro group) in Germany that had put Vitembal under competitive pressure. [...].<sup>566</sup>

- (526) The anti-competitive purpose of the meeting is also apparent from a [company name] internal note: In preparation of the journey [company representative] ([company name]) noted down "*Monday meeting Düsseldorf. Price agr.*"<sup>567</sup> [...] this indicated that the participating competitors wanted to talk about the implementation of the existing price agreements.<sup>568</sup>
- (527) In **March, April and May 2003** [company representative] ([company name]) had telephone conversations about a price increase with several competitors. In an internal management meeting on 18 March 2003 in Paris [company representative] had been told to take the initiative and collect arguments for a price increase. This is evidenced in [company representative's] handwritten notes of that meeting that also state: "*coordinate with competition and circular letter to all customers*".<sup>569</sup> Following that internal meeting [company representative] noted on a chart with raw material prices: "*New prices in trade. Call [non-addressee], [company name], Silver-Plastics*".<sup>570</sup> He implemented the price increases and called [company representative] ([company name]), [company representative] ([company name]) and [company representative] ([non-addressee]) and informed them of [company name's] price increase.<sup>571</sup>
- (528) In **April 2003** [company name] announced price increases of 9% for foam trays to its customers in Austria, Belgium, Denmark, Finland, Germany and Switzerland which would be effective as of 1 May 2003.<sup>572</sup> In a note of **29 April 2003** [company representative] wrote that "*Huhtamäki in Sweden should take the lead because they made the latest decrease in prices. [Company representative]! (...) Last time we went first with 8%*".<sup>573</sup>
- (529) Silver Plastics denies having been informed about the price increase and argues it did not send out price increase letters, nor did it increase prices in 2003.<sup>574</sup> Huhtamäki also denies involvement in anticompetitive discussions in this period.<sup>575</sup> However, there are contemporaneous documents namely the two handwritten notes relating to the price discussions in March, April and May 2003, clearly showing that both Silver

---

<sup>566</sup> ID [...] and ID [...] corroborated by ID [...] and ID [...]

<sup>567</sup> ID [...] corroborated by ID [...] (Original in German: "*Montag meeting Düsseldorf. Preisab.*").

<sup>568</sup> ID [...]

<sup>569</sup> ID [...] corroborated by ID [...] (Original in German: "*Abstimmen mit Wettbewerb und Rundschreiben an alle Kunden*").

<sup>570</sup> ID [...] (Original in German: "*Neue Preise im Handel. Anrufen [non-addressee], [company name], Silver-Plastics*").

<sup>571</sup> ID [...]

<sup>572</sup> Standard price increase letter ID [...], customer list ID [...]

<sup>573</sup> ID [...] (Original in German: "*Huhtamäki in Schweden sollte [] vormarschieren, weil sie die letzten Preissenkungen gemacht haben. [Company representative]! [...] letztes mal wir sind mit 8% vorausgegangen*") explained in ID [...]. "[Company representative]" refers to the representative of Huhtamäki.

<sup>574</sup> ID [...]. In ID [...] (Silver Plastics reply to the SO) Silver Plastics refers to the email dated 3 February 2004 showing that [company representative] (Huhtamäki) informed Linpac about Silver Plastic's aggressive pricing policy. However, this email relates to year 2004.

<sup>575</sup> ID [...] (Huhtamäki reply to the SO).

Plastic's and Huhtamäki were involved in coordinated price actions and price discussions with [company name] (see Recital ([...])).

- (530) On **26 September 2003** [company representative] (Linpac) sent a fax to [company representative] (Vitembal) containing a list with Linpac's prices applied at that time to the customer REWE in Germany. Taking into account the data from that price list, Vitembal made a higher quote to REWE in order to strengthen Linpac's traditional position with REWE.<sup>576</sup>
- (531) In an internal e-mail of **3 February 2004** [company representative] ([company name]) reported that [company representative] (Huhtamäki) had informed him about [company representative] (Silver Plastics) offering certain rigid trays at a competitive price: "As told me [company representative] undercut the market price by 25%."<sup>577</sup> According to Huhtamäki this was merely a rumour exchange and informal industry gossip and did not form part of an anticompetitive scheme.<sup>578</sup> However, there is contemporaneous evidence showing that this was not an isolated incident because [...] Huhtamäki and Silver Plastics had been involved in a number of similar anticompetitive contacts before in May/June 2002 and in March April and May 2003 (see Recitals (515), (516) and (527)). [...].<sup>579</sup> This shows that there were also contacts between the cartel participants on rigid trays before February 2004. [...] (see Recitals (516) and (527)) [...] (see Recitals (534) -(538)).

#### 4.3.3.2. The price increase in summer/autumn 2004

- (532) In 2004, following the rise of raw material prices, there was another increase in prices. After Silver Plastics decided internally to raise prices and communicated this to Linpac (see Recitals (533) and (541)), Silver Plastics, Linpac, Vitembal, [non-addressee] and Huhtamäki decided to go along with the same price increase. Further details are given in Recitals (533)-(538).
- (533) In August 2004, after discussing them internally on 16 August 2004, Silver Plastics sent out price increase letters to its customers. It announced a price increase of 9.5 % for all products as of 1 October 2004. It cited raw material prices as the reason for the price increase.<sup>580</sup>
- (534) On **24 August 2004** a meeting at the Graugans restaurant of the Hyatt Regency Hotel, Cologne, took place in Germany between [company representative] (Linpac), [company representative] (Vitembal), [company representative] (Silver Plastics) and [company representative] (Huhtamäki). The participating competitors agreed on a price increase for foam trays and rigid trays in the Scandinavian countries (see also Recital (538)).<sup>581</sup> [...].<sup>582</sup>

---

<sup>576</sup> ID [...] (Original in German: "Sehr geehrter [company representative], anliegend erhalten Sie die erwünschten Preise") [...] ID [...] and ID [...]

<sup>577</sup> ID [...] (Original in German: "Wie [company representative] mir sagte, hat [company representative] den Marktpreis um 25% unterboten.") explained in ID [...]

<sup>578</sup> ID [...] (Huhtamäki reply to the SO).

<sup>579</sup> ID [...]

<sup>580</sup> ID [...] and ID [...]

<sup>581</sup> ID [...], ID [...], ID [...], ID [...], corroborated by ID [...] and ID [...]. See also ID [...] exchange of emails between **Linpac** ([company representative]) and **Silver Plastics** ([company representative]) on 23 August 2003 about a meeting on 24 August 2003.

<sup>582</sup> ID [...], ID [...], ID [...] and ID [...] corroborated by ID [...] and ID [...]. ID [...] (ID [...] question 8).

(535) Preparing his journey to Cologne [company representative] ([company name]) wrote in an [...] e-mail of 20 August 2004 with the subject: "*Journey to Cologne*": "*Next week in Cologne I will meet REWE and the Mafia*".<sup>583</sup>

(536) In an [...] e-mail of **31 August 2004** with the subject: "*Price increases*" [company representative] ([company name]) reported that the price increase had been agreed upon between the participating competitors in Cologne and explained the percentage of price increases they would ask for ("*demand*") from their customers and the percentage of price increase they would aim to achieve after the negotiation ("*impose*" and "*impose as target*").<sup>584</sup> The e-mail from this meeting reads as follows:

"[...]  
all said ok.  
[...] we want to reach the following:  
REWE demand 9.5 impose 8  
Wiesenhof  $d = 9.5$   $i = 8 - 8.5$   
Edeka  $d = 9$ ,  $i = 8$   
Tengelmann stays the same

---

in principle  
EPS products demand between 9 – 10  
Impose as target 8  
[...]

---

*I will report once the first official letters are out. Silver had announced for this week (according to [company representative])*

[...]  
*PS: delete this e-mail at once and do not forward it*".<sup>585</sup>

(537) In **August/September 2004** another meeting took place at the Novotel in Ratingen, between [company representative] and [company representative] (both of Linpac), [company representative] and [company representative] (both of Vitembal), [company representative] and [company representative] (both of Silver Plastics) and [company representative] ([non-addressee]). The participating competitors agreed on a price increase for foam trays and rigid trays for Germany and Benelux. [...].<sup>586</sup> In addition [...] at the meeting on 24 August 2004 at the Hyatt Regency Hotel, Cologne (see Recital (534)) the participants discussed the price increase in the Scandinavian countries, whereas at the meeting in August/September 2004 at the Novotel,

---

<sup>583</sup> ID [...] (Original in German: Subject: "*Anreise nach Köln*", "*Ich treffe kommende Woche in Köln Rewe und die Maffia*").

<sup>584</sup> ID [...] explained by ID [...]

<sup>585</sup> ID [...], (Original in German: Subject: "*Preiserhöhungen*" "[...] alle haben OK gesagt. [...] Das wollen wir da erreichen: REWE Forderung 9,5 Durchsetzen 8, Wiesenhof  $F = 9,5$   $D = 8 - 8,5$ , Edeka  $F = 9$ ,  $D = 8$ , Tengelmänn so lassen [...] Grundsätzlich: EPS Produkte Forderung zwischen 9 – 10, Durchsetzen als Ziel 8 [...] Ich sage Bescheid, wenn die ersten offiziellen Briefe draußen sind. Silver hatte für diese Woche angekündigt (lt. [company representative]). PS e-mail bitte gleich löschen und nicht weiterleiten").

<sup>586</sup> ID [...], ID [...], ID [...] and ID [...]

Ratingen they discussed price increases for Germany and the Benelux. This explains the participation of Huhtamäki in the first and the participation of [non-addressee] in the second meeting.<sup>587</sup>

- (538) [...] the price increase discussed during the two meetings between the participants concerned customers in Belgium, Denmark, Finland, Germany, Luxembourg, the Netherlands, Norway and Sweden. Varying by region the price increase agreed upon was 9.5 % - 12 % for foam trays and 5 % - 7 % for rigid trays.<sup>588</sup>
- (539) Silver Plastics denies participation in the meeting in August/September 2004 at the Novotel in Ratingen, but remembers a meeting in the hotel lobby at the Hyatt Regency Hotel in Cologne.<sup>589</sup> It alleges that the internal price discussion of 16 August 2004 is exculpatory, because it proves that the price setting of Silver Plastics took place before the meeting. It denies having entered into a price increase agreement with competitors and argues that Vitembal and Linpac had already sent out price increase letters predating the meetings; therefore the meetings would have made no sense.<sup>590</sup> It submits a table of price increases<sup>591</sup> to show that the price increases it negotiated with its customers varied from one customer to another. It also submitted that contrary to the [company name] e-mail of 31 August 2004 (see Recital (536)), it implemented lower price increases for the customers Wiesenhof and REWE on 1 October 2004 and that it did not increase prices for the customer Edeka in 2004. To support those arguments, Silver Plastics also submits an e-mail sent to its customer REWE on 10 September 2004 regarding the price increases as from 1 October 2004.<sup>592</sup> Those arguments are not convincing: First of all, the participation of Silver Plastics in the price increase discussions held at the meetings of 24 August 2004 and August/September 2004 is corroborated [...] <sup>593</sup> (see Recitals (536), (537) and (538)). Therefore, the Silver Plastic's internal discussion of 16 August 2004 did not prevent it from entering into prices increase discussions with its competitors at the above-mentioned meetings. Moreover, the Silver Plastic's table of price increases shows that for several customers the price increase demanded was in fact 9.5 %. The Silver Plastics e-mail of 10 September 2004 to REWE also shows that Silver Plastics originally demanded a price increase from its customer REWE of 9.5 % for foam trays and 6 % for rigid trays and finally agreed on a price increase of 8.5 % and 5 % for foam and rigid trays respectively. Therefore, both documents submitted by Silver Plastics confirm the content of the contemporaneous evidence namely of the [company name] e-mail of 31 August 2004 according to which competitors agreed in principle to demand an increase between 9 – 10% for foam trays (namely "*EPS products*") and to impose as a target an increase of 8 %.
- (540) In its reply to the SO Huhtamäki denies participation in the meeting of 24 August 2004. According to Huhtamäki that meeting concerned only foam trays and it would

---

<sup>587</sup> See also ID [...] [Non-addressee] was not invited to the meeting of 24 August 2004.

<sup>588</sup> ID [...] Regarding the territories concerned by the price increases agreed at the meetings on 24 August 2004 and August/September 2004 see ID [...] and ID [...] corroborated by ID [...] and ID [...]. [...] the agreed price increases for rigid trays were lower than the ones agreed for foam trays because there was more competition on the rigid trays' market.

<sup>589</sup> ID [...] (Silver Plastics reply to the RFI) and ID [...]

<sup>590</sup> ID [...] (Silver Plastics reply to the SO).

<sup>591</sup> ID [...] (Silver Plastics reply to the RFI) same as ID [...] (Silver Plastics reply to the SO).

<sup>592</sup> ID [...] (Silver Plastics reply to the SO).

<sup>593</sup> ID [...] ID [...] and ID [...] and ID [...] corroborated by ID [...]

therefore have had no reason to attend it as a) it had no foam tray business in Germany, Austria or in Benelux and b) [company representative] did not cover the Nordic countries, but was responsible only for Germany and Benelux.<sup>594</sup> However, [...] <sup>595</sup> Silver Plastic's and Huhtamäki's participation in the meeting on 24 August 2004 in Cologne [is corroborated]. Moreover, [...] the price increase discussions concerned foam and rigid trays.<sup>596</sup> Furthermore, Silver Plastics and [company representative] are explicitly mentioned in [company representative] ([company name]) [...] report on the meeting on 24 August 2004. Finally, in the light of the subsequent contemporaneous items of evidence of 27 September 2004 and 27 November 2004 (all [non-addressee] inspection documents see Recitals (545)-(547)), [...] the participation of Silver Plastics in the meeting of August/September 2004 at the Novotel, Ratingen, is credible.

- (541) In **September 2004** [company name] sent out price increase letters to its customers in Germany and to its competitors. It announced a price increase of 9.5 % for PS foam trays as of 1 October 2004. It cited raw material prices as the reason for the price increase. [Company name's] [...] e-mails of 2 and 5 September 2004 concerning the price increase letters shows the anticompetitive contacts with Silver Plastics and Vittembal. At the bottom of the page of the e-mail of 5 September 2004, there is a remark that Silver Plastics had already sent out its price increase letters, with a copy also being sent to [company name], and Vittembal would send out price increase letters shortly and would also afterwards provide [company name] with a copy: "*For info: Silver has sent out, copy by post. Vittembal sends out on Monday, I will receive a copy later*".<sup>597</sup>
- (542) In an e-mail of **3 September 2004** that was found at the premises of Silver Plastics during the inspection the undertaking [non-addressee], a dealer for products of Silver Plastics in Sweden, reported to Silver Plastics that it had had contact with the Swedish market leader Huhtamäki who would raise prices as of 15 October at 6.5 % and a higher price increase than that of the market leader would be difficult. Silver Plastics agreed to 6.5 % for foam trays and proposed 4 % for rigid trays. The e-mail was a reaction to a proposal by Silver Plastics announcing a price increase of 9.5% for foam trays and 5 % for rigid trays and shows that Silver Plastics proceeded to announcements that were in line with the price increases agreed previously with its competitors (see Recitals (536), (537) and (538)).<sup>598</sup>
- (543) In an e-mail of **8 September 2004** the undertaking [non-addressee], a dealer for products of Silver Plastics in Denmark, complains that the price increase was announced without three months notice. Silver Plastics answered that the prices should be increased as of 1 December 2004 by 9.5 % for foam trays and 5 % for rigid trays.<sup>599</sup>

---

<sup>594</sup> ID [...] (Huhtamäki reply to the SO). See also ID [...] (Huhtamäki reply to the RFI).

<sup>595</sup> ID [...] and ID [...]

<sup>596</sup> ID [...] and ID [...]

<sup>597</sup> ID [...] (Silver Plastics inspection document); see also ID [...] supported by ID [...]: original in German: "*Zur Info: Silver hat verschickt, Kopie in der Post. Vittembal verschickt am Montag, Kopie erhalte ich später*".

<sup>598</sup> ID [...] (Silver Plastics inspection document) explained in ID [...]

<sup>599</sup> ID [...] (Silver Plastics inspection document).

- (544) On **13 September 2004** Vitembal communicated price increases to its customers, which would be effective as of 15 October 2004. [...] these price increases were agreed among competitors<sup>600</sup> and took effect in the months that followed. This is supported by [...] subsequent evidence including notably the [non-addressee] internal memo of 27 November 2004 and the [company name] internal e-mail of 2 December 2004 showing contacts between [company representative] from Vitembal and [company representative] from Linpac (see Recitals (547) and (548)).
- (545) On **27 September 2004** the sales team of [non-addressee] complained in an internal e-mail that their competitors were not proceeding fast enough with the price increase: *"Despite all (pre-)talks, letters, lobby activities, etc., it is more than difficult to effectuate a price increase at this moment. In my opinion this is mostly related to the laziness and lack of interest of a number of our competitors. We have noticed that notably Linpac takes no or little action to get the prices into another direction".*<sup>601</sup>
- (546) Another [non-addressee] internal e-mail of **27 September 2004**, states: "A percentage far above the plus 10% is needed. It is illustrative that in Germany the firm Linpac has announced its price increase with 9.5 % (price increase letter is available) and Silver Plastics with 7 %".<sup>602</sup> That e-mail shows that [non-addressee] was informed about Linpac's exact price increase announcements in Germany and had a price increase letter in its possession confirming this.
- (547) An internal memo of [non-addressee] dating **27 November 2004**, notes that this time "it was again agreed this time that [non-addressee] would play the role of "follower" and not take the leading role ".<sup>603</sup>
- (548) On **2 December 2004** [company representative] (Linpac) contacted [company representative] ([company name]) after [company representative] (Vitembal) had talked to him concerning the customer Gelpa: *"[Company representative] believes that Gelpa did not get a price increase."* [Company representative's] answer reflects the allocation of the market between the participating competitors: *"We did raise the prices for Gelpa. [...] Accordingly [company representative] should be quiet but what does [company representative] do in Holland??? He shall stay in Germany I already told him. (was then also my last telephone conversation with him, probably also because I told him that with a Dutchman (that was me) he cannot behave like an SS officer)."*<sup>604</sup>

---

<sup>600</sup> See list of customers to which the price increases were communicated in **ID [...]**

<sup>601</sup> **ID [...]** ([non-addressee] inspection document), (Original in Dutch: "Ondanks alle (voor)gesprekken, brieven, lobby activiteiten etc. is het meer dan moeilijk (...) om op dit moment een prijsverhoging te effectueren. Naar mijn mening heeft dit voornamelijk te maken met de laksheid of desinteresse van een aantal van onze concurrenten. Wij merken dat met name Linpac weinig of geen actie onderneemt om de prijzen een andere richting op te krijgen").

<sup>602</sup> **ID [...]** ([non-addressee] inspection document) (Original in Dutch: "Een percentage van ver boven de +10% is nodig maar het geeft te denken dat in Duitsland de firma Linpac zijn de prijsverhoging heeft aangekondigd met 9,5% (prijsaankondigingsbrief is aanwezig) en Silverplastics met 7%").

<sup>603</sup> **ID [...]** ([non-addressee] inspection document) (Original in Dutch: "Wij hadden ook deze keer weer afgesproken dat we [...] de rol van een „volger“ zouden spelen en niet voorop zouden lopen"). [Non-addressee] in **ID [...]** (reply to RFI) tries to explain this by referring to an "internal agreement" without providing any information or evidence who agreed what with whom.

<sup>604</sup> See [...] e-mail of 2 December 2004 with the subject: "GELPA" in **ID [...]**; (Original in German: "[Company representative] meint, dass Gelpa keine Preiserhöhung erhalten hat." [...] "Wir haben die Preise bei Gelpa angehoben. [...] Also [company representative] kann ruhig sein, aber was tut

#### 4.3.3.3. Bilateral exchange of information and kick off for the MAP IK in 2005

- (549) **In 2005**, the German market started shifting from foam to rigid trays.<sup>605</sup> Rigid trays had been discussed as part of the arrangements between the cartel participants before 2005 in multilateral meetings and on a bilateral basis (see for example Recitals (534) and (531)). However, at that time, only Linpac, Silver Plastics and Huhtamäki were already active in the rigid trays business. Vitembal did not produce rigid trays.
- (550) At the Interpack trade fair in Düsseldorf in **April 2005** [company representative] (Linpac) had got to know [company representative] (Huhtamäki). After the trade fair they regularly wrote e-mails to exchange information on customers, especially on the customer Friki. [...].<sup>606</sup> On **4 May 2005** [company representative] (Linpac) sent an e-mail to [company representative] (Huhtamäki) containing Linpac's offers for the joint customer Friki and R&W Houdek for rigid trays and asking for a "*hint on the prices for Friki and Tönnies*".<sup>607</sup> Huhtamäki argues that the communication was linked to [company representative's] imminent switch to Linpac and her personal interest in having a smooth transition into her new position.<sup>608</sup> However, [company representative] moved to Linpac only later in September 2005 and that exchange of price information with a competitor occurred while she was still employed at Huhtamäki.
- (551) In **July/August 2005** a meeting at the restaurant Haus am Walde, Bremen, took place between [company representative] ([company name]) and his predecessor [company representative] who then worked for a competitor. It concerned rigid trays. After a price increase of the raw material polypropylene (see Recital (6)), [company representative] suggested that a mechanism similar to the EQA should be set up for rigid trays. They agreed that [company name] would organise an in-house exhibition with competitors (see Recitals (553)-(554)). That meeting thereby served as "kick-off" meeting for a framework for price increases for rigid trays, that later became the MAP IK meetings.<sup>609</sup>
- (552) The shift of the German market from foam to rigid trays is explained in an internal [company name] report by [company representative] of 5 September 2005.<sup>610</sup> Around that time, [company representative] (Silver Plastics) called [company representative] (Linpac) and asked him to organise a meeting in order to discuss this development.<sup>611</sup> In **September 2005** [company representative] convened a meeting in a hotel in Cologne where he booked a special conference room in order to be able to discuss in a safe environment.<sup>612</sup> [Company representative] (Linpac), [company representative] (Vitembal), [company representative] and [company representative] (both of Silver Plastics) and [company representative] ([non-addressee]) participated. The

---

*[company representative] in Holland??? Er soll in Deutschland bleiben, habe ich im auch schon gesagt. (war dann auch mein letzte Telefongespräch mit ihm, wahrscheinlich weil ich ihm gesagt hatte das Er sich gegenüber Holländer (das war ich) nicht als ein SS Offizier benehmen könnte')"*

<sup>605</sup> ID [...]

<sup>606</sup> ID [...]

<sup>607</sup> ID [...] corroborated by ID[...] (Original in German: "Hallo [company representative], Angebot ist gefaxt. War schön wenn Du mir einen Tip zum Friki-Preis und Tönnies geben kannst")

<sup>608</sup> ID [...] (Huhtamäki reply to the SO).

<sup>609</sup> ID [...]

<sup>610</sup> ID [...]

<sup>611</sup> ID [...]

<sup>612</sup> ID [...]

participants discussed the shift from foam to rigid trays. [...].<sup>613</sup> Silver Plastics cannot remember it.<sup>614</sup> However, in the light of the previous anticompetitive contacts (24 August 2004, August/September 2004 and 3 September 2004) and the subsequent ones (12 October 2005, 27 February/5 March 2005, 18 May 2006, 12 July 2006, 14 September 2006) with some of the same cartel participants regarding foam and/or rigid trays and/or customers, and in the light of the disclosure of [company name's] price increase letters in September 2006 (see Recital (567)), [...] [the existence of] this meeting is credible.

- (553) On **12 October 2005** a meeting at the in-house exhibition organised by [company name] took place in Bad Salzflun, between [company representative] and [company representative] (both of Linpac), [company representative] (Silver Plastics),<sup>615</sup> [company representative] (Huhtamäki)<sup>616</sup> and two other competitors. The objective of the meeting was to engage in anticompetitive contacts on rigid trays.<sup>617</sup> [...] the participants were aware of the subject matter of the meeting.<sup>618</sup>
- (554) Preparing the meeting [company representative] ([company name]) wrote an internal e-mail to [company representative] ([company name]): "*Could you order some 'sales material' for the meeting. [...]*  
*We should have at least something on the record to show. The sales event is the main reason and we must have something on it (in case the competition authority knocks on our door).*"<sup>619</sup> That contemporaneous document corroborates [...] the anti-competitive purpose of the 12 October 2005 meeting.<sup>620</sup>
- (555) Discussions between the cartel participants on this new subject were difficult. The representative of Huhtamäki started a discussion about the customer Westfalenland where he claimed that Linpac had put Huhtamäki out of business. In the end the discussion led to an understanding between Linpac, Silver Plastics and Huhtamäki that they would not interfere with each other's customers.<sup>621</sup>
- (556) Huhtamäki<sup>622</sup> claims that the meeting was limited to legal discussions on transport systems. Silver Plastics claims that Linpac tried to achieve an agreement on a price increase but Silver Plastics did not participate.<sup>623</sup> However, [...] [the anti-competitive contact is] credible in the light of [company representative's] e-mail and of the involvement of Huhtamäki<sup>624</sup> and Silver Plastics in a series of contacts before and after the meeting.

---

<sup>613</sup> ID [...]

<sup>614</sup> ID [...] (Silver Plastics reply to RFI).

<sup>615</sup> ID [...] (Silver Plastics reply to RFI).

<sup>616</sup> ID [...] (Huhtamäki reply to RFI).

<sup>617</sup> ID [...] corroborated by ID [...]

<sup>618</sup> ID [...]

<sup>619</sup> ID [...]; (Original in German: "*Kannst du für das Meeting ein paar 'Verkaufsunterlagen' odern. [...]*  
*Wir sollten zumindest etwas protokollarisches haben zum Zeigen. Die Verkaufsveranstaltung ist der Hauptgrund und wir müssen darüber auch was haben (Falls das Kartellamt vor der Tür steht)*").

<sup>620</sup> ID [...]

<sup>621</sup> ID [...]

<sup>622</sup> ID [...] (Huhtamäki reply to RFI) and ID [...] (Huhtamäki reply to the SO).

<sup>623</sup> ID [...]

<sup>624</sup> See for instance the e-mails concerning the contacts of 3 February 2004, 4 May 2005, 20 June 2006 and the meeting of 24 August 2004.



#### 4.3.3.4. Bilateral exchange of information in 2006

- (557) In **the week 27 February to 5 March 2006** a meeting took place between [company representative] ([company name]) and [company representative] (Silver Plastics) in Bad Homburg on foam and rigid tray prices. In his [...] weekly report for week 9/2006 [company representative] reported the following: "*Spoke to [company representative] from Silver. He told me that Silver has got problems with EPS and PP due to the current price development. The production operates at 70%.*"<sup>625</sup> Silver Plastics has no recollection of such a conversation.<sup>626</sup>
- (558) On **18 May 2006** a meeting took place between [company representative] and [company representative] ([company name]) and [company representative] and [company representative] (both of Silver Plastics) at a parking lot close to the customer Kaufland's office in Heilbronn, prior to a joint meeting with that customer on the same day. It concerned rigid trays with suction pad in connection with the customer Kaufland. On 15 May 2006 [company representative] had called [company representative] and told him that [company name] and Silver Plastics would have a meeting with Kaufland and that they should meet before in order to avoid inconsistencies. [Company representative] briefed [company name's] participants in an e-mail saying that [company representative] from Silver Plastics had called him: "*He wants to have an exchange on the strategy with us. He wants to squeeze out as much money as possible for the suction pad*".<sup>627</sup> [Company representative] then reported to [company name] in the United Kingdom that they would try to arrange a price increase.<sup>628</sup> Silver Plastics acknowledges only the subsequent official meeting with Kaufland.<sup>629</sup> Silver Plastics argues that the informal meeting with [company name] at the parking lot cannot have taken place because [company representative's] Mercedes broke down on that same day. In support of that argument it submits a damage report for [company representative's] Mercedes.<sup>630</sup> However, the evidence that [company representative's] car broke down on that day does not alter the fact that contemporaneous evidence clearly shows that the parties took steps to coordinate their pricing strategies concerning that particular customer.<sup>631</sup>
- (559) On **20 June 2006** [company representative] (Huhtamäki) called [company representative] ([company name]) and told him that Huhtamäki had sent out a wrong price list for rigid trays to customers Wiesenhof and Emsland in Germany. The price list contained too high prices and [company representative] suggested that [company name] should take advantage of the occasion and raise prices accordingly. [Company representative] in an internal e-mail passed that information on to [company representative]: "*had a call by [company representative] yesterday. He informed me, that due to an IT mistake a few bills with wrong prices for the tray 275 had gone out.*"

---

<sup>625</sup> ID [...] corroborated by ID [...]

<sup>626</sup> ID [...] (Silver Plastics reply to the SO).

<sup>627</sup> ID [...] corroborated by ID [...]: (Original in German: "*Er will sich mit uns wegen der Strategie austauschen. Will soviel wie möglich Geld für die Saugeinlage rausschlagen.*"; see also at the bottom of the [company name] internal email in ID [...]: "[*Company representative*] möchte vorher telefonieren und ein Treffen auf dem Parkplatz, damit man sich nicht widerspricht. [*Company representative's*] Telefonnummer: ...").

<sup>628</sup> ID [...]

<sup>629</sup> ID [...] (Silver Plastics reply to RFI).

<sup>630</sup> ID [...] and ID [...] (Silver Plastics reply to the SO).

<sup>631</sup> ID [...]

*He told me the customers, too. Told me, that the market price is at approximately EUR 120,--. At the moment one is not lower than EUR 110,--. He corrected the prices for these two customers ([company representative], customers Ems and Wies, [referring to colleague [company representative] and the customers Emsland and Wiesenhof]). He suggests that we also adapt the prices."* However, [company representative] was suspicious of Huhtamäki and thought that they might try to trick [company name].<sup>632</sup>

- (560) [...] <sup>633</sup> Huhtamäki cannot remember any anticompetitive contact.<sup>634</sup> In its reply to the SO Huhtamäki argues that it tried to mislead [company name] by passing on to [company name] higher prices than those that it actually intended to charge. However, this does not alter the anticompetitive nature of the contact which is evidenced by a contemporaneous piece of evidence namely [company name's] internal email which shows that Huhtamäki informed [company name] of its prices to customers Wiesenhof and Emsland. A similar pattern is also clear from other evidence, for example the [...] email of 3 February 2004 showing that Huhtamäki informed [company name] that Silver Plastics had undercut the prices for rigid trays (see Recital (531)).<sup>635</sup>

#### 4.3.3.5. The price increase in the Netherlands in 2006

- (561) On **12 July 2006** a meeting between [company representative] ([company name]) and [company representative] ([non-addressee]) at the AC restaurant Apeldoorn took place. It concerned overwrap foam trays in the Netherlands. Before that meeting [company representative] had a telephone conversation with [non-addressee] discussing a price increase of 12 % for all foam trays in the Netherlands. In an internal [company name] management meeting preparing [company representative's] meeting with [non-addressee], [company representative] had put [company representative] under pressure to stick to that line. [Company representative] thought that the price increase would be too high. He therefore agreed with [non-addressee] on a price increase of 8 % for overwrap foam trays in the Netherlands.<sup>636</sup> The meeting is evidenced by [...] and is corroborated by a calendar entry and a bill. [Non-addressee] confirms the participation of [company representative] but cannot provide details about the content except that they exchanged info on [company name's] market position.<sup>637</sup>
- (562) On **15 September 2006** a meeting between [company representative] ([company name]) and [company representative] ([non-addressee]) at the Postiljon Hotel, Zwolle took place. They assessed the progress they had made concerning the price

---

<sup>632</sup> ID [...] corroborated by ID [...]; (Original in German: "hatte gestern einen Anruf von [company representative]. Er hat mich informiert, dass durch einen EDV Fehler einige Rechnungen mit dem flaschen (gemeint: "fälschen") Preis für 275er Schalen rausgegangen sind. Hat mir auch die Kunden gesagt. Teilte mit, daß der Marktpreis bei ca. 120 Euro lag. Nun ist man nicht niedriger als 110 Euro. Er hat bei den 2 Kunden die Preise korrigiert. ([Company representative] Kunden Ems und Wies). Schlägt vor, dass wir auch die Preise anpassen.").

<sup>633</sup> ID [...] corroborated by ID [...]

<sup>634</sup> ID [...] (Huhtamäki reply to the RFI).

<sup>635</sup> According to both [company representative] and [company representative] (both from [company name]), [company representative] ([company name]) often passed on to them prices that were not correct; however this does not change the anti-competitive nature of the contacts. ID [...]

<sup>636</sup> ID [...], ID [...] and ID [...] the meeting itself corroborated by calendar entry and bill ID [...]

<sup>637</sup> ID [...] ([non-addressee] reply to the RFI).

increase decided on 12 July 2006. The meeting is evidenced by [...] and is corroborated by a calendar entry.<sup>638</sup> [Non-addressee] confirms the participation of [company representative] but cannot provide details about the content.<sup>639</sup>

- (563) In **September/October 2006** [company name] sent out the price increase letters to its customers.<sup>640</sup>
- (564) Based on the clear description of the event, the Commission concludes that [company name] and [non-addressee] decided on a price increase for overwrap foam trays in the Netherlands, in parallel to the multilateral agreement on a price increase in autumn 2006 (see Recitals (565)-(578)).

#### 4.3.3.6. The price increase in autumn 2006

- (565) In **summer 2006** the competitors felt that a price increase was necessary. The fact that the competitors did not automatically decide their actions in an independent manner is clear from among others an internal [non-addressee] e-mail to [company representative] of 7 August 2006 where [company representative] ([non-addressee]) asks: *"It is clear that something must happen with the prices but who does what now? Does everyone have to find out on their own or will we synchronize and what about our competitors?"*<sup>641</sup>
- (566) [Non-addressee] tries to explain that document by stating that it meant to adapt the prices on the basis of information stemming from customers.<sup>642</sup> The wording of the document itself clearly suggests, however, that the choice was between setting the prices independently *"choose on their own"* or setting them in a coordinated fashion *"synchronise them with our competitors"*. This interpretation is even more plausible in the light of the existence of similar collusions before and after the email was sent.
- (567) In late **September 2006** [company name] sent price increase letters to its customers. It announced a price increase of 11 % for foam trays and 5 % for rigid trays as of 16 October 2006. It cited raw material prices and the costs of transport and energy as the reason for the price increase.<sup>643</sup> Before that, [company name] had informed Silver Plastics and [non-addressee] about the price increase but not [company name].<sup>644</sup> In addition, [company name] [...] sent the price increase letters to [company name], Silver Plastics and [non-addressee] beforehand. Those is also evidenced by the identical price increase letters of 25 September 2006 that were addressed separately to [company representative] of [company name], [company representative] of Silver Plastics and [company representative] of [non-addressee] by [company representative] of [company name]. These price increase letters state that the increase of raw material prices and the negative forecasts in the upcoming months oblige

---

<sup>638</sup> ID [...] the meeting itself corroborated by calendar entry ID [...]

<sup>639</sup> ID [...] ([non-addressee] reply to the RFI).

<sup>640</sup> ID [...]

<sup>641</sup> ID [...] ([non-addressee] inspection document); (Original in Dutch: *"dat wat aan de prijzen moet gebeuren is duidelijk, maar wie doet nu wat? moet iedereen het voor zich zelf uitzoeken of gaan wij nog wat afstemmen en hoe zit het met onze concurrentie?"*).

<sup>642</sup> ID [...] ([non-addressee] reply to the RFI).

<sup>643</sup> ID [...] and ID [...] supported by ID [...]

<sup>644</sup> ID [...], ID [...] and ID [...] [Company representative's] note of 11 September 2006 from an internal [company name] meeting which states: *"2. Price increase for standard tray + tray for overwrap. Starting discussion with customers this week ... Starting Club discussions"*.

[company name] to proceed to price increases of 11 % for EPS products, namely foam trays and 5 % for rigid trays, as of 2 October 2006.<sup>645</sup>

- (568) The cartel participants informed their sales teams that Linpac would take the leading role in the price increase. For example, in an internal e-mail that was found during the inspection at the premises of Silver Plastics, [company representative] informed the sales team of Silver Plastics ([company representative] and [company representative]) on **20 September 2006**. It says: "*we are waiting for a letter of Linpac concerning increase eps. then we will eventually do it together.*"<sup>646</sup> [...] (see Recital (567)).
- (569) On **27 September 2006** an internal Silver Plastics e-mail (namely [company representative] informing again [company representative] and [company representative]) explains the purpose of the price increase letter by Linpac: "*The letter serves primarily the purpose for our sales department to announce our price increases in their size, too, (linpac can surely take a leading role here).*" [...] "*first success: Price increase at walMart on eps as of 10/2006 7%.*"<sup>647</sup> Silver Plastics argues that it received the Linpac price increase letter as a customer and submits orders and invoices for 2006 as proof of its customer relations with Linpac.<sup>648</sup> Silver Plastics also submits two statements by its employees, namely by [company representative] and by [company representative], dated 8 January 2013 and 16 January 2013 respectively, both explaining that the meaning of the sentence "*then we will eventually do it together*" in the Silver Plastics internal e-mail of 20 September 2006 (see Recital (568)) was simply that [company representative] would together with [company representative] revise a draft Silver Plastics price increase letter.<sup>649</sup> However, those arguments and statements are not convincing in the light of the wording of this piece of contemporaneous evidence, notably in view of other examples of similar contacts between "the Club members" on who would take the leading role in the price increase announcements (see for example Recitals (571) and (572)).
- (570) In **October 2006** Silver Plastics sent price increase letters to its customers. It announced a price increase of 11 % for foam trays and 6 % for rigid trays as of 16 October 2006. It cited raw material prices and the costs of transport and energy as the reason for the price increase.<sup>650</sup>
- (571) In an internal e-mail of **7 October 2006** [company name] informed its sales team that a price increase with a target of 8 % for foam trays and 5 % for rigid trays needed to be implemented. The price increase concerned customers in Belgium, Denmark, Finland, Germany, Luxembourg, the Netherlands, Norway and Sweden.<sup>651</sup> They also stated that all competitors with the exception of Vitembal would do the same: "*For*

---

<sup>645</sup> ID [...]

<sup>646</sup> ID [...] (Silver Plastics inspection document); (Original in German: "*wir warten auf ein schreiben von Linpac bzgl. erhöhung eps. dann machen wir das evtl. zusammen*").

<sup>647</sup> ID [...] (Silver Plastics inspection document); (Original in German: "*das schreiben dient vor allem dem verkauf dazu unsere preiserhöhungen ebenfalls in der größenordnung anzukündigen (linpac kann hierbei sicherlich eine vorreiterrolle einnehmen) [...] "erster erfolg: preiserhöhung bei walMart im eps ab 10/2006 um 7%.*").

<sup>648</sup> ID [...] (Silver Plastics reply to the SO) and ID [...] (Silver Plastics reply to the SO).

<sup>649</sup> ID [...] (Silver Plastics reply to the SO).

<sup>650</sup> ID [...] (Silver Plastics reply to RFI).

<sup>651</sup> ID [...]

foam [trays] we have to achieve at least 8%. For PP [rigid trays] it has to be 5%. It is clear to me that this is not easy. Except for Vitembal all competitors will do the same. Please mention all difficulties in the weekly report. Please share Vitembal information in any event".<sup>652</sup> The almost similar price increases announced by [company name] and Silver Plastics confirm the above-mentioned anti-competitive contacts.

- (572) In an internal e-mail of **9 October 2006** [company representative] complains to [company representative] and [company representative] (all from [non-addressee]) about [non-addressee] going forward with the customer Schuitema: *"I understood from our discussion of last Friday that despite the fact that we agreed clearly with one another, not to do this, we did take the role of the "leader" on us with all risks connected to it. I am assuming therefore that we with our other relations in the Benelux will adopt a more passive attitude and will wait for others to take the first step."* The answer to that e-mail reads: *"I also understood it that way that with the exception of Schuitema we should not be leader."*<sup>653</sup>
- (573) On **16 October 2006** an EQA fringe meeting took place at the Arabella Sheraton Airport Hotel, Frankfurt between [company representative] (Linpac), [company representative] (Silver Plastics), Vitembal ([company representative]) and [company representative] ([non-addressee]). The meeting concerned foam trays. The participants except for Vitembal, agreed to follow the price increase by Linpac. [Company representative] (Vitembal) reacted angrily because Vitembal had not been informed before the price increase letters and announced that it would decrease prices in order to impede the agreement. [...].<sup>654</sup> The fact that a price increase was discussed between Linpac, Vitembal and Silver Plastics at the EQA fringe meeting on 16 October 2006 is also corroborated by a contemporaneous document namely an internal [company name] e-mail dated **30 October 2006**<sup>655</sup>. In that e-mail the sales team of [company name] reported to [company representative] that the announcement by [company name] during the fringe EQA meeting on 16 October 2006 not to increase prices was putting [company name] under pressure. The e-mail also mentioned that [non-addressee] (a dealer for products of Silver Plastics in Denmark (see also Recital (543)) had announced a price increase as per December 2006.

---

<sup>652</sup> ID [...] (Original in German: *"Bei Schaum müssen wir unbedingt mind. 8% realisieren. Bei PP sollten es 5% sein. Mir ist klar, daß es nicht einfach ist. Bis auf Vitembal werden alle Wettbewerber ähnlich verfahren. Alle Schwierigkeiten bitte Im Wochenbericht erwähnen. Vitembal Informationen bitte unbedingt mitteilen"*) explained in ID [...]

<sup>653</sup> ID [...] ([non-addressee] inspection document); (Original in Dutch: *"ik heb begrepen uit ons gesprek van afgelopen vrijdag dat wij, ondanks het feit dat we duidelijk met elkaar hebben afgesproken dit niet te doen, toch de rol van "leader" op ons hebben genomen met alle risico's, die daaraan verbonden zijn" "Ik ga er derhalve dan ook van uit dat we bij de overige relaties in de Benelux een wat meer passieve houding zullen aannemen en zullen wachten tot anderen de eerste stap hebben gezet."*); (Original in Dutch: *"ook ik heb het zo begrepen, dat wij met uitzondering van Schuitema niet leader zullen zijn."*)

<sup>654</sup> ID [...], ID [...] and ID [...] See also ID [...] the official minutes of the meeting and the list of participants and ID [...] which is a Silver Plastics price increase letter sent on 16 October 2006 by e-mail to Linpac. The cover e-mail reads: *"[Company representative], only for your info. The price increase SP was sent today by post"* (Original in German: *"[Company representative], nur zu Ihrer Info. Preiserhöhung SP war heute in der Post"*)

<sup>655</sup> The subject of the e-mail is *"Price Increase – State of Affairs"* (Original in English: *" Price Increase – State of Affairs"*), see ID [...] explained in ID [...]

- (574) **Silver Plastics** denies that the price increase was agreed upon between competitors at that EQA fringe meeting.<sup>656</sup> It argues that only [company representative] was present at the official EQA meeting and that no fringe meeting took place. Silver Plastics submits that it had already updated its price lists before 16 October 2006 and therefore it would have been no longer possible to enter into a price increase agreement with its competitors. It also claims that it competed fiercely on prices for the customers Metro and REWE.<sup>657</sup> **Vitembal** states that it does not remember if it had an agreement with its competitors about a price increase at that time and on that occasion; it also argues that it learned about the price increase announced by Linpac and Silver Plastics between end of September 2006 and November 2006 from one of its film suppliers.<sup>658</sup> However, the evidence shows that soon after, Vitembal participated in the meeting of 23 October 2003 (see Recital (576)) and then proceeded with the price increase (see Recital (577)). Therefore, it is clear that both Silver Plastics and Vitembal must already have been aware of the price increase intentions of Linpac through their participation in the meeting on 16 October 2006 (see Recital (573)).
- (575) Despite the position of Silver Plastics and Vitembal, the evidence surrounding the EQA fringe meeting on 16 October 2006 clearly shows that the participants proceeded with the price increases in a coordinated manner (see for example Recitals (570)-(573), (576), (577) and (578)). Moreover, in the light of the previous and the subsequent anticompetitive meetings and contacts with some of the same competitors regarding foam and/or rigid trays and/or customers (see notably the meetings of 20 September 2007, 12 March 2007 and 29 October 2007 in Recitals (580), (584) and (588)), the contemporaneous documents, including price increase letters and internal e-mails showing the intentions of competitors to coordinate their price increase actions (see Recitals (568), (569), (571) and (578)) and in the absence of alternative plausible explanations, [...] [are] credible and constitute[...] sufficient evidence.
- (576) On **23 October 2006** a meeting took place at the Steigenberger Hotel, Düsseldorf, between [company representative] (**Vitembal**) and [company representative] (**[non-addressee]**). [Company representative] learnt from [company representative] that Linpac, Silver Plastics and [non-addressee] would implement a price increase at the end of 2006. This gave Vitembal confidence to also implement a price increase, despite its announcement on 16 October 2006 that it would lower its prices.<sup>659</sup>
- (577) On **7 and 11 December 2006**, Vitembal announced a general price increase of 12% for foam trays to its customers in Belgium, Denmark, Finland, Germany, Luxembourg, the Netherlands, Sweden and Switzerland.<sup>660</sup>
- (578) In an [...] e-mail of **22 December 2006**, [company representative] (**[company name]**) informed [...] about the price increases by Vitembal and Silver Plastics saying that "*our competitors are taking up our airflow and also raise*".<sup>661</sup> In internal

---

<sup>656</sup> ID [...]

<sup>657</sup> ID [...] (Silver Plastics reply to the SO).

<sup>658</sup> ID [...]. See also ID [...] (Vitembal reply to the SO).

<sup>659</sup> ID [...] and ID [...]. [Non-addressee] confirms its attendance at the meeting, but, it does not remember anything on the content of the meeting ID [...] ([non-addressee] reply to RFI).

<sup>660</sup> ID [...]

<sup>661</sup> ID [...] and ID [...]; (Original in German: "*Unsere Wettbewerber kommen nun langsam in unseren Fahrtwind und erhöhen ebenfalls*"). See also ID [...] internal [company name] email of 12 December

e-mails in January 2007, [company name] considered that the price increase of 2006 for foam and rigid trays still had sufficient impact for 2007.<sup>662</sup>

#### 4.3.3.7. Agreement in the framework of the MAP IK in autumn 2007

- (579) After the in-house exhibition in Bad Salzuflen (see Recital (553)) competitors set up a framework similar to that of the EQA within the framework of the IK-Industrieverband, called the MAP IK meetings. The kick-off for that framework was a meeting at Bad Homburg on 1 February 2006 in which Linpac, Silver Plastics, Huhtamäki<sup>663</sup> and other competitors ([non-addressee], [non-addressee], [non-addressee]) had participated.<sup>664</sup> Further MAP IK meetings took place on 3 April 2006, 26 April 2007 and 5 July 2007. [...] none of those meetings had any illegal content, they concentrated on legal topics and served the purpose of getting to know each other.<sup>665</sup>
- (580) On **20 September 2007** a MAP IK fringe meeting between [company representative] (**Linpac**), [company representative] and [company representative] (both of **Silver Plastics**), [company representative] (**Huhtamäki**), and other competitors took place in the Arabella Sheraton Hotel in Nürnberg. It concerned rigid trays.<sup>666</sup>
- (581) After a short discussion on the price increases of raw material during the official meeting<sup>667</sup> and after the end of the official meeting, **Linpac** and **Silver Plastics** asked the other competitors back into the meeting room where **Linpac** offered snacks. Silver Plastics took the floor and explained to the participating competitors that something had to be done about the prices and that Silver Plastics had very good experience with that kind of discussions for foam trays in the past. Silver Plastics suggested communicating a price increase of 8 % - 8.5 % to all customers with the aim of achieving 6 %. Linpac expressed support for the view that something had to be done concerning the prices. Huhtamäki did not actively take part in the discussion.<sup>668</sup> The discussion did not lead to an agreement on a price increase but to the mutual understanding that the participating competitors would implement price increases on their own and keep each other informed. Silver Plastics confirms the participants and the content of a fringe meeting; however, it alleges that it did not participate in a price agreement.<sup>669</sup>
- (582) On **20 September 2007**, after the MAP IK fringe meeting another bilateral meeting between [company representative] ([company name]) and [company representative] (**Silver Plastics**) took place. It concerned rigid trays. They agreed to raise the prices for their common customer Kaufland in Germany.<sup>670</sup> **Silver Plastics** denies participation in that meeting. Silver Plastics submits that its employees [company

---

2006 sent from [company representative] to [company representative] and [company representative] mentioning that the price increase will have to take place as agreed in the Club.

662 ID [...] and ID [...]

663 ID [...] (Huhtamäki reply to RFI); Huhtamäki's internal investigation has not revealed any information about participation of any of its employees.

664 ID [...]

665 ID [...] and ID [...]

666 ID [...] the meeting itself corroborated by ID [...]

667 ID [...] corroborated by official minutes ID [...]

668 ID [...], ID and ID [...]

669 ID [...] and ID [...]; see also ID [...].

670 ID [...] and ID [...]

representative] and [company representative] never discussed a price increase for the customer Kaufland; on the contrary they left the IK meeting together, ate pizza for lunch and spent the afternoon and evening with their wives in the city center. In support of this argument Silver Plastics provides hotel bills and hotel bar receipts dated 21 and 22 September.<sup>671</sup> However, the receipts submitted by Silver Plastics do not support its explanations that [company representative] and [company representative] left the hotel after the MAP IK fringe meeting. Silver Plastics also claims that it did not send out price increase letters or increase prices for rigid trays in the autumn of 2007 for Kaufland or for any other customer. [...] [the existence of] the discussion as such (irrespective of whether it was later implemented by both parties) is however credible in the light of the subsequent meeting of 29 October 2007 (see Recital (588)).

#### 4.3.3.8. Bilateral and smaller multilateral contacts between competitors 2007

- (583) In 2007 the cartel participants did not consider there to be a need for a price increase for foam trays as the price increase decided upon in autumn 2006 was still taking effect (see Recital (578)).<sup>672</sup> This is in line with evidence showing that subsequent contacts during 2007 either concerned rigid trays in general and/or specific customers (see the meeting of 20 September 2007 on rigid trays and the fringe meeting of 29 October 2007 concerning rigid trays for the customers Tönnies, Wiesenhof and Kaufland in Recitals (582) and (588)).
- (584) On **12 March 2007** an EQA fringe meeting took place at the Airport Conference Centre, Frankfurt between [company representative] (**Linpac**), [company representative] (**Vitembal**), [company representative] (**Silver Plastics**) and [company representative] (**[non-addressee]**). The cartel participants discussed among other things, the Italian competitor Magic Pack, who entered the German market with aggressive prices.<sup>673</sup>
- (585) [...].<sup>674</sup> **Silver Plastics** confirms its participation in the official EQA meeting but does not remember the fringe meeting.<sup>675</sup> **Vitembal** argues that no anticompetitive agreement or decision took place at that meeting.<sup>676</sup> However, [the anti-competitive contact] [...] is credible in the light of the contemporaneous handwritten notes as well as the subsequent meetings on 20 September 2007 and 29 October 2007 (see Recitals (581) and (587)-(591)).
- (586) On **2 May 2007** a meeting took place at the AC Restaurant at De Meern in Utrecht between [company representative] (**Linpac**) and [company representative] and [company representative] (both of **[non-addressee]**). They agreed that their agreement of 2006 not to approach each other's customers of foam trays in the Netherlands should stay in place.<sup>677</sup> [...]. [Non-addressee] confirms its participation

---

<sup>671</sup> ID [...] and ID [...] (Silver Plastics reply to the SO).

<sup>672</sup> ID [...] and ID [...]

<sup>673</sup> The fact that competitors discussed Magic Pack is evidenced in the handwritten notes [...] where the name “*MagiPac*” is mentioned ID [...] and ID [...]; for the participants see ID [...]

<sup>674</sup> ID [...], participants see ID [...] and ID [...] (Silver Plastics reply to RFI), handwritten notes see ID [...]

<sup>675</sup> ID [...] (Silver Plastics reply to the RFI). See also ID [...] (Silver Plastics reply to the SO).

<sup>676</sup> ID [...] (Vitembal reply to the SO)

<sup>677</sup> ID [...] and ID [...]



and states that they discussed the fact that [non-addressee] had acquired [non-addressee], a customer of Linpac.<sup>678</sup>

- (587) On **29 October 2007** an EQA meeting took place at the K trade fair, Düsseldorf, between [company representative] (**Linpac**), [company representative] (**Silver Plastics**), [company representative] ([non-addressee])<sup>679</sup> and others.<sup>680</sup> No general fringe meeting to discuss prices and price increases took place which seemed to be rather unusual. In an internal e-mail of **9 November 2007** [company representative] complains to [company representative] (both of [**non-addressee**]) about the fact that no EQA fringe meeting took place on the 29 October 2007 to discuss price increases: *"See below concerning the topic price increase. In the meantime I spoke with Linpac D and NL as well as Silver. There are no concrete plans for a price increase there. Linpac NL wants to talk with us about an adjustment in the first quarter of 2008. I cannot understand how an EQA could pass without discussions on this topic. If we should plan to go it alone, this is also o.k. [...]"*.<sup>681</sup>
- (588) On the same day namely on 29 October 2007 but at 14.00H, [company representative] ([company name]), [company representative] (**Silver Plastics**) and another competitor met at the Reifenhäuser stand. The purpose of the meeting was to exchange price information on their joint customers Tönnies, Wiesenhof and Kaufland. [...].<sup>682</sup>
- (589) They exchanged price information and agreed on a price increase with respect to rigid trays for their joint customers Tönnies, Wiesenhof and Kaufland. At that meeting the participating competitors compared their respective prices for those three customers. [Company representative] had prepared a matrix in order to fill in the prices of his competitors. [Company representative] only brought the price list for Kaufland with him. He asked his Sales Manager ([company representative]) to fax the price information on Tönnies. As this way to proceed was not possible for the information on Wiesenhof, he promised to send it to [company representative] afterwards. During the meeting the participating competitors checked 30 individual prices position by position. They came to an understanding that they would try to equal out gaps between competitors.<sup>683</sup> They realised that [company name's] prices were too low and agreed that [company name] should adjust them to an acceptable level. They also agreed to keep each other updated.<sup>684</sup> [...] the discussed prices would be applicable for [company name] as of 1 November and 1 December 2007 for the customer Tönnies and as of 1 February 2008 for the customer Wiesenhof.<sup>685</sup>

---

<sup>678</sup> ID [...] ([non-addressee] reply to the RFI).

<sup>679</sup> ID [...] ([non-addressee] reply to the RFI).

<sup>680</sup> ID [...]

<sup>681</sup> ID [...] ([non-addressee] inspection document), (Original in German: *"Siehe unten Diskussion zum Thema Preiserhöhung. Habe zwischenzeitlich mit Linpac D und NL sowie Silver gesprochen. Dort sind keine konkreten Pläne für eine Preiserhöhung. Linpac NL will wohl mit uns reden über eine Anpassung im ersten Quartal 2008" "Es ist mir auch schleierhaft wie eine EQA vorbei gehen kann ohne dass zu diesem Thema etwas besprochen wird. Sollten wir einen Alleingang vorhaben ist das auch gut[...]"*).

<sup>682</sup> ID [...], the meeting itself corroborated by ID [...], ID [...] and ID [...]

<sup>683</sup> ID [...]

<sup>684</sup> ID [...] corroborated by common price list of the three competitors ID [...]

<sup>685</sup> ID [...]

- (590) After his journey, [company representative] transferred the data into his computer.<sup>686</sup> Later on he received the price list of [company name] on Wiesenhof in a neutral envelope sent to his home address. After transferring the information into his computer he destroyed the price list.<sup>687</sup>
- (591) This is evidenced by [...] the matrix containing the price information exchanged at the meeting [...]. [...] [company representative] changed the date when he transferred the data which is why the date now reads 24 October 2007 instead of 29 October 2007.<sup>688</sup> **Silver Plastics** remembers the meeting and an exchange of price information on one or two customers as well as a plea from their competitors to respect the price discipline but excludes a price agreement.<sup>689</sup> In its reply to the SO, [company name] admits that [company representative] met with [company representative] and another competitor in order to establish whether any of them were supplying the customer Tönnies with rigid trays at dumping prices. It also argues that [...] it did not increase prices for these three customers at or around the time of that meeting.<sup>690</sup>
- (592) Following the contact on 29 October 2007, on **19 November 2007** [company name] sent out the price increase letter to Kaufland announcing a general price increase for its products of 9 % as of 1 January 2008.<sup>691</sup>

#### **4.4. Central and Eastern Europe (5 November 2004 – 24 September 2007)**

##### *4.4.1. Basic principles and structure of the cartel*

- (593) The cartel in CEE involved Linpac, Coopbox, Sirap-Gema (including its vertically integrated distributor – Petruzalek)<sup>692</sup> and Propack. The cartel related to foam trays used for retail food packaging.<sup>693</sup> The objective/overall aim of the cartel was to maintain the status quo concerning customer relations and market shares and to maintain the prices above competitive levels.
- (594) The competitors coordinated their behaviour through a series of multilateral and bilateral contacts (physical meetings, email exchanges and telephone conversations) often held at the top and middle management level. The collusive contacts were often referred to as “Club East”.<sup>694</sup>
- (595) The market mechanisms and limited number of important clients provided for easy monitoring of the implementation of the anticompetitive agreements. Monitoring was also facilitated by the fact that customers often reported back to their suppliers if they were approached by another supplier and wanted to use the opportunity to get better

---

<sup>686</sup> ID [...] explained in ID [...]

<sup>687</sup> ID [...]

<sup>688</sup> ID [...] explained in ID [...]

<sup>689</sup> ID [...]

<sup>690</sup> ID [...]

<sup>691</sup> ID [...] explained in ID [...]

<sup>692</sup> ID [...]; ID [...]. Petruzalek is an independent trader which was directly involved in the infringement. It had a transversal view of the market and experience of CEE markets. Its role was to control the respect for the client non-aggression pact and facilitate compensation measures agreed by the competitors. Even after its acquisition by Sirap-Gema in 2004, Petruzalek remained an independent distributor who bought products from different manufacturers, including Sirap-Gema.

<sup>693</sup> ID [...]; ID [...]; ID [...]; ID [...]; ID [...]; ID [...]; ID [...]

<sup>694</sup> ID [...]

prices.<sup>695</sup> The competitors also convened follow-up meetings which also involved monitoring.<sup>696</sup>

#### 4.4.2. *The cartel history*

(596) From the mid-1980's the markets of CEE became gradually accessible for foreign companies and were perceived as "markets of the future". [Information pre-dating the infringement]<sup>697</sup>, [information pre-dating the infringement].<sup>698</sup>

#### 4.4.3. *The chronology of events*

(597) From the 1990's Huhtamäki/Polarcup and Linpac were leaders of the retail food packaging market in Poland.<sup>699</sup> Unlike Huhtamäki/Polarcup, whose CEE presence was primarily limited to Poland, Linpac was active across the whole of CEE. [Information pre-dating the infringement].<sup>700</sup> [Information pre-dating the infringement].<sup>701</sup>

(598) [Information pre-dating the infringement].<sup>702</sup>

(599) [Information pre-dating the infringement]<sup>703</sup> [Information pre-dating the infringement].<sup>704</sup>

(600) [Information pre-dating the infringement].<sup>705</sup>

(601) [Information pre-dating the infringement]<sup>706</sup> [information pre-dating the infringement]<sup>707</sup>. [Information pre-dating the infringement].<sup>708</sup> [Information pre-dating the infringement].<sup>709</sup> The competitors referred to their anticompetitive meetings in the CEE as "Club East" meetings or "Plastic Council" meetings.<sup>710</sup>

(602) On **5 November 2004** [company representative] (Sirap-Gema) convened a meeting at the Vienna airport between [company representative], [company representative], [company representative], [company representative], [company representative] (all of Sirap-Gema); [company representative] and [company representative] (both of Coopbox) and [company representative], [company representative], [company representative], [company representative], [company representative] and [company representative] (all of Linpac). The meeting was subsequently referred to by the cartel members as the "Vienna meeting", "Vienna agreement" or "Status Quo" meeting<sup>711</sup> and is considered as the starting date of the CEE cartel.

---

695 ID [...]

696 ID [...]; ID [...]

697 [...]

698 [...]

699 ID [...]

700 [...]

701 [...]

702 [...]

703 [...]

704 [...]

705 [...]

706 [...]

707 [...]

708 [...]

709 [...]

710 ID [...]; ID [...]; ID ; ID [...]

711 ID [...]; ID [...]; ID [...]; ID [...]; ID [...]

- (603) With regard to the date and venue of the meeting, [company name] claimed that the meeting took place at Vienna airport on 13 November 2004.<sup>712</sup> In support of its claim, [company name] presented credit card receipts and a receipt issued in connection with the rental of a conference room at Vienna Airport. The meeting room receipt bears the handwritten names of the participating competitors: "*Meeting: Linpac, Coopbox, Petruzalek*". However, with regard to the date of the meeting, the Commission notes that the date of 13 November 2004 is the date of the issuance of the bill for the rental of the conference room and not the date when the meeting took place. This is confirmed by the fact that the same bill, next to the type of the venue booked, bears the date of "*5-11-2004*" which is the actual date on which the meeting between the competitors took place, namely on 5 November 2004.<sup>713</sup> In its reply to the Commission's SO, [company name] has conceded that there was a cartel meeting on 5 November held at Vienna airport. However, [company name] also claimed that there was an additional cartel meeting attended by the same representatives of the same undertakings, which was held in the area of Vienna (in Vösendorf) several days later.<sup>714</sup>
- (604) [Company name] claims that the meeting did not take place on 13 November 2004 in Vienna but on 5 November in Vösendorf, a town close to Vienna.<sup>715</sup> [Company name] confirms that because 13 November 2004 fell on a Saturday, it would have been a very unlikely day for a cartel meeting. Furthermore, having interviewed its employees, [company name] confirms that the meeting took place on 5 November 2004. Firstly, [company name] informs the Commission that [company representative] ([company name]) was in Ljubljana, Slovenia on 13 November 2011 and thus could not have attended any meeting in Vienna. Secondly, [company representative's] ([company name]) personal calendar bears the entry "Meeting Sirap Gema Coopbox" for 5 November 2004.<sup>716</sup> Thirdly, [company name] provides a copy of [company representative's] ([company name]) airline ticket from Prague to Vienna issued for 5 November 2004.<sup>717</sup> Fourthly, [company name] provides a copy of an expenses report with transcripts for a meal at the Vienna airport hotel on 5 November 2004. The expenses report refers to [company representative], [company representative], [company representative] and [company representative] (all of [company name]) as persons attending on [company name's] behalf and lists "*Price increases Central Europe*" as the purpose of their trip to Vienna.<sup>718</sup> As to the place where the meeting took place, [company name] has claimed that the meeting did not take place in Vienna but in Vösendorf, close to Vienna. The reason for this is that at the time, Sirap-Gema was based in Vösendorf and it had been originally planned that the competitors would meet at Sirap-Gema's premises. However, according to [company name], due to the large number of participants, the meeting was subsequently conveyed at a nearby hotel (Hotel Arnia in Vösendorf).<sup>719</sup>

---

<sup>712</sup> ID [...]

<sup>713</sup> ID [...]

<sup>714</sup> ID [...]

<sup>715</sup> ID [...]

<sup>716</sup> ID [...]

<sup>717</sup> ID [...]

<sup>718</sup> ID [...]: Original in German: "*Preiserhöhungen Central Europe*".

<sup>719</sup> ID [...]

- (605) Coopbox claims that its internal investigation has not revealed any information regarding the said meeting. On that basis, Coopbox claims that its employees are unlikely to have participated in the meeting.<sup>720</sup>
- (606) Huhtamäki/Polarcup states that its internal investigation has not revealed any information according to which Huhtamäki/Polarcup employees were informed by Linpac about the meeting.<sup>721</sup>
- (607) In light of the available evidence, in particular of the bill for renting the conference room by [company representative] ([company name]) at the Vienna Airport bearing the date of 5 November 2004 and the evidence submitted by [...] <sup>722</sup>, the Commission concludes that the meeting in question took place on 5 November 2004 in the area of Vienna.
- (608) At the said meeting, during which no particular agenda was followed and no handwritten notes were taken, the cartel members discussed the market situation of foam trays in the CEE.<sup>723</sup> The cartel members subsequently discussed specific clients, country per country, and agreed not to "attack" each other's customers with a view to preserving the status quo on the CEE foam trays market.<sup>724</sup> The agreement referred principally to CEE, however it also concerned Bulgaria and Slovenia as the latter two countries often served as "compensation" to Sirap-Gema and Coopbox for not entering Poland at the expense of Linpac. Indeed, on the basis of that agreement Sirap-Gema committed to stay out of Poland and Bulgaria.<sup>725</sup> The agreement was applicable to both producers and distributors of foam trays.<sup>726</sup>
- (609) The cartel participants allocated a large number of customers during the same meeting. For example, Agropol, Billa, Tesco and Xaverov were discussed in terms of sales volumes and prices applied. It was agreed that Agropol would be shared between Coopbox and Sirap-Gema. Tesco and Billa were to be shared between Sirap-Gema and Linpac. Billa in Bulgaria was assigned to Linpac and, in return, Sirap-Gema was assigned Xaverov in the Czech Republic. The markets were therefore shared both in terms of clients and in geographical terms.<sup>727</sup>
- (610) The cartel participants did not have to draw up any list of their "assigned" clients. The number of major clients in the CEE was so limited that everyone remembered their "assigned" customers.<sup>728</sup> Further to the meeting in Vienna, the cartel members allocated customers and shared the market as described in Recitals (611)-(613) below.
- (611) In the Czech Republic, Linpac was assigned Ahold, Kaufland, Vodnany, Klatovy and Tesco. Coopbox was entitled to Vodnany (together with Linpac), Promt, Eurobal, Globus and Ceroz (together with Sirap-Gema). It was agreed that Sirap-Gema would supply Kostelec, Xaverov and Billa with products from different producers. In addition, it was agreed that Sirap-Gema would supply Hortim and Ceroz with Sirap-

720

ID [...]

721

ID [...] (Huhtamäki – reply to RFI).

722

ID [...]

723

ID [...]

724

ID [...]; ID [...]; ID [...]; ID [...]; ID [...]

725

ID [...]; ID [...]; ID [...]; ID [...]; ID [...]; ID [...]

726

ID [...]

727

ID [...]

728

ID [...]

Gema products while Spar and Meinl were to be supplied with products from a competitor other than Sirap-Gema.

- (612) In Hungary, Linpac was allocated Tesco, Master, Hercsi, Galicop, Galfood and Pesti Baromfi Kft. Coopbox was assigned Cora, Tesco (supplied together with Linpac), Mórakért, Pannon and Galia. It was agreed that Sirap-Gema would supply Auchan with products from different producers, Zala with Sirap Gema products and Spar, Zalabaroma, Gastrobál and CBA with products from competitors other than Sirap-Gema.
- (613) In Slovakia, Linpac was allocated Ahold, Tesco, Hyza, Kaufland and Hrádok. Coopbox was assigned Topoleany, HSH, Eurobal and Ceroz (co-supplied with Petruzalek) and Sirap-Gema would sell to Hydinazk and Cifer products from different producers; and to Billa and Ceroz products from competitors other than Sirap-Gema. Hyza was accepted as a common client of all three, namely Linpac, Coopbox and Petruzalek. The parties also discussed the possibility of Coopbox selling its products in the Czech Republic, Hungary and Slovakia via Petruzalek, despite the fact that Coopbox had already had distributors in these three countries.
- (614) The above allocation described in Recitals (611)-(613) has been described by [...] <sup>729</sup> This anticompetitive practice demonstrates that the parties' agreement related to all concerned CEE countries and that Linpac, Sirap-Gema/Petruzalek and Coopbox had full knowledge of the anticompetitive agreement and its geographic reach.
- (615) [...] Poland was left primarily to Linpac and Huhtamäki/Polarcup. [...] a key reason for it to take part in the meeting was to protect its strong market position particularly in Poland from potential market entries in that country by Petruzalek and Coopbox. <sup>730</sup>
- (616) During the same meeting on 5 November 2004, the cartel members also discussed the need to implement a price increase in order to reflect the increasing raw material prices. However, during the meeting, [company representative] (Linpac), who was [function of company representative], argued against such a price increase due to the fact that the prices on the Czech market were already inflated in comparison with the neighbouring markets. Nevertheless, his superior, [company representative] (Linpac) suggested an overall increase in prices across CEE of approximately 10 to 15%. [...] the intention of the competitors was to reach a gentlemen's agreement regarding the price increase for foam trays. During the same meeting, the representatives of Sirap-Gema/Petruzalek and Linpac agreed on a coordinated price increase for their common client Billa, to be applied before the end of 2004. <sup>731</sup>
- (617) The cartel members also used the meeting to exchange sensitive information. They discussed, for example, Tesco's intention to take over the business of Carrefour in Slovakia, which would have had a major impact on the plastic food packaging market situation in Slovakia. <sup>732</sup>
- (618) The meeting held on 5 November 2004 was pivotal for anticompetitive contacts between the cartel members in CEE as it formalised the market sharing, client

---

<sup>729</sup> ID [...]; ID [...]; ID [...]

<sup>730</sup> ID [...]

<sup>731</sup> ID [...]; ID [...]; ID [...]

<sup>732</sup> ID [...]

allocation and the non-aggression agreement in the region. Although, it was discussed in previous contacts, the Vienna agreement strengthened and formalised that agreement. The cartel participants made frequent references to the meeting during their subsequent contacts within the framework of "Club East"/"Plastic Council" meetings – they would refer to the meeting as "the Vienna agreement" or the "Status Quo agreement".<sup>733</sup>

- (619) On **13 December 2004**, a meeting took place at Flamenco Hotel in Budapest between [company representative] and [company representative] (both of Linpac), [company representative] and [company representative] (Petruszalek), and [company representative] and [company representative] (Propack).<sup>734</sup> The meeting was convened to discuss with Propack, which had not attended the meeting in Vienna, the Vienna agreement and its implementation in Hungary. The cartel participants discussed the allocation of customers amongst themselves and identified conflicting interests (parallel supplying) on the Hungarian market.<sup>735</sup> [...] customer allocation was discussed during the meeting but [...] no agreement was reached.<sup>736</sup> [...] the meeting resulted in a customer sharing agreement.<sup>737</sup> [...] travel documents and handwritten notes [...] provide evidence of the anticompetitive discussions relating to specific large retail customers [...].<sup>738</sup> According to the hand-written notes, the cartel participants discussed, amongst other things, the allocation of the main large retail customers in Hungary.<sup>739</sup> Furthermore, the Commission is in possession of a voluntary statement provided by [X]<sup>740</sup> and a Sirap-Gema/Petruszalek internal email dated 24 January 2005 which, referring to a tender launched by a customer (Spar), evidences that the cartel participants had selected "appointed suppliers" for customers in Hungary.<sup>741</sup>
- (620) [X] explained that during the meeting, the competitors discussed all of their customers and agreed on how to share them. The competitors discussed on the basis of customers rather than individual products. The basis for the split was the historical allocation of clients.<sup>742</sup> The competitors also agreed that in order to enforce their customer allocation agreement they would quote high prices if a "non-assigned" customer was to approach one of them.<sup>743</sup> Despite some disagreements between Propack and Linpac with regard to the customers active in the fruit and vegetable sector, the undertakings eventually agreed on a detailed customer allocation and undertook not to approach each others' customers.<sup>744</sup>

---

<sup>733</sup> ID [...]; ID [...]; ID [...]

<sup>734</sup> ID [...] ([X's] statement under Article 19 of Regulation (EC) No 1/2003); ID [...]; ID ; ID [...] (Propack – reply to RFI).

<sup>735</sup> ID [...] ([X's] statement under Article 19 of Regulation (EC) No 1/2003); ID [...]; ID [...]

<sup>736</sup> ID [...] (Propack – reply to RFI).

<sup>737</sup> ID [...]; ID [...]

<sup>738</sup> ID [...]; ID [...]; ID [...]

<sup>739</sup> ID [...] (Sirap-Gema reply to RFI); ID [...]

<sup>740</sup> ID [...] ([X's] statement under Article 19 of Regulation (EC) No 1/2003).

<sup>741</sup> ID [...] (Contemporaneous evidence provided by [X] under Article 19 of Regulation (EC) No 1/2003).

<sup>742</sup> ID [...] ([X's] statement under Article 19 of Regulation (EC) No 1/2003).

<sup>743</sup> ID [...] ([X's] statement under Article 19 of Regulation (EC) No 1/2003).

<sup>744</sup> ID [...] ([X's] statement under Article 19 of Regulation (EC) No 1/2003).

- (621) In addition, having agreed on a detailed customer allocation, all the participants at that cartel meeting decided to introduce a price increase of 10-15% with respect to their customers.<sup>745</sup> [...].<sup>746</sup>
- (622) With regard to the date of the meeting at the Flamenco Hotel in Budapest, [X] states that the meeting took place in January 2005.<sup>747</sup> [...] doubts that it took place in January 2005.<sup>748</sup> [...] the meeting in Budapest took place in mid-December shortly after the meeting in Győr.<sup>749</sup> [Company name] claims that the meeting took place on 13 December 2004.<sup>750</sup> In support of its claim, [company name] provides [company representative's] ([company name]) expenses note from the same holiday from which it can be deducted that the meeting was attended by six persons and that it ended at around 15.00 CET.<sup>751</sup> Furthermore, [company name] provides a copy of [company representative's] air ticket (Warsaw – Budapest – Warsaw) issued for 13 December 2004.<sup>752</sup> Based on the fact that most of the undertakings claim that the meeting took place in mid-December 2004, the Commission concludes that the meeting at the Flamenco Hotel in Budapest indeed took place on 13 December 2004.
- (623) At the Budapest meeting, in addition to pure status quo arrangements, Petruzalek and Linpac agreed that in exchange for Petruzalek giving up its sales of 1 kilogram vegetable punnets to Linpac, the latter would give Petruzalek a greater share of sales in the poultry industry.<sup>753</sup> [...] Linpac promised to stop doing business with the poultry producers Her-Csi-Hus Kft and Master Goods Kft, which as a result were allocated to Petruzalek. Furthermore, Linpac promised to refrain from offering low prices to Taravis Kft, another poultry producer and a main customer of Petruzalek. As part of the agreement, [...] competitors agreed to refrain from attempts to supply Pannon Baromfi Kft, a [business secret] Linpac customer in the poultry industry.<sup>754</sup> The parties also discussed Auchan supplies.<sup>755</sup>
- (624) The evidence further indicates that a meeting took place at the **end of 2004** between [company representative] (Coopbox) and [company representative] (Linpac) [...] in Győr in October 2004. During that meeting [company representative] ([company name]) complained that [company name] was attacking [company name] contrary to what had been agreed pursuant to the Vienna Agreement.<sup>756</sup> [...].<sup>757</sup> [...].<sup>758</sup>
- (625) On **17 January 2005**, [company representative] (Petruzalek) asked [company representative] (Petruzalek) to abstain from approaching Master Good Kft since that customer was assigned to Propack.<sup>759</sup> [...] [X] explained to the Commission that

---

<sup>745</sup> ID [...] ([X's] statement under Article 19 of Regulation (EC) No 1/2003).

<sup>746</sup> ID [...]

<sup>747</sup> ID [...] ([X's] statement under Article 19 of Regulation (EC) No 1/2003).

<sup>748</sup> ID [...]

<sup>749</sup> ID [...] (Propack – reply to RFI).

<sup>750</sup> ID [...]

<sup>751</sup> ID [...]; ID [...]

<sup>752</sup> ID [...]; ID [...]

<sup>753</sup> ID [...]

<sup>754</sup> ID [...]

<sup>755</sup> ID [...]

<sup>756</sup> ID [...]

<sup>757</sup> ID [...]; ID [...]

<sup>758</sup> ID [...]; ID [...]

<sup>759</sup> ID [...] ([X's] statement under Article 19 of Regulation (EC) No 1/2003); ID [...] ([X's] statement under Article 19 of Regulation (EC) No 1/2003).



since Propack was unable to supply Master Good with good foam trays (manufactured by Coopbox), Master Good approached Petruzalek for an offer. Eventually, Petruzalek started supplying Master Good but only after the customer refused to accept Propack's supplies.<sup>760</sup> [...].<sup>761</sup>

- (626) On **14-15 February 2005**, Petruzalek held a [...] meeting in Vienna. Around the same time, [company representative] (Petruzalek) received a phone call from Spar which was very anxious following a price increase letter it had received from Petruzalek. [company representative] (Petruzalek) spoke with [company representative] (Petruzalek) about the letter and the latter told him that Spar did not have an option but to accept the price increase since pursuant to the agreement with Linpac and Propack, the two competitors would not supply Spar.<sup>762</sup> [...].<sup>763</sup>
- (627) Following the conversation with [company representative] (Petruzalek), [company representative] (Petruzalek) and [company representative] (Petruzalek) went to meet Spar's representatives. During the meeting [company representative] (Petruzalek) was informed that Spar had managed to find some local suppliers in Hungary despite the fact that both Linpac and Propack had quoted very high prices.<sup>764</sup> This demonstrates that all of the competitors respected and implemented their customer allocation agreement.
- (628) In **March 2005** [company representative] and [company representative] (both of Petruzalek) met with [company representative] (Linpac) in order to discuss one of the clients – Hungerit. The background to the meeting is that Linpac was very much interested in supplying this client and the client was attributed to it pursuant to the Status Quo agreement. However, in early 2005, it became apparent that Sirap-Gema/Petruzalek kept on supplying Hungerit. During the meeting the competitors decided that Sirap-Gema/Petruzalek would compensate Linpac's loss of Hungerit by allowing Linpac to take over Pannonbaromfi, Hercis and Pesti Baromfi. That solution was aimed at calming Linpac after its loss of Hungerit. The meeting and its conduct are explained in great detail by [X] who attended the meeting.<sup>765</sup> In its reply to the Commission's SO, Sirap-Gema states that while it is unable to provide any observations on the meeting, it nevertheless takes the view that the meeting should be excluded since [X] has been unable to substantiate it with any relevant documentation.<sup>766</sup> The Commission concludes that the sole fact of not being able to provide documentation in support of a detailed statement given by a direct attendee of the meeting does not in itself render that statement unreliable.
- (629) On **16 March 2005** a meeting took place at Munich airport. The meeting was attended by [company representative], [company representative] and [company representative] (all of Linpac), [company representative] and [company representative] (both of Coopbox) and [company representative], [company representative], [company representative], and [company representative] (Petruzalek). At the meeting prices of foam and rigid trays were discussed and the

---

<sup>760</sup> ID [...] ([X's] statement under Article 19 of Regulation (EC) No 1/2003)

<sup>761</sup> ID [...]

<sup>762</sup> ID [...] ([X's] statement under Article 19 of Regulation (EC) No 1/2003).

<sup>763</sup> ID [...]

<sup>764</sup> ID [...] ([X's] statement under Article 19 of Regulation (EC) No 1/2003).

<sup>765</sup> ID [...] ([X's] statement under Article 19 of Regulation (EC) No 1/2003).

<sup>766</sup> ID [...]

aim was to apply a coordinated price increase.<sup>767</sup> In addition, coordination on individual customers and tenders were discussed.<sup>768</sup> The cartel participants also exchanged commercially sensitive information and verified the implementation of the Vienna Status Quo agreement.<sup>769</sup>

- (630) On **30 March 2005**, in the context of a Kaufland tender, [company representative] (Sirap-Gema/Petruszalek) sent an email to [company representative] (Linpac) asking her to complete an attached table with a view to ensuring that Petruzalek would not undercut Linpac: *"I attach a table, please complete it with the prices I should offer so that I do not undercut you."*<sup>770</sup> The Kaufland tender was run for a large number of packaging materials, for example: plastic bags; bin bags; cover film and disposable gloves.<sup>771</sup> Pursuant to the Vienna agreement, Kaufland was a customer "assigned" to Linpac (see Recital (613) above). [...] [company representative] (Linpac) maintained illegal anticompetitive contacts with [company representative] (Sirap-Gema/Petruszalek).<sup>772</sup>
- (631) On **23 May 2005** [company representative] ([company name]) sent an internal e-mail to [company representative] and [company representative] ([company name]), in which he stated that [company name] would respect the Vienna Agreement and its implementation in Hungary. At the same time, [company representative] ([company name]) stated that since the Vienna Agreement did not extend to the relationships between producers and their distributors (meaning that each producer could supply its distributors with as many products as it wanted), [company name] could use its distributors to gain market share without breaching what had been agreed between the competitors. [Company representative] ([company name]) further explained that such a strategy would be particularly successful if [company name] distributors started selling diverse range of products in smaller volumes to smaller end customers as this would be less likely to be detected by [company name] competitors.<sup>773</sup> [Company representative's] ([company name]) email demonstrates that the implementation of the Vienna Agreement in Hungary was still in place and influenced the parties' conduct.
- (632) On **23 June 2005** a meeting took place at the Hotel Böck Brunn in Vienna between [company representative], [company representative], [company representative], [company representative] and [company representative] (all of Petruzalek), [company representative] and [company representative] (both of Coopbox), and [company representative], [company representative], [company representative] and [company representative] (all of Linpac).<sup>774</sup> The purpose of the meeting was to discuss further consolidation of the Vienna agreement, especially in the light of decreasing margins and reduced volumes.<sup>775</sup> The cartel members discussed national foam trays markets on a one-by-one basis (namely Bulgaria, Croatia, the Czech Republic, Romania and Slovakia) discussing all the clients, indicating each time to

---

<sup>767</sup> ID [...]; ID [...]

<sup>768</sup> ID [...]

<sup>769</sup> ID [...]; ID [...]; ID [...]; ID [...]; ID [...]

<sup>770</sup> ID [...]; ID [...]

<sup>771</sup> ID [...]

<sup>772</sup> ID [...]; ID [...]

<sup>773</sup> ID [...]; ID [...]

<sup>774</sup> ID [...]; ID [...]; ID [...]

<sup>775</sup> ID [...]; ID [...]

whom they were attributed. The cartel members committed to refrain from attacking clients "assigned" to another producer.<sup>776</sup> In reply to the Commission's SO, Linpac stated that it could not trace any meeting with the competitors on that day.<sup>777</sup> The Commission notes, however, that Linpac has only presented [company representative's] (Linpac) agenda according to which he attended another meeting (management meeting) on that day and has not presented any arguments or evidence that the other Linpac representatives ([company representative], [company representative], [company representative] and [company representative]) did not attend the said meeting.<sup>778</sup> Given the credible and detailed account of the meeting by [company name] and the fact that Linpac does not actually deny the meeting and it does not adduce arguments or evidence to cast doubt on [company name's] account, the Commission considers the meeting to be credible.<sup>779</sup>

- (633) In **June 2005**, [company representative] (Petruszalek) met with [company representative] (Linpac) in Polus mall in Budapest. During the meeting [company representative] (Linpac) handed over a price list which Petruszalek had to quote in order to enable Linpac to keep its customer (Pannonbaromfi) during the upcoming tender. The decision to enable Linpac to keep Pannonbaromfi resulted from the customer compensation agreed between Petruszalek and Linpac after the former took over Hungerit (see Recital (628)). After the meeting, [company representative] (Petruszalek) informed [company representative] (Petruszalek) about what had been agreed with Linpac since [company representative] (Petruszalek) was responsible for IT support during internet auctions. The occurrence of the meeting, its attendees and content have been described to the Commission by [X].<sup>780</sup> In its reply to the Commission's SO, Sirap-Gema claims that the meeting should be excluded from the list of collusive contacts since it is not supported by any documentation. The Commission concludes that given [X's] detailed statement in respect of that meeting and the fact that Sirap-Gema could not adduce any arguments or evidence to put in doubt [X's] account, the account of the meeting is credible.<sup>781</sup>
- (634) Despite the discussions taking place in the early 2000s (see Recital (598) above), Coopbox was not allocated the share of foam trays clients which it was expecting from Linpac and Huhtamäki/Polarcup in Poland. Therefore, in the **first semester of 2005**, Coopbox started drastically lowering prices of foam trays in the Czech Republic and Slovakia in order to gain more market share at the expense of Linpac. The latter retaliated by also lowering prices. Evidence of this can be found in Coopbox's internal reports of June and November 2005. [...] in the years 2005-2006 there were frequent "battles" in the Czech Republic and Slovakia between Linpac, Coopbox and Petruszalek, which led to a decrease in the prices for foam trays and big losses of profit for the producers.<sup>782</sup>
- (635) In order to stop this "price battle" between the cartel members, which was detrimental to the overall price levels and threatened the Status Quo agreement, Coopbox and Linpac met in Berlin on **7 July 2005**. At that meeting, Coopbox and

---

<sup>776</sup> ID [...]

<sup>777</sup> ID [...]

<sup>778</sup> ID [...]

<sup>779</sup> ID [...]; ID [...]; ID [...]

<sup>780</sup> ID [...] ([X's] statement under Article 19 of Regulation (EC) No 1/2003).

<sup>781</sup> ID [...]

<sup>782</sup> ID [...] (Coopbox inspection documents); ID [...] (Coopbox inspection document); ID [...]

Linpac agreed to fix the minimum prices to lower the losses of margins caused by the price war instigated by Coopbox in the Czech Republic and Slovakia. Evidence of the meeting and the agreement can be found in an internal Coopbox email of 8 July 2005, which reads as follows: "Yesterday we met with L and we made an agreement. So there will be no drastic reduction of margins."<sup>783</sup> It is further confirmed by an internal Coopbox report of 15 July 2005, which states: "After the agreement in extremis, the tension with Linpac has dropped. From September on we will regain the margins sacrificed in the battle."<sup>784</sup> The date and place of the meeting are confirmed by the travel records of [...].<sup>785</sup> Furthermore, [...] detailed explanation of the market situation at that time; and the details of the agreement aimed at resolving the price battle between the parties.<sup>786</sup>

- (636) On the basis of the agreement reached in Berlin on 7 July 2005, Coopbox was allocated 2/3 of Agropol's supply for 6 months in the Czech Republic, which amounted to Coopbox selling 1 million additional trays each month. Coopbox expected that the agreement would in turn allow it to lower the anticipated losses of EUR 45.000/55.000 per month to some EUR 15.000 per month already in September/October 2005. This is evidenced by internal Coopbox reports of 30 June 2005 projecting losses of margin, the report of July 2005 referring to the terms of the agreement concerning Agropol and the internal communication.<sup>787</sup> The Agropol Group in the Czech Republic (which corresponded to more than 50% of the market) was a very important client which often became a trading card between Linpac and Coopbox as their shared client. Most of the time, the two undertakings managed to find an agreement. This has been explained to the Commission by [company representative] (at the time of the infringement employed by [company name]).<sup>788</sup>
- (637) On **24 August 2005** [company representative] ([company name]) wrote an e-mail to [company representative] ([company name]), with a copy to [company representative] and [company representative] ([company name]), referring to the Hungarian market. [Company representative] claimed that [company name] was not respecting the agreement between Petruzalek and Linpac on the allocation of the poultry processing customer segment to [company name] and suggested that in return [company name] should attack [company name] in the fruit and vegetables segment.<sup>789</sup> The existence of the conflict is also evidenced by [X].<sup>790</sup> In its reply to the SO, [company name] has confirmed that the contact took place.<sup>791</sup>
- (638) The agreement between Linpac and Petruzalek is further evidenced by an internal email dated **12 October 2005** sent from [company representative] ([company name]) to [company representative] and [company representative] ([company name]). It that

---

<sup>783</sup> ID [...] (Coopbox inspection documents): (IT) "Ieri abbiamo incontrato L e ci siamo messi d'accordo.. Perciò la diminuzione drastica sui margini non ci sarà. (...)"; (...)"].

<sup>784</sup> ID [...] (Coopbox inspection documents): (IT) "Dopo l'accordo in extremis, la tensione con Linpac si e' allentata. Da settembre recupereremo il margine sacrificato in battaglia."

<sup>785</sup> ID [...].

<sup>786</sup> ID [...]

<sup>787</sup> ID [...] (Coopbox inspection documents).

<sup>788</sup> ID [...]

<sup>789</sup> ID [...]: (Original in German): "Mit diesem Aktivitäten in Poultry-bereich greifen wir [company name] an, was gegen unsere Vereinbarung ist, aber die haben auch nicht Ihr Wort gehalten im Fruit & Vegetable Bereich"; ID [...]

<sup>790</sup> ID [...] ([X's] statement under Article 19 of Regulation (EC) No 1/2003).

<sup>791</sup> ID [...]

email [company representative] ([company name]) complains: *"2, Hungaropack sold in 2005 over 8 pieces of 1 kg punnets. In December 2004 the terms of our agreement was, that they will quit from this business. I was asking the [function of company representative] [company representative] about his activities, and the answer was always, that my informations are wrong. I don't like to be held a fool!!!! My opinion is, it doesn't make sense to talk to them, because they are absolutely not fair on the market, and it is just wasting of time!"*.<sup>792</sup> [...] pursuant to the Vienna Agreement and its implementation in Hungary, Petruzalek was supposed to give up some fruit and vegetable business to Linpac to compensate the latter for losing Auchan supplies to Petruzalek.<sup>793</sup> In its reply to the SO, [company name] confirms that the contact took place.<sup>794</sup>

- (639) [...] Petruzalek did not keep Her-Csi-Hús as a customer for very long since Coopbox, through the personal relations of [company representative], was eventually able to gain that customer. As part of the agreement, however, [company representative] (Linpac) insisted on Linpac's competitors refraining from attempts to supply Pannon Baromfi Kft, [business secret]. All those transfers and client allocation were to make it possible to maintain the overall status quo agreed upon in Vienna in terms of quantities and turnover.<sup>795</sup>
- (640) On **8 November 2005**, Petruzalek organised a meeting which was held at the Butter Hotel in Vösendorf. The meeting was attended by [company representative] and [company representative] (Linpac), [company representative] (Coopbox), [company representative], [company representative], [company representative], [company representative], [company representative] (all of Petruzalek). During the meeting, the cartel members discussed the implementation and functioning of the Vienna Agreement in Hungary as well as exchanged commercially sensitive information, such as the output of Petruzalek's constructed factory. Following the meeting, [company representative] (Petruzalek), who only attended the morning session of the meeting, called [company representative] (Linpac) to find out what had been discussed and agreed in the afternoon. The meeting and the phone call are evidenced by a detailed signed statement provided by [X] to the European Commission.<sup>796</sup>
- (641) On **18 November 2005**, [company representative] and [company representative] (both of Petruzalek) met with [company representative] (Linpac) at a petrol station on motorway M1 near the Veszprem exit. During the meeting, [company representative] ([company name]) stated that he was not happy with the customer allocation. Linpac was concerned that it had lost some turnover due to the agreed allocation and the fact that Hungerit became Petruzalek's customer. Despite [company representative's] (Linpac) complaints, the competitors decided to stick to the agreed customer allocation.<sup>797</sup> In its reply to the Commission's SO, Sirap-Gema claims that the meeting should be excluded from the list of collusive contacts since it is not supported by any documentation. Sirap-Gema claims that [company representative] was also in Austria on the same day. However, this circumstance

---

<sup>792</sup> ID [...]

<sup>793</sup> ID [...]; ID [...]

<sup>794</sup> ID [...]

<sup>795</sup> ID [...]

<sup>796</sup> ID [...] ([X's] statement under Article 19 of Regulation (EC) No 1/2003).

<sup>797</sup> ID [...] ([X's] statement under Article 19 of Regulation (EC) No 1/2003).

does not contradict [X's] statement given the relatively short distance between the meeting's venue and Austria.<sup>798</sup> The Commission concludes that the meeting is sufficiently proved given [X's] detailed statement in respect of the meeting and the fact that [company name] could not adduce any arguments or evidence to put in doubt [X's] account.

- (642) On **28 November 2005**, [company representative] ([company name]) sent an internal email to [company representative] and [company representative] (both of [company name]) containing a price offer that Petruzalek offered to a customer, Taravis. In the same email, [company representative] ([company name]) stated that he would meet [company representative] (Sirap-Gema/Petruzalek) to discuss the attached offer.<sup>799</sup> The meeting to discuss it then took place on 1 December 2005 and was attended by [company representative] ([company name]) and [company representative] (Sirap-Gema/Petruzalek).<sup>800</sup>
- (643) On **10 March 2006**, [company representative] ([company name]) sent an email to [company representative] (Propack) informing the latter about the prices it had quoted to Pannon Baromfi, a customer of [company name].<sup>801</sup> The Commission concludes that such exchanges were consistent with and in furtherance of the Vienna agreement (see Recitals (602)-(618)) and its implementation in Hungary (see Recitals (619)-(623)).
- (644) On **20 April 2006**, [company representative] ([company name]) sent an internal email to [company representative] ([company name]) informing the latter about recent developments in the CEE.<sup>802</sup> Firstly, [company representative] reported about a meeting he had had with [company representative] (Petruzalek) regarding the Czech, Hungarian and Slovak markets. The said meeting was held on 14 April 2006 in Budapest. The cartel members discussed a range of rigid products (containers, pads, fruit and vegetable punnets) and PVC cover film supplied to a number of CEE customers (Kostelec, Mesoplana Del Haize and Hyza). The email states the conclusion of the meeting: *"There was agreed that due to high currency risk, market prices must be raised by approx. 10%"*. Furthermore, the parties also agreed to inform Propack about their agreement.<sup>803</sup> [Company name] provides a detailed account of the meeting.<sup>804</sup> In its reply to the Commission's SO, Sirap-Gema rules out that [company representative] (Petruzalek) participated in the meeting on 14 April 2006 as he was, allegedly in Italy on 13 April 2006. The Commission concludes that the fact that [company representative] was in Italy the day before the said meeting does not exclude his attendance of the meeting in Budapest on 14 April 2006. Furthermore, [company name] confirms the attendance of [company representative] ([company name]).<sup>805</sup> In its reply to the Commission's SO, Propack claims that it was never informed about any collusive actions going beyond Hungary.<sup>806</sup> The Commission notices that Propack does not deny that it was kept informed about the

---

<sup>798</sup> ID [...] (Sirap-Gema reply to the SO).

<sup>799</sup> ID [...]; ID [...]; ID [...]

<sup>800</sup> ID [...]; ID [...].

<sup>801</sup> ID [...]; ID [...]

<sup>802</sup> ID [...]

<sup>803</sup> ID [...]; ID [...]

<sup>804</sup> ID [...]

<sup>805</sup> ID [...]

<sup>806</sup> ID [...] (Propack reply to the SO).

collusive actions relating to Hungary. This together with the fact that the Commission has evidence that such information was on a number of occasions indeed passed to it (see for instance: 10 March 2006 – Recital (643) or 15 September 2006 – Recital (646)) makes the Commission conclude that Propack was also informed about the conclusions of the meeting on 14 April 2006, at least as far as they related to Hungary.

- (645) On **11 May 2006** a meeting took place at Hotel Mövenpick in Prague between [company representative], [company representative] and [company representative] (all of Petruzalek), [company representative], [company representative] and [company representative] (all of Linpac) and [company representative], [company representative] and [company representative] (all of Coopbox).<sup>807</sup> The aim of the meeting, following what had been agreed in Vienna, was to discuss and resolve some disputes between the cartel members as far as the allocation of individual customers and tenders for foam trays were concerned.<sup>808</sup> In this context, the cartel members discussed a shared client Agropol (belonging to Sirap-Gema/Petruzalek in the Czech Republic) as well as clients such as Julius Meinl and Edeka which were about to shut down their sales points in the Czech Republic.<sup>809</sup> The cartel members also discussed the situation of Carrefour since that customer was considering the sale of its sales points to Tesco, which, if confirmed, would require some amendments to the customer allocation agreement.<sup>810</sup> [...].<sup>811</sup>
- (646) On **15 September 2006**, [company representative] ([company name]) sent an email to [company representative] (Propack) informing the latter about the prices it had quoted to [name of individual], a customer of [company name].<sup>812</sup> The Commission concludes that such exchanges were consistent with and in furtherance of the Vienna Agreement (see Recitals (602)-(618)) and its implementation in Hungary (see Recitals (619)-(623)).
- (647) On **25 October 2006**, the cartel members met at the Hotel Holiday Inn in Brno. The meeting was attended by: [company representative] and [company representative] (both of Petruzalek), [company representative] and [company representative] (both of Coopbox) and [company representative] and [company representative] (both of Linpac).<sup>813</sup> The aim of the meeting was to discuss certain relations of cross-supplies between the parties, with particular reference to sales of cover film by Petruzalek to Linpac.<sup>814</sup> The presence of Coopbox proves, however, that the was not the only aim of the meeting. Indeed, during this meeting the cartel members further confirmed the agreement on client allocation made in Vienna on 5 November 2004 concerning foam trays, with particular regard to the Slovak market, by verification of who supplied what models and at what price to the following clients in Slovakia:

---

807 ID [...]; ID [...]; ID [...]; ID [...]; ID [...]; ID [...]  
808 ID [...]; ID [...]  
809 ID [...]  
810 ID [...]  
811 ID [...]; ID [...]; ID [...]; ID [...]; ID [...]; ID [...]; ID [...]; ID [...]; ID [...]  
812 ID [...]; ID [...]  
813 ID [...]; ID [...]  
814 ID [...]; ID [...]

Topocalny, Zilina, Tesco and Kaufland, which were totally or partially shared by the three competitors.<sup>815</sup> [...].<sup>816</sup>

- (648) On **20 December 2006** [company representative] (Sirap-Gema/Petruszalek) and [company representative] (Linpac) exchanged their price offers to be made in the tender organised by Hyza in Slovakia. [Company representative] (Linpac) sent [company representative] (Sirap-Gema/Petruszalek) a table for assessment and asked him to send it back when amended.<sup>817</sup> The attached table referred to a price auction called by THP Hyza and contained the starting prices for transparent rigid trays to be quoted by Linpac.<sup>818</sup> In fact, Hyza has been perceived by Linpac as its "assigned" customer (see Recital (613) above) and despite Petruszalek's efforts to find an agreement with Linpac relating to this customer, including exchanging commercially sensitive information with Linpac, Linpac held on to Hyza and remained its sole supplier.<sup>819</sup>
- (649) Despite occasional "battles" in the Czech Republic and Slovakia, the allocation agreement made by the cartel members in Vienna was successfully implemented in the CEE in 2005 and 2006. The evidence of this can be found in some contemporaneous documents, such as emails exchanging prices or other sensitive information or internal reports confirming cooperation between the cartel members.<sup>820</sup> For example, an email sent from [company name] to Propack informing the latter about the prices applied to [company name's] client in Hungary (see Recital (643)); or a [company name's] sales report of 2006 which, with regard to the CEE, states the following: "6. *COMPETITORS. So far we have not serious problems with our competitors. We keep good relationship with them. We respect each other.*"<sup>821</sup>
- (650) The client allocation and Status Quo agreement were facts known in the industry even outside of the CEE area, as can be seen in a [...] [company name] email of **26 January 2006**, which reads as follows: "*The Czech market (and also Slovak) is extraordinarily "calm", divided in an unofficial way between Petruszalek, Linpac and them [Eurobal, distributor of Coopbox]. Therefore if one of the three loses a deal (e.g. a supermarket that changes technology or the supplier) there is very little possibility to regain the loss because it would trouble the market of another...*"<sup>822</sup>
- (651) Despite extensive periods of stable cooperation between the cartel members, in **2007**, there was yet again a need to find an agreement to calm the price battles between Coopbox, on the one hand, and Sirap-Gema/Petruszalek and Linpac on the other. Sirap-Gema/Petruszalek's report of April 2007 points out that the period was marked by "price wars" between the cartel members: "*The "price war" concerning the trays in CEE, in particular SK, CZ, HU is now in a "rethinking" phase after the first disputes which have left some hundreds of euro of losses (of margins) on the field,*

815

ID [...]

816

ID [...]; ID [...]; ID [...]

817

ID [...]; ID [...]

818

ID [...]

819

ID [...]; ID [...]; ID [...]; ID [...]

820

ID [...]; ID [...]

821

ID [...]; ID [...]

822

ID [...] (Original in French): "*Le marché tchèque (et slovaque, d'ailleurs) est extraordinairement "tranquille" partagé de façon non officielle entre Petruszalek, Linpac et eux. De ce fait, lorsqu'un des trois perd un marché (p.ex. un Supermarché qui change de technologie ou d'emballage) Il y a très peu de possibilités de récupérer la perte, car cela trouble le marché d'un autre...*".



*without bringing any shift of volume to Coopbox. For this reason it seems a certain openness to talk is born, the seriousness of which we will be revealed these days.*"<sup>823</sup> The openness of Coopbox was indeed tested immediately. The proof of this can be found in the next sales report of Sirap-Gema/Petruszalek of July 2007, where under the heading "*Competitive situation*" it reads: "*The situation with Coopbox has come back to normality after the attacks and battles of last months. We are considering cooperation in the sector of film now to defend ourselves from strong attacks of Spanish suppliers both in CZ and in SK*".<sup>824</sup>

- (652) Later in 2007, Coopbox started significantly reducing its prices for foam trays in the Czech Republic by approximately 25 to 30% in order to regain volumes lost to Linpac and Sirap-Gema/Petruszalek.<sup>825</sup> Coopbox accused Linpac of having "stolen" sales of approximately 40 million foam trays on the market from Coopbox and declared that the price cut was a reaction to this. Coopbox therefore demanded compensation from Linpac and it explained that otherwise it would not respect the illegal agreement made earlier.<sup>826</sup>
- (653) On **24 September 2007** a meeting took place in Verona between [company representative] and [company representative] (both of Linpac), [company representative] and [company representative] (both of Coopbox), [company representative] (Petruszalek) and [company representative] (Sirap-Gema).<sup>827</sup> The purpose of the meeting was to end the battles between Coopbox and other cartel members and to agree on compensating Coopbox for foam tray volumes which it had lost to Linpac and Sirap-Gema/Petruszalek.<sup>828</sup> In addition, the cartel members agreed on a price increase and exchanged commercially sensitive information.<sup>829</sup> At the meeting, Linpac and Sirap-Gema/Petruszalek agreed to purchase from Coopbox the volumes which Coopbox had lost to them respectively in various markets. This concerned approximately 40 million foam trays, in the case of Linpac, and approximately 30 million foam trays in the case of Sirap-Gema/Petruszalek. It was agreed that those trays would be resold only in countries where this would not be harmful to Coopbox.<sup>830</sup> [...]. They [...] attached relevant travel records. [Company name] could not provide information on the contents of the meeting, because the relevant people had left the company, but provided instead relevant travel records as evidence of their presence at the meeting.<sup>831</sup>
- (654) As regards Linpac, part of its commitment made to Coopbox was that the volume it purchased would be resold at a low price in Poland where Coopbox would not be

---

<sup>823</sup> ID [...] (Sirap-Gema inspection documents): (Original in Italian) "*La "Guerra dei prezzi" per quanto riguarda i vassoi nell'Europa Centrale, in particolare SK, CZ, HU e' ora in una fase di "ripensamento" dopo le prime schermaglie che han lasciato qualche centinaia di migliaia di euro di perdite (di margini) sul terreno, senza portare nessuno spostamento di volumi a favore di CX. Per questo motivo, sembra ora nata una certa disponibilit  al dialogo la cui "seriet " si sveler  a fondo in questi giorni.*"

<sup>824</sup> ID [...] (Sirap-Gema inspection documents): (Original in Italian) "*La situazione con la Coopbox si   normalizzata dopo gli attacchi e scontri degli ultimi mesi. Si sta valutando una collaborazione nel settore dei film per difenderci da attacchi forti da parte di fornitori spagnoli sia in CZ che in SK*".

<sup>825</sup> ID [...]

<sup>826</sup> ID [...]

<sup>827</sup> ID [...]; ID [...]; ID [...]; ID [...]; ID [...]

<sup>828</sup> ID [...]; ID [...]

<sup>829</sup> ID [...]

<sup>830</sup> ID [...]; ID [...]

<sup>831</sup> ID [...]; ID [...]; ID [...]; ID [...]; ID [...]; ID [...]; ID [...]

hurt. However, Linpac eventually sold the volume purchased from Coopbox in Serbia, which was not in line with the understanding it had with Coopbox as that sale hurt the interests of the local Serbian distributor of Coopbox. Hence, Coopbox and Linpac scheduled another meeting in Alba, south of Milan. That bilateral meeting was attended by [company representative] and [company representative] (both of Linpac) and [company representative] and [company representative] (Coopbox). During the meeting, Coopbox complained about the breach of the agreement reached in Verona by Linpac which had resold the foam trays purchased from Coopbox in Serbia. It was agreed that Linpac would continue buying foam trays from Coopbox, but would stop reselling them in Serbia. However, Linpac did not eventually respect that agreement.<sup>832</sup>

#### **4.5. France (3 September 2004 – 24 November 2005)**

##### *4.5.1. Basic principles and structure of the cartel*

- (655) The cartel in France involved Linpac, Vitembal, Sirap-Gema, Huhtamäki and, at a later stage, also Silver Plastics. The cartel related to foam trays (including standard, absorbent and barrier) used for retail food packaging.<sup>833</sup> The objective/overall aim of the cartel was to increase and maintain prices in France above competitive levels and to maintain the historical allocation of clients.
- (656) The competitors coordinated their behaviour through a series of multilateral and bilateral contacts (physical meetings, email exchanges and telephone conversations). Multilateral meetings often took place on the fringes of official industry meetings organised by La Chambre Syndicale des Emballages en Matière Plastique (CSEMP) or were held at public venues (restaurants, airport lounges). Multilateral contacts were complemented by bilateral contacts.
- (657) The market mechanisms and a limited number of important clients provided for easy monitoring of the implementation of the anticompetitive agreements. In order to monitor the implementation, especially of price increases, the competitors convened follow-up meetings and exchanged price letters and reactions of their customers (see for example Recital (666)).

##### *4.5.2. The cartel history*

- (658) Until the end of 1986, a system of price regulation of retail food packaging products existed in France (régime de blocage des prix). As a result, any contemplated price increases required a prior authorisation from the Ministry of Finance and, once authorised, were applied simultaneously by all producers. This system of price regulation did not prevent normal competition between the periods of price regulation. Competition indeed intensified following the entry of Linpac on the the French market in the late 1970s. [Information pre-dating the infringement].<sup>834</sup> [Information pre-dating the infringement],<sup>835</sup> [information pre-dating the

---

<sup>832</sup> ID [...]; ID [...] ; ID [...]; ID [...]; ID [...]; ID [...]

<sup>833</sup> ID [...]; ID [...]; ID [...]; ID [...]; ID [...]; ID [...]; ID [...] (Carrefour tender documentation); ID [...]; ID [...]; ID [...]; ID [...]; ID [...] (Huhtamäki – reply to RFI).

<sup>834</sup> [...]

<sup>835</sup> [...]

infringement]<sup>836</sup> [information pre-dating the infringement]<sup>837</sup> [information pre-dating the infringement]<sup>838</sup>.

#### 4.5.3. *Chronology of events*

- (659) The price of raw polystyrene rose significantly in 2004. That increase resulted in contacts between the competitors to preserve the status quo with regard to customers and to agree on a price increase aimed at passing the increasing costs of raw materials on to customers.<sup>839</sup>
- (660) On **3 September 2004** a meeting took place at Orly Airport, Paris, between [company representative] and [company representative] (both of Linpac), [company representative] and [company representative] (both of Vitembal), [company representative] and [company representative] (both of Sirap-Gema) and [company representative] and [company representative] (both of Huhtamäki). During the meeting the competitors agreed on a price increase in the range of 7-15% for foam trays to be implemented in the last quarter of 2004 and the first quarter of 2005.<sup>840</sup> The implementation of that agreement is evidenced by the price letters sent from Vitembal to its customers in late 2004 and early 2005.<sup>841</sup>
- (661) [...] there were in fact two meetings in early September 2004. First, on 3 September 2004, there was a pre-meeting between [company representative], [company representative] (both of Linpac) and [company representative] and [company representative] (both of Vitembal) during which the parties agreed their common stance before the meeting with the other competitors on 8 September 2004. Second, the meeting on 8 September 2004 was then attended by [company representative] (Sirap-Gema), [company representative] and [company representative] (both of Linpac) and [company representative] and [company representative] (both of Vitembal). [...] it was only during the second meeting that the competitors agreed on a price increase and the market freeze.<sup>842</sup>
- (662) [...] there was only one meeting on 3 September 2004 which was attended by [company representative] and [company representative] (both of Sirap-Gema), [company representative] and [company representative] (both of Vitembal), [company representative] and [company representative] (both of Linpac), and [company representative] and [company representative] (both of Huhtamäki). The purpose of the meeting was to discuss the price increases to be implemented as of the beginning of 2005.<sup>843</sup> [...] [company representative] ([company name]) could not have attended the meeting on 8 September 2004 as he was travelling from Marseille to Milan on that day.<sup>844</sup> To support its claim that there was only one meeting (namely on 3 September 2004), [company name] presented a receipt for the rental of a

836

[...]

837

[...]

838

[...]

839

ID [...]

840

ID [...]; ID [...][...]; ID [...]; ID [...]; ID [...]; ID [...]; ID[...]; ID [...]; ID [...]; ID [...] (Huhtamäki answer to RFI); ID [...]

841

ID [...]; ID [...]; ID [...] (Vitembal inspection document).

842

ID [...]; ID [...] ID [...]

843

ID [...]

844

ID [...]

conference room at Orly Airport dated 3 September 2004.<sup>845</sup> In its reply to the Commission's SO, [company name] specifically confirmed, so far as it is concerned, the anticompetitive nature of the meeting. In the same reply, [company name] reconfirmed that in addition to agreeing on a price increase, the competitors also decided to meet periodically in order to verify the effective application of the agreed price increases.<sup>846</sup>

- (663) Huhtamäki also confirms that the meeting took place on 3 September 2004 and was attended by [company representative] (Huhtamäki). As to the content of the meeting, [company representative] (Huhtamäki) does not have a clear recollection of the topics discussed and speculates that the meeting was probably limited to tax matters and environmental issues.<sup>847</sup> At the same time, [company representative's] recollection lists only "possible" discussion topics, which, in the Commission's assessment, does not contradict [...].
- (664) The Commission is in possession of a statement [...] which also confirms the date (3 September 2004) and the meeting's anticompetitive character.<sup>848</sup>
- (665) Given that not a single undertaking contests its attendance at the meeting and that [...] the matters discussed at the meeting were anti-competitive, the Commission concludes that the price increases relating to foam trays, possibly in addition to other anticompetitive subjects, were discussed and agreed upon during the meeting on 3 September 2004. This is considered to be the starting date for the cartel in France.
- (666) On **21 October 2004** a meeting took place at the Holiday Inn, Avignon, between [company representative] and [company representative] (both of Linpac), [company representative] (Vitembal), [company representative] (Sirap-Gema) and [company representative] and [company representative] (both of Huhtamäki). During the meeting, the competitors discussed the price increase for foam trays necessitated by the rising cost of polystyrene and also agreed to maintain the status quo with regard to the supply of their clients. They also shared with each other their customers' reactions to the announcement of the price increase for the third quarter of 2004 and which was agreed on 3 September 2004 (see Recitals (660)-(665)).<sup>849</sup>
- (667) [...].<sup>850</sup> [...] it is likely that the meeting took place and [company representative] ([company name]) may well have participated in it since the seat of [company name] is only a very short drive from Avignon. In its reply to the SO, [company name] confirms, so far as it is concerned, that this was one of the meetings also held to verify the effective implementation of the price increase agreement from 3 September 2004 (see Recitals (660)-(665)).<sup>851</sup>
- (668) On **25 November 2004** a meeting took place in Paris at the premises of the CSEMP industry association between [company representative] (Linpac), [company representative] and [company representative] (both of Vitembal), [company representative] (Sirap-Gema) and [company representative] (Huhtamäki). It

---

845 ID [...]  
846 ID [...]; ID [...]  
847 ID [...](Huhtamäki – reply to RFI).  
848 ID [...]  
849 ID [...]; ID [...]; ID [...]  
850 ID [...]; ID [...]  
851 ID [...]; ID [...]

concerned foam trays. Again, the participating competitors agreed to stick to the previously agreed price increase (see Recitals (660)-(665)) and to freeze their market positions in the supply of their clients.<sup>852</sup>

- (669) [...].<sup>853</sup> [Company name] provides an expense report demonstrating that [company representative] ([company name]) was in Paris on 25 November 2004.<sup>854</sup> In its reply to the Commission's SO, [company name] confirmed that the meeting was organised to verify the actual implementation of the agreed price increases (see Recitals (660)-(665)) and to ensure the respect for the status quo on the French market. Huhtamäki states that its internal investigation has not revealed any information according to which its employees participated in the said meeting.<sup>855</sup> The Commission concludes that Huhtamäki's statement does not call into question the otherwise corroborated evidence provided by [...] since, by Huhtamäki's own admission,<sup>856</sup> the relevant individuals have declined to assist Huhtamäki in its internal investigation.
- (670) On **24 January 2005** a meeting took place at the Holiday Inn, Avignon, between [company representative] (Linpac), [company representative] and [company representative] (both of Vitembal), [company representative] and [company representative] (both of Sirap-Gema) and [company representative] and [company representative] (both of Huhtamäki). The meeting concerned foam trays. The purpose of the meeting was to discuss the previously agreed price increases which were to be implemented at the end of 2004 and the beginning of 2005 (see Recitals (660)-(665)) and to freeze market position in the supply of their clients.<sup>857</sup>
- (671) [...].<sup>858</sup> [...] in addition to carrying out an audit of prices previously agreed on by the parties (see Recitals (660)-(665)), Vitembal, Linpac and Sirap-Gema also discussed the prices to be offered to an industry client (Gastronome).<sup>859</sup> Huhtamäki states that its internal investigation has not revealed any information according to which its employees participated in the meeting.<sup>860</sup> The Commission notes that Huhtamäki's inability to provide any information on this meeting, which is a result of Huhtamäki's inability to secure cooperation from its former employees, does not undermine the corroborated evidence [...].<sup>861</sup>
- (672) There were a number of tenders foreseen for late 2005 and early 2006, including the ones organised by: Casino (23 November 2005), Carrefour (13 December 2005) and Système U (early 2006). The competitors intensified their contacts in order to ensure that, following the tenders, they kept their historical clients and that the prices did not decrease as a result of the tenders.<sup>862</sup>
- (673) On **17 March 2005** a meeting took place at the premises of CSEMP in Paris between [company representative] (Linpac), [company representative] (Vitembal), [company

---

<sup>852</sup> ID [...] and ID [...]; ID [...]

<sup>853</sup> ID [...]; ID [...]

<sup>854</sup> ID [...]; ID [...]; ID [...]

<sup>855</sup> ID [...] (Huhtamäki – reply to RFI).

<sup>856</sup> ID [...] (Huhtamäki – reply to the SO).

<sup>857</sup> ID [...]; ID [...]; ID [...]

<sup>858</sup> ID [...]; ID [...]

<sup>859</sup> ID [...]

<sup>860</sup> ID [...] (Huhtamäki – reply to RFI).

<sup>861</sup> ID [...] (Huhtamäki – reply to the SO).

<sup>862</sup> ID [...] (ONO Packaging – reply to RFI – Carrefour tender documentation); ID [...]; ID [...]

representative] and [company representative] (both of Sirap-Gema) and [company representative] (Huhtamäki). The meeting concentrated on the Casino tender which was to be held in November 2005. The competitors agreed on non-aggression towards Sirap-Gema who was the main supplier of Casino and to whom that particular client had been historically allocated. As a result of the collusive agreement, Sirap-Gema remained competent for the supply. During the same meeting, in addition to the Casino tender, the competitors also reviewed the previously agreed price increases (see Recitals (660)-(665)) and discussed freezing their market positions in the supply of their clients.<sup>863</sup>

- (674) [...].<sup>864</sup> [...] the parties also discussed supplies to industry clients (Gastronome and Scopa) for which Vitembal, Linpac and Sirap-Gema were responsible.<sup>865</sup>
- (675) On **19 April 2005** a meeting took place at Roissy airport, Paris, between [company representative] (Linpac), [company representative] and/or [company representative] (both of Vitembal), [company representative] and [company representative] (both of Sirap-Gema) and [company representative] (Huhtamäki). The meeting was convened to monitor the implementation of the price increase agreed for the end of 2004 and the beginning of 2005 (see Recitals (660)-(665)).<sup>866</sup>
- (676) [Company name] states that it could not trace any information regarding the meeting on 19 April 2005. [Company name] confirms that [company representative] could not have attended the meeting as he was on holiday that week. However, [company name] states that it is possible that [company representative] participated in the meeting.<sup>867</sup> Huhtamäki states that its internal investigation has not revealed any information according to which Huhtamäki's employees participated in the said meeting.<sup>868</sup> The Commission notes that Huhtamäki's inability to provide further information stems from the fact that some of Huhtamäki's former employees have declined to cooperate with Huhtamäki in its internal investigation.<sup>869</sup> The Commission concludes that Huhtamäki's reply does not undermine [...].
- (677) [...] it was proposed during the meeting that Silver Plastics be included in the cartel meetings as of 29 June 2005 (see Recital (678)). This was suggested due to the fact that Silver Plastics was pushing into the French market and was perceived as a dangerous player.<sup>870</sup> It was Vitembal and Linpac that were particularly concerned with Silver Plastics' aggressive competition on the French market and wanted it to be included in the future cartel meetings.<sup>871</sup> [Company name] claims to have acted as an intermediary in a conflict between Silver Plastics and Vitembal.<sup>872</sup> The increasing perceived danger represented by Silver Plastics on the French market is corroborated [...].<sup>873</sup>

---

<sup>863</sup> ID [...]; ID [...]; ID [...]

<sup>864</sup> ID [...]; ID [...]; ID [...]

<sup>865</sup> ID [...]

<sup>866</sup> ID [...]; ID [...]; ID [...]; ID [...]; ID [...], and ID [...]

<sup>867</sup> ID [...]

<sup>868</sup> ID [...] (Huhtamäki – reply to RFI).

<sup>869</sup> ID [...] (Huhtamäki – reply to the SO).

<sup>870</sup> ID [...]

<sup>871</sup> ID [...]; ID [...]

<sup>872</sup> ID [...]; ID [...]

<sup>873</sup> ID [...]; ID [...]

- (678) On **29 June 2005** a meeting took place at the premises of CSEMP in Paris between [company representative] and [company representative] (Linpac), [company representative] and [company representative] (both of Vitembal), [company representative] and [company representative] (both of Sirap-Gema), [company representative] and [company representative] (both of Huhtamäki) and [company representative] (Silver Plastics). On the fringe of the legitimate discussions concerning environmental issues, the competitors discussed and decided to maintain the previously agreed price increases for foam trays, discussed the need for a new price increase and, given that it was the first meeting to which a representative of Silver Plastics was invited, attempted to convince Silver Plastics to abandon its aggressive market strategy in France.<sup>874</sup>
- (679) The meeting itself and its attendees are evidenced by a follow-up email sent by CSEMP to the parties on 8 August 2005.<sup>875</sup> [...] <sup>876</sup> [...] the meeting took place and [...] it was most likely attended by [company representative] and [company representative] ([...]).<sup>877</sup> [...] the fact of the meeting, its attendees and the meeting's anticompetitive character [are corroborated].<sup>878</sup> [...] the meeting took place and [...] it had an anticompetitive character.<sup>879</sup> [...] Silver Plastics claims that its representative, despite hearing and thus becoming fully aware of the anticompetitive discussions, did not actively participate in them.<sup>880</sup> [...] <sup>881</sup> However, given that the anticompetitive discussions took place on the fringe of the legitimate subjects, which may well have included the environment, there is no evidence that would contradict the statements of [company name].
- (680) On **21 September 2005** a meeting took place at the business centre, Paris Orly, between [company representative] (Linpac), [company representative] and [company representative] (Vitembal), [company representative] (Sirap-Gema), [company representative] (Huhtamäki) and [company representative] (Silver Plastics). The purpose of the meeting was to agree on non-aggression during the upcoming tenders of Casino (November 2005), Carrefour (December 2005) and Système U (early 2006). Silver Plastics was unable to commit to any course of conduct – this was upon express telephone instructions that [company representative] (Silver Plastics) received from [company representative] (Silver Plastics).<sup>882</sup> At the same time, [company representative] (Silver Plastics) informed the other cartel participants that Silver Plastics was interested in the Système U tender and also disclosed the volumes that Silver Plastics hoped to secure.<sup>883</sup> Linpac, Sirap-Gema, Vitembal and Huhtamäki reiterated their agreement that Sirap-Gema should win the tender of Casino, because it had already been the supplier of Casino before (see also Recitals (673)-(674)). This was part of a broader "settlement" between the parties whereby Sirap-Gema, in

---

<sup>874</sup> ID [...]; ID [...]; ID [...]; ID [...]; ID [...] (ONO Packaging – reply to RFI); ID [...] (ONO Packaging – reply to RFI); ID [...] (Silver Plastics inspection document); ID [...]; ID [...]. ID [...] ID [...]; ID [...]

<sup>875</sup> ID [...] (Silver Plastics inspection document).

<sup>876</sup> ID [...]; ID [...]; ID [...]

<sup>877</sup> ID [...]

<sup>878</sup> ID [...]; ID [...]; ID [...]

<sup>879</sup> ID [...]

<sup>880</sup> ID [...] (Silver Plastics – reply to the SO).

<sup>881</sup> ID [...]; ID [...]

<sup>882</sup> ID [...] (Silver Plastics – reply to the SO).

<sup>883</sup> ID [...]; ID [...] (Silver Plastics reply to the SO).

exchange for not being attacked on the Casino tender, committed not to disturb the other competitors during the Carrefour tender. Linpac, for which the Carrefour tender was important, was prepared not to disturb the Casino and Système U tenders.<sup>884</sup> The latter tender was particularly important for Vitembal, which remained one of Système U's suppliers, albeit subject to the reduced prices caused by aggressive bidding by Silver Plastics and Magic Pack.<sup>885</sup> In addition, Vitembal accepted to take only the southern region of Carrefour. Finally, in exchange for not being attacked in respect of the Champion supermarkets, Huhtamäki agreed not to bid competitively for Système U and Carrefour.<sup>886</sup>

- (681) [...] [company representative] and [company representative] (both of Sirap-Gema), [company representative] and [company representative] (both of Vitembal), [company representative] (Linpac) and [company representative] (Huhtamäki) had numerous phone contacts before the Casino and Carrefour tenders to work out the details of their agreement.<sup>887</sup> In particular, Sirap-Gema was ready to make an offer at a predetermined price level in order to give Linpac and Vitembal the possibility to continue supplying their historical customer with the same quantities. During the telephone conversations the cartel participants agreed that Vitembal and Linpac would continue to deliver their respective volumes to Carrefour, Champion would stay with Huhtamäki and Casino with Sirap-Gema.<sup>888</sup> [...]. Silver Plastics states that it did not agree on any customer allocation.<sup>889</sup> At the same time, the Commission notes that Silver Plastics admits that its representative became aware of the other cartel participants' bidding strategies and Silver Plastics itself disclosed to the other cartel participants the fact that it planned to participate in the tender and the volumes it wanted to supply to Système U.<sup>890</sup>
- (682) On **5 October 2005**, on the fringe of the official EQA meeting at Lyon-St.Exupéry airport, there was a cartel meeting between [company representative] and [company representative] (both of Linpac), [company representative], [company representative] and [company representative] (all of Vitembal), [company representative] and [company representative] (Sirap-Gema), [company representative] (Huhtamäki) and [company representative] and [company representative] (Silver Plastics). The competitors discussed prices in France and also discussed the aggressive presence of Silver Plastics on the French market.<sup>891</sup>
- (683) The meeting itself and its attendees is evidenced by an email dated 8 August 2005 sent from CSEMP announcing that the next meeting would be taking place on 5 October 2005 in Lyon.<sup>892</sup> [...] <sup>893</sup> [...] the atmosphere at the meeting was very tense. This was caused [...] by the other cartel participants becoming more and more concerned with Silver Plastics presence on the French market. At the same time. [...]

---

884 ID [...]. ID [...]; ID [...]; ID [...]; ID [...]

885 ID [...]; ID [...]; ID [...]

886 ID [...]; ID [...]

887 ID [...], ID [...], ID [...]

888 ID [...]; ID [...]

889 ID [...] (Silver Plastics – reply to the SO).

890 ID [...]

891 ID [...]; ID [...]; ID [...] and ID [...] and ID [...] (Silver Plastics inspection document).

892 ID [...] (Silver Plastics inspection document).

893 ID [...]; ID [...]; ID [...]; ID [...]; ID [...]



there were no discussions concerning prices or specific customers.<sup>894</sup> The Commission concludes that [...] the meeting did concern prices charged on the French market.

- (684) As a follow-up to the meeting on 21 September 2005 (see Recital (680)), [company representative] (Linpac), [company representative] and [company representative] (Vitembal), [company representative] and [company representative]<sup>895</sup> (both of Sirap-Gema) and [company representative] (Huhtamäki) met again on **24 November 2005**.<sup>896</sup> In the context of the agreed settlement (see Recitals (680)-(681)), the competitors discussed in detail the tenders of Casino and Carrefour and agreed on a strategy to be followed during the tenders. The content of the meeting is evidence by a handwritten note taken during the meeting by [company representative] ([company name]):

*"1. Call for offers CASINO. 2. Call for offers CARREFOUR. → Film PVC. 1. On – one tender for Vitembal. Base tender prices = prices applied by Sirap-Gema in 2005. → not registered the pre-offers which were on the up. ? on [illegible]? Tender rules = supplier [illegible] Casino not [illegible]. 18% of CA. [...] '4-> if it's true 4 -> SG, LP, Huht, V. Decrement 10.000 €. Hypo[thesis] 1 = there will be only 4 of us. SG takes Casino, LP [illegible]. Hypo[thesis] 2 = we are 4. [...] 9h10 Vit decrements market 1 for 10k €. Afterwards 9h15 SG takes M1 and offers for M8. 9h17 LP decrements M4 in order to take up. 8h30 LP takes up M8. 9h40 SG takes up M4 and confirms the others. SG buy 4 Tel. RV [rendezvous]tonight for the tel."*<sup>897</sup>

- (685) The content of the note is corroborated [...] the competitors were not sure if they would be the only participants in the Casino tender. Therefore, they created two scenarios: Scenario 1, based on the participation of more than four participants, foresaw the result only, namely that Casino should be left to Sirap-Gema. Scenario 2, based on the assumption of the four competitors being the only participants, foresaw a detailed way to proceed for the different slots.<sup>898</sup>

- (686) As a result of the anticompetitive contacts and the settlement agreed between the competitors, Sirap-Gema remained Casino's supplier, albeit subject to a price reduction caused by the participation of another bidder in the tender (possibly Magic Pack).<sup>899</sup> In return, Sirap-Gema did not bid competitively during the Carrefour tender with the result that Huhtamäki kept Champion, with respect to trays and boxes, and Linpac and Vitembal maintained their respective Carrefour market shares of 62% and 38 %. The evidence in the Commission's possession indicates that by the end of

<sup>894</sup> ID [...]

<sup>895</sup> ID [...]. [...] [company representative] also attended the meeting on 24 November 2005.

<sup>896</sup> ID [...]

<sup>897</sup> ID [...]; (Original in French): 1. AO CASINO. 2. AO CARREFOUR → Film PVC. 1 Au – 1 enchère pour VT. Prix base enchère = les prix pratiqués par SG en 2005. → n'a pas enregistré les pré-offre qui étaient à la ↑. ? sur les [illegible]?. Règle enchère = le fournisseur [illegible] Casino ne [illegible]. 18% de CA. [...] '4-> si c'est vrai SG, LP, Huht, V. Décrément 10.000 €. Hypo 1 = on est + que 4. SG prendra la main sur Casino, LP sur [?]. Hypo 2 = on est 4 [...] 9h10 Vit décrémente Marché 1 de 10k €. Ensuite, 9h15 SG prend la main sur M1 + offre sur M8. 9h17 LP décrémente M4 pour reprendre. 9h30 LP reprend M8. 9h40 SG reprend M4 + valide les autres. SG achète 4 Tel. RV ce soir pour les tél.).

<sup>898</sup> ID [...]; ID [...]

<sup>899</sup> ID [...]; ID [...] (Vitembal – reply to RFI); ID [...]; ID [...]

2005, the anticompetitive arrangements resulted in a number of large customers being allocated between the competitors.<sup>900</sup>

#### 4.6. Discussion and findings regarding the evidence

- (687) Several parties have questioned the reliability of [...].<sup>901</sup> In addition, in their replies to the SO, some of the parties have submitted witness statements of their employees, aiming to show that the content of particular contacts or evidence was lawful<sup>902</sup>. Silver Plastics has thereafter also submitted statements from customers' employees and independent distributors (not involved in the current proceedings) to support their position that existing market conditions would rule out a cartel in NWE. Silver Plastic has also requested that the Commission conducts a formal interview under Article 19 of Council Regulation (EC) No 1/2003 with (originally) two of the [company name] employees that participated in the NWE cartel and that the Commission grants it the possibility to cross-examine those individuals. Silver Plastics has informed the Commission that its lawyers have on their own motion spoken to one of the (now ex-) employees of [company name] ([company representative]) and that the information obtained during that conversation supports their view that parts of the information provided by [company name] in its oral statements is incorrect and questions the reliability of those statements.<sup>903</sup>
- (688) The evidence presented in Section 4 consists of documents supplied by the leniency applicants, documents found during the inspections and replies to RFIs and their annexes. Among these materials, there are several pages of direct evidence: contemporaneous emails, (handwritten) notes and corporate statements from undertakings directly involved in the infringement. In addition, the file is composed of corroborating contemporaneous evidence, notably in the form of travel records, and diary entries.
- (689) In accordance with the generally applicable rules on evidence, the reliability and, therefore, the probative value of a document depends on its origin, the circumstances in which it was drawn up, the person to whom it is addressed and the reputed and reliable nature of its content.<sup>904</sup> In particular, great importance must be attached to the fact that a document has been drawn up in close connection with the events,<sup>905</sup> or by a direct witness to those events<sup>906</sup>.

---

<sup>900</sup> ID [...] and ID [...]

<sup>901</sup> See for example [...] (Silver Plastics reply to the SO); ID [...] (Huhtamäki reply to the SO).

<sup>902</sup> See for example ID [...] (Silver Plastics reply to the SO – [...]). The witness statements were provided by two employees of Silver Plastics; ID [...] (Silver Plastics supplementary reply to the SO).

<sup>903</sup> ID [...] (Silver Plastics supplementary reply to the SO) dated 3 June 2015. Silver Plastics has later confirmed that its submission is based on notes taken by its external lawyers during a conversation with [company representative] on 1 June 2015 and that [company representative] has not provided any witness statement or record that can be disclosed to the Commission or other parties.

<sup>904</sup> Case T-44/00 *Mannesmannröhren-Werke AG v Commission* ECLI:EU:T:2004:218, paragraph 84; Joined Cases T-25/95, T-26/95, T-30/95, T-31/95, T-32/95, T-34/95, T-35/95, T-36/95, T-37/95, T-38/95, T-39/95, T-42/95, T-43/95, T-44/95, T-45/95, T-46/95, T-48/95, T-50/95, T-51/95, T-52/95, T-53/95, T-54/95, T-55/95, T-56/95, T-57/95, T-58/95, T-59/95, T-60/95, T-61/95, T-62/95, T-63/95, T-64/95, T-65/95, T-68/95, T-69/95, T-70/95, T-71/95, T-87/95, T-103/95 and T-104/95 *Cimenteries CBR and Others v Commission* ('Cement') ECLI:EU:T:2000:77, paragraph 1053.

<sup>905</sup> Case T-157/94 *Empresa Nacional Siderúrgica SA (Ensidesa) v Commission* ECLI:EU:T:1999:54, paragraph 312 and Joined Cases T-5/00 and T-6/00 *Nederlandse Federatieve Vereniging voor de*

- (690) In each infringement, there are corroborating leniency statements that implicate other undertakings and therefore run counter to the interest of those undertakings. As established by the Court, they therefore have a particularly high probative value.<sup>907</sup> This is because providing inaccurate statements may jeopardise the leniency application and the admission of involvement entails considerable legal and economic risks such as private damages claims.<sup>908</sup> In this Decision, the leniency statements are corroborated by contemporaneous evidence and by other means for example by other statements of that nature.<sup>909</sup> Contacts reported in leniency statements are also corroborated in the light of earlier and later contacts that are sufficiently proven. The Commission has applied proper caution to the evidence voluntarily provided by the immunity and leniency applicants.<sup>910</sup>
- (691) Witness statements written by the employees of a company, drawn up under the supervision of that company and submitted by it in its defence in the administrative procedure by the Commission, cannot, in principle, be classified as evidence which is different from, and independent of, the statements made by that same company. In order to influence the course of the proceedings and the content of the Commission's decision, such witness statements need to be substantiated.<sup>911</sup> This applies in particular to witness statements of employees that were not directly involved in the infringement and that have been made available only after the company was informed of the main allegations against it. The above applies to most of the witness statements submitted to the Commission. Neither can witness statements, produced by individuals of companies that are not alleged to have been involved in the infringements, about the feasibility of such arrangements be given a greater weight than the evidence in the Commission's file supporting the existence of the infringements pursued in this Decision. According to the case-law witness statements seeking to contest the existence of any infringement have a lower probative value as such statements are not contrary to the interests of those undertakings.<sup>912</sup>
- (692) It is settled case-law<sup>913</sup> that the guarantee of the rights of the defence does not require the Commission to hear witnesses put forward by the parties concerned, where it considers that the investigation of the case has been sufficient. The Commission is also not required to afford the undertaking concerned the opportunity to cross-

---

*Groothandel op Elektrotechnisch Gebied and Technische Unie v Commission* ECLI:EU:T:2003:342, paragraph 181.

<sup>906</sup> Joined Cases T-67/00, T-68/00, T-71/00 and T-78/00 *JFE Engineering Corp., formerly NKK Corp. (T-67/00), Nippon Steel Corp. (T-68/00), JFE Steel Corp. (T-71/00) and Sumitomo Metal Industries, Ltd (T-78/00) v Commission* ECLI:EU:T:2004:221, paragraph 207.

<sup>907</sup> Case T-133/07 *Mitsubishi Electric v Commission* ECLI:EU:T:2011:345, paragraphs 84-107; joined Cases C-239/11 P, C-489/11 P and C-498/11 *Siemens v Commission* ECLI:EU:C:2013:866, paragraphs 135-142.

<sup>908</sup> Joined Cases C-239/11 P, C-489/11 P and C-498/11 *Siemens v Commission* ECLI:EU:C:2013:866, paragraphs 138-141.

<sup>909</sup> Case T-113/07 *Toshiba v Commission* ECLI:EU:T:2011:343, paragraphs 90-91; Case T-133/07 *Mitsubishi Electric v Commission* ECLI:EU:T:2011:345, paragraphs 84-85; Joined Cases C-239/11 P, C-489/11 P and C-498/11 *Siemens v Commission* ECLI:EU:C:2013:866, paragraphs 189-191.

<sup>910</sup> Case T-191/06 *FMC Foret, SA v Commission* ECLI:EU:T:2011:277, paragraph 117.

<sup>911</sup> Case T-113/07 *Toshiba Corp. v Commission* ECLI:EU:T:2011:343, paragraphs 58-61.

<sup>912</sup> Joined Cases C-239/11 P, C-489/11 P and C-498/11 P, *Siemens AG and Others v Commission*, EU:C:2013:866, paragraph 144-146.

<sup>913</sup> See Case T-191/06 *FMC Foret SA v Commission*, ECLI:EU:T:2011:277, paragraphs 137, 139 and 140. See Case C-219/00 P *Aalborg Portland and Others v Commission* ECLI:EU:C:2004:6, paragraph 200.

examine a particular witness and to analyse his/her statements at the investigation stage. It is sufficient that the statements used by the Commission were provided in the file sent to the applicant, who is able to challenge them before the judicature of the European Union.<sup>914</sup> The Commission believes that [company name's] statements are credible and provide sufficient proof for the findings for which they are used in this Decision without the need for further verification.<sup>915</sup> That is based on an overall assessment of a number of relevant factors, such as the level of details in the corporate statements in question, the circumstances under which those statements were prepared, including notably the proximity in time between the reported cartel events and the statements, the risks associated with inaccurate statements (both for the company and any individual involved in the preparation) and the fact that the information is corroborated and supported by other elements,

- (693) In addition, in its reply to the Commission's SO, [company name] states that the statements provided by [X] under Article 19 of Regulation (EC) No 1/2003 are unreliable, self-serving and have little probative value. [Company name] states that [X] has a personal interest in harming his former employer with whom he is involved in litigation. The Commission concludes that the statements provided by [X] were made following his personal attendance at a large number of collusive meetings –for instance: 17 January 2005 (see Recital (625)). In addition, his account of the collusive events is generally in line with the accounts provided by [company name] or other parties – see for instance: 13 December 2004 (see Recitals (619)-(623)); 17 January 2005 (see Recital (625)); 14-15 February 2005 (see Recitals (626)-(627)); 24 August 2005 (see Recital (637)). As a result, there is no reason why [X's] statement should be seen as either lacking evidential value or being inferior to the statements provided by [company name]. In conclusion, the Commission is of the opinion that it has properly assessed the available evidence and the arguments submitted by the parties.

## **5. APPLICATION OF ARTICLE 101 OF THE TREATY AND ARTICLE 53 OF THE EEA AGREEMENT**

### **5.1. Relationship between the Treaty and the EEA Agreement**

- (694) The five separate cartels described in this Decision (see Sections 4.1-4.5 ) covered a large proportion of the territory of the EEA. Therefore each of them was liable to affect competition in the whole of the internal market and the territory covered by the EEA Agreement.

---

<sup>914</sup> Having verified that Silver Plastics has received access to all of [company name's] statements and has exercised its right to reply to the SO and to be heard, the Commission has therefore on two occasions rejected Silver Plastics request to conduct formal interviews under Art. 19 of Council Regulation 1/2003 and to allow cross-examination. See ID [...], ID [...] and ID [...].

<sup>915</sup> As part of its duty of cooperation under the Leniency Notice, [company name] has made its employee [company representative] available for discussions with the Commission during the early phase of the Commission's investigation where the Commission was able to direct questions to [company representative] and reassure itself about the credibility of one of the sources relied on by [company name] when preparing its corporate statements. The information provided by [company representative] during that meeting was reported by [company name] [...] i.e. ID [...], ID [...], ID [...] and ID [...] to which all parties have received access.

- (695) Insofar as the arrangements affected competition in the internal market and trade between Member States of the European Union, Article 101 of the Treaty is applicable. Article 53 of the EEA Agreement is applicable insofar as the arrangements affected competition in the territory covered by that Agreement and trade between the Contracting Parties to that Agreement.

## **5.2. Jurisdiction**

- (696) In this case the Commission is the competent authority to apply both Article 101 of the Treaty and Article 53 of the EEA Agreement, on the basis of Article 56 of the EEA Agreement to the NWE cartel, since that cartel had an appreciable effect on trade within the EEA.

## **5.3. Application of competition rules**

### *5.3.1. Article 101(1) of the Treaty and Article 53(1) of the EEA Agreement*

- (697) Article 101(1) of the Treaty prohibits as incompatible with the internal market all agreements between undertakings, decisions by associations of undertakings or 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, and in particular those which directly or indirectly fix purchase or selling prices or any other trading conditions, limit or control production and markets, or share markets or sources of supply.<sup>916</sup>
- (698) Article 53(1) of the EEA Agreement (which is modelled on Article 101(1) of the Treaty) contains a similar prohibition. However the reference in Article 101(1) to trade "*between Member States*" is replaced by a reference to trade "*between contracting parties*" and the reference to competition "*within the internal market*" is replaced by a reference to competition "*within the territory covered by the ... [EEA] Agreement*". In this case, Article 53(1) of the EEA Agreement should be applied only in relation to the NWE cartel.

### *5.3.2. Agreements and concerted practices*

#### *5.3.2.1. Principles*

- (699) An *agreement* can be said to exist when the parties 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. It does not have to be made in writing; no formalities are necessary, and no contractual sanctions or enforcement measures are required. The fact of agreement may be express or implicit in the behaviour of the parties. Furthermore, it is not necessary, in order for there to be an alleged infringement of Article 101(1) of the Treaty, for the participants to have agreed in advance upon a comprehensive common plan. The concept of agreement in Article 101(1) of the Treaty would apply to the inchoate understandings

---

<sup>916</sup> The case law of the Court of Justice and the General Court in relation to the interpretation of Article 101 of the Treaty applies equally to Article 53 of the EEA Agreement. See Recitals 4 and 15 as well as Article 6 of the EEA Agreement, Article 3(2) of the EEA Surveillance and Court Agreement and Case E-1/94 Ravintoloitsijain Liiton Kustannus Oy Restamark [1994-1995] EFTA Ct. Rep, p. 15, paragraphs 32-35. References in this Decision to Article 101 of the Treaty therefore apply also to Article 53 EEA.

and partial and conditional agreements in the bargaining process which lead up to the definitive agreement.<sup>917</sup>

- (700) In its judgement in PVC II case,<sup>918</sup> the General Court stated that “*it is well established in the case law that for there to be an agreement within the meaning of Article 101(1) of the Treaty it is sufficient for the undertakings to have expressed their joint intention to behave on the market in a certain way*”.<sup>919</sup>
- (701) If, for instance, an undertaking is present at meetings in which the parties agree on certain behaviour on the market, it may be held liable for an infringement even where its own conduct on the market does not comply with the conduct agreed. It is also well-settled case-law that “*the fact that an undertaking does not abide by the outcome of meetings which have a manifestly anti-competitive purpose is not such as to relieve it of full responsibility for the fact that it participated in the cartel, if it has not publicly distanced itself from what was agreed in the meetings*”.<sup>920</sup> Such distancing should take the form of an announcement by the company, for example, that it would take no further part in the collusive meetings and therefore did not wish to be invited to them.<sup>921</sup>
- (702) Although Article 101(1) of the Treaty and Article 53 of the EEA Agreement draw a distinction between the concept of “*concerted practices*” and “*agreements between undertakings*”, the object is to bring within the prohibition of these Articles a form of co-ordination between undertakings by which, without having reached the stage where an agreement properly so-called has been concluded, they knowingly substitute practical co-operation between them for the risks of competition.<sup>922</sup>
- (703) The criteria of co-ordination and co-operation laid down by the case law of the Court of Justice, far from requiring the elaboration of an actual plan, must be understood in the light of the concept inherent in the provisions of the Treaty relating to competition, according to which each economic operator must determine independently the commercial policy which it intends to adopt in the internal market.
- (704) Although that requirement of independence does not deprive undertakings of the right to adapt themselves intelligently to the existing or anticipated conduct of their competitors, it strictly precludes any direct or indirect contact between such operators the object or effect whereof is either to influence the conduct on the market of an actual or potential competitor or to disclose to such a competitor the course of

---

<sup>917</sup> Case T-9/99 *HFB Holding für Fernwärmetechnik Beteiligungsgesellschaft mbH & Co. KG and Others v Commission* ECLI:EU:T:2002:70, paragraphs 196 and 207.

<sup>918</sup> Joined Cases T-305/94 etc. *Limburgse Vinyl Maatschappij N.V. and others v Commission* (PVC II), ECLI:EU:T:1999:80, paragraph 715.

<sup>919</sup> The case law of the Court of Justice and the General Court in relation to the interpretation of Article 101 of the Treaty applies equally to Article 53 of the EEA Agreement. See Recitals No 4 and 15 as well as Article 6 of the EEA Agreement, Article 3(2) of the EEA Surveillance and Court Agreement, as well as Case E-1/94 of 16.12.1994, Recitals 32-35.

<sup>920</sup> See Joined Cases C-204/00P C-205/00P, C-211/00P, C-213/00P, C-217/00P and C-219/00P *Aalborg Portland A/S and Others v. Commission*, ECLI:EU:C:2004:6, paragraph 85, Case T-334/94 *Sarrió SA v. Commission* ECLI:EU:T:1998:97, paragraph 118; Case T-141/89 *Tréfileurope Sales SARL v. Commission* ECLI:EU:T:1995:62, paragraph 85; Case T-7/89 *SA Hercules Chemicals NV v. Commission* ECLI:EU:T:1991:75, paragraph 232.

<sup>921</sup> Case T-377/06, *Comap v Commission* ECLI:EU:T:2011:108, paragraphs 75-78.

<sup>922</sup> Case 48/69, *Imperial Chemical Industries v Commission* ECLI:EU:C:1972:70, paragraph 64.

conduct which they themselves have decided to adopt or contemplate adopting on the market.<sup>923</sup>

- (705) Thus, conduct may fall under Article 101(1) 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>924</sup> Furthermore, the exchange of commercial information between competitors in preparation for an anti-competitive agreement suffices to prove the existence of a concerted practice within the meaning of Article 101 of the Treaty.<sup>925</sup>
- (706) Although in terms of Article 101(1) of the Treaty the concept of a concerted practice requires not only concertation but also conduct on the market resulting from the concertation and having a causal connection with it, it may be presumed, subject to proof to the contrary, that undertakings taking part in such a concertation and remaining active in the market will take account of the information exchanged with competitors in determining their own conduct on the market, all the more so when the concertation occurs on a regular basis and over a long period. Such a concerted practice is caught by Article 101(1) of the Treaty even in the absence of anti-competitive effects on the market.<sup>926</sup>
- (707) Moreover, it is established case law that the exchange, between undertakings, in pursuance of a cartel falling under Article 101(1) of the Treaty, of information concerning their respective deliveries, which not only covers deliveries already made but is intended to facilitate constant monitoring of current deliveries in order to ensure that the cartel is sufficiently effective, constitutes a concerted practice within the meaning of that Article.<sup>927</sup>
- (708) In the case of a *complex infringement* of long duration, 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. The anti-competitive behaviour may well be varied from time to time, or its mechanisms adapted or strengthened to take account of new developments. Indeed, it may not even be possible to make such a distinction, as an alleged infringement may present simultaneously the characteristics of each form of prohibited conduct, while when considered in isolation some of its manifestations could accurately be described as one rather than the other. It would however be artificial analytically to sub-divide what is clearly a continuing common enterprise having one and the same overall objective into several different forms of alleged infringement. A cartel may therefore be an agreement and a concerted practice at the same time. Article 101 of the Treaty lays down no specific category for a complex alleged infringement of the types involved in this case.<sup>928</sup>

---

<sup>923</sup> Joined Cases 40-48/73 etc. *Suiker Unie and others v Commission* ECLI:EU:C:1975:174.

<sup>924</sup> See also Case T-7/89 *Hercules v Commission* ECLI:EU:T:1991:75, paragraph 256.

<sup>925</sup> Case C-455/11 P, *Solvay v Commission*, ECLI:EU:C:2013:796, paragraph 40.

<sup>926</sup> See also Case C-199/92 P *Hüls v Commission*, ECLI:EU:C:1999:358, paragraphs 158-166; Case T-186/06 *Solvay*, ECLI:EU:T:2011:276, paragraphs 132, 134, 139, 143-149).

<sup>927</sup> See, in this sense, Cases T-147/89, T-148/89 and T-151/89, *Société Métallurgique de Normandie v Commission*, *Trefilunion v Commission* and *Société des treillis et panneaux soudés v Commission*, respectively, ECLI:EU:T:1995:71, paragraph 72.

<sup>928</sup> See again Case T-7/89 *Hercules v Commission* ECLI:EU:T:1991:75, paragraph 264.

- (709) In its PVC II judgment,<sup>929</sup> the General Court stated that “[i]n the context of a complex alleged infringement which involves many producers seeking over a number of years to regulate the market between them, the Commission cannot be expected to classify the alleged infringement precisely, for each undertaking and for any given moment, as in any event both those forms of alleged infringement are covered by Article 101 of the Treaty”.
- (710) An agreement for the purposes of Article 101(1) of the Treaty does not require the same certainty as would be necessary for the enforcement of a commercial contract at civil law. Moreover, in the case of a complex cartel of long duration, the term “agreement” can properly be applied not only to any overall plan or to the terms expressly agreed but also to the implementation of what has been agreed on the basis of the same mechanisms and in pursuance of the same common purpose. As the Court of Justice has pointed out it follows from the express terms of Article 101(1) of the Treaty that agreement may consist not only in an isolated act but also in a series of acts or a course of conduct.<sup>930</sup>
- (711) The organisation of meetings or providing services relating to anti-competitive arrangements may also be prohibited under certain conditions according to the case law of the General Court. The General Court stated that “it is sufficient for the Commission to show that the undertaking concerned attended meetings at which anticompetitive agreements were concluded” and that “the Commission must prove that the undertaking intended, through its own conduct, to contribute to the common objectives pursued by the participants as a whole and that it was aware of the substantive conduct planned or implemented by other undertakings in pursuance of those objectives, or that it could reasonably have foreseen that conduct and that it was ready to accept the attendant risk”.<sup>931</sup>
- (712) It is also well established case law that “the fact that an undertaking does not abide by the outcome of meetings which have a manifest anti-competitive purpose is not such as to relieve it of full responsibility for the fact that it participated in the cartel, if it has not publicly distanced itself from what was agreed in the meeting”.<sup>932</sup> Such distancing should have taken the form of an announcement by the company, for example, that it would take no further part in the meetings and therefore did not wish to be invited to them.

#### 5.3.2.2. Findings – Italy

- (713) The facts described in Section 4.1 of this Decision demonstrate that Linpac, Coopbox, Vitembal, Sirap-Gema, Magic Pack and Nespak engaged in anticompetitive conduct with regard to foam trays in Italy. The overall aim of their contacts, whether relating to specific aspects of conduct or to the whole or part of the infringement region, was to increase and maintain prices above competitive levels

---

<sup>929</sup> See Case T-305/94 *PVC II*, ECLI:EU:T:1999:80, paragraph 696.

<sup>930</sup> See Case C-49/92P *Commission v Anic Partecipazioni SpA*, ECLI:EU:C:1999:356, paragraph 81.

<sup>931</sup> Case T-99/04 *AC Treuhand AG v Commission* ECLI:EU:T:2008:256, paragraphs 122, 127 and 130.

<sup>932</sup> Case T-334/94 *Sarrió SA v Commission* ECLI:EU:T:1998:97, paragraph 118; Case T-141/89 *Tréfileurope Sales SARL v Commission* ECLI:EU:T:1995:62, paragraph 85; Case T-7/89 *Hercules Chemicals v Commission* ECLI:EU:T:1991:75, paragraph 232; Joine Cases T-25/95 and others *Cimenteries CBR and Others v Commission ('Cement')* ECLI:EU:T:2000:77, paragraph 1389; Case T-329/01 *Archer Daniels Midland Co. v Commission* ECLI:EU:T:2006:268, paragraph 247 and Case T-303/02 *Westfalen Gassen Nederland BV v Commission* ECLI:EU:T:2006:374, paragraphs 138-139.



and to maintain the status quo in the region concerning their customer relations and market shares. In order to achieve their objective, the parties established a network of multilateral and bilateral meetings and other contacts and participated in one or more of the following cartel activities:

- (a) Agreeing and/or concerting on minimum prices and/or price increases as well as the dates/timing for their implementation, often in order to maintain the historical customer allocation and to pass on raw material (polystyrene) price increases in a coordinated manner. See for instance the following Recitals: (i) Linpac: (83)-(84), (146)-(153), (229)-(232), (234)-(236), (271)-(279), (325)-(328), (ii) Coopbox: (83)-(84), (146)-(153), (210)-(212), (229)-(232), (234)-(236), (271)-(279), (iii) Sirap-Gema: (83)-(84), (146)-(153), (229)-(232), (234)-(236), (271)-(279), (325)-(328), (iv) Vitembal: (146)-(153), (210)-(212), (229)-(232), (234)-(236), (271)-(279), (v) Nespak: (146)-(153), (210)-(212), (229)-(232), (234)-(236), (268)-(279), (vi) Magic Pack: (146)-(153), (210)-(212), (229)-(232), (259)-(260).
  - (b) Agreeing and/or concerting on customer allocation and on compensating measures for the loss of some customers due to market entries or isolated episodes of customer aggressions. See for instance the following Recitals: (i) Linpac: (175)-(179), (205)-(209), (244)-(247), (248)-(249), (267), (308)-(310), (313)-(315) (ii) Coopbox: (120)-(121), (175)-(179), (205)-(209), (244)-(247), (267), (313)-(315), (337)-(339) (iii) Sirap-Gema: (120)-(121), (175)-(179), (205)-(209), (244)-(247), (267), (313)-(315), (337)-(339) (iv) Vitembal: (205)-(209), (242)-(243), (244)-(247), (267), (v) Nespak: (175)-(179), (205)-(209), (267), (iv) Magic Pack: (175)-(179), (205)-(209), (244)-(247).
  - (c) Exchanging commercially sensitive information with a view, for example, to monitoring the coordinated price increases and/or the application of client allocation and the status quo on the Italian market. See for instance the following Recitals: (i) Linpac: (204), (207)-(208), ([...]), (223)-(228), (325)-(328) (ii) Coopbox: (193)-(194), (204), (207)-(208), (223)-(228), (286), (300)-(301) (iii) Sirap-Gema: (193)-(194), (204), (207)-(208), (223)-(228), (300)-(301), (325)-(328), (iv) Vitembal: (204), (207)-(208), (212), (223)-(228), (v) Nespak: (204), (207)-(208), (223)-(228), (vi) Magic Pack: (204), (207)-(208), (223)-(228).
  - (d) Bid-rigging with a view to keeping the prices above competitive levels and maintaining the historical client allocation. See for instance the following Recitals: (i) Linpac: (130)-(136), (171)-(174), (250)-(257), (289)-(298), (343)-(362), (ii) Coopbox: (104)-(110), (128), (171)-(174), (250)-(257), (289)-(298), (343)-(362), (iii) Sirap-Gema: (111)-(112), (130)-(136), (164), (171)-(174), (289)-(298), (343)-(362), (iv) Vitembal: (111)-(112), (130)-(136), (171)-(174), (250)-(257), (343)-(362), (v) Nespak: (128), (171)-(174), (250)-(257), (vi) Magic Pack: (164)-(166), (171)-(174).
- (714) Those activities represent a form of coordination by which the parties knowingly substituted practical cooperation between them for the risk of competition throughout the entire period of the cartel.
- (715) While some parties may claim that some contacts between the parties were held for legitimate reasons (for example resulting from cross-supply relationships) and were not restrictive of competition by either object or effect, they have failed to adduce any evidence that would establish this with regard to the evidence presented in

Section 4.1. In addition, none of the parties (except for Magic Pack) has succeeded in demonstrating that they publicly distanced themselves from the anticompetitive contacts. By failing to publicly distance themselves, the parties are presumed to have taken account of the information exchanged with other cartel participants in determining their own conduct on the market (see Recitals (701)-(706)).

- (716) The Commission concludes that the events described in Section 4.1 demonstrate that the participants either expressed a joint intention to take account of each other's interests and to act in a certain manner that had the object or effect of restricting competition or knowingly substituted practical cooperation between them for the risks of competition between them. The evidence demonstrates that the price increases agreed on by the parties (for instance, in the summer 2002 (see Recitals (80)-(93) or in autumn 2004 (see Recitals (143)-(153)) did not result from the participants' independent commercial strategies or any unilateral conduct but were the expressions of the participants' joint intention to pass on the rising cost of polystyrene to consumers in a coordinated manner. The subsequent meetings (for instance – 8 November 2004 (see Recitals (157)-(160)) served the purpose of monitoring and/or reviewing the agreed price increases and further aligning their commercial strategies by a detailed customer allocation and bid rigging (for instance – the Auchan/SMA tender on 22 November 2002 (see Recitals (103)-(116)). The regularity of meetings between the participants (approximately 72 anticompetitive contacts in a period of 5 years and a half) made the collusion between the participants more robust and increased the reliability of the cooperation, thus further restricted the independence of the individual commercial strategies. Given that the collusive conduct occurred on a continuous and regular basis and that there is evidence of the actual implementation of the agreed arrangements (see Recital (804)), the Commission considers that the participants cannot have failed to take into account the information received from or disclosed by the other participants when determining their conduct on the market.<sup>933</sup>
- (717) Based on the foregoing, the different collusive elements in this case are considered to form part of an overall scheme to coordinate prices and maintain historical customers with regard to foam trays in Italy. The Commission considers that the behaviour of the parties is to be characterised as a complex infringement consisting of various actions which, in isolation or jointly, in this case present all the characteristics of an agreement and/or a concerted practice in the sense of Article 101 of the Treaty.

#### 5.3.2.3. Findings – South West Europe (SWE)

- (718) The facts described in Section 4.2 of this Decision demonstrate that Linpac, Coopbox, Huhtamäki, Vitmbal and Ovarpack engaged in anticompetitive conduct with regard to foam trays in Spain and Portugal. The overall aim of their contacts, whether relating to specific aspects of conduct or to the whole or part of the infringement region, was to increase and maintain prices above competitive levels and to maintain the status quo in the region concerning their customer relations and market shares. In order to achieve their objective, the parties established a network of

---

<sup>933</sup> See, in particular, cases T-303/02, *Westfalen Gassen Nederland BV v Commission*, ECLI:EU:T:2006:374, paragraph 133 and Case C-8/08 *T-Mobile Netherlands BV, KPN Mobile NV, Orange Nederland NV and Vodafone Libertel NV v Raad van bestuur van de Nederlandse Mededingingsautoriteit*, ECLI:EU:C:2009:343, paragraph 62.; T-83/08 *Denki Kagaku Kabushiki Kaisha v Commission* ECLI:EU:T:2012:48, paragraph 247.

multilateral and bilateral meetings and other contacts at and participated in one or more of the following cartel activities:

- (a) Agreeing and/or concerting on prices and price increases as well as the dates/timing for their implementation, often in order to maintain the status quo on the market and pass on raw material price increases in a coordinated manner. See for instance the following Recitals: (i) Linpac: (386)-(388), (398)-(402), (415)-(417), (453)-(455), (483)-(484), (500)-(502); (ii) Coopbox: (386)-(388), (398)-(402), (415)-(417), (453)-(455), (483)-(484), (500)-(502); (iii) Huhtamäki: (398)-(402), (415)-(417), (443)-(446), (453)-(455); (iv) Vitembal: (443)-(446), (449)-(450), (456)-(460), (465), (485)-(486); (v) Ovarpack: (415)-(417), (453)-(455), (493), (500)-(502).
  - (b) Agreeing and/or concerting on customer and volume allocation and/or market sharing, often in order to maintain the status quo on the market and resist price reductions. See for instance the following Recitals: (i) Linpac: (383)-(385), (403)-(406), (432)-(434), (435)-(437), (438)-(440), (480), (492), (500)-(502); (ii) Coopbox: (383)-(385), (403)-(406), (432)-(434), (435)-(437), (438)-(440), (476), (480), (492), (500)-(502); (iii) Huhtamäki: (403)-(406), (415)-(417); (iv) Vitembal: (465), (476); (v) Ovarpack: (403)-(406), (496), (500)-(502).
  - (c) Exchanging commercially sensitive information, with a view, for example, to monitoring the coordinated price increases and/or the application of client allocation and the status quo on the market. See for instance the following Recitals: (i) Linpac: (412), (428), (453)-(455), (456)-(458), (465), (472)-(475), (480), (481), (494); (ii) Coopbox: (412), (428), (453)-(455), (456)-(458), (472)-(475), (480), (481), (494); (iii) Huhtamäki: (453)-(455), (456)-(458); (iv) Vitembal: (456)-(458), (465), (466); (v) Ovarpack: (453)-(455).
- (719) Those activities represent a form of coordination by which the parties knowingly substituted practical cooperation between them for the risk of competition throughout the entire period of the cartel.
- (720) While some parties may claim that some contacts between the parties were held for legitimate reasons (for example resulting from cross-supply relationships) and were not restrictive of competition by either object or effect, they have failed to adduce any evidence that would establish this with regard to the evidence presented in Section 4.2. In addition, none of the parties has succeeded in demonstrating that they publicly distanced themselves from the anticompetitive contacts. By failing to publicly distance themselves, the parties are presumed to have taken account of the information exchanged with other cartel participants in determining their own conduct on the market (see Recitals (701)-(706)).
- (721) The Commission concludes that the events described in Section 4.2 demonstrate that the participants either expressed a joint intention to take account of each other's interests and to act in a certain manner that had the object or effect of restricting competition or knowingly substituted practical cooperation between them for the risks of competition between them. The evidence clearly shows that the price increases agreed on by the parties (for instance, on 2 March 2002 for Spain (see Recitals (383)-(385)) or on 26 June 2002 for Portugal (see Recitals (415)-(417)) did not result from the participants' independent commercial strategies or any unilateral conduct but were the expression of the participants' joint intention to increase prices in a coordinated manner. The subsequent meetings (for instance – 6 March 2001 (see Recitals (407)-(409)) served the purpose of monitoring and/or reviewing the agreed

price increases and further aligning their commercial strategies by sharing information and allocating customers. The regularity of meetings between the participants (approximately 55 anticompetitive contacts in a period of almost 8 years) made the collusion between the participants more robust and increased the reliability of the cooperation, thus further restricted the independence of the individual commercial strategies. Given that the collusive conduct occurred on a continuous and regular basis and that there is evidence of the actual implementation of the agreed arrangements (see Recital (804)), the Commission considers that the participants cannot have failed to take into account the information received from or disclosed by the other participants when determining their conduct on the market.<sup>934</sup>

- (722) Based on the foregoing, the different collusive elements in this case are considered to form part of an overall scheme to coordinate prices and maintain historical customers with regard to foam trays in Spain and Portugal. The Commission considers that the behaviour of the parties is to be characterised as a complex infringement consisting of various actions which, in isolation or jointly, in this case present all the characteristics of an agreement and/or a concerted practice in the sense of Article 101 of the Treaty.
- (723) As regards the distributor, Ovarpack, this undertaking participated in the arrangement for the purpose of restricting competition in the sector of retail food packaging for foam trays, even if it did not produce trays itself. Its role was crucial to the implementation of the anti-competitive arrangements in Portugal. More specifically, as described in Recital (370), Ovarpack (for Linpac) followed the instructions given to it by Linpac Spain in relation to the Portuguese market. Ovarpack attended a significant number of anti-competitive meetings between producers where the situation of the Portuguese market and the allocation of clients were discussed (approximately once a year, see for example Recitals (398), (403), (415) and (421)), implemented the anti-competitive arrangements and reported on the implementation of such arrangements by the other competitors (see for example Recital (480)). From its side, Linpac (and through [non-addressee] also Coopbox) coordinated and monitored the anti-competitive arrangements for Portugal through contacts with its distributor (see for example Recitals (487) and (491)).
- (724) Ovarpack's conduct facilitated the implementation of the anti-competitive arrangements and contributed to the common objectives pursued by the cartel participants.<sup>935</sup> On this basis, the Commission concludes that Ovarpack must have been aware of the anti-competitive conduct of the other participants, or could reasonably have foreseen that conduct, and was ready to accept the attendant risk.<sup>936</sup> As such, the distributor subscribed to the overall anticompetitive aim of the cartel and must be therefore considered to have infringed Article 101 of the Treaty.

---

<sup>934</sup> See, in particular, cases T-303/02, *Westfalen Gassen Nederland BV v Commission*, ECLI:EU:T:2006:374, paragraph 133 and Case C-8/08 *T-Mobile Netherlands BV, KPN Mobile NV, Orange Nederland NV and Vodafone Libertel NV v Raad van bestuur van de Nederlandse Mededingingsautoriteit*, ECLI:EU:C:2009:343, paragraph 62.; T-83/08 *Denki Kagaku Kabushiki Kaisha v Commission* ECLI:EU:T:2012:48, paragraph 247.

<sup>935</sup> Although Ovarpack did not itself produce trays, it sold such trays on the market. It is therefore clear that it was in a position to exercise a competitive constraint on the other cartel participants.

<sup>936</sup> Case T-99/04 *Treuhand AG v. Commission* ECLI:EU:T:2008:256, paragraph 134.

#### 5.3.2.4. Findings – North-West Europe (NWE)

- (725) The facts described in Section 4.3 of this Decision demonstrate that Linpac, Vitembal, Huhtamäki and Silver Plastic engaged in anticompetitive conduct with regard to foam and rigid trays in NWE comprising Belgium, Denmark, Finland, Germany, Luxembourg, the Netherlands, Norway and Sweden. The overall aim of their contact, whether relating to specific aspects of conduct or to the whole or part of the infringement region, was to increase and maintain prices in NWE above competitive levels and to maintain the status quo in the region. In order to achieve their objective, the parties established a network of multilateral and bilateral meetings and other contacts and participated in one or more of the following cartel activities:
- (a) Agreeing and/or concerting on price increases by, for example, fixing a percentage or percentage band and the dates/timing for increase in order to pass on raw material price increases in a coordinated manner. See for instance the following Recitals: (i) Linpac: (517)-(522), (525), (534), (537), ([...]), ([...]), (568), (575), (582); (ii) Vitembal: (517)-(522), (525), (534); (iii) Huhtamäki: (517)-(522), (534), (559); (iv) Silver Plastics: (517)-(522), (534), (537), (558), (568), (569), (575), (582).
  - (b) Exchanging commercially sensitive information with a view, for example, to monitoring the coordinated price increases and its implementation and/or to monitor the prices for common customers on the market. See for instance the following Recitals: (i) Linpac: (516), (523), (525), ([...]), (530), ([...]), (548), (550), (553)-(555), ([...]), ([...]), ([...]), (561), (580)-(581), (584), (588); (ii) Vitembal: (516), (527), (541), (525), (530), (548), (576), (584); (iii) Huhtamäki: (516), (527), (530), (550), (553)-(555), (559); (iv) Silver Plastics: (516), (523), (527), (541), (553)-(555), (557), (558), (580)-(581), (584), (588).
- (726) Those activities represented a form of coordination by which the parties knowingly substituted practical cooperation between them for the risk of competition throughout the entire period of the cartel.
- (727) While some parties may claim that some contacts between the parties were held for legitimate reasons (for example resulting from cross-supply relationships) and were not restrictive of competition by either object or effect,<sup>937</sup> they have failed to adduce any evidence that would establish this with regard to the evidence presented in Section 4.3. In addition, none of the parties has succeeded in demonstrating that they publicly distanced themselves from the anticompetitive contacts. By failing to publicly distance themselves, the parties are presumed to have taken account of the information exchanged with other cartel participants in determining their own conduct on the market (see Recitals (701)-(706)).
- (728) The Commission concludes that the events described in Section 4.3 demonstrate that the participants either expressed a joint intention to take account of each other's interests and to act in a certain manner that had the object or effect of restricting competition; or knowingly substituted practical cooperation between them for the risks of competition between them. For instance, the evidence clearly shows that the price increases agreed by the parties in the EQA fringe meeting on 13 June 2002 (see

---

<sup>937</sup>

See **ID [...]** (Silver Plastics reply to the SO) and **ID [...]** (Huhtamäki reply to the SO).

Recitals (518)-(519)), in the multilateral meeting on 24 August 2004 and in August/September 2004 (see Recitals (534)-(537)), as well as the price increases in the autumn of 2006 (see Recitals (567)-(572)) and in the subsequent EQA fringe meeting on 16 October 2006 (see Recital (573)), did not result from the participants' independent commercial strategies or any unilateral conduct but was the expression of the participants' joint intention to pass on the rising cost of raw materials to consumers in a coordinated manner. The regularity of meetings between the participants (approximately 30 anticompetitive contacts in a period of under 6 years) made the collusion between the participants more robust and increased the reliability of the cooperation, thus further restricted the independence of the individual commercial strategies. Given that the above mentioned conduct occurred on a continuous and regular basis and that there is evidence of the actual implementation of the agreed arrangements (see Recital (804)), the Commission considers that the parties cannot have failed to take into account the information received from the other parties when determining their conduct on the market.<sup>938</sup>

- (729) Based on the foregoing, the different collusive elements in this case are considered to form part of an overall scheme to coordinate prices and to maintain the status quo in relation to foam and rigid trays in the NWE. The Commission considers that the behaviour of the parties is to be characterised as a complex infringement consisting of various actions which, in isolation or jointly in this case present all the characteristics of an agreement and/or concerted practice in the sense of Article 101 of the Treaty.

#### 5.3.2.5. Findings – Central and Eastern Europe (CEE)

- (730) The facts described in Section 4.4 of this Decision demonstrate that Linpac, Coopbox, Propack and Sirap-Gema engaged in anticompetitive conduct with regard to foam trays in CEE comprising the Czech Republic, Hungary, Poland and Slovakia. The same facts described in Section 4.4 demonstrate that Propack's involvement in the anticompetitive conduct related only to Hungary. The overall aim of the anticompetitive contacts, whether relating to specific aspects of conduct or to the whole or part of the infringement region, was to maintain the status quo concerning customer relations and market shares. In order to achieve their objective, the parties established a network of multilateral and bilateral meetings and other contacts and participated in one or more of the following cartel activities:
- (a) Agreeing and/or concerting on market sharing and compensatory mechanisms whereby the Polish market would be allocated predominately to Linpac; Sirap-Gema/Petruzalek and Coopbox would focus their operations on the Czech, Hungarian and Slovak markets. See for instance the following Recitals: (i) Coopbox: (602)-(618), (653)-(654); (ii) Linpac: (602)-(618), (653)-(654); (iii) Sirap-Gema: (602)-(618), (653)-(654).
  - (b) Agreeing and/or concerting on client allocation. See for instance the following Recitals: (i) Coopbox: (602)-(618), (624), (629), (632), (635)-(636), (645), (647); (ii) Linpac: (602)-(618), (619)-(623), (624), (626)-(627), (628), (629),

---

<sup>938</sup> See, in particular, cases T-303/02, *Westfalen Gassen Nederland BV v Commission*, ECLI:EU:T:2006:374, paragraph 133 and Case C-8/08 *T-Mobile Netherlands BV, KPN Mobile NV, Orange Nederland NV and Vodafone Libertel NV v Raad van bestuur van de Nederlandse Mededingingsautoriteit*, ECLI:EU:C:2009:343, paragraph 62.

(630), (632), (633), (635)-(636), (638)-(639), (641), ([...]), ([...]), (645), ([...]), (647); (iii) Propack: (619)-(623), (626)-(627), (643), (646); (iv) Sirap-Gema/Petruzalek: (602)-(618), (619)-(623), (626)-(627), (628), (629), (630), (632), (633), (638)-(639), (641), (642), (645), (647).

- (c) Agreeing and/or concerting on price increases or minimum prices in order prevent competition threatening the status quo on the market or to reflect the increasing costs of raw materials or to bolster the customer allocation. See for instance the following Recitals: (i) Coopbox: (602)-(618), (629), (635)-(636), (653)-(654); (ii) Linpac: (602)-(618), (619)-(623), (629), (635)-(636), ([...]), (653)-(654); (iii) Propack: (619)-(623); (iv) Sirap-Gema/Petruzalek: (602)-(618), (619)-(623), (629), (644), (653)-(654).
- (d) Exchanging commercially sensitive information, in particular on production capacities, and on other types of commercially sensitive information. See for instance the following Recitals: (i) Coopbox: (602)-(618), (629), (640), (653)-(654); (ii) Linpac: (602)-(618), (619)-(623), (629), (640), ([...]), ([...]), ([...]), ([...]), ([...]), (653)-(654); (iii) Propack: (619)-(623), (643), (646), (649); (iv) Sirap-Gema/Petruzalek: (602)-(618), (619)-(623), (629), (640), (642), (644), (653)-(654).
- (e) Bid-rigging in order to allocate customers pursuant to the Status Quo agreement. See for instance the following Recitals: (i) Coopbox: (629), (645); Linpac: (629), (630), (633), ([...]), (645), (648); (iii) Sirap-Gema/Petruzalek: (629), (630), (633), (642), (645), (648). These activities represented a form of coordination by which the parties knowingly substituted practical cooperation between them for the risk of competition throughout the entire period of the cartel.

(731) While some parties may claim that some contacts between the parties were held for legitimate reasons (for example resulting from cross-supply relationships) and were not restrictive of competition by either object or effect, they have failed to adduce any evidence that would establish this with regard to the evidence presented in Section 4.4. In addition, none of the parties has succeeded in demonstrating that they publicly distanced themselves from the anticompetitive contacts. By failing to publicly distance themselves, the parties are presumed to have taken account of the information exchanged with other cartel participants in determining their own conduct on the market (see Recitals (701)-(706)).

(732) The Commission concludes that the events described in Section 4.4 demonstrate that the participants either expressed a joint intention to take account of each other's interests and to act in a certain manner that had the object or effect of restricting competition; or knowingly substituted practical cooperation between them for the risks of competition between them. For instance, the evidence clearly shows that the detailed customer allocation agreed on by the parties under the so-called Vienna Agreement on 5 November 2004 (see Recitals (602)-(618)) did not result from the participants' independent commercial strategies or any unilateral conduct but was the expression of the participants' joint intention to pass on the rising cost of polystyrene to consumers in a coordinated manner. The subsequent references to the Vienna Agreement (for instance 13 December 2004 (see Recitals (619)-(623)) served the purpose of its further reinforcement and implementation within CEE. The regularity of meetings between the participants (approximately 17 anticompetitive contacts in a period of just under 3 years) made the collusion between the participants more robust

and increase the reliability of the cooperation thus further restricted the independence of the individual commercial strategies. Given that the collusive conduct occurred on a continuous and regular basis and that there is evidence of the actual implementation of the agreed arrangements (see Recital (804)), the Commission considers that the participants cannot have failed to take into account the information received from or disclosed by the other participants when determining their conduct on the market.<sup>939</sup>

- (733) Based on the foregoing, the different collusive elements in this case are considered to form part of an overall scheme to maintain the status quo in the CEE region with regard to customers and market shares in relation to foam trays. The Commission considers that the behaviour of the parties is to be characterised as a complex infringement consisting of various actions which, in isolation or jointly, in this case present all the characteristics of an agreement and/or concerted practice in the sense of Article 101 of the Treaty.
- (734) The Commission further considers that both Petruzalek and Propack (distributors) had an important role in the above described agreements and/or concerted practices. Their roles went beyond the roles of mere distributors, especially in the case of Petruzalek which was vertically integrated with Sirap-Gema (a manufacturer) and is considered to form part of the same undertaking. As described in Section 4.4, both distributors participated in collusive meetings and also took part in the implementation and monitoring of the collusive behaviour. Petruzalek's and Propack's conduct facilitated the implementation of the anti-competitive arrangements and contributed to the common objectives pursued by the cartel participants.<sup>940</sup> On this basis, the Commission concludes that Propack (in so far as it relates to Hungary) and Petruzalek (for the whole CEE) must have been aware of the anti-competitive conduct of the other participants, or could reasonably have foreseen that conduct, and was ready to accept the attendant risk.<sup>941</sup> As such, the distributors subscribed to the overall anticompetitive aim of the cartel and must be therefore considered to have infringed Article 101 of the Treaty.

#### 5.3.2.6. Findings - France

- (735) The facts described in Section 4.5 of this Decision demonstrate that Huhtamäki, Linpac, Sirap-Gema, Vitembal and Silver Plastics engaged in anticompetitive conduct with regard to foam trays in France. The overall aim of their contact was, whether relating to specific aspects of conduct or to the whole or part of the infringement region, to increase and maintain prices in France above competitive levels and to maintain the historical allocation of clients. In order to achieve their objective, the parties established a network of multilateral and bilateral meetings and other contacts and participated in one or more of the following cartel activities:

---

<sup>939</sup> See, in particular, cases T-303/02, *Westfalen Gassen Nederland BV v Commission*, ECLI:EU:T:2006:374, paragraph 133 and Case C-8/08 *T-Mobile Netherlands BV, KPN Mobile NV, Orange Nederland NV and Vodafone Libertel NV v Raad van bestuur van de Nederlandse Mededingingsautoriteit*, ECLI:EU:C:2009:343, paragraph 62.; T-83/08 *Denki Kagaku Kabushiki Kaisha v Commission* ECLI:EU:T:2012:48, paragraph 247.

<sup>940</sup> Although Petruzalek and Propack did not themselves produce trays, they sold such trays on the market. It is therefore clear that they were in a position to exercise a competitive constraint on the other cartel participants.

<sup>941</sup> Case T-99/04 *Treuhand AG v. Commission* ECLI:EU:T:2008:256, paragraph 134.



- (a) Agreeing and/or concerting on price increases by, for example, fixing a percentage or percentage band and the dates/timing for increase in order to pass on to customers the price increase of the raw material in a coordinated manner. See for instance the following Recitals: (i) Huhtamäki: (660)-(665), (666)-(667), (668)-(669), (670)-(671), (678)-(679); (ii) Linpac: (660)-(665), (666)-(667), (668)-(669), (670)-(671), (678)-(679); (iii) Sirap-Gema: (660)-(665), (666)-(667), (668)-(669), (670)-(671), (678)-(679); (iv) Vitembal: (660)-(665), (666)-(667), (668)-(669), (670)-(671), (678)-(679); (v) Silver Plastics: (678)-(679).
  - (b) Agreeing and/or concerting on freezing market position and allocating customers on the French market. See for instance the following Recitals: (i) Huhtamäki: (666)-(667), (668)-(669), (670)-(671), (673)-(674), (680)-(681), (684)-(686); (ii) Linpac: (666)-(667), (668)-(669), (670)-(671), (673)-(674), (680)-(681), (684)-(686); (iii) Sirap-Gema: (666)-(667), (668)-(669), (670)-(671), (673)-(674), (680)-(681), (684)-(686); (iv) Vitembal: (666)-(667), (668)-(669), (670)-(671), (673)-(674), (680)-(681), (684)-(686); and Silver Plastics: (680)-(681).
  - (c) Exchanging commercially sensitive information with a view, for example, to monitoring the coordinated price increases and its implementation and/or to monitor the application of client allocation and the status quo on the French market. See for instance the following Recitals: (i) Huhtamäki: (666)-(667), (668)-(669), (670)-(671), (675)-(677), (678)-(679), (680)-(681), (682)-(683); (ii) Linpac: (666)-(667), (668)-(669), (670)-(671), (675)-(677), (678)-(679), (680)-(681), (682)-(683); (iii) Sirap-Gema: (666)-(667), (668)-(669), (670)-(671), (675)-(677), (678)-(679), (680)-(681), (682)-(683); (iv) Vitembal: (666)-(667), (668)-(669), (670)-(671), (675)-(677), (678)-(679), (680)-(681), (682)-(683) and (v) Silver Plastics: (678)-(679), (680)-(681), (682)-(683).
  - (d) Bid-rigging in order to allocate customers and ensure that the historical agreed client allocation is maintained. See for instance the following Recitals: (i) Huhtamäki: (673)-(674), (680)-(681), (684)-(686); (ii) Linpac: (673)-(674), (680)-(681), (684)-(686); (iii) Sirap-Gema: (673)-(674), (680)-(681), (684)-(686); (iv) Vitembal: (673)-(674), (680)-(681), (684)-(686) and (v) Silver Plastics: (680)-(681).
- (736) Those activities represented a form of coordination by which the parties knowingly substituted practical cooperation between them for the risk of competition throughout the entire period of the cartel.
- (737) While some parties may claim that some contacts between them were held for legitimate reasons (for example resulting from cross-supply relationships) and were not restrictive of competition by either object or effect, they have failed to adduce evidence that would establish this with regard to the evidence presented in Section 4.5. In addition, none of the parties has succeeded in demonstrating that they publicly distanced themselves from the anticompetitive contacts. By failing to publicly distance themselves, the parties are presumed to have taken account of the information exchanged with other cartel participants in determining their own conduct on the market (see Recitals (701)-(707)). In particular, in relation to Silver

Plastics, the Commission concludes that, contrary to what it claims in its reply to the SO,<sup>942</sup> Silver Plastics failed to distance itself from the anticompetitive contacts. The Commission concludes that the anti-competitive character of meetings became clear to Silver Plastics already during its first meeting with other cartel participants (29 June 2005 – see Recitals (678)-(679)). Nevertheless, instead of immediately distancing itself and discounting its participation in any subsequent meetings, Silver Plastics attended subsequent collusive meetings. For instance, the Commission concludes that there was no distancing from the cartel conduct when Silver Plastics merely communicated to the other cartelists that it would not agree to bid-rigging of a tender but still disclosed the fact that it would participate in that tender and also disclosed the supply volumes it was hoping to secure with the customer. Silver Plastics is furthermore presumed to have taken account of the commercial strategies of other cartelists when it in fact placed a bid in the tender (see for instance – 21 September 2005 (Recitals (680)-(681))).

- (738) The Commission concludes that the events described in Section 4.5 demonstrate that the participants either expressed a joint intention to take account of each other's interests and to act in a certain manner that had the object or effect of restricting competition; or knowingly substituted practical cooperation between them for the risks of competition between them. For instance, the evidence clearly shows that the price increase agreed on by the parties on 3 September 2004 (see Recitals (660)-(665)) did not result from the participants' independent commercial strategies or any unilateral conduct but was the expression of the participants' joint intention to pass on the rising cost of polystyrene to consumers in a coordinated manner. The subsequent meetings (for instance – 21 October 2004 (see Recitals (666)-(667))) served the purpose of further aligning their commercial strategies by, for instance, sharing the reactions of customers to the announced price increases. In relation to customer allocation, the parties either expressed their joint intention to allocate customers in a certain agreed manner (for instance – 17 March 2005 (see Recitals (673)-(674)) or disclosed commercially-sensitive information with regard to upcoming tenders and the volumes they were interested in supplying to a particular customer (for instance – 21 September 2005 (Recitals (680)-(681))). The regularity of meetings between the participants (10 anticompetitive contacts in a period of just less than 15 months) made the collusion between the participants more robust and increased the reliability of their cooperation thus further restricted the independence of their individual commercial strategies. Given that the collusive conduct occurred on a continuous and regular basis and that there is evidence of the actual implementation of the agreed arrangements (see Recital (666)), the Commission considers that the participants cannot have failed to take into account the information received from or disclosed by the other participants when determining their conduct on the market.<sup>943</sup>
- (739) Based on the foregoing, the different collusive elements in this case are considered to form part of an overall scheme to coordinate prices and maintain historical customers

---

<sup>942</sup> ID [...] (Silver Plastics reply to the SO).

<sup>943</sup> See, in particular, cases T-303/02, *Westfalen Gassen Nederland BV v Commission*, ECLI:EU:T:2006:374, paragraph 133 and Case C-8/08 *T-Mobile Netherlands BV, KPN Mobile NV, Orange Nederland NV and Vodafone Libertel NV v Raad van bestuur van de Nederlandse Mededingingsautoriteit*, ECLI:EU:C:2009:343, paragraph 62.; T-83/08 *Denki Kagaku Kabushiki Kaisha v Commission* ECLI:EU:T:2012:48, paragraph 247.

in relation to foam trays (standard, absorbent and barrier) in France. The Commission considers that the behaviour of the parties is to be characterised as a complex infringement consisting of various actions which, in isolation or jointly, in this case present all the characteristics of an agreement and/or concerted practice in the sense of Article 101 of the Treaty.

### 5.3.3. *Single and continuous infringement*

#### 5.3.3.1. Principles

- (740) A complex cartel may properly be viewed as a single and continuous infringement for the time frame in which it existed. The General Court points out, among others, in the Cement cartel case that the concept of ‘single agreement’ or ‘single infringement’ presupposes a complex of practices adopted by various parties in pursuit of a single anti-competitive economic aim.<sup>944</sup> The agreement may well be varied from time to time, or its mechanisms adapted or strengthened to take account of new developments. The validity of this assessment is not affected by the fact that one or more elements of a series of actions or of a continuous course of conduct could individually and in themselves constitute a violation of Article 101 of the Treaty.
- (741) Although a cartel is a joint enterprise, each participant in the arrangement may play its own particular role. One or more may exercise a dominant role as ringleader(s). Internal conflicts and rivalries, or even cheating may occur, but will not however prevent the arrangement from constituting an agreement/concerted practice for the purposes of Article 101 of the Treaty where there is a single common and continuing objective.
- (742) The mere fact that each participant in a cartel may play the role which is appropriate to its own specific circumstances does not exclude its responsibility for the infringement as a whole, including acts committed by other participants but which share the same unlawful purpose and the same anti-competitive effect. An undertaking which takes part in the common unlawful enterprise by actions which contribute to the realisation of the shared objective is equally responsible, for the whole period of its adherence to the common scheme, for the acts of the other participants pursuant to the same infringement. This is certainly the case where it is established that the undertaking in question was aware of the unlawful behaviour of the other participants or could have reasonably foreseen or been aware of them and was prepared to take the risk.<sup>945</sup>
- (743) The fact that the undertaking concerned did not participate directly in all the constituent elements of the overall cartel cannot relieve it of responsibility for the infringement of Article 101(1) of the Treaty. Such a circumstance may nevertheless be taken into account when assessing the seriousness of the infringement which it is found to have committed. Such a conclusion is not at odds with the principle that responsibility for such infringements is personal in nature, nor does it neglect

---

<sup>944</sup> Joined Cases T-25/95 and others, *Cement*, ECLI:EU:T:2000:77, paragraph 3782.

<sup>945</sup> See Case C-49/92, *Commission v Anic Partecipazioni* ECR ECLI:EU:C:1999:356, paragraph 83.

individual analysis of the evidence adduced, in disregard of the applicable rules of evidence, or infringe the rights of defence of the undertakings involved.<sup>946</sup>

- (744) In fact, as the Court of Justice stated in its judgement in Case *Commission v Anic Partecipazioni*, the agreements and concerted practices referred to in Article 101(1) of the Treaty necessarily result from collaboration by several undertakings, who are all co-perpetrators of the alleged infringement but whose participation can take different forms according, in particular, to the characteristics of the market concerned and the position of each undertaking on that market, the aims pursued and the means of implementation chosen or envisaged. It follows, as reiterated by the Court in the Cement cases, that an alleged infringement of Article 101 may result not only from an isolated act but also from a series of acts or from a continuous conduct. That interpretation cannot be challenged on the ground that one or several elements of that series of acts or continuous conduct could also constitute in themselves and taken in isolation an alleged infringement of Article 101 of the Treaty. When the different actions form part of an ‘overall plan’, because their identical object distorts competition within the internal market, the Commission is entitled to impute responsibility for those actions on the basis of participation in the alleged infringement considered as a whole.<sup>947</sup>
- (745) An undertaking that has only taken part in some of the forms of anticompetitive conduct comprising a single and continuous infringement, but has not contributed to all the common objectives pursued by the other participants in the cartel or was not aware of or could reasonably have foreseen all the other offending conduct planned or put into effect by the other participants, cannot be relieved of its liability for the conduct in which it has undeniably taken part of for which it can undeniably be held responsible, if such conduct may in itself constitute an infringement of Article 101 of the Treaty.<sup>948</sup>

#### 5.3.3.2. Arguments of the parties

- (746) In the SO, the Commission considered that the agreements and/or concerted practices found to exist in relation to each of the five separate geographic regions constituted separate cartels. However, the arrangements in each cartel constituted, on their own, a single and continuous infringement underpinned by a cartel-specific common anticompetitive plan.
- (747) The Commission's position, as set out in the SO, is in contrast with some of the representations made by the parties before and after the SO. Before the SO, [company name], [company name] and [company name] argued that the cartel activities in the five regions fell under the concept of one single infringement, whereas [company name] maintained the opposite. [Company name] and [company name] changed their positions in their replies to the SO: [company name] considered that the infringements were closely linked to each other and hence formed a single and continuous infringement, whereas [company name] supported the Commission's

---

<sup>946</sup> Joined cases T-101/05 and T-111/05 *BASF AG and UCB SA v Commission* ECLI:EU:T:2007:380, paragraphs 60.

<sup>947</sup> See Joint Cases C-204/00 and others, *Aalborg Portland et al.* ECLI:EU:C:2004:6, paragraph 258. See also Case C-49/92, *Commission v Anic Partecipazioni* (ibidem) ECLI:EU:C:1999:356, paragraphs 78-81, 83-85 and 203.

<sup>948</sup> C-441/11 *Commission v Verhuizingen Coppens NV* ECLI:EU:C:2012:778, paragraphs 44-45.

conclusion that there were insufficient links between the collusive behaviour in different geographic areas to find an overarching collusive plan.<sup>949</sup> In its reply to the SO, also [company name] stated that the five arrangements form one single and continuous infringement.<sup>950</sup>

- (748) [Company name], [company name] and [company name] all argue that similarities in terms of product, participants, time periods and functioning of the cartels in the five regions indicate that the five arrangements form a single and continuous infringement. [Company name] and [company name] also argue that the collusive conducts in the different regions were complementary to each other and that the stability of one anti-competitive arrangement depended on the existence of an overall balancing mechanism across the regions. The parties refer to instances showing 1) cross-regional agreements on "non-aggression", 2) that an undertaking sought to avoid a local conflict by granting compensations in another region and 3) that an aggressive move in one region triggered a retaliatory action in another region.<sup>951</sup>
- (749) While [company name] did not comment on and did not dispute the finding of a single and continuous infringement in its reply to the SO, it had already before it received the SO stated that there was one single and continuous infringement. Its views were based on several elements. First, the collusion concerned identical products which were sourced, for example by large retailers like Carrefour, on the basis of EU-wide tenders. Second, a core group of companies was involved in the restrictive practices across various regions, even though some smaller players such as Magic Pack in Italy and Propack in the CEE were only active in one region. Third, [company name] submitted that the contacts had largely overlapped, time-wise, as the practices began some time in the 1990s and ended between 2007 and 2008. Fourth, the individuals involved in and aware of the contacts were sometimes the same and often had European-wide responsibilities, showing at least some form of broad cross-border coordination and cross-links between the countries involved. [Company name] provided some examples of such high-level coordination. Finally, according to [company name] the competitors adopted the same mechanism to pursue the same anti-competitive object and a single economic goal.<sup>952</sup>
- (750) [Company name] similarly contends that, even though the cartel contacts took place in different geographic areas, there was an overarching collusive scheme covering at least Italy, France, Spain, Portugal and certain Eastern European countries. First, [company name] maintains notably that such contacts pursued a single objective, namely maintaining the existing competitive equilibrium and status quo across all the regions. In particular, the single collusive acts were complementary to each other, and given the characteristics of the retail food packaging sector, it would not have been possible to maintain a "local status quo" in the absence of a more complex strategy or mechanism regulating the expansion of the various players onto the local markets. The common objective of the collusive contacts is, according to [company name], further demonstrated by the awareness on the part of both top level and local managers of decisions taken in the different regions, the tendency to seek the intervention of high level managers in case of local conflicts, the offers to

---

<sup>949</sup> See ID [...] and ID [...]

<sup>950</sup> ID [...]

<sup>951</sup> ID [...] and ID [...]

<sup>952</sup> ID [...]

competitors of compensations in another region than the one discussed, the general tendency to take into account the competitors' conduct in other regions and finally the existence of meetings in which several regions were discussed. Second, [company name] contends that the participants' conduct in all regions followed essentially the same modalities, such as bilateral and multilateral contacts aimed at maintaining the existing customer allocation and coordinating prices. Third, more than half of the participating undertakings (excluding distributors) were involved in collusive contacts in more than one region. In each region the aggregate market share of the undertakings involved in more than one infringement exceeded 80% (2007). These market players participated in collusive contacts in those regions where they had a significant market share.<sup>953</sup> According to [company name], this shows a subjective connection between the infringements and allows the identification of the key participants in the overall collusive arrangement. Finally, [company name] highlights the overlaps in time between the five infringements, namely between 2004 and 2006 in all geographical regions, between 2004 and 2008 in four regions and between 2002 and 2008 in three regions. [Company name] refers to concrete examples and evidence in support of the arguments summarised in this Recital.<sup>954</sup>

- (751) [Company name] originally contested the existence of a single and continuous infringement covering more than one geographic area. [Company name], which was involved in cartel activities in four regions, denied that there was an overarching collusive scheme, and maintained that the arrangements should be viewed as separate infringements.<sup>955</sup> However, in its reply to the SO, [company name] states that in view of the documents contained in the file, it "*realised that there was indeed a strategy of coordination between the main operators as a result of which the arrangements in each geographical zone were closely linked to those of another geographical zone, and that this strategy was implemented by a 'core group' of operators, concerning the same category of products, for widely overlapping time periods and with the use of the same mechanisms*".<sup>956</sup> [Company name] further outlines four elements in support of its position. First, [company name] points out that the historical and structural background characterising the retail food packaging sector was the same in all the regions. The manufacturers typically found themselves squeezed between big suppliers of raw materials on one side and powerful customers on the other side. This led to simultaneous price increases across all the regions. Second, the single agreements aiming at maintaining the competitive status quo in each region would not have been possible without an efficient global coordination ensuring that competitors from other regions did not disrupt the created balance within each region. To maintain the status quo the presidents of the different undertakings did not need to meet personally as the competitive balance was ensured through a process of "commercial diplomacy" acting as an "invisible hand", a mechanism confirmed by several pieces of evidence in the file. Third, a number of individuals involved were responsible within their undertaking for multiple regions and also participated in meetings in several regions. Thus these individuals had a broader awareness of the

---

<sup>953</sup> [Company name] points out that the aggregate market share of the key participants is an element which has previously been taken into account by the Commission when determining the nature of the infringement, see COMP/AT38.620 Hydrogen Peroxide and Perborate, Recital 332.

<sup>954</sup> ID [...]

<sup>955</sup> ID [...]

<sup>956</sup> ID [...]

activities in the regions concerned and could use that knowledge during discussions with competitors. Fourth, [company name] provides a number of examples of meetings at which the discussions concerned more than one region.<sup>957</sup>

(752) Conversely, [company name] argues that the anti-competitive arrangements in each region did not pursue a common strategy such as to link them together under a single infringement. According to [company name], the food tray markets were essentially national due to differences in prices, customer preferences and the impact of transportation costs and, even if similar, the anti-competitive practices between competitors were limited to the region concerned. In support hereof, [company name] points out that the infringements in which it participated presented their own specificities (such as [company name's] destabilising conduct in Italy), most of the meetings described in the SO concerned only one region, compensation measures were mostly enacted within the territory of the concerned breach and the participating individuals and legal entities - even within the same undertaking - differed across the regions. Finally, [company name] finds that the evidence linking Italy and France is not sufficient to conclude that the two countries fall under the same infringement.<sup>958</sup>

(753) In its reply to the SO, [company name] argues that the respective submissions of the parties in support of a single and continuous infringement should be awarded a particularly high degree of credibility, since they broaden rather than narrow the scope of the arrangements (and thus increase the gravity of the infringements) by characterising them as a single infringement covering all regions. [Company name] further recalls the case law according to which a person's admittance of an infringement and of the existence of facts going beyond those whose existence could be directly inferred from the documents available implies, a priori, in the absence of special circumstances indicating otherwise, that that person had resolved to tell the truth. Finally [company name] underlines that the subjective perception – in this case expressed by three undertakings – is a relevant factor for the purposes of the assessment under Article 101(1) of the Treaty.<sup>959</sup>

#### 5.3.3.3. Discussion and findings

(754) The Commission observes that the categorization of the unlawful actions affects the penalty that may be imposed. A finding that the unlawful conducts in all regions constitute one single infringement broadens the scope of the infringement in which each undertaking is involved and may therefore increase the gravity to be taken into consideration when determining the fine. A finding that multiple infringements exist, may result in several distinct fines being imposed on the same undertaking, each of which may reach the upper limit of 10% of the undertaking's turnover as defined in Article 23(2) of Regulation (EC) No 1/2003. Several distinct fines may lead to an aggregate fine exceeding 10% of the undertaking's total turnover, which would not occur if the arrangements were categorised as one single infringement. In particular, [company name], which was involved in three infringements, could be exposed to an aggregated fine exceeding 10%, as it pointed out itself in its reply to the SO.<sup>960</sup> Therefore, due to the particularities of this case, parties that are involved in cartel

---

<sup>957</sup> ID [...]

<sup>958</sup> ID [...]

<sup>959</sup> ID [...]

<sup>960</sup> ID [...]

activities in several regions may have a self-serving interest to argue in favour of categorising the arrangements as one single and continuous infringement while other parties may have an interest to argue in favour of several distinct infringements. In conclusion, the Commission does therefore not agree with [company name's] argument that submissions made by parties supporting the finding of a single continuous infringement should necessarily be attributed a higher degree of credibility than submissions that argue the opposite.

- (755) It is recalled that, as established by case law, the existence of a single and continuous infringement must be inferred from a number of coincidences and indicia which, taken together and in the absence of another plausible explanation, constitute evidence of a single and continuous infringement and each manifestation corroborates the actual occurrence of the infringement.<sup>961</sup>
- (756) As established by case law, the concept of a single objective cannot be determined by a general reference to the distortion of competition with regard to a certain sector or market (for instance for foam trays), since an impact on competition, whether it is the object or the effect of the conduct in question, constitutes a substantial element of any conduct covered by Article 101 (1) of the Treaty. Such a definition of the concept of a single objective is likely to deprive the concept of a single and continuous infringement of a part of its meaning, since it would have the consequence that different types of conduct which relate to a particular economic sector and are prohibited by Article 101 (1) would have to be systematically characterised as constituent elements of a single infringement.<sup>962</sup> It is thus necessary to establish whether the series of conducts are complementary and whether through interaction, they contribute to the attainment of the set of anti-competitive effects desired by those responsible, within the framework of a global plan with a single objective. In that regard, it will be necessary to take into account any circumstance capable of establishing or of casting doubt on that link, such as the period of implementation, the content, including the methods used, and correlatively, the objective of the various actions in question.<sup>963</sup>
- (757) The Commission does not deny that the evidence in its file and the representations of the undertakings involved demonstrate certain objective links which, depending on the specific circumstances of a case, could support the finding of a single and continuous infringement. Indeed all the infringements concern the same type of product (foam trays), encompass the same types of anti-competitive behaviour (price fixing, exchange of sensitive information and (with the exception of NWE) customer and/or market allocation), occur with certain time overlaps and partly involve the same participants (with Linpac being the only undertaking present in all regions). However, in line with the case-law<sup>964</sup>, for there to be a single and continuous infringement, it must be demonstrated that the undertakings were pursuing an overall

---

<sup>961</sup> T-53/03 *BPB plc v Commission*, ECLI:EU:T:2008:254, paragraph 249.

<sup>962</sup> Joined cases T-101/05 and T-111/05 *BASF AG and UCB SA v Commission* ECLI:EU:T:2007:380, paragraph 180. See also T-385/06, *Aalberts Industries NV and others v Commission* ECLI:EU:T:2011:114, paragraph 88.

<sup>963</sup> T-385/06, *Aalberts Industries NV and others v Commission* ECLI:EU:T:2011:114, paragraph 88.

<sup>964</sup> Case T-27/10, *AC-Treuhand v Commission*, ECLI:EU:T:2014:59, paragraphs 239 and 243 and Case T-11/05, *Wieland-Werke and Others v Commission*, ECLI:EU:T:2010:201, paragraph 82; T-446/05, *Amann & Söhne and Cousin Filterie v Commission*, ECLI:EU:T:2010:165, paragraph 95; T-53/03 *BPB plc v Commission*, ECLI:EU:T:2008:254, paragraph 246.



common plan to distort competition, in this case in the geographical area covering Italy, SWE, NWE, CEE and France.

- (758) The Commission notes, in this respect, that the described similarities in terms of product, type of conduct and partial chronological and personal overlaps are not in this case in themselves sufficiently strong to establish the existence of such an overall collusive plan. The large majority of the evidence concerns contacts related to one and the same geographic area and there is no documentary evidence of a common strategy between the competitors to allocate customers or markets, increase prices or maintain the status quo in market shares at an almost pan-European level. The contacts relating to more than one region were sporadic and appear to be mostly bilateral contacts between different parties, covering at most two or three regions and often aimed at finding an ad hoc solution to a situation or problem arisen in a specific region. Examples of cross regional considerations can be found in some internal notes or e-mails.<sup>965</sup> However, such elements are likely to follow from the fact that the undertakings were active in several regions and as such necessarily were aware and took account of the situation on the broader European market when adopting their commercial strategies.
- (759) The clearest case of conduct covering more than one region is the Carrefour tender in 2006 (covering France, Belgium and Italy) which however appears to be an isolated event in the general development of the arrangements. This example also demonstrates that any incidental overlaps between the cartels resulted mainly from particular tendering rules drafted by customers rather than from any overarching consistent links between the cartels. Furthermore, [...] the first global auction (namely covering more than one country) only took place at the end of 2006, the time when the cartel covering France had already ended (see Section 7.1.5).<sup>966</sup>
- (760) Although the infringements share some objective features, such as price fixing or customer allocation (which are common in many cartels),<sup>967</sup> some of them also present distinguishing elements. For instance, bid-rigging practices were not enacted in all the regions, but only in CEE, Italy and France and customer or market allocations were not part of the NWE cartel. Moreover, rigid trays were discussed among competitors in the NWE cartel whereas cartel discussions in the remaining regions mainly concerned foam trays. There were significant variations in the markets for foam and rigid trays at national and regional level as to the level of prices<sup>968</sup> and end-consumers' preferences.<sup>969</sup>
- (761) As far as the alleged complementarity of the arrangements in the different cartels is concerned (for example cross-region compensation and retaliation), the Commission notes that only very few of the examples relied on by the parties, may be indicative of some interaction between the cartels [...].<sup>970</sup> Most of those instances are

---

<sup>965</sup> ID [...], ID [...], ID [...], [...], ID [...], ID [...], ID [...], ID [...], ID [...], ID [...]

<sup>966</sup> ID [...]

<sup>967</sup> Case T-11/05, *Wieland-Werke and Others v Commission*, ECLI:EU:T:2010:201, paragraph 91.

<sup>968</sup> ID [...]: The price level in France is traditionally around 20%-30% higher in France than in Germany.

<sup>969</sup> ID [...] ([non-addressee] - reply to RFI): In Germany for example fresh meat is primarily packaged in PP trays, whereas a lot of countries (e.g. Spain, Portugal and France) are still dominated by foam trays.

<sup>970</sup> ID [...] and ID [...] (involving CEE, France, Italy), ID [...] (France, NWE), ID [...] (NWE, France), ID [...] (Italy, France), ID [...] (SWE, France), ID [...] and [...] (CEE, Italy), ID [...] (CEE, France, NWE), ID [...] and [...] (CEE, France), ID [...] (France, Italy), ID [...] (CEE, France), ID [...] and ID [...]

occasional, and do not involve more than two regions and a maximum of three undertakings at a time. Some of the cross-regional trade-offs mentioned may, conversely, be seen as a consequence of the absence of an overall scheme to regulate the relationships between the parties involved and merely an expression of undertakings taking advantage of being positioned in several regions. In addition, there are other examples in the file which clearly support the absence of any cross-regional compensation or retaliation schemes. In that respect the Commission refers to the following examples:

- (a) [...] a meeting between Linpac, Sirap-Gema and Coopbox on 24 September 2007 in Verona to discuss compensations to Coopbox for volumes lost to Sirap-Gema and to Linpac in France and Sweden. [...] there was no agreement in place which would have entitled Coopbox to any compensation: [...]<sup>971</sup>
- (b) [...] the following in relation to a meeting in 2007 between Linpac and Coopbox: [...]<sup>972</sup>
- (c) In relation to Sirap-Gema's choice of supplier to its subsidiary Petruzalek, internal Coopbox notes of April 2003 contain the following: *'SG will have preference for CX, unless they have no choice/have to prefer someone for reasons of "non-belligerence" (eg. it takes from [non-addressee] because for the same price, in exchange for the supply, D. commits to not disturb for example in France).'*<sup>973</sup>

(762) The argument that there must have been an overall cross-regional coordination in place in order for the local status quo arrangements to have made sense is not substantiated by any facts or evidence. Besides the general assertions of [company names], there is nothing which suggests that the cartels in essence could not have functioned or did not function in isolation, that is to say, without the existence of anti-competitive arrangements in the bordering regions. The mere fact that some of the cartels existed for several years before the market was cartelised in neighbouring regions would rather suggest the opposite.<sup>974</sup> The evidence indicates that some undertakings may have had a certain limited degree of awareness of the ongoing activities in the different regions, in particular due to having market presence across more than one cartel and also some instances of internal reporting.<sup>975</sup> However, in line with the case-law<sup>976</sup>, these indicia do not demonstrate the existence of an overall plan or the joint intention of the parties to adhere to such a plan.

---

[...] (SWE, France), ID [...] (Italy, France), ID [...] (SWE, France), ID [...] (Italy, France, Belgium), ID [...] (SWE, Italy)

<sup>971</sup> ID [...]

<sup>972</sup> ID [...]

<sup>973</sup> ID [...] (Coopbox – inspection document).

<sup>974</sup> See Section 7 below.

<sup>975</sup> For instance ID [...], ID [...], ID [...], ID [...], also referred to by Coopbox in its reply to the SO, ID [...]

<sup>976</sup> For instance ID [...], ID [...], ID [...], ID [...], also referred to by Coopbox in its reply to the SO, ID [...]. See also Case T-11/05, *Wieland-Werke and Others v Commission*, ECLI:EU:T:2010:201, paragraph 89; T-446/05, *Amann & Söhne and Cousin Filterie v Commission*, ECLI:EU:T:2010:165, paragraph 108.

- (763) Nor does the evidence in the file support the alleged existence of a group of core participants to a common scheme covering all or more than one region. Linpac was the only undertaking involved in all regions. Out of eleven undertakings involved, only five other undertakings participated in more than one regional cartel: Vitembal, Sirap-Gema, Coopbox, Silver Plastics and Huhtamaki. The number of the cartels and the cartels concerned in which each of these undertakings was involved differed. Also, no cartel had more than six participating undertakings with a limited and diverging overlap in participants across the regions. The limited overlap of participants in the cartels has in previous case law been taken into account in combination with other elements when assessing the single nature of several infringements.<sup>977</sup> [Company name's] reference to the high aggregate market shares of the undertakings involved in more than one region does not allow to draw any conclusions on the links between the cartels given that the undertakings involved differed.
- (764) The anticompetitive agreements and practices were at the outset defined and enacted at regional level, and not on the basis of high level coordination amongst the European top managers. This is well illustrated by the contents of the cartel contacts and by the participating individuals in each cartel, which differed irrespective of whether some of them were employed by the same undertaking. In addition, each region had its own fora or venues for discussion. In Italy the competitors typically met around the cities of Parma, Cremona, Modena and Bologna and at the premises of the Italian Packaging Association in Milan. In SWE meetings typically took place in Madrid, Lisbon or Barcelona. In NWE the anti-competitive contacts were often held on the fringe of EQA official industry meetings usually in Düsseldorf, Frankfurt and Cologne. As for CEE, meetings took place at various locations principally within the countries concerned. In France, multilateral meetings often took place on the fringe of official industry meetings under CSEMP in Paris. There is no evidence to indicate that those meetings were merely meant to implement or fine tune at regional level what had been decided in an overarching scheme at pan-European level.
- (765) [...] there are examples of the involvement in the cartels of European top managers whose responsibilities cover more than one region. However, most of the evidence quoted consists of either internal reportings to higher managers and representatives of the parent company with information about relevant market issues<sup>978</sup> or competitor contacts with the presence of top managers which concern only one region<sup>979</sup>. Another example concerns the Carrefour tender in Italy in December 2007. Evidence shows that Coopbox could not get in touch with Linpac Italy and therefore called upon [company representative] (Linpac) in Spain to try to solve the conflict in Italy. Whilst this shows a link between Italy and SWE, this contact is likely to be the logical consequence of the fact that [company representative] had been Linpac's [function of company representative] until March that year when he moved to the Spanish subsidiary. In this respect it should be noted that this is the only example showing a link between [company representative] and Italy after March 2007, when

---

<sup>977</sup> Joined cases T-71/03, T-74/03, T-87/03, T-91/03, ECLI:EU:T:2005:220, paragraph 120 and Amann&Söhne, T-446/05, paragraph 99. Case T-27/10, *AC-Treuhand v Commission*, ECLI:EU:T:2014:59, paragraphs 245-246; Case T-11/05, *Wieland-Werke and Others v Commission*, ECLI:EU:T:2010:201, paragraph 89..

<sup>978</sup> ID [...]

<sup>979</sup> ID [...]

he changed jobs within Linpac and went from being a key participant in the Italian infringement to being a key participant in the SWE infringement. Upon taking up the position in Spain, [company representative] stopped participating in any contacts in Italy and, conversely, only engaged in contacts with the participants in SWE. This constitutes a further indication of the separate nature of the cartels.

- (766) The only clear examples of multilateral meetings between European top managers at which more than one region was discussed are the meetings of 11 January 2005 at the Malpensa Airport, Milan, between Linpac, Vitembal, Coopbox, Sirap-Gema and Nespak and the meeting of 18 January 2005 in Barcelona between Linpac, Vitembal, Coopbox, Huhtamaki and Sirap-Gema. At the former meeting in Italy, the competitors discussed how to restore the balance in Italy after Linpac's aggressive pricing. Sirap-Gema forwarded a proposal to assign to the market leader (Sirap-Gema in Italy, Linpac in Spain and Vitembal in France) the role of coordinator of price increases (Recital (198)). It is not known how the proposal was received amongst the competitors and whether it was pursued. At the latter meeting in Barcelona, the managers discussed sales and prices especially in SWE, but also in France (Recital (456)).
- (767) As mentioned in Recital (762) and on the basis of the quoted evidence, the Commission considers that it is likely that some of the high level managers may have been aware of the cartels in which their respective undertakings were involved. However, the scarcity of examples of clear cross-regional and top level coordination indicates that cartel activities were at the outset defined regionally. In fact, [...] it appears that top managers were called upon when a specific conflict arose and the competitors' original plans did not work out.<sup>980</sup> Evidence also points to an actual lack of central coordination at headquarter level. As described in Recital (373), notes show that in March 2007, Linpac stressed to Coopbox that it wanted to keep the arrangements in SWE secret from Linpac Europe. In an internal email within Coopbox, in which [company representative] calls for a high level intervention to maintain the customer Eroski in Spain in April 2007, [company representative] refers to the '*disintegration of the producers*' and to the fact that '*some of the big ones (first of all Linpac) do not have a central point of command.*'<sup>981</sup>
- (768) [Company names] refer to the fact that some of the same individuals participated in anti-competitive contacts concerning different geographical regions. However, each regional cartel was made up of relationships between its own core participants and there are only a few examples of individuals participating in meetings in more than one region within the same time period. Most of those examples concern persons who were exceptionally present at a meeting (usually merely accompanying the usual participant from the same undertaking) in a different region than their own (for instance [company representative] in France (once), [company representative] in CEE (once), [company representative] in CEE (twice), [company representative] in SWE (once), [company representative] in Italy (once), [company representative] in SWE (once), [company representative] in SWE (once), and [company representative] in Italy and SWE (once)) or high level managers with cross regional responsibilities

<sup>980</sup>

ID [...] and ID [...]

<sup>981</sup>

ID [...] (Coopbox inspection document): Original in Italian: "*In generale poi ritengo che questo sia un altro elemento che dimostra la disgregazione dei produttori in lotta fra di loro e con l'aggravante che alcuni grandi ( LINPAC in primis) non hanno un comando centrale.*"

(for example [company representative] (Linpac) in Italy, SWE and France, [company representative] (Sirap-Gema) in Italy and France, and [company representative] (Coopbox) in SWE and Italy). The case is different for Vitembal, whose President, [company representative], because of his responsibilities and position with the undertaking, was active in all four infringements in which Vitembal participated (although he was present only once in NWE) and whose Commercial Director, [company representative], was present at meetings in three regions. Their participation is however neither in isolation nor in combination with other indicia enough to conclude that there was an overall common plan that would prove the existence of a single and continuous infringement.

- (769) In the SO, the Commission considered that the evidence was not sufficiently strong to underpin the links between France and Italy. The Commission observed that both countries were discussed at a few meetings and between some of the same individuals. Italy and France are mentioned especially in the context of reverse tender auctions which covered more than one country. However, those reverse tender auctions were a late development in the cartels, as they started only in 2006, after the French infringement ended. The meetings and detailed coordination concerning Carrefour's joint tender for Belgium, France and Italy in December 2006 seem more of a reaction to the switch to a cross-border tender rather than due to the existence of a single, overarching arrangement for France and Italy. Also the periods of the infringements are not the same. While the infringement on the Italian market lasted from 2002 to 2007, the evidence relating to the French infringement indicates that it lasted from 2004 to 2005. Furthermore, the evidence shows that the price increases were not implemented simultaneously and the undertakings and individuals involved differed. Vitembal, Linpac and Sirap-Gema were involved in both countries whereas Huhtamäki was present only in France, and Magic Pack, Coopbox and Nespak were involved only in Italy. The Commission therefore maintains that there was no common plan linking the French and the Italian cartels and concludes that the French and Italian cartels constitute separate infringements.
- (770) In conclusion, for the reasons outlined in Recitals (754)-(769) above, the Commission considers that the complex of agreements and/or concerted practices found to exist in relation to each of the defined regions constitute five separate cartels.

#### 5.3.3.4. Single and continuous infringement – Italy

- (771) The facts described in Section 4.1 of this Decision constitute a single and continuous infringement of Article 101(1) of the Treaty in relation to the foam trays market in Italy. This is notwithstanding that each of the cartel activities described in Section 4.1 and listed in Section 5.3.2.2 could be qualified, when looked at in isolation, as separate infringements of Article 101(1) of the Treaty in relation to the same market.
- (772) For the period from **18 June 2002** to **17 December 2007**, Linpac, Coopbox, Sirap-Gema, Vitembal (between 5 July 2002 and 17 December 2007), Nespak (between 7 October 2003 and 6 September 2006) and Magic Pack (between 13 September 2004 and 7 March 2006) engaged in different types of anti-competitive agreements and/or concerted practices (see Section 5.3.2.2) pursuant to a common anticompetitive plan aimed at restricting competition on the Italian market for foam trays (see Section 5.3.4).
- (773) The single and continuous nature of the infringement is demonstrated by a clear continuity of meetings and other contacts, by the individuals involved and by the

modalities of the cartel behaviour. As described in Section 4.1.3 above, the parties engaged in anti-competitive contacts when the price of raw material (polystyrene) was rising, and when a new competitor entered the market or a customer planned a change in its supply, threatening the existing status quo. Throughout the duration of the infringement, the competitor contacts focused on price coordination, exchange of commercially sensitive information, customer allocation, and bid rigging of tenders.

- (774) The agreements between the competitors were applicable mainly to the Italian market. There are only few examples where discussions on prices, tenders or customer allocation contain references to territories outside Italy (see Recitals (138), (198), (240), (289) and (331)).
- (775) Since the discussions concerned only one product, all the participants taking part in the meetings were necessarily aware of the product scope of the cartel. Since all cartel members participated, with varying frequency, in multilateral meetings, they were aware of all aspects of the cartel which were discussed multilaterally, such as the introduction and monitoring of price increases, or the sharing out of GDO tenders. As regards bilateral arrangements, such as the management of common industry clients, all cartel members were involved, to a greater or lesser extent, in such contacts, and it is clear from the corporate statements describing the cartel's *modus operandi* that it was common ground that such bilateral contacts were one of the ways in which the cartel operated.
- (776) Given the above mentioned links and the common objective of eliminating competition in the sector of foam trays for retail food packaging in Italy, the Commission considers that the complex of collusive arrangements described in Section 4.1 are inter-related and form part of an overall plan. It therefore concludes that there was one single and continuous infringement of Article 101(1) of the Treaty.

#### 5.3.3.5. Single and continuous infringement – South-West Europe (SWE)

- (777) The facts described in Section 4.2 of this Decision constitute a single and continuous infringement of Article 101(1) of the Treaty in relation to the foam trays market in Spain and Portugal. This is notwithstanding that each of the cartel activities described in Section 4.2 and listed in Section 5.3.2.3 could be qualified, when looked at in isolation, as separate infringements of Article 101(1) of the Treaty in relation to either of the two countries covered by the cartel.
- (778) Linpac, Coopbox (in the period from 2 March 2000 to 13 February 2008), Vitembal (in the period between 7 October 2004 and 25 July 2007), Huhtamäki (in the period between 7 December 2000 and 18 January 2005) and Ovarpack (in the period between 7 December 2000 and 12 January 2005 and between 25 October 2007 and 13 February 2008) engaged in different types of anti-competitive agreements and/or concerted practices (see Section 5.3.2.3) pursuant to a common anticompetitive plan aimed at restricting competition on the SWE market for foam trays (see Section 5.3.4).
- (779) The single and continuous nature of the infringement is demonstrated by a clear continuity of meetings and other contacts, by the individuals involved and by the modalities of the cartel behaviour. In particular, the Spanish and the Portuguese markets were discussed together in a significant number of contacts (see Recital (369)). The same individuals participated in the collusive contacts concerning either market. Even though there was an initial period of around three months (see Recitals

(383)-(393)) which related solely to Spain, this does not affect the single nature of the infringement given the overall duration of the cartel of over 8 years. That relatively short period will therefore not have any impact on the assessment of the cartel's gravity or overall duration. As described in Section 4.2 above, the parties engaged in anti-competitive contacts with the aim of maintaining the status quo between competitors, introducing price increases and avoiding potential price reductions due to customers' attempts to negotiate. Throughout the duration of the infringement, the arrangements focused on price coordination, exchange of commercially sensitive information and customer allocation. The parties were also aware of all the aspects of the cartel owing to their participation in multilateral collusive meetings.

- (780) The agreements on common price increases and customer allocation were applicable and limited to the Spanish and Portuguese markets. There are only a few examples of references to other regions (see Recitals (408), (440), (456)-(458) and (461)).
- (781) As explained in Recital (723)- Ovarpack was a distributor in Portugal and its role and conduct in the SWE cartel related to Portugal. However, the evidence clearly shows that Ovarpack was aware that it was taking part in an arrangement which also covered Spain (see for example Recitals (402), (417), (422), (454) and (500)-(502)). Therefore, as explained in Recitals (742)-(743), it can be held liable for the infringement as a whole for the period of its participation.
- (782) Given the above mentioned links and the common objective of eliminating competition in the sector of foam trays for retail food packaging in Spain and Portugal, the Commission considers that the complex of collusive arrangements described in Section 4.2 are inter-related and form part of an overall plan. It therefore concludes that there was one single and continuous infringement of Article 101(1) of the Treaty.

#### 5.3.3.6. Single and continuous infringement –North-West Europe (NWE)

- (783) The facts described in Section 4.3 of this Decision constitute a single and continuous infringement of Article 101(1) of the Treaty and Article 53 of the EEA Agreement in relation to the foam and rigid trays market in NWE. This is notwithstanding that each of the cartel activities described in Section 4.3 and listed in Section 5.3.2.4 could be qualified, when looked at in isolation, as separate infringements of Article 101(1) of the Treaty and Article 53 of the EEA Agreement in relation to each of the eight countries as well as each product (foam trays and rigid trays) covered by the cartel.
- (784) For the period from 13 June 2004 until 29 October 2007 Linpac, Silver Plastics; Vitembal (only until 12 March 2007) and Huhtamäki (only until 20 June 2006) engaged in different types of anticompetitive agreements and/or concerted practices (see Section 5.3.2.4) pursuant to a common anticompetitive plan aimed at restricting competition on the NWE market for foam and rigid trays (see Section 5.3.4).
- (785) As set out in Section 4.3, the single and continuous nature of the cartel in NWE is evidenced by, for example, the fact that there was a stable, regular and consistent pattern of collusive contacts when changes in the market required intervention (especially when the price of raw material was rising); the fact that throughout the infringement period the manifestations of the complex arrangements, namely price coordination and exchange of information concerned foam and rigid trays (see for example Recitals (516), (531), (534), (537), (552),(557), (567), (571) and (578)); the fact that the pool of the individuals participating in the collusive contacts throughout

the infringement was consistently stable and the awareness by all the cartelists of all the aspects of the infringement owing to their participation in multilateral meetings.

- (786) The cartel arrangements were applicable to the NWE market, comprising Belgium, Denmark, Finland, Germany, Luxembourg, the Netherlands, Norway and Sweden. [...] the cartel participants participated in EQA fringe meetings and price increase agreements which covered all or the majority of the above-mentioned countries.<sup>982</sup> First, the handwritten notes of the EQA fringe meeting on 13 June 2002<sup>983</sup> (see Recitals (518)-(519)) clearly show the territories covered by the price increase agreement. They contain detailed tables comparing the prices of Linpac, Vitembal, Silver Plastics and Polarcup (Huhtamäki) for Denmark, Finland, The Netherlands, Norway and Sweden. The notes also refer to price increase announcements that Linpac and Huhtamäki agreed to make, namely to raise prices by 10% as of 1 July for Sweden and Finland and as of 15 July for The Netherlands and Belgium: "*Lin Pac + Polarcup 10% in Sweden and Finland 1/7 [1 July], will report next week, NL-B/15.July + 10% added to Status Quo*".<sup>984</sup> Second, the corroborating statements [...] concerning the multilateral meetings of 24 August 2004 and August/September 2004 (see Recitals (534)-(538)) show that the cartel participants discussed price increases for the Scandinavian countries, Germany and the Benelux.<sup>985</sup> Third, the evidence relating to the September 2006 price increases (see Recitals (567) and (568)) and the EQA fringe meeting on 16 October 2006 (see Recital (573)) shows that the countries concerned by the agreed price increases were Belgium, Denmark, Finland, Germany, Luxembourg, the Netherlands, Norway and Sweden (see Recitals (571) and (577)).<sup>986</sup>
- (787) There is also evidence of bilateral contacts between [company name] and [non-addressee] concerning explicitly the Dutch market<sup>987</sup> (see for example Recital (561)), as well as contacts relating to specific customers in Germany (see for example the contacts between Linpac and Silver Plastics on 7 October 2002 and the contact between [company name] and Huhtamäki on 20 June 2006 in Recitals ([...]) and ([...])). Those contacts took place in parallel to the multilateral collusive contacts and form part of the overall cartel (see for example Recital (548)).
- (788) Huhtamäki contests the geographic scope of the infringement for foam and rigid trays and argues that a cartel on rigid trays could not have extended beyond

---

<sup>982</sup> See for example ID [...], ID [...] and ID [...]. [...] competitors knew that if Linpac Germany announced price increase for foam trays, this would normally apply to the North-West European region covering Germany, Austria, the Benelux and the Scandinavian countries. It is also clear from the reference in the minutes of the EQA meeting of 25 April 2002: "5. *Market situation/Raw material prices: The participants exchange their experiences concerning the steep price increases of polystyrene on the European market*" (see Recital (509)) that the cartel discussions from the outset covered all countries that have been included in the definition of the NWE region in this Decision, even though the contemporaneous documents in the Commission's possession, that explicitly mention a certain country, may be of a later date.

<sup>983</sup> ID [...]

<sup>984</sup> ID [...]; original in German: "*Lin Pac + Polarcup 10% in Sweden u. Finnland 1/7, melden sich Anfang der Woche, NL-B/15. Juli + 10% auf Status Quo*" and ID [...]. The notes repeatedly quote Silver Plastics (as 'Silver') and Huhtamäki (as "Polar"); see also ID [...], ID [...] and ID [...]

<sup>985</sup> See ID [...] and ID [...]; ID [...] and ID [...]

<sup>986</sup> See ID [...] corroborated by ID [...] and ID [...]

<sup>987</sup> See also ID [...] (Silver Plastics reply to the SO).



Germany, Austria and the Benelux.<sup>988</sup> Silver Plastics also submits that it sold trays only to Germany and that independent distributors were selling its products to the rest of the NWE region. In addition, Silver Plastics argues that it sold its products in Benelux, Norway, Sweden and Denmark to independent and non-exclusive distributors who were free to set prices to customers at their absolute discretion; therefore Silver Plastics had no influence over the prices charged for its products in those countries.<sup>989</sup> According to Silver Plastics the geographic scope of the cartel could not have covered the NWE region as a whole, because each country constitutes a separate national geographic market.<sup>990</sup> However, the evidence shows that both Huhtamäki and Silver Plastics participated in cartel contacts covering also Denmark, Finland, Norway and Sweden (see for example the handwritten notes relating to the 13 June 2002 EQA fringe meeting, which concerned price increases for foam trays in Belgium, the Netherlands, Denmark, Finland, Norway and Sweden, Recital (519); as well as the price increases discussed at the meetings on 24 August 2004 and in August/September 2004, which concerned price increases for foam and rigid trays in Belgium, Denmark, Finland, Germany, Luxembourg, the Netherlands, Norway and Sweden, Recitals (534) and (537)-(538); or the reference to Huhtamäki and Sweden in Recital (528)). This is in itself sufficient to conclude that they were directly contributing to the single aim of the NWE cartel or at the very least clearly aware of the full extent of the cartel.

- (789) Silver Plastics also contests the product scope of the cartel claiming that foam and rigid trays do not belong to the same market,<sup>991</sup> that different individuals were responsible for foam and rigid trays, that the periods of anticompetitive contacts for foam and rigid trays differed and that the price increase letters were not indicative of collusion on rigid trays because the pricing letters (as in other sectors) are very abstract and also include other products. Huhtamäki also claims that with respect to foam trays, price increase letters did not mean an automatic price increases for the recipients of the letters. It also emphasises the differences between its German and Finnish production facilities, due to the different specifications for rigid trays in Finland.<sup>992</sup> Those arguments are not supported by the evidence in this case. It is clear that throughout the infringement period, all cartel participants had several anticompetitive contacts concerning both foam and rigid trays (see for example Recitals (534), (537), (559) (567), (571) and (578)). The anticompetitive discussions that focused exclusively on rigid trays were mainly bilateral and were initiated due to a particular issue or customer (see for example Recitals (530), (550), (558) and (559)). In the context of the 2002 price increase agreements on foam trays Linpac already included rigid trays in its price increase letter in order to help Silver Plastics to show that its competitors were also increasing prices for rigid trays (see Recital

---

<sup>988</sup> ID [...] (Huhtamäki reply to the SO) pages [...] (for foam trays) and [...] (for rigid trays – see paragraphs 79-98). Huhtamäki argues that [business secret - internal group policy]; in addition [company representative] and [company representative] had no reason or interest to participate in anti-competitive discussions on foam trays as these were outside the scope of their responsibilities, because (i) [company representative] was not responsible for the foam tray business in [business secret - internal group policy]; [company representative] and [company representative] were not responsible for the [business secret - internal group policy].

<sup>989</sup> ID [...] (Silver Plastics reply to the SO).

<sup>990</sup> ID [...] (Silver Plastics supplementary reply to the SO).

<sup>991</sup> ID [...] (Silver Plastics reply to the SO); ID [...] (Silver Plastics supplementary reply to the SO).

<sup>992</sup> ID [...] and ID [...] (Huhtamäki's reply to the SO).

(516)). In addition, [company name] reports that the price increases agreed at the multilateral cartel meetings in 2002 and 2004 also concerned rigid trays (see Recitals (534) and (537)). Therefore, there is evidence showing that all cartel participants were aware of the collusion on rigid trays and were willing to coordinate their business conduct regarding rigid trays at least as of 2002, namely long before the start of the specific MAK IK discussions on rigid trays later in 2007 (see Recital (580)).

- (790) In addition, consistent case-law of the General Court<sup>993</sup> makes it clear that in cartel cases, the product scope of the cartel is defined by the scope of the participant's discussions. In this respect, the General Court stated in Tokai that "*It is not the Commission which arbitrarily chose the relevant market but the members of the cartel in which [the Applicant] participated who deliberately concentrated their anti-competitive conduct on [the identified] products.*"<sup>994</sup> Based on the above, the Commission concludes that all cartel participants were aware of and participated in anti-competitive contacts concerning both foam and rigid trays throughout the whole infringement period.
- (791) The Commission notes that from around May 2003 until July 2004 the evidence of cartel contacts is scarcer for all participants. This may be due to the fact that fewer contacts took place in that period or that the investigation was unable to reveal evidence of such contacts. There is, however, no evidence supporting that any cartel participant ended its participation in or distanced itself from the cartel during that period. On the basis of the overall body of evidence, the Commission concludes that the parties pursued the single aim of the cartel concerning both foam and rigid trays in the whole NWE region uninterrupted throughout the entire infringement period.

#### 5.3.3.7. Single and continuous infringement – Central and Eastern Europe (CEE)

- (792) The facts described in Section 4.4 of this Decision constitute a single and continuous infringement of Article 101(1) of the Treaty in relation to the foam trays market in CEE. This is notwithstanding that each of the cartel activities described in Section 4.4 and listed in Section 5.3.2.5 could be qualified, when looked at in isolation, as separate infringements of Article 101(1) of the Treaty in relation to each of the countries covered by the cartel. In particular, it is evident from Section 5.3.2.5 that while Propack's anticompetitive conduct related only to Hungary, its participation in that country alone, even when looked at in isolation, restricted competition and infringed Article 101(1) of the Treaty.
- (793) For the period from 5 November 2004 (see Recitals (602)-(618)) until 24 September 2007 (see Recitals (653)-(654)), Coopbox, Linpac Sirap-Gema and Propack (the latter only for the period from 13 December 2004 (see Recitals (619)-(623)) until 15 September 2006 (see Recital (646)) engaged in different types of anticompetitive agreements and/or concerted practices (see Section 5.3.2.5) pursuant to a common anticompetitive plan aimed at restricting competition on the CEE market for foam trays (see Section 5.3.4)).

---

<sup>993</sup> See for example Case T-38/02 *Groupe Danone v Commission* ECLI:EU:T:2005:367, paragraphs 99 and Case T-48/02 *Brouwerij Haacht NV v Commission* ECLI:EU:T:2005:436, paragraphs 58 and the case law cited in these paragraphs.

<sup>994</sup> Joined cases T-71/03, T-74/03, T-87/03 and T-93/03 *Tokai Carbon and others v Commission* ECLI:EU:T:2005:220, paragraph 90.

- (794) As set out in Section 4.4, the single and continuous nature of the cartel in the CEE is evidenced by, for example, the fact that there was a stable, regular and consistent pattern of collusive contacts; the fact that all the manifestations of the complex arrangements concerned foam trays and the fact that the pool of the individuals participating in the collusive contacts throughout the infringement was consistently stable. The parties were aware of all the aspects of the cartel in CEE owing to their participation in multilateral collusive meetings (see for example the meeting on 5 November 2004 described in Recitals (602)-(618)).
- (795) [...]. Propack claims that it was not involved in, nor was it aware of the collusive conduct covering the Czech Republic, Poland and Slovakia. The Commission notes that while Propack was involved in a number of anticompetitive meetings during the period of the infringement, they indeed concerned only the Hungarian foam trays market. The Commission notes that while there are some indications that the other cartelists wanted to inform Propack about the full extent of the CEE cartel (see for example – Rectial (644)), there is no evidence to demonstrate that Propack was indeed informed or that it, should have been aware for other reasons. Propack should therefore only be held liable for the single and continuous infringement in CEE insofar as the cartel arrangements related to Hungary.

#### 5.3.3.8. Single and continuous infringement – France

- (796) The facts described in Section 4.5 of this Decision constitute a single and continuous infringement of Article 101(1) of the Treaty in relation to the foam trays market in France. This is notwithstanding that each of the cartel activities described in Section 4.5 and listed in Section 5.3.2.6 could be qualified, when looked at in isolation, as separate infringements of Article 101(1) of the Treaty in relation to the same market.
- (797) For the period from 3 September 2004 (see Recitals (660)-(665)) until 24 November 2005 (see Recitals (684)-(686)), Huhtamäki, Linpac, Sirap-Gema and Vitembal, and during the period from 29 June 2005 (see Recitals (678)-(679)) until 5 October 2005 (see Recitals (682)-(683)) also Silver Plastics, engaged in different types of anticompetitive agreements and/or concerted practices (see Section 5.3.2.6) pursuant to a common anticompetitive plan aimed at restricting competition on the French market for foam trays (see Section 5.3.4).
- (798) As set out in Section 4.5, the single and continuous nature of the cartel in France is evidenced by, for example, the fact that there was a stable, regular and consistent pattern of collusive contacts; the fact that all the manifestations of the complex arrangements concerned foam trays; the fact that the pool of the individuals participating in the collusive contacts throughout the infringement was consistently stable; and the awareness by all the parties of all the aspects of the cartel in France owing to their participation in multilateral collusive contacts (see for example – a meeting on 3 September 2004 described in Recitals (660)-(665)).

#### 5.3.4. *Restriction of competition*

- (799) Article 101(1) of the Treaty and Article 53(1) of the EEA Agreement expressly include as restrictive of competition agreements and concerted practices which: (i) directly/indirectly fix purchasing/selling prices or any other trading conditions; (ii) limit or control production, markets or technical development; (iii) share markets or

sources of supply.<sup>995</sup> These are the essential characteristics of the complex horizontal arrangements under consideration (as well as their individual aspects or parts thereof taken in isolation) in relation to each of the five separate infringements covered by this Decision. As set out in Section 5.3.2, the principal types of anticompetitive behaviour employed across the five separate infringements (see: Italy – Section 5.3.2.2; South-West Europe – Section 5.3.2.3; North-West Europe – Section 5.3.2.4; Central and Eastern Europe – Section 5.3.2.5; and France – Section 5.3.2.6 ) by their very nature were restrictive of competition within the meaning of Article 101(1) of the Treaty and, in relation to the NWE infringement, of Article 53(1) of the EEA Agreement. While each of the five separate infringements has to be considered as a whole and in the light of its overall circumstances, each infringement's individual aspects (or parts thereof) in themselves and taken in isolation constitute an infringement of Article 101(1) of the Treaty and of Article 53(1) of the EEA Agreement

- (800) The Court of Justice has also clarified that under the terms of Article 101 of the Treaty, the only points to be determined for the purposes of applying the prohibition laid down in that provision are whether the agreement in which the undertaking participated alongside other undertakings had as its object or effect the restriction of competition and whether it was capable of affecting trade between Member States. The question of whether the individual participation of an undertaking in such an agreement could, by itself, restrict competition or affect trade between Member States, taking account of the undertaking's weak position on the market concerned, is irrelevant when it comes to ascertaining whether there is an infringement.<sup>996</sup>
- (801) The anti-competitive behaviour described for each of the five cartels in this Decision has to be considered as a whole and in the light of the overall circumstances of the separate cartels, despite the fact that each of the aspects (or parts thereof) in themselves and taken in isolation constitute an infringement of Article 101 of the Treaty. The principal activities of the respective cartels are listed in Sections 5.3.2.2 (Italy), 5.3.2.3 (SWE), 5.3.2.4 (NWE), 5.3.2.5 (CEE) and 5.3.2.6 (France). The complex of agreements and concerted practices within each of these cartels as well as their individual parts **has as its object the restriction of competition** within the meaning of Article 101(1) of the Treaty and Article 53(1) of the EEA Agreement.
- (802) In reply to the Commission's SO, some of the parties,<sup>997</sup> argued that the events described by the Commission in the SO were not restrictive of competition or that any restriction was insignificant. In this regard, some of the parties have claimed that, for instance, contacts between the participants did not result in the restriction of autonomous decision-making, that there was no causal link between coordination and the participants' conduct on the market, that any effects were due to the structure of the market (for example cross-supply) not collusion, that any mentioning of commercial strategies was unilateral and there was no effect (or such effect was insignificant) on competition. In so far as the arguments of the parties relate to the alleged ineffectiveness of the agreements and/or concerted practices, it suffices to state that Article 101 of the Treaty and Article 53 of the EEA Agreement prohibit

<sup>995</sup> The list is not exhaustive.

<sup>996</sup> Case C-441/11 P *European Commission v Verhuizingen Coppens* ECLI:EU:C:2012:778, paragraph 64.

<sup>997</sup> For instance: **ID [...]** (Silver Plastics reply to the SO); **ID [...]** (Vitembal reply to the SO); **ID [...]** (Coopbox reply to the SO); **ID [...]** (Nespak reply to the SO); **ID [...]** (Magic Pack reply to the SO).

agreements between undertakings which have an anticompetitive object, regardless of their effect.

- (803) The evidence set out in Section 4 of this Decision demonstrates that the object of the arrangements described in this Decision was to restrict competition. It is equally established that each of the five separate cartels may have affected trade between Member States (see Section 5.3.5). Therefore, by its nature, and independently of any concrete effect that it may have, each of the five separate cartels constitutes an appreciable restriction of competition.<sup>998</sup> While the Commission is mindful that some of the communication between the participants, when looked at in isolation (for example price letters sent between competitors that had cross-supply relationships or received from distributors or customers), may appear on their face to be legitimate, the Commission finds it necessary to confront such individual pieces of evidence with the bulk of evidence in the Commission's possession to demonstrate that they do not undermine the participants' culpability for cartel conduct described in this Decision. For instance, while cross-supply may indeed have been a feature of the market, the evidence in the Commission's possession demonstrates that the price letters were also used to better coordinate the collusive price increases (see for instance Recital (569)) or to increase transparency between the participants (see for instance Recitals (515)).
- (804) The Commission notes that the evidence in Section 4 demonstrates that the anticompetitive arrangements in all five cartels were often being implemented. The undertakings concerned implemented, for example, the agreed price increase (see for example: Italy – Recitals (153), (194), (199), (235)-(236) (276) and (329); South-West Europe – Recitals (396), (441)-(442), (446), (447)-(448), (471), (486), (490) and (491); North-West Europe – Recitals (544), (548), (567), (578), and (586); Central and Eastern Europe – Recitals (634)-(636), (651); France – Recitals (660)-(665), (666)-(667), (675)-(677) and (682)-(683)); allocation of customers (see for example: Italy – Recitals (185)-(186), (188), (247), (249), (295)-(296), (304), (309)-(310) and (314); South-West Europe – Recitals (451)-(452); Central and Eastern Europe – Recitals (619)-(623), (626)-(627), (630), (631), (633), (634)-(636), (640),(641), (645), (646), (647), (648) and (649)-(650); France – Recitals (673)-(674), (680), and (684)-(686)); implementation of bid-rigging strategies (see for example: Italy – Recitals (101), (116), (134), (174) and (255)-(256); Central and Eastern Europe – Recitals (630), (633), (642), (646) and (648); France – (673)-(674), (680) and (684)-(686)). The fact that an agreement having an anti-competitive object is implemented, even if only in part, is sufficient to preclude the possibility that the agreement had no effect on the market.<sup>999</sup>

#### 5.3.5. *Effect upon trade between EU Member States*

- (805) Article 101 of the Treaty is aimed at agreements and concerted practices which affect the structure of competition within the internal market or otherwise partition markets along geographic lines. Similarly, Article 53(1) of the EEA Agreement is directed at agreements that undermine the achievement of a homogeneous European Economic Area. It is not required that those agreements or concerted practices actually affect

---

<sup>998</sup> Case C-226/11Expedia ECLI:EU:C:2012:795, paragraph 37; Case T-62/98 *Volkswagen AG v Commission* ECLI:EU:T:2000:180, paragraph 178.

<sup>999</sup> Case T-38/02, *Groupe Danone v Commission* ECLI:EU:T:2005:367, paragraph 148.

trade between Member States, when it can be established that they are capable of having such an effect.<sup>1000</sup> According to consistent case law, "*an agreement between undertakings may affect trade between Member States when it is possible to foresee with a sufficient degree of probability on the basis of a set of objective factors of law or fact that it may have an influence, direct or indirect, actual or potential, on the pattern of trade between Member States*".<sup>1001</sup>

- (806) The application of Article 101 of the Treaty to a cartel is not, however, limited to that part of the participants' sales that actually involve the transfer of goods from one Member State to another. Nor is it necessary, in order for these provisions to apply, to show that the individual conduct of each participant, as opposed to the cartel as a whole, affected trade between Member States.<sup>1002</sup> Trade between Member States may also be potentially affected where the relevant geographic market is national or sub-national in scope.<sup>1003</sup>
- (807) The types of anticompetitive arrangements employed across all five separate infringements (see: Italy – Section 5.3.2.2; South-West Europe – Section 5.3.2.3; North-West Europe – Section 5.3.2.4; Central and Eastern Europe – Section 5.3.2.5; and France – Section 5.3.2.6 ) must have resulted, or were very likely to result, in the automatic diversion of trade patterns from the course they would otherwise have followed.<sup>1004</sup> This resulted, for example, from the geographical span of the cartels. In relation to the NWE cartel, the anticompetitive conduct covered Belgium, Denmark, Finland, Germany, Luxembourg, the Netherlands, Norway and Sweden; the SWE cartel covered Portugal and Spain; the CEE cartel covered the Czech Republic, Hungary, Poland and Slovakia. Furthermore, in relation to all five cartels, the anticompetitive behaviour was often aimed at specific large customers which had trading operations across many countries and which also could source their products on a cross-border basis - see for instance – (i) CEE - Recitals (602)-(618), (625), (628), (630), (644), (645) ; (ii) France – Recitals (672), (673)-(674), (680)-(681), (684)-(686) (iii) Italy – Recitals (138), (289) and (331) (iv) NWE – Recitals (514), (516), (538), (542)-(544), (567)-(571) (v) SWE – Recitals (440) and (456). This is in line with the Commission Guidelines on the effect on trade concept which states that cartel agreements covering several Member States are by their very nature capable of affecting trade between Member States.<sup>1005</sup> Indeed, their cross border element is likely to affect the interpenetration of trade by cementing traditional patterns of trade<sup>1006</sup> and consequently eliminating competition.
- (808) Nespak, in its reply to the SO, argued that the cartel in Italy did not have any effect on trade between Member States. Nespak considers that the cartel did not prevent the

<sup>1000</sup> Case C-306/96 *Javico*, ECLI:EU:C:1998:173, paragraphs 16 and 17; see also Case T-374/94, *European Night Services*, ECLI:EU:T:1998:198, paragraph 136.

<sup>1001</sup> Case 42/84 *Remia and Others* ECLI:EU:C:1985:327, paragraph 22; Case C-238/05 *Asnef-Equifax* ECLI:EU:C:2006:734, Recital 34 and *Cimenteries CBR and Others v Commission*, ECLI:EU:T:2000:77, cited above, paragraph 491.

<sup>1002</sup> See Case T-13/89 *Imperial Chemical Industries v Commission* ECLI:EU:T:1992:35, paragraph 304.

<sup>1003</sup> Commission Notice – Guidelines on the effect on trade concept contained in Article 81 and 82 of the Treaty, point 22.

<sup>1004</sup> See Joined Cases 209 to 215 and 218/78 *Van Landewyck and others v Commission* ECLI:EU:C:1980:248, paragraph 170.

<sup>1005</sup> Commission Notice – Guidelines on the effect on trade concept contained in Articles 81 and 82 of the Treaty, published in OJ C 101, 27.4.2004 pages 81-96, in particular Recital 64.

<sup>1006</sup> See e.g. Case T-142/89, *Usines Gustave Boël*, ECLI:EU:T:1995:63, paragraph 102.

economic penetration of competitors from other Member States since most of the undertakings that are active on the Italian market are also active in the rest of the European Union. Moreover, Nespak claims that the production of foam trays in Italy is profitable in so far as it is intended for the Italian market because of the high costs of transportation. Therefore producers of foam trays that are not established in Italy would not have any interest in selling their products there. Those arguments are unfounded. The above mentioned Commission Guidelines on the effect on trade concept state clearly that horizontal cartels covering the whole of a Member State are normally capable of affecting trade between Member States.<sup>1007</sup> This is confirmed by settled case law which states that agreements extending over the whole territory of a Member State by their very nature have the effect of reinforcing the partitioning of markets on a national basis by hindering the economic penetration of competitors from other Member States which the Treaty is designed to bring about.<sup>1008</sup> This is consequently applicable to both the French and the Italian cartel.

- (809) The fact that most of the undertakings active on the Italian market are also present in the rest of the European Union does not rule out an effect on trade between Member States since the anticompetitive agreement is still likely to hinder the penetration of other or new undertakings in the Italian market. Nespak's argument based on the non-profitability of the trade in Italy of foam trays not produced in the Italian territory because of the high costs of transportation is groundless considering the geography of Italy and the fact that it borders on three Member States.
- (810) Hence, in this case the types of anticompetitive arrangements employed across all five separate cartels must have resulted, or were likely to result, in the automatic diversion of trade patterns from the course they would otherwise have followed.<sup>1009</sup>

#### **5.4. Application of Article 101(3) of the Treaty**

- (811) On the basis of the facts before the Commission, there are no indications suggesting that the conditions of Article 101(3) of the Treaty could be fulfilled in any of the five cartels covered by this Decision and **none of the addressees has argued that they were fulfilled.**

## **6. ADDRESSEES OF THIS DECISION**

### **6.1. General principles**

- (812) In order to identify the addressees of this Decision, it is necessary to determine the legal entities to which responsibility for the anti-competitive behaviour described in this Decision should be attributed.
- (813) As a general consideration, the subject of Union competition rules is the “undertaking”, a concept that is not identical with the notion of corporate legal personality in national commercial or fiscal law. The “undertaking” that participated

<sup>1007</sup> Commission Notice – Guidelines on the effect on trade concept contained in Articles 81 and 82 of the Treaty, published in OJ C 101, 27.4.2004 pages 81-96, in particular Recital 78.

<sup>1008</sup> Case 8/72 *Vereeniging van Cementhandelaren v Commission* ECLI:EU:C:1972:84, paragraph 29; Case 42/84 *Remia and Others v Commission* ECLI:EU:C:1985:327, paragraph 22; Case C-309/99, *Wouters*, ECLI:EU:C:2002:98, paragraph 95.

<sup>1009</sup> See Joined Cases 209 to 215 and 218/78 *Van Landewyck and others v Commission* ECLI:EU:C:1980:248, paragraph 170.

in the infringement is therefore not necessarily identical with the precise legal entity within the group of companies whose representatives actually took part in the cartel meetings. The term “undertaking” is not defined in the Treaty. The case law has confirmed that Article 101 of the Treaty *"is aimed at economic units which consist of a unitary organization of personal, tangible and intangible elements which pursues a specific economic aim on a long-term basis and can contribute to the commission of an alleged infringement of the kind referred to in that provision"*.<sup>1010</sup>

- (814) The concept of an undertaking encompasses every entity engaged in an economic activity, regardless of the legal status of the entity or its precise legal form under national law.<sup>1011</sup> Despite the fact that Article 101 of the Treaty is applicable to undertakings and that the concept of an undertaking is of an economic nature, only entities with legal personality can be held liable for infringements. The principle of personal liability is not breached as long as the different legal entities representing the undertaking are held liable on the basis of their own behaviour or their conduct within the same undertaking.
- (815) Accordingly, it is necessary for the purposes of applying and enforcing decisions to define the undertaking(s) that will be held accountable for the infringement of Article 101 of the Treaty by defining one or more legal persons to represent the undertaking. In accordance with case law, Union competition law recognises that different companies belonging to the same group form an economic unit and therefore an undertaking within the meaning of Articles 101 and 102 of the Treaty *"if the companies concerned do not determine independently their own conduct on the market"*.<sup>1012</sup> If a subsidiary does not determine its own conduct on the market independently, the company which directed its commercial policy (that is to say, which exercised decisive influence) forms a single economic entity with that subsidiary and may be held liable for an alleged infringement on the ground that it forms part of the same undertaking (so-called parental liability).
- (816) According to the settled case-law of the Courts, the Commission can generally assume that a wholly or almost wholly-owned subsidiary essentially follows the instructions given to it by its parent company without needing to check whether the parent company has in fact exercised that power.<sup>1013</sup> In such a case, there exists a

---

<sup>1010</sup> See Case T-11/89, *Shell International Chemical Company Ltd v Commission* ECLI:EU:T:1992:33, paragraph 311. See also case T-352/94 *Mo och Domsjö AB v Commission*, ECLI:EU:T:1998:103, paragraphs 87-96.

<sup>1011</sup> Although an ‘undertaking’ within the meaning of Article 101(1) is not necessarily the same as a company having legal personality, it is necessary for the purposes of enforcing decisions to identify the natural or legal person to whom the decision will be addressed. See Case T-305/94 *PVC*, ECLI:EU:T:1999:80, paragraph 978.

<sup>1012</sup> Case 48/69 *Imperial Chemical Industries v. Commission*, ECLI:EU:C:1972:70, paragraphs 132-133; Case 170/83 *Hydrotherm*, ECLI:EU:C:1984:271, paragraph 11 and Case T-102/92 *Viho v Commission*, ECLI:EU:T:1995:3, paragraph 50, cited in Case T-203/01 *Michelin v Commission*, ECLI:EU:T:2003:250, paragraph 290.

<sup>1013</sup> Joined Cases T-71/03 *Tokai Carbon and Others v Commission*, ECLI:EU:T:2005:220, paragraph 60; Case T-354/94 *Stora Kopparbergs Bergslags v Commission*, ECLI:EU:T:1998:104, paragraph 80, upheld in Case C-286/98P *Stora Kopparbergs Bergslags v Commission*, ECLI:EU:C:2000:630, paragraphs 27-29; and Case 107/82 *AEG v Commission*, ECLI:EU:C:1983:293, paragraph 50; Case C-97/08 P *Akzo Nobel NV and Others v Commission* ECLI:EU:C:2009:536, paragraphs 60-61; C-521/09 P *Elf Aquitaine v. Commission* ECLI:EU:C:2011:620, paragraphs 56-57; C-201/09 P *ArcelorMittal Luxembourg v Commission* and C-216/09 P *Commission v ArcelorMittal Luxembourg and Others* ECLI:EU:C:2011:190, paragraphs 97-100; Case C-90/09 P *General Química v Commission*



rebuttable presumption that the parent not only has the ability to but also in fact exercises decisive control over its subsidiary without the need for the Commission to adduce further evidence on the actual exercise of control (the "parental liability presumption"). When the Commission relies on the parental liability presumption and declares its intention to hold a parent company liable for an infringement committed by its wholly owned subsidiary in the SO, the parent company and/or subsidiary can rebut that presumption by producing sufficient evidence during the administrative procedure to demonstrate that the subsidiary determined its conduct independently on the market.<sup>1014</sup> Moreover, it is clear from the case-law that a presumption, even difficult to rebut, remains within acceptable limits if it is proportionate to the legitimate aim pursued, if it is possible to bring proof to the contrary and if the rights of defence are assured.<sup>1015</sup>

- (817) Where such exercise of decisive influence cannot be presumed, it has to be demonstrated on the basis of factual evidence, including in particular the management powers that the parent companies have on the subsidiary.<sup>1016</sup> The European Courts have established that such powers can be, not only directly concluded from the parent's specific instructions, guidelines or rights of codetermination on the commercial policy given to their subsidiary, but also indirectly inferred from the totality of the economic, organisational and legal links between the parent company and its subsidiary<sup>1017</sup> influencing it in aspects such as corporate strategy, operational policy, business plans, investment, capacity, provision of finance, human resources and legal matters, even if each of those indicia taken in isolation does not have sufficient probative value.<sup>1018</sup> Among these indicia, the European Courts have considered, for example, the implementation of the applicable statutory provisions/agreements between the parent companies in relation to the management of their common subsidiary, the presence in leading positions of the subsidiary of many individuals who occupy simultaneously (or even consecutive)<sup>1019</sup> managerial posts within the parent company, or the business relationships that they

---

ECLI:EU:C:2011:21, paragraphs 39-42; Case C-654/11 P *Transcatlab v Commission* ECLI:EU:C:2012:806, paragraphs 30-31.

<sup>1014</sup> Joined Cases T-71/03 etc. *Tokai Carbon and Others v Commission*, ECLI:EU:T:2005:220, paragraph 61; Case T-330/01 *Akzo Nobel NV v Commission* ECLI:EU:T:2006:26, paragraph 83; Case T-91/03 *Tokai Carbon Co. Ltd, Intech EDM BV, Intech EDM AG and SGL Carbon AG v Commission* ECLI:EU:T:2005:220, paragraph 61; Case T-30/05 *Prym and Prym Consumer v Commission* ECLI:EU:T:2007:267, paragraphs 146-147; Case T-541/08, *Sasol and others v Commission*, ECLI:EU:T:2014:628, paragraph 163: "*Rebutting the presumption of the actual exercise of decisive influence by a parent company over its subsidiary's conduct is not, however, a question of the quantity and detail of the evidence when that evidence describes the usual form of organisation in a large multinational undertaking, where the powers of operational management are delegated to the managers of its local units. In order to rebut that presumption, it is necessary to set out unusual circumstances which show that, notwithstanding the fact that the subsidiaries of the group are wholly owned by their parent companies, the economic unity of the group has been severed, as the mechanisms ensuring the alignment of the subsidiaries' commercial conduct with that of their parent companies did not operate in the usual way*".

<sup>1015</sup> C-521/09 P, *Elf Aquitaine v Commission*, ECLI:EU:C:2011:620, paragraphs 60-62.

<sup>1016</sup> Case T-77/08 *The Dow Chemical Company v Commission* ECLI:EU:T:2012:47, paragraph 76.

<sup>1017</sup> Case T-77/08 *The Dow Chemical Company v Commission* ECLI:EU:T:2012:47, paragraph 77.

<sup>1018</sup> Case T-132/07 *Fuji Electric Co. Ltd v Commission* ECLI:EU:T:2011:344, paragraph 183.

<sup>1019</sup> Case T-76/08 *El du Pont de Nemours and Company, DuPont Performance Elastomers LLC and DuPont Performance Elastomers SA v Commission* ECLI:EU:T:2012:46, paragraphs 70, 74.

have with each other (for example, where a parent company is also the supplier or customer of its subsidiary).<sup>1020</sup>

- (818) The question of decisive influence relates to the level of autonomy of the subsidiary with regard to its overall commercial policy and not to the awareness of the parent company with respect to the infringing behaviour of the subsidiary. Attribution of liability to a parent company flows from the fact that the two entities constitute one single undertaking for the purposes of the Union rules on competition and not from proof of the parent's participation in or awareness of the infringement, including its organisation.<sup>1021</sup>
- (819) Where a company has the ability to exercise control over its subsidiary and is aware of the infringement and does not stop it, it will be held liable for its infringement.<sup>1022</sup> In such a case, the actual exercise or non-exercise of control by the parent is irrelevant for its liability. According to *Agroexpansión*,<sup>1023</sup> when a parent company is aware of the involvement of its whole-owned subsidiary in an infringement and it does not oppose that involvement, the Commission can deduce that the parent company tacitly approves the participation in the infringement and this circumstance represents additional indicia supporting the presumption.
- (820) When an undertaking that has committed an infringement of Article 101 of the Treaty subsequently disposes of the assets which contributed to the infringement and withdraws from the market in question, it continues to be answerable for the infringement if it has not ceased to exist.<sup>1024</sup> If the undertaking which has acquired the assets carries on the violation of Article 101 of the Treaty, liability for the infringement should be apportioned between the seller and the acquirer of the infringing assets, each undertaking being responsible for the period in which it participated through those assets in the cartel. However, if the legal person initially answerable for the infringement ceases to exist, being purely and simply absorbed by another legal entity, that latter entity must be held answerable for the whole period of the infringement and thus liable for the activity of the entity that was absorbed.<sup>1025</sup> The mere disappearance of the person responsible for the operation of the undertaking when the infringement was committed does not allow it to evade

---

<sup>1020</sup> Case T-132/07 *Fuji Electric Co. Ltd v Commission* ECLI:EU:T:2011:344, paragraph 184.

<sup>1021</sup> Joined cases T-71/03, T-74/03, T-87/03 and T-91/03 *Tokai Carbon Ltd, Intech EDM BV, Intech EDM AG and SGL Carbon AG v Commission* ECLI:EU:T:2005:220, paragraph 54.

<sup>1022</sup> Joined Cases T-259/02 to T-264/02 and T-271/02 *Raiffeisen Zentralbank Österreich AG v Commission* ECLI:EU:T:2006:396, paragraph 330.

<sup>1023</sup> Case T-38/05 *Agroexpansión SA v Commission* ECLI:EU:T:2011:585, paragraphs 146 and 157. See also Case T-41/05 *Alliance One International Inc. v Commission* ECLI:EU:T:2011:586, paragraph 136.

<sup>1024</sup> Case T-6/89 *Enichem Anic v Commission (Polypropylene)*, ECLI:EU:T:1991:74; Case C-49/92P *Commission v Anic Partecipazioni*, ECLI:EU:C:1999:356, paragraphs 47-49; Case T-314/01 *Coöperatieve Verkoop- en Productievereniging van Aardappelmeel en Derivaten Avebe BA v Commission* ECLI:EU:T:2006:266, paragraphs 135-140.

<sup>1025</sup> See Case C-279/98 P *Cascades v Commission*, ECLI:EU:C:2000:626, paragraphs 78-79: “It falls, in principle, to the natural or legal person managing the undertaking in question when the infringement was committed to answer for that infringement, even if, when the Decision finding the infringement was adopted, another person had assumed responsibility for operating the undertaking. Moreover, those companies were not purely and simply absorbed by the appellant but continued their activities as its subsidiaries. They must, therefore, answer themselves for their unlawful activity prior to their acquisition by the appellant, which cannot be held responsible for it”; Joined Cases T- 122/07 *Siemens AG Österreich and VA Tech Transmission & Distribution v Commission* ECLI:EU:T:2011:70, paragraph 139.

liability.<sup>1026</sup> Liability for a fine may thus pass to a successor where the corporate entity which committed the violation has ceased to exist in law.

- (821) Different conclusions may, however, be reached when a business is transferred from one company to another, in cases where transferor and transferee are linked by economic links, that is to say, when they belong to the same undertaking. In such cases, liability for past behaviour of the transferor may transfer to the transferee, notwithstanding the fact that the transferor remains in existence.<sup>1027</sup>
- (822) The same principles hold true, *mutatis mutandis*, for the purposes of the application of Article 53 of the EEA Agreement.
- (823) Applying the principles described in Recitals (812)-(822), this Decision should be addressed to those legal entities whose representatives participated in cartel meetings and other forms of anticompetitive contacts with competitors. In addition, this Decision should be addressed to the parent companies of those legal entities in so far as it is presumed or shown that they exercised decisive influence over the commercial policy of their wholly owned subsidiaries.
- (824) The names and the employment records of individuals relevant for this Decision are provided in Annex I to this Decision.<sup>1028</sup>

## **6.2. Italy**

### **6.2.1. Linpac**

- (825) As established in Section 4.1, throughout the infringement, LINPAC Packaging Verona S.r.l. was a direct participant for Linpac in the infringement through the involvement of [company representative], [company representative] and [company representative]. Therefore LINPAC Packaging Verona S.r.l. is held liable for its participation in the infringement.<sup>1029</sup> LINPAC Packaging Ltd, intermediate parent of LINPAC Packaging Verona S.r.l., participated in the infringement through the involvement of [company representative].<sup>1030</sup>
- (826) During the entire period of the infringement, LINPAC Group Ltd was the indirect almost 100% parent company of LINPAC Packaging Verona S.r.l. through the chain of control described in Recital (9). In line with the case law referred to in Recital (816), the Commission considers that LINPAC Group Ltd therefore is presumed to have exercised decisive influence on the conduct of LINPAC Packaging Verona S.r.l. Although the Commission believes that the presumption is in itself sufficient to establish liability for that entity, the presumption is further strengthened by the fact that, during the period of the infringement, LINPAC Group Ltd addressed a manual to all companies controlled by it which sets minimum standards and policies for the

---

<sup>1026</sup> See Case T-305/94 *PVC II*, ECLI:EU:T:1999:80, paragraph 953.

<sup>1027</sup> See judgment in Joined Cases C-204/00 P (and other), *Aalborg Portland A/S a.o. v Commission* ECLI:EU:C:2004:6, paragraphs 354-360, as confirmed in case T-43/02 *Jungbunzlauer AG v Commission*, ECLI:EU:T:2006:270, paragraphs 132-133 and Case C-280/06 *ETI and others*, ECLI:EU:C:2007:775, paragraph 41; Joined Cases T-117/07 and 121/07 *Areva and Others and Alstom v Commission* ECLI:EU:T:2011:69, paragraphs 66-69.

<sup>1028</sup> Some of the individuals listed in Annex I may not have been involved in anti-competitive contacts with competitors for all of the periods specified.

<sup>1029</sup> Linpac Packaging Verona S.r.l.'s participated in the infringement from 18 June 2002 to 17 December 2007.

<sup>1030</sup> LINPAC Packaging Ltd participated in the infringement from 13 November 2003 to 11 January 2005.

conduct within and management of the group. The manual was to provide for procedures and thresholds for authorisation in relation to a number of governance issues, including (i) capital expenditure, (ii) disposals, (iii) certain commercial decisions, (iv) procedures for internal reporting, (v) HR policy, (vi) legal affairs, and (vii) certain trading matters. The policies set out in the manual have to be adhered to by all companies controlled by LINPAC Group Ltd.<sup>1031</sup> The manual demonstrates that LINPAC Group Ltd had the ability to exercise - and in fact exercised - decisive influence on all of its subsidiaries, including the companies directly involved in the infringement. In its reply to the Commission's SO, Linpac did not provide any observations on the presumed parental liability.

- (827) The Commission therefore holds LINPAC Packaging Verona S.r.l. and LINPAC Group Ltd jointly and severally liable for the infringement committed by Linpac. In particular, LINPAC Packaging Verona S.r.l. is held liable as a direct participant for the whole duration of the infringement. LINPAC Group Ltd is held liable as a parent company of LINPAC Packaging Verona S.r.l. for the whole duration of the infringement and of LINPAC Packaging Ltd between 13 November 2003 and 11 January 2005.

#### 6.2.2. *Sirap-Gema*

- (828) As established in Section 4.1, throughout the entire infringement, Sirap-Gema S.p.A. was a direct participant in the infringement in Italy through the involvement of [company representative], [company representative], [company representative] and [company representative].<sup>1032</sup> Therefore Sirap-Gema S.p.A. is held liable for its participation in the infringement.
- (829) During the entire period of the infringement, Italmobiliare S.p.A. was the 100% indirect parent company of Sirap-Gema S.p.A. through the chain of control described in Recital (15). In line with the case law referred to in Recital (816), the Commission considers that Italmobiliare S.p.A. is therefore presumed to have exercised decisive influence on the conduct of Sirap-Gema S.p.A. Although the Commission considers that this presumption is in itself sufficient to establish liability for this entity, the presumption is further strengthened by the fact that Italmobiliare S.p.A. was kept informed through a system of reporting from the operating companies. During the entire period of the infringement, Sirap-Gema's subsidiaries had an obligation to report to [company representative], [functions of company representative] of Sirap-Gema S.p.A. In his turn, [company representative] reported to [company representative], [function of company representative] of Sirap-Gema S.p.A. and at the same time [function of company representative] of Italmobiliare S.p.A. In his quality of [function of company representative] within Italmobiliare S.p.A., [company representative] reported to the [functions of company representative] of Italmobiliare S.p.A. and proposed development and strategic opportunities to Italmobiliare S.p.A. for the subsidiaries active in the industrial sector. This indicates that during the time of the infringement, Italmobiliare S.p.A. had the ability to exercise - and in fact exercised - decisive influence on Sirap-Gema S.p.A.

---

<sup>1031</sup> ID [...]

<sup>1032</sup> [Company representative] was also employed by [company name], which was absorbed by Sirap-Gema in 2009 and has therefore ceased to exist as a legal entity.

- (830) In its reply to the SO, Sirap-Gema denies that Italmobiliare S.p.A. exercised decisive influence on Sirap-Gema and underlines that Italmobiliare S.p.A. had no awareness of the cartel activities. Sirap-Gema argues that Italmobiliare S.p.A. is a mere financial holding and that the subsidiaries have complete autonomy in determining their commercial strategies. Sirap-Gema explains that Italmobiliare S.p.A. only issues [business secret] to ensure [business secret]. [Business secret]. Sirap-Gema further points out that it decided upon its own investments and budget and that its Commercial Director and General Manager had decision-making powers [business secret]. Finally, Sirap-Gema underlines that the limited role of Italmobiliare S.p.A. is demonstrated by its limited number of employees [business secret].
- (831) The Commission considers that the arguments put forward by Sirap-Gema are insufficient to rebut the presumed exercise of decisive influence given Italmobiliare S.p.A.'s 100% shareholding in its subsidiaries' involved in the infringement. It is noted that the fact that the parent company was not involved in the decision-making processes to define strategic and commercial plans is not sufficient to rebut the presumption of decisive control as in order to ascertain whether a subsidiary determines its conduct on the market independently account must be taken of all the factors relied on in the light of the organisational, economic, and legal links and not only of the conduct on the market or the commercial policy *stricto sensu* of the subsidiary.<sup>1033</sup> The fact that Italmobiliare S.p.A. issued [business secret] actually shows that it did not refrain from exercising decisive influence on its subsidiaries on strategic matters.<sup>1034</sup> Also the alleged lack of awareness of the cartel cannot rebut the abovementioned presumption. According to the case-law, there is no requirement, in order to impute to a parent company liability for the acts undertaken by its subsidiary, to prove that that parent company was directly involved in, or was aware of, the offending conduct.<sup>1035</sup> Furthermore, the reporting mentioned in Recital (829), even if allegedly limited to financial results, show the actual involvement of Italmobiliare S.p.A. in its subsidiaries. In this regard, the Commission's file also contains examples of employees of the food packaging subsidiaries sending detailed information on the market to [company representative], a [function of company representative] of Sirap-Gema S.p.A. and at the same time [function of company representative] in Italmobiliare S.p.A., in charge of identifying new opportunities (such as mergers and acquisitions, partnerships etc.) for Italmobiliare S.p.A.'s subsidiaries. The file also contains an example of [company representative] transmitting detailed market information to [company representative], [function of company representative] of Sirap-Gema S.p.A. and [function of company representative] in Italmobiliare S.p.A., as well as [company representative] himself corresponding with another market player in the retail food packaging business.<sup>1036</sup> As regards the appointment of the manager of Sirap-Gema S.p.A. by the board of directors, it is clear that Italmobiliare S.p.A. influenced that decision, given the positions of [company representative] and [company representative], and given that

---

<sup>1033</sup> C-508/11 P *Eni Spa v Commission*, ECLI:EU:C:2013:289, paragraph 66; Case C-501/11 P, *Schindler Holding and Others v Commission*, ECLI:EU:C:2013:522, paragraph 112; Case C-97/08 P, *Akzo Nobel v Commission*, ECLI:EU:C:2009:536, paragraphs 73 referring to the Opinion of AG Kokott in that case, ECLI:EU:C:2009:262, paragraphs 89 and 91-93.

<sup>1034</sup> C-508/11 P, *Eni Spa v Commission*, ECLI:EU:C:2013:289, paragraph 64.

<sup>1035</sup> Case-T-77/08, *Dow Chemical v Commission*, ECLI:EU:T:2012:47, paragraph 106; T-391/09, *Evonik Degussa et AlzChem v Commission*, ECLI:EU:T:2014:22, paragraph 43.

<sup>1036</sup> ID [...] (Sirap-Gema – inspection documents), ID , ID [...] (Sirap-Gema – inspection document).

the board of Sirap-Gema S.p.A. was composed of members appointed by Italmobiliare S.p.A.<sup>1037</sup> Finally, according to the case law, the fact that a parent company and its subsidiary are active in different economic sectors or even that the personnel in the parent company had no expertise in the commercial sector in which the subsidiary is active, does not preclude the exercise of decisive influence by the parent company on the subsidiary, even if the latter enjoyed a certain level of autonomy in the management of its business.<sup>1038</sup> In light hereof, Sirap-Gema's arguments in relation to the core business and limited staff of Italmobiliare S.p.A. can be fully rejected.

(832) In its reply to the SO, Sirap-Gema claimed that by referring to additional elements other than the 100% shareholding to strengthen the finding of parental liability, the Commission bound itself to another and more onerous standard of proof than the presumption of decisive influence in cases of 100% ownership. Sirap-Gema thus claims that the Commission imposed upon itself an obligation to prove that Italmobiliare S.p.A. actually exercised decisive influence on its food packaging subsidiaries and that not adhering to that standard for all the addressees would infringe the principle of equal treatment. Sirap-Gema refers to the Joined Cases C-628/10 P and C-14/11 P (*Alliance One, etc. v Commission*). Contrary to Sirap-Gema's claims, the situation in this case and in the Alliance One case must be distinguished. The Commission has in this case not opted for a 'dual-basis' methodology according to which it would only hold those companies liable for which it can provide further evidence to support the actual exercise of decisive influence. It is in this case clear that evidence relied on in both the SO and in this Decision serve only to further reinforce the parental liability presumption in order to forego or to respond to attempts by the parties to rebut that presumption. This does not change the burden of proof with respect to a parent company's decisive influence over the conduct of its (almost) wholly owned subsidiary as established by case law. The methodology chosen in this case (namely to rely on the parental liability presumption, reinforced by additional elements if and when needed) is applied equally to all addressees in similar situations.

(833) The Commission therefore holds Sirap-Gema S.p.A. and Italmobiliare S.p.A. jointly and severally liable for the infringement committed by Sirap-Gema.

#### 6.2.3. *Nespak*

(834) As established in Section 4.1, NESPAK S.p.A. was the direct participant for Nespak in the infringement mainly through the involvement of [company representative and [company representative]. Therefore NESPAK S.p.A. is held liable for its participation in the infringement.

(835) During the entire period of the infringement GROUPE GUILLIN SA was the 100% direct parent of NESPAK S.p.A. (see Recital (26)). In line with the case law referred to in Recital (816), the Commission considers that GROUPE GUILLIN SA is therefore presumed to have actually exercised decisive influence on the conduct of NESPAK S.p.A. Although the Commission considers that this presumption is in

---

<sup>1037</sup> Reference is made to the statute of Sirap-Gema S.p.A. (ID [...] Sirap-Gema – reply to RFI). See also C-508/11 P *Eni Spa v Commission*, ECLI:EU:C:2013:289 (Court Reports – general), paragraph 67 with reference to paragraph 55.

<sup>1038</sup> See case T-399/09, *HSE v Commission*, ECLI:EU:T:2013:647, paragraphs 54 and 56.

itself sufficient to establish liability for this entity, the presumption is further strengthened by the fact that NESPAK S.p.A.'s budgetary proposals are presented to the Director General for Operations of GROUPE GUILLIN SA ("Directeur General Opérationnel") and require approval of the President of GROUPE GUILLIN SA. Furthermore, [company representative], General Director for Operations of GROUPE GUILLIN SA attended a collusive meeting on 11 January 2005 at the airport in Milan (see Recital (196)), which shows that the parent company was aware of the infringing conduct of its subsidiary and did not oppose it.<sup>1039</sup>

- (836) In its reply to the SO, Nespak claims that GROUPE GUILLIN SA did not exercise decisive influence on NESPAK S.p.A. in spite of the 100% ownership. Nespak points out that no document in the file shows that GROUPE GUILLIN SA gave instructions to NESPAK S.p.A. on its market conduct or that it participated in or was aware of the anti-competitive contacts. In this respect, [company representative's] participation at the meeting on 11 January 2005 was purely coincidental given that [company representative] had been in Italy to discuss budgetary matters with [company representative] and does not show that the management of GROUPE GUILLIN SA knew about the anti-competitive conduct. Nespak explains that NESPAK S.p.A. had complete autonomy in its production and commercialisation, disposed of its own resources and defined its own business policies independently. NESPAK S.p.A.'s monthly reportings to GROUPE GUILLIN SA were given retrospectively and therefore did not allow any prior control from the parent. In support of its stance, Nespak submits the employment contract between GROUPE GUILLIN SA and NESPAK S.p.A.'s director ([company representative]) which defines the responsibilities delegated to the latter. In this light, Nespak submits that GROUPE GUILLIN SA had no possibility to influence the pricing policy, production, distribution, procurements, bidding, etc. of NESPAK S.p.A.<sup>1040</sup>
- (837) The Commission considers that the arguments put forward by Nespak are insufficient to rebut the presumed exercise of actual exercise of decisive influence of GROUPE GUILLIN SA over NESPAK S.p.A. as further strengthened by the additional elements described in Recital (835). [Company representative's] employment contract, in addition to defining his responsibilities, also establishes that NESPAK S.p.A.'s director is under the authority of the GROUPE GUILLIN SA's management and contains several clauses which limit the autonomy of NESPAK S.p.A. including specifications of decisions which must be subject to GROUPE GUILLIN SA's prior approval. The contract includes a set of obligations imposed on NESPAK S.p.A.'s director in relation to the commercial management of the company and establishes that NESPAK S.p.A.'s commercial policy will be determined in accordance with the strategy of the Group as defined by the President of the Board of Directors of GROUPE GUILLIN SA, who is also the President of NESPAK S.p.A. It also establishes that any changes hereto will be defined in agreement with the General Director for Operations of the Group ([company representative]). On this basis, the Commission considers that the employment contract is an additional element which strengthens the presumption that GROUPE GUILLIN SA exercised control over

---

<sup>1039</sup> See for example Case T-38/05, *Agroexpansión v Commission*, ECLI:EU:T:2011:585, paragraphs 146 and 157). The General Court stated that, if a parent company is aware of the participation of its subsidiaries and does not oppose the involvement, this behaviour confirms the liability presumption.

<sup>1040</sup> **ID [...]** and **ID [...]** (Nespak – reply to SO), **ID [...]** (Nespak –reply to SO).

NESPAK S.p.A., rather than proving its autonomy as claimed by Nespak and refutes the claim that GROUPE GUILLIN SA did not give instructions to NESPAK S.p.A. Nor can the lack of involvement and awareness of the cartel rebut the abovementioned presumption. According to the case-law, there is no requirement, in order to impute to a parent company liability for the acts undertaken by its subsidiary, to prove that that parent company was directly involved in, or was aware of, the offending conduct.<sup>1041</sup> The argument that GROUPE GUILLIN SA did not give instructions to NESPAK S.p.A. on its market conduct cannot rebut the abovementioned presumption even if it were substantiated, as in order to ascertain whether a subsidiary determines its conduct on the market independently account must be taken of all the factors relied on in the light of the organisational, economic, and legal links and not only of the conduct on the market or the commercial policy *stricto sensu* of the subsidiary.<sup>1042</sup>

- (838) The Commission therefore holds NESPAK S.p.A. and GROUPE GUILLIN SA jointly and severally liable for the infringement committed by Nespak.

#### 6.2.4. Vitembal

- (839) As established in Section 4.1, VITEMBAL Italia S.r.l. and VITEMBAL HOLDING SAS were direct participants in the infringement for Vitembal through the involvement of [company representative] and [company representative] (both at VITEMBAL Italia S.r.l.) and [company representative] (VITEMBAL HOLDING SAS).<sup>1043</sup> VITEMBAL SOCIETE INDUSTRIELLE SAS also participated in the infringement through the involvement of [company representative].<sup>1044</sup>
- (840) During the entire period of the infringement, VITEMBAL HOLDING SAS was in addition the direct almost 100% parent company of VITEMBAL Italia S.r.l. and of VITEMBAL SOCIETE INDUSTRIELLE (see Recital (12)).<sup>1045</sup> In line with the case law referred to in Recital (816), the Commission considers that VITEMBAL HOLDING SAS is therefore presumed to have exercised decisive influence on the conduct of VITEMBAL Italia S.r.l. and VITEMBAL SOCIETE INDUSTRIELLE SAS. Although the Commission considers that the presumption is in itself sufficient to establish liability for this entity, the presumption is further strengthened by the direct participation of [company representative], General Manager and President of VITEMBAL HOLDING SAS.
- (841) The Commission therefore holds VITEMBAL HOLDING SAS liable as a direct participant from 13 November 2003 to 23 February 2005 and as a parent company of VITEMBAL Italia S.r.l. from 5 July 2002 to 17 December 2007 and of VITEMBAL

---

<sup>1041</sup> Case-T-77/08, *Dow Chemical v Commission*, ECLI:EU:T:2012:47, paragraph 106; Case T-391/09, *Evonik Degussa et AlzChem v Commission*, ECLI:EU:T:2014:22, paragraph 43.

<sup>1042</sup> Case C-501/11 P, *Schindler Holding and Others v Commission*, ECLI:EU:C:2013:522, paragraph 112; Case C-97/08 P, *Akzo Nobel. v Commission*, ECLI:EU:C:2009:536, paragraphs 73 referring to the Opinion of AG Kokott in that case, ECLI:EU:C:2009:262, paragraphs 89 and 91-93.

<sup>1043</sup> Vitembal Italia S.r.l. participated directly in the infringement from 5 July 2002 to 17 December 2007. Vitembal Holding SAS participated directly only in the period from 13 November 2003 to 23 February 2005.

<sup>1044</sup> Vitembal Société Industrielle SAS participated directly in the infringement from 13 November 2003 to 19 December 2006.

<sup>1045</sup> Vitembal Holding held 99% of Vitembal Société Industrielle and 98% of Vitembal Italia.



SOCIETE INDUSTRIELLE SAS for the period between 13 November 2003 and 19 December 2006.

- (842) Since VITEMBAL Italia S.r.l. has been liquidated and is no longer in existence, that entity will not be held liable for the infringement and it will not be an addressee of this Decision. However, this does not affect the liability of VITEMBAL HOLDING SAS for the period of VITEMBAL Italia S.r.l.'s direct participation. In fact, at the time of the infringement, VITEMBAL HOLDING SAS formed part of the same economic unit as VITEMBAL Italia S.r.l. Accordingly, the unlawful conduct of VITEMBAL Italia S.r.l. may be imputed to VITEMBAL HOLDING SAS, because the two entities form an undertaking and VITEMBAL HOLDING SAS is deemed to have committed that infringement itself.<sup>1046</sup>

#### 6.2.5. *Magic Pack*

- (843) As established in Section 4.1, Magic Pack Srl was the direct participant in the infringement for Magic Pack through the involvement of [company representative], [company representative] and [company representative]. The Commission therefore holds Magic Pack S.r.l. liable for the infringement committed by Magic Pack.<sup>1047</sup>

#### 6.2.6. *Coopbox*

- (844) Throughout the infringement, Coopbox was subject to numerous internal restructurings. The Commission holds liable those Coopbox entities that were directly involved in the infringement and that are successors of other entities that because of various intragroup restructurings during and after the infringement period, no longer exist (see Section 2.2.4).
- (845) The following entities were direct participants in the infringement committed by Coopbox:
- (1) CCPL S.c. from 18 June 2002 to 31 December 2002 through the involvement of [company representative], [company representative], [company representative] and [company representative].<sup>1048</sup>
  - (2) Coopbox Group S.p.A. from 18 June 2002 to 17 December 2007 through the involvement of [company representative], [company representative], [company representative], [company representative], [company representative], [company representative], [company representative] and [company representative].<sup>1049</sup>
  - (3) Poliemme S.r.l. (ex-Turris Pack) from 18 June 2002 to 29 May 2006 through the involvement of [company representative], [company representative],

---

<sup>1046</sup> See case T-399/09, *HSE v Commission*, ECLI:EU:T:2013:647, paragraphs 127-128.

<sup>1047</sup> When referring to the addressees in its reply to the SO, Magic Pack points out that during its period of participation, [Description of Magic Pack's ownership structure]. ID [...] (Magic Pack reply to the SO)

<sup>1048</sup> CCPL S.c. was until 2004 called CCPL S.c.r.l, see Recital (18)(1) .

<sup>1049</sup> Coopbox Group S.p.A. is the legal successor of Coopbox Europe S.p.A., Very Pack S.r.l. and Coopbox Italia S.r.l. (ex-Isolex). Coopbox Europe S.p.A. participated directly in the infringement from 4 November 2002 to 27 April 2006 through [company representative], [company representative] and [company representative]. Very Pack S.r.l. participated directly in the infringement from 18 June 2002 to 27 February 2003 through [company representative] and [company representative]. Coopbox Italia S.r.l. (ex-Isolex) participated directly in the infringement from 1 April 2006 to 17 December 2007 through [company representative], [company representative], [company representative], [company representative] and [company representative].

[company representative], [company representative], [company representative], [company representative], [company representative], [company representative], [company representative] and [company representative].<sup>1050</sup>

- (846) In order to attribute parental liability, the Commission has first retraced the complex changes which have taken place in Coopbox's corporate structure with a view to establishing the shareholdings held by the ultimate and intermediate parents in the directly involved entities during the period of infringement. The Commission relies on the parental liability presumption referred to in Recital (816) that the parent exercised decisive influence during the period(s) in which at least one directly involved entity was wholly owned (or almost wholly owned) by the parent.
- (847) On that basis, CCPL S.c. is held liable as the ultimate parent of various directly participating entities between 18 June 2002 and 17 December 2007.<sup>1051</sup> Coopbox Group S.p.A. is also held liable as the intermediate parent of various directly participating entities between 28 October 2002 and 27 February 2003 and between 27 April 2006 and 29 May 2006.<sup>1052</sup>
- (848) As explained in Section 2.2.4, CCPL S.c. was during the entire infringement period the ultimate parent company. Its direct or indirect shareholding in one or more of the Coopbox entities directly involved in the infringement was 100% until 18 April 2006 and 93.864% between 18 April 2006 and the end of the infringement.<sup>1053</sup> On 18 April 2006, the shareholders of CCPL S.c. were offered to buy their own shareholdings in the intermediate parent company, CCPL S.p.A. Therefore from 18 April 2006 until after the end of the infringement, the remaining 6.14% of CCPL S.p.A. was held by 10 shareholders, each of which owned between 0.18 % and 1.82%.

---

<sup>1050</sup> Poliemme S.r.l. (ex-Turris Pack) is the legal successor of Coopbox Italia S.p.A., Poliemme S.r.l. and Turris Pack S.r.l. Coopbox Italia S.p.A. participated in the infringement from 1 January 2003 to 27 April 2006 through [company representative], [company representative], [company representative], [company representative], [company representative], [company representative], [company representative], [company representative]. Poliemme S.r.l. participated in the infringement from 18 June 2002 to 27 April 2006 through the participation of [company representative], [company representative] and [company representative]. Turris Pack S.r.l. participated in the infringement from 18 June 2002 to 9 November 2005 through [company representative], [company representative] and [company representative]. From 27 April 2006 to 29 May 2006, Poliemme S.r.l. (ex-Turris Pack) participated in the infringement through [company representative].

<sup>1051</sup> The entities which during the time of their participation in the infringement are directly or indirectly wholly or almost wholly owned by CCPL S.c. are: Very Pack S.r.l. (from 18 June 2002 to 27 February 2003), Coopbox Europe S.p.A. (from 4 November 2002 to 27 April 2006), Poliemme S.r.l. (wholly owned from 28 October 2002 until 31 December 2003 and again from 20 December 2004 to 27 April 2006), Coopbox Italia S.p.A. (from 1 February 2003 to 31 December 2003 and again from 20 December 2004 to 27 April 2006), Coopbox Italia S.r.l. (ex-Isolex) (from 1 April 2006 to 17 December 2007) and Poliemme S.r.l. (ex-Turris Pack) (from 27 April 2006 to 29 May 2006).

<sup>1052</sup> The entities which during the time of their participation in the infringement are directly or indirectly wholly or almost wholly owned by Coopbox Group S.p.A. are: Poliemme S.r.l. (from 28 October 2002 to 27 February 2003) and Poliemme S.r.l. (ex-Turris Pack) (from 27 April to 29 May 2006). It is noted that the Commission has not taken into account those of Coopbox Group S.p.A.'s predeceasing entities which at a certain time were controlled by Coopbox Group S.p.A. before being absorbed by it (Very Pack S.r.l. and Coopbox Italia S.r.l. (ex-Isolex)).

<sup>1053</sup> More specifically, CCPL S.c. always held (directly or indirectly through the sub-holding CCPL S.p.A.) either 100% or almost 100% (93,864%) of Coopbox Europe S.p.A. (now Coopbox Group S.p.A.) whose employees participated directly in the infringement.

- (849) The Commission considers that a shareholding of 93.864% is sufficient to trigger the presumption that a parent company exercises decisive influence over the conduct of its subsidiary. In these circumstances, it is for the parent company to adduce sufficient evidence to rebut the presumption and to show that its subsidiary acted independently on the market. Although the Commission considers that the parental liability presumption is in itself sufficient to establish liability for the concerned entities, taking into account among others arguments introduced by Coopbox and the complexity of the corporate structure, the presumption is further strengthened by an analysis of the legal, personal and economic links between the entities which form part of the Coopbox undertaking.
- (850) According to the Statutes of Association of CCPL S.p.A.,<sup>1054</sup> the parent company CCPL S.c. appoints and dismisses all the Members of its Management Board. As the majority shareholder, the parent company also approves the balance sheet of the company and decides on the responsibilities of the administrators. The Managing Director reports to the President of the Board of Directors, who monitors the implementation of the Board's decisions and objectives. The same corporate model applies for Coopbox Group SpA.
- (851) The Shareholders' Agreement for CCPL S.p.A. ("Contratto parasociale") explicitly recognizes that CCPL S.c. has a controlling shareholding in CCPL S.p.A. and lays down that divestitures of shares [business secret]. CCPL S.c. enjoys [business secret], the modalities of which are established in the Shareholders' Agreement. Furthermore, no shareholder may hold more than [business secret] of CCPL S.p.A., which ensures that CCPL S.c. will in all circumstances retained control over its subsidiary. No special rights were granted to minority shareholders, and there are no special agreements regarding control and decision-making between the subsidiary and the parent.<sup>1055</sup> In addition, the remaining 6.14% of CCPL S.p.A., which is not held by CCPL S.c., was held by the same shareholders that own CCPL S.c.<sup>1056</sup> Therefore, the circle of owners in both entities is the same, showing strong ties between the two companies.
- (852) CCPL S.c. had the same Managing Director, [company representative], from the beginning of Coopbox's participation in the infringement (when CCPL S.c. was directly participating in the cartel) until the end of its participation. [Company representative] was also president of the Management Board in CCPL S.p.A. between December 2003 and 19 May 2008. Moreover, in the period from 4 November 2002 until 15 September 2008, [company representative] was first President, then Board Member (Consigliere) and then again President of Coopbox Europe S.p.A. and its legal successors Coopbox Italia S.r.l. (ex-Isolex) and Coopbox Group S.p.A.<sup>1057</sup>
- (853) Coopbox Group S.p.A.'s (and its predecessors') Managing Board consists of 3 members out of which one is the President and one is the Managing Director. Thus,

---

<sup>1054</sup> ID [...] (Coopbox - reply to RFI).

<sup>1055</sup> ID [...] (Coopbox - reply to RFI)

<sup>1056</sup> ID [...] (Coopbox - reply to RFI).

<sup>1057</sup> ID [...] (Coopbox - reply to RFI).

[company representative] was as a Board Member in direct contact with the Managing Director of the operational food packaging entities.<sup>1058</sup>

- (854) In addition, [company representative] was first a Board Member and then Managing Director of CCPL S.p.A. between 22 December 2003 and May 2008, and at the same time a Board Member of Coopbox Europe S.p.A. (and its successors) from November 2002 to September 2008. He was also President of Coopbox Italia S.p.A. from January 2006 to May 2006 and a Board Member of Coopbox Italia S.r.l. (ex-Isolex) from March 2006 to February 2009. Thus, [company representative] held simultaneous management positions in CCPL S.p.A. and the operational food packaging subsidiaries and had contacts with [company representative] of CCPL S.c. through their simultaneous membership in the Boards of CCPL S.p.A. and Coopbox Europe S.p.A.
- (855) [Company representative] was at the same time a Board Member of CCPL S.p.A. (May 2005-September 2008) and Vice-President of Coopbox Italia S.r.l. (March 2006 to October 2008). He also held many key management positions in Coopbox Italia S.p.A., Poliemme S.r.l. (ex-Turris Pack), Turris Pack S.r.l. and Very Pack S.r.l. Other examples of similar management overlaps were reported by Coopbox.
- (856) In its reply to the SO, Coopbox claims that after the restructuring of the group on 25 October 2002, CCPL S.c. did not exercise any decisive influence on the Coopbox subsidiaries, not even through CCPL S.p.A. According to Coopbox, from the end of 2002, CCPL S.c. stopped its activities related to the management of the food packaging production and gave complete autonomy to the Coopbox subsidiaries put in charge of that business line (at first Coopbox Europe S.p.A.). As for CCPL S.p.A., Coopbox claims that this is a sub-holding, not operational in any commercial activities.
- (857) Coopbox submits that the Coopbox subsidiaries under CCPL S.p.A. determined their own prices and commercial policies without any interference from the holding parents, CCPL S.p.A. and CCPL S.c. Coopbox underlines that the Coopbox subsidiaries participated in the cartel at their own initiative and never informed CCPL S.p.A. or CCPL S.c. about their cartel activities. Coopbox also submits that the Coopbox subsidiaries are financially independent from the holding parents. Furthermore, Coopbox contends that none of the three Board Members of CCPL S.c. or CCPL S.p.A. that were also members of the Boards of the Coopbox subsidiaries, had any operational function in the latter entities or took part in any of the anti-competitive contacts. Finally, Coopbox points out that none of the documents in the case file shows that those Board members were involved in the management of the subsidiaries or that they were part of any of the numerous email exchanges in the case file.
- (858) The Commission observes that Coopbox does not submit any evidence to support its assertions that the parent companies did not exercise a decisive influence on their wholly or almost wholly owned Coopbox subsidiaries after the reorganisation of the group in 2002. In any event, even if they were substantiated, the alleged aspects cannot rebut the abovementioned presumption as in order to ascertain whether a subsidiary determines its conduct on the market independently account must be taken of all the relevant factors relating to economic, organisational and legal links which

---

<sup>1058</sup>

ID [...] (Coopbox reply to the SO).

tie the subsidiary to the parent company, which may vary from case to case and cannot therefore be set out in an exhaustive list and not only of the conduct on the market or the commercial policy *stricto sensu* of the subsidiary.<sup>1059</sup>

- (859) According to the description of the 2002 reorganisation on CCPL S.c.'s website, the business units under "CCPL" were indeed under its control: *"The new governance was prompted by a new model of business: the unitary multibusiness cooperative group in which CCPL acted as parent company, controlling and managing the six business units. Each strategic business area became a specific joint-stock company comprising activities within its system according to an industrial and no longer a purely financial logic."*<sup>1060</sup> The spirit of the CCPL cooperative group's business model is further underlined by its motto which, among others, appears on its annual balance sheet: *"Together. Our way of doing business"*.<sup>1061</sup> The financial results of the Coopbox subsidiaries are incorporated into CCPL S.c.'s overall balance sheet. An explanatory note to the consolidated CCPL group's balance sheet explains further the functioning of the cooperative: *"The strategical lines are defined at group level; consequently the companies that constitute it are subject to a unitary management. The activities of the group, as evidenced below, are distinguished by sector (Aree Strategiche di Affari – ASA or Business Units - BU)"*,<sup>1062</sup> here amongst the Fresh Food Packaging activity. The case law has confirmed that the fact that different companies present themselves towards the outside world as forming part of the same group constitutes relevant evidence that can be used in order to justify the conclusion that they form part of the same economic unit and that the infringement committed by one of the entities may be imputed to the other.<sup>1063</sup>
- (860) Although according to Coopbox there is no structured reporting system vis-à-vis CCPL S.p.A. and CCPL S.c., the file contains numerous examples of detailed reports and information regarding the day-to-day business of the food packaging entities provided to [company representative] of CCPL S.c., [company representative] of CCPL S.p.A. and [company representative] and [company representative] of Coopbox Europe S.p.A. (and its successors) by representatives of the Coopbox subsidiaries. Even though most of those inspection documents concern the Spanish and Eastern European subsidiaries, they show direct involvement on the part of CCPL S.c. and CCPL S.p.A. in the Fresh Food Packaging business line. In fact the reporting subsidiaries often included representatives of both the intermediate parent of the European food packaging subsidiaries, Coopbox Europe S.p.A. (and its successors), and the ultimate parents, CCPL S.c. and CCPL S.p.A., as recipients of the same email.<sup>1064</sup>

---

<sup>1059</sup> Case C-501/11 P, *Schindler Holding and Others v Commission*, ECLI:EU:C:2013:522, paragraph 112; Case C-97/08 P, *Akzo Nobel v Commission*, ECLI:EU:C:2009:536, paragraphs 73 referring to the Opinion of AG Kokott in that case, ECLI:EU:C:2009:262, paragraphs 89 and 91-93.

<sup>1060</sup> See: <http://www.ccpl.it/The-Group/The-History>.

<sup>1061</sup> In Italian: *'Insieme. Il nostro modo di fare impresa.'*

<sup>1062</sup> See the CCPL Balance Sheet 2012, 'Nota Integrativa al Bilancio Consolidato 2012' on page 120, published on <http://www.ccpl.it/Governance/Balance>. Original in Italian: *'Le linee strategiche sono definite a livello di Gruppo; conseguentemente le imprese che lo costituiscono sono assoggettate ad una direzione unitaria. Le attività svolte dal Gruppo, come risulta evidenziato successivamente, sono distinte per settore (Aree Strategiche di Affari – ASA o Business Units – BU).'*

<sup>1063</sup> See among others Case T-399/09 *Holding Slovenske elektrarne d.o.o. (HSE) v Commission*, ECLI:EU:T:2013:647, paragraph 36.

<sup>1064</sup> ID [...], ID [...] and ID [...] (all Coopbox inspection documents).

- (861) As regards Coopbox Europe S.p.A.'s (and its successors') financial independency, Coopbox has previously outlined some other elements which suggest that the Coopbox subsidiaries did not function independently from their parents. CCPL S.p.A. provided a cash pooling service for all the business units, including the Food Packaging line of the CCPL group, in order to optimise cash management and to reduce passive interests. CCPL S.c. also provided administrative, accountancy, financial and legal assistance to its subsidiaries and checks Coopbox Group S.p.A.'s annual budget, which is elaborated and presented to it by Coopbox Group S.p.A.
- (862) Finally, as stated in Section 6.1, a parent company's awareness of and lack of distancing from the infringing conduct of the subsidiaries is not a necessary precondition for the establishment of parental liability.<sup>1065</sup> Nonetheless, CCPL S.c. must have been aware of certain collusive contacts with competitors even after the period of its own direct participation in the cartel. In fact, emails addressed to [company representative] of CCPL S.c. after the end of CCPL S.c.'s direct participation in the cartel contain clear references to the cartel activities in South West Europe, Italy and Central Eastern Europe.<sup>1066</sup> This evidence clearly reinforces the parental liability presumption. As stated above (see Recital (819)), case-law has also confirmed that a parent company that has the ability to exercise decisive influence over a subsidiary and is aware of the infringement committed by such subsidiary can be held liable for the acts of the subsidiary if it did not bring the infringement to an end.
- (863) The Commission therefore holds CCPL S.c. liable for its direct participation from 18 June 2002 to 31 December 2002, Coopbox Group S.p.A. for its direct participation from 18 June 2002 to 17 December 2007 and Poliemme S.r.l. (ex-Turris Pack) from 18 June 2002 to 29 May 2006. In addition, the Commission holds Poliemme S.r.l. (ex-Turris Pack), Coopbox Group S.p.A. and CCPL S.c. jointly and severally liable. In particular, Coopbox Group S.p.A. and CCPL S.c. are jointly and severally liable for the whole period of Coopbox's participation in the cartel.<sup>1067</sup> CCPL S.c. and Poliemme S.r.l. (ex-Turris Pack) are jointly and severally liable in respect of the periods between 28 October 2002 and 31 December 2003 and between 20 December 2004 and 29 May 2006.<sup>1068</sup> Coopbox Group S.p.A. and Poliemme S.r.l. (ex-Turris

---

<sup>1065</sup> See for instance T-72/06 *Groupe Gascogne SA v Commission*, ECLI:EU:T:2011:671, paragraph 81.

<sup>1066</sup> **ID [...]** (SWE 2007), **ID [...]** (Italy 2005), **ID [...]** (SWE 2005), **ID [...]** (CEE 2005) (all Coopbox inspection documents).

<sup>1067</sup> CCPL S.c. and Coopbox Group S.p.A. are jointly and severally liable from 18 June 2002 to 27 February 2003 insofar as Coopbox Group S.p.A. is the legal successor of Very Pack S.r.l. CCPL S.c. and Coopbox Group S.p.A. are jointly and severally liable from 4 November 2002 to 27 April 2006 insofar as Coopbox Group S.p.A. is the legal successor of Coopbox Europe S.p.A. Finally, CCPL S.c. and Coopbox Group S.p.A. are jointly and severally liable from 1 April 2006 to 17 December 2007 insofar as Coopbox Group S.p.A. is the successor of Coopbox Italia S.r.l. (ex-Isolex).

<sup>1068</sup> CCPL S.c. and Poliemme S.r.l. are jointly and severally liable from 28 October 2002 to 31 December 2003 insofar as Poliemme S.r.l. (ex-Turris Pack) is the legal successor of Poliemme S.r.l. and from 1 January 2003 to 31 December 2003 also insofar as Poliemme S.r.l. (ex-Turris Pack) is the legal successor of Coopbox Italia S.p.A. (at the time Coopbox Italia S.r.l.). CCPL S.c. and Poliemme S.r.l. are then jointly and severally liable from 20 December 2004 to 27 April 2006 insofar as Poliemme S.r.l. (ex-Turris Pack) is the legal successor of Poliemme S.r.l. and Coopbox Italia S.p.A.. CCPL S.c. and Poliemme S.r.l. (ex-Turris Pack) are then jointly and severally liable until the end of Poliemme S.r.l. (ex-Turris Pack)'s participation in the infringement on 29 May 2006.

Pack) are jointly and severally liable between 28 October 2002 and 27 February 2003 and between 27 April 2006 and 29 May 2006.<sup>1069</sup>

### 6.3. South-West Europe (SWE)

#### 6.3.1. *Linpac*

- (864) As established in Section 4.2, LINPAC Packaging Pravia S.A. and LINPAC Packaging Holdings S.L. were the direct participants for Linpac in the infringement in Spain and Portugal mainly through the involvement of [company representative], [company representative] and [company representative]. They are therefore held liable for their direct participation in the infringement.<sup>1070</sup>
- (865) During the entire period of the infringement, LINPAC Group Ltd, held indirectly 100% shareholding in LINPAC Packaging Holdings S.L. through the chain of control described in Recital (9). On 9 November 2006, LINPAC Packaging Pravia S.A. became directly 100% owned by LINPAC Packaging Holdings S.L. and thus indirectly wholly owned by LINPAC Group Ltd. Before that date, LINPAC Packaging Pravia S.A. was not a wholly owned entity as LINPAC Packaging Holdings S.L. only held 76% of its shares. In line with the case law referred to in Recital (816), the Commission considers that LINPAC Group Ltd therefore exercised decisive influence on the conduct of LINPAC Packaging Holdings S.L. and, as of 9 November 2006, also of LINPAC Packaging Pravia S.A. Furthermore, there is a presumption that the intermediate parent and direct participant, LINPAC Packaging Holdings S.L., exercised decisive influence over LINPAC Packaging Pravia S.A. as of 9 November 2006. LINPAC Packaging Holdings S.L. and LINPAC Group Ltd are on this basis liable for the conduct of their respective wholly owned subsidiaries.
- (866) Although the Commission considers that the abovementioned presumption is in itself sufficient to establish liability for LINPAC Group Ltd, the presumption is further strengthened by the fact that, during the period of the infringement, LINPAC Group Ltd addressed a manual to all companies controlled by it which sets minimum standards and policies for conduct within and management of the group. The manual was to provide for procedures and thresholds for authorisation in relation to a number of governance issues, including (i) capital expenditure, (ii) disposals, (iii) certain commercial decisions, (iv) procedures for internal reporting, (v) HR policy, (vi) legal affairs and (vii) certain trading matters. The policies set out in the manual had to be complied with by all companies controlled by LINPAC Group Ltd.<sup>1071</sup> The manual demonstrates that LINPAC Group Ltd had the ability to exercise - and in fact exercised - decisive influence on all of its subsidiaries, including the companies directly involved in the infringement. In its reply to the SO, Linpac did not provide any observations on the presumed parental liability.

---

<sup>1069</sup> Coopbox Group S.p.A. and Poliemme S.r.l. (ex-Turris Pack) are jointly and severally liable from 28 October 2002 to 27 February 2003 insofar as Poliemme S.r.l. (ex-Turris Pack) is the legal successor of Poliemme S.r.l. and Coopbox Group S.p.A. is the legal successor of Coopbox Europe S.p.A. Coopbox Group S.p.A. and Poliemme S.r.l. (ex-Turris Pack) are then jointly and severally liable from 27 April 2006 to 29 May 2006 insofar as Coopbox Group S.p.A. is the legal successor of Coopbox Europe S.p.A.

<sup>1070</sup> See also **ID [...]**

<sup>1071</sup> **ID [...]**

- (867) The Commission therefore holds LINPAC Packaging Pravia S.A., LINPAC Packaging Holdings S.L. and LINPAC Group Ltd jointly and severally liable for the infringement committed by Linpac. In particular, Linpac Packaging Pravia S.A. is liable as a direct participant from 2 March 2000 to 26 September 2007. LINPAC Packaging Holdings S.L. is liable as a direct participant from 2 March 2000 to 13 February 2008 and as the parent company of LINPAC Packaging Pravia S.A. from 9 November 2006 to 26 September 2007. LINPAC Group Ltd is liable as the parent company of Linpac Packaging Pravia S.A. from 9 November 2006 to 26 September 2007 and of Linpac Packaging Holdings S.L. from 2 March 2000 to 13 February 2008.

#### 6.3.2. *Vitembal*

- (868) As established in Section 4.2, VITEMBAL España, S.L. and VITEMBAL HOLDING SAS were direct participants in the infringement in Spain and Portugal for Vitembal through the involvement of [company representative] (VITEMBAL España, S.L.) and [company representative] (VITEMBAL HOLDING SAS).<sup>1072</sup> They are therefore held liable for their participation in the infringement. VITEMBAL SOCIETE INDUSTRIELLE SAS also participated in the infringement through the involvement of [company representative].<sup>1073</sup>
- (869) During the entire period of the infringement, VITEMBAL HOLDING SAS was the direct almost 100% parent of VITEMBAL España, S.L. and of VITEMBAL SOCIETE INDUSTRIELLE SAS (see Recital (12)). In line with the case law referred to in Recital (816), the Commission considers that VITEMBAL HOLDING SAS is therefore presumed to have exercised decisive influence on the conduct of VITEMBAL España, S.L. and VITEMBAL SOCIETE INDUSTRIELLE SAS. This presumption, which is sufficient in itself to establish liability, is further strengthened by the direct participation of [company representative], General Manager and President of VITEMBAL HOLDING SAS.
- (870) The Commission therefore holds VITEMBAL España, S.L. liable for its participation in the infringement from 7 October 2004 to 25 July 2007 and VITEMBAL HOLDING SAS liable as direct participant from 7 October 2004 to 18 January 2005 and as the parent company of VITEMBAL España, S.L. from 7 October 2004 to 25 July 2007 and of VITEMBAL SOCIETE INDUSTRIELLE SAS from 7 October 2004 to 18 January 2005 (see Recitals (984)-(985)).
- (871) In September 2013, VITEMBAL España, S.L. was put into liquidation. The Commission notes that the process for the liquidation of VITEMBAL España, S.L. does not affect VITEMBAL España, S.L.'s liability for its direct participation in the infringement or the imputation of liability for the conduct of that entity to its parent, VITEMBAL HOLDING SAS. The Commission therefore holds VITEMBAL España, S.L. and VITEMBAL HOLDING SAS jointly and severally liable for the infringement committed by Vitembal.<sup>1074</sup>

---

<sup>1072</sup> Vitembal España S.L. participated in the infringement from 7 October 2004 to 25 July 2007. Vitembal Holding SAS participated directly only in the period from 7 October 2004 to 18 January 2005.

<sup>1073</sup> Vitembal Société Industrielle SAS participated in the infringement from 7 October 2004 to 18 January 2005.

<sup>1074</sup> Although Vitembal España S.L. was directly involved in the cartel activities, the Commission refrains from imposing a fine on it as it has been put into judicial liquidation. However, the Commission decides



### 6.3.3. Coopbox

- (872) Throughout the infringement, Coopbox was subject to numerous internal restructurings. The Coopbox entities that are held liable for the infringement are those which were directly involved in the infringement and those which are successors of other entities that because of various intragroup restructurings during and after the infringement period, no longer exist (see Section 2.2.4).
- (873) The following entities were direct participants in the infringement committed by Coopbox:
- (1) Coopbox Hispania S.l.u. from 2 March 2000 to 13 February 2008 in particular through the involvement of [company representative], [company representative] and [company representative];<sup>1075</sup>
  - (2) Dynaplast Ibérica de Embalaje S.L.U. from 26 June 2002 to 13 February 2008 in particular through the involvement of [company representative] and [company representative].<sup>1076</sup> On 24 September 2014 Dynaplast Ibérica de Embalaje S.L.U. was incorporated into Coopbox Hispania S.l.u. Therefore Coopbox Hispania S.l.u. is liable as legal successor for Dynaplast Ibérica de Embalaje S.L.U.'s participation in the cartel (see Recital (820)).

---

to impose a fine on Vitembal Holding SAS for Vitembal España S.L.'s unlawful behaviour as it has been established that Vitembal Holding SAS formed a single undertaking with its subsidiary during the period of the infringement. Reference is made to Case T-399/09 *Holding Slovenske elektrarne d.o.o. (HSE) v Commission*, ECLI:EU:T:2013:647, paragraphs 127-128.

<sup>1075</sup> Coopbox Hispania S.l.u. is the economic successor of Coopbox Ibérica S.L. which in turn is the legal successor of Coopbox Ibérica S.A. Coopbox Ibérica S.A./S.L. participated in the infringement from 2 March 2000 to 31 December 2005 through the involvement of [company representative], [company representative] and [company representative]. From 1 January 2006 and on, Coopbox Hispania S.l.u. participated in the infringement through [company representative] and [company representative]. Following an internal group restructuring in December 2005, Coopbox Ibérica S.A. changed its legal form into Coopbox Ibérica S.L. and was then split, with the creation of a new company, Coopbox Hispania S.l.u., which retained the packaging assets (including its human resources, and notably [company representative]), while Coopbox Ibérica S.L. stepped out of food packaging and into real estate. Coopbox Ibérica S.L. remained in the group as a wholly owned subsidiary of CCPL S.c. Since the transfer of assets took place intra-group and although the initial operator has not ceased to have a legal existence but no longer carries out an economic activity on the relevant market, in line with the case-law stated in Recital (821) and in view of the structural links between the initial operator (Coopbox Ibérica S.A.) and the new operator of the undertaking (Coopbox Hispania S.l.u.), the Commission considers that the responsibility of the initial operator has lawfully been passed on within the same undertaking. Liability for past behaviour of the initial operator should therefore be passed on to the new operator. In the present case, therefore, liability should be attributed to Coopbox Hispania S.l.u. throughout the period of infringement.

<sup>1076</sup> Dynaplast Ibérica de Embalaje S.L.U. is the economic successor of Dynaplast S.L. which in turn is the legal successor of Dynaplast S.A. Dynaplast S.A./S.L. participated in the infringement from 26 June 2002 to 31 December 2005 through the involvement of [company representative] and [company representative]. From 1 January 2006 and on, Dynaplast Ibérica de Embalaje S.L.U. participated in the infringement through [company representative]. Following an internal group restructuring in December 2005, Dynaplast S.A. changed its legal form into Dynaplast S.L. and was then split, with the creation of a new company, Dynaplast Ibérica de Embalaje S.L.U., which took over the food packaging assets (production and marketing), but the original entity Dynaplast S.L. remained in existence. The latter company owns the building where the production of packaging trays takes place but is no longer active in the food packaging business. Both entities are indirectly wholly owned by CCPL S.c. In these circumstances, by analogy with the approach taken for Coopbox Hispania S.l.u., the Commission considers that Dynaplast Ibérica de Embalaje S.L.U. can be held liable for the entire period of infringement.

- (874) As explained in Section 2.2.4, CCPL S.c. was the ultimate parent company of the above subsidiaries during the period of the infringement, whereas CCPL S.p.A. and Coopbox Group S.p.A. were the intermediate parent companies. For further information on the corporate history of CCPL S.c. and CCPL S.p.A, see Recital (848).
- (875) In order to attribute parental liability, the Commission has, first retraced the changes which have taken place in Coopbox's corporate structure with a view to establishing the shareholdings held by the ultimate and intermediate parents in the directly involved subsidiaries during the period of infringement. The Commission relies on the parental liability presumption referred to in Recital (816) that the parent exercised decisive influence during the period(s) in which at least one directly involved subsidiary was wholly or almost wholly owned by the parent(s).
- (876) On that basis, CCPL S.c. is held liable as the ultimate parent of Coopbox Hispania S.l.u. and Dynaplast Ibérica de Embalaje S.L.U (now Coopbox Hispania S.l.u.).
- (877) As described in Section 2.2.4, Coopbox Hispania S.l.u. became 100% owned as of 24 July 2003. Until that date, Coopbox Hispania S.l.u. was held 90% by Coopbox Group S.p.A. (legal successor of Very Pack S.r.l. and Coopbox Europe S.p.A.) which in turn was held 95% by CCPL S.c. until it became wholly owned on 25 October 2002.
- (878) As also described in Section 2.2.4, Dynaplast Ibérica de Embalaje S.L.U. (now Coopbox Hispania S.l.u.) became 100% owned as of 25 October 2002. Between 26 June 2002 and 25 October 2002, Dynaplast Ibérica de Embalaje S.L.U. was held 100% by Very Pack S.r.l. which in turn was owned 95% by CCPL S.c. The Commission considers that this shareholding is sufficient to presume that CCPL S.c., through its indirect ownership, exercised decisive influence on Dynaplast Ibérica de Embalaje S.l.u. (at the time Dynaplast S.A. and now Coopbox Hispania S.l.u.). This presumption is strengthened by [company representative's] participation in a cartel meeting on 29 July 2002 (see Recital (880) below). On 18 April 2006, CCPL S.c. reduces its shareholding from 100% to 93.86% in the intermediate parent company, CCPL S.p.A. Therefore from 18 April 2006 until the end of the infringement on 13 February 2008, Coopbox Hispania S.l.u. and Dynaplast Ibérica de Embalaje S.L.U. (now Coopbox Hispania S.l.u.) were indirectly 93.86% held by CCPL S.c.
- (879) As explained in Recitals (848)-(849), the Commission considers that a shareholding of 93.864% alone is sufficient to trigger the presumption that a parent company exercises decisive influence over the conduct of its subsidiary. In these circumstances, it would be for the parent company to adduce sufficient evidence to rebut the presumption and to show that its subsidiary acted independently on the market. Although the Commission believes that the parental liability presumption would in itself be sufficient to establish liability for the entities concerned, taking into account the arguments put forward by Coopbox and the complexity of the corporate structure, the presumption is further strengthened by an analysis of the legal, personal and economic links between the entities which form part of the Coopbox undertaking, see Recitals (850)-(855).
- (880) As stated in Section 6.1, a parent company's awareness of and lack of distancing from the infringing conduct of its subsidiaries is not a necessary precondition for the

establishment of parental liability.<sup>1077</sup> Nonetheless, both CCPL S.c. and Very Pack S.r.l. must have been aware of certain collusive contacts with competitors. The Commission notes in particular that [company representative] participated in one cartel meeting on 29 July 2002 (see Recital (418)). At that time, [company representative] was [function of company representative] of CCPL S.c., a position which he held between 1 April 2000 and 4 November 2002. He was also [function of company representative] of Very Pack S.r.l., a position which he held between 1 June 2000 and 27 February 2003. His presence at the meeting shows that the ultimate parent, CCPL S.c., as well as the intermediate parent, Very Pack S.r.l., were aware of the cartel activities. This evidence clearly reinforces the parental liability presumption. As stated above (see Recital (819)), case-law has also confirmed that a parent company that has the ability to exercise decisive influence over a subsidiary and is aware of the infringement committed by such subsidiary can be held liable for the acts of the subsidiary if it did not bring the infringement to an end.

- (881) The involvement of intermediate parents along the chain of control also strengthens the presumption of liability for the ultimate parent, CCPL S.c. [Company representative] participated in the meeting of 18 January 2005 at Hotel Calderon in Barcelona (see Recitals (456)-(460)). At the time he was Managing Director of Coopbox Europe S.p.A. (he held this position from 8 September 2003 to 8 September 2005). [Company representative], [function of company representative] at Coopbox Europe S.p.A., took part in a meeting in July 2005 (see Recital (464)). Therefore, Coopbox Europe S.p.A. (later to become Coopbox Group S.p.A.) was aware of and participated in the infringement.
- (882) There were also significant management overlaps. For example, [company representative], Managing Director of CCPL S.c., was President of Coopbox Ibérica S.A. until 31 December 2003. [Company representative], Board Member and Managing Director of CCPL S.p.A. (respectively between 22 December 2003 and 28 April 2006 and 28 April 2006 and 15 September 2008), was Board Member of Coopbox Ibérica S.A. and then Coopbox Hispania S.l.u. from 31 December 2003 until the end of the infringement. Finally, between 1 January 2000 and 31 January 2003, [company representative] (who was not involved in this infringement) was Sales Director in CCPL S.c. and Vice President of Very Pack S.r.l.
- (883) In its reply to the SO, Coopbox claims that CCPL S.c. did not exercise decisive influence on its food packaging subsidiaries as of 25 October 2002. The specific arguments and claims raised by Coopbox and the Commission's reply to those arguments are set out in Recitals (856)-(862) which apply equally to the SWE infringement.
- (884) The Commission therefore holds Coopbox Hispania S.l.u. liable for its direct participation from 2 March 2000 to 13 February 2008. In addition, the Commission holds Coopbox Hispania S.l.u. and CCPL S.c. jointly and severally liable for the infringement committed by Coopbox from 26 June 2002 to 13 February 2008.

---

<sup>1077</sup> See for instance T-72/06 *Groupe Gascogne SA v Commission*, ECLI:EU:T:2011:671, paragraph 81.

#### 6.3.4. *Huhtamäki/ONO Packaging*

- (885) Huhtamäki Embalagens Portugal S.A. was the direct participant in the infringement in Spain and Portugal for Huhtamäki in particular through the involvement of [company representative].
- (886) On 19 June 2006, Huhtamäki Embalagens Portugal S.A. was sold to ONO Packaging SAS, and was renamed ONO PACKAGING PORTUGAL S.A. Therefore, the Commission holds ONO PACKAGING PORTUGAL S.A. liable as the successor of Huhtamäki Embalagens Portugal S.A.<sup>1078</sup>
- (887) After its sale to ONO Packaging SAS, ONO PACKAGING PORTUGAL S.A. was no longer involved in the collusive activities. Therefore, in line with the case law referred to in Recital (820) the Commission imputes parental liability to the ultimate parent company that exercised decisive influence on Huhtamäki Embalagens Portugal S.A. during the period of the infringement.
- (888) Huhtamäki Oyj was the ultimate parent company which indirectly held 100% of the shareholding of Huhtamäki Embalagens Portugal S.A. during the entire period of the infringement. In line with the case law referred to in Recital (816), the Commission considers that Huhtamäki Oyj is therefore presumed to have exercised decisive influence over Huhtamäki Embalagens Portugal S.A. Although the Commission considers that this presumption is, in itself, sufficient to establish the liability of Huhtamäki Embalagens Portugal S.A., the presumption is further strengthened by the fact that the Huhtamäki Group operates in accordance with the Huhtamäki Group Corporate Governance Policy for Subsidiaries ("Huhtamäki Policy") which is based on the Finnish corporate and securities legislation as well as the Rules of the Helsinki Stock Exchange. Pursuant to Huhtamäki Policy each direct or indirect subsidiary of Huhtamäki Oyj is obliged to follow a set rules with regard to (i) corporate governance, (i) composition of boards of directors, (iii) allocation of duties, responsibilities and liabilities, (iv) holding of the meetings of the board of directors and (iv) signing on behalf of subsidiaries. In case of any deviations from the Huhtamäki Policy, a Huhtamäki entity is obliged to contact [business secret - internal group policy].<sup>1079</sup> Furthermore, during the period of the infringement, [company representative], who participated in the anticompetitive meetings on behalf of Huhtamäki Embalagens Portugal S.A., reported to [company representative] [business secret - internal group policy].
- (889) In its reply to the SO, ONO Packaging SAS claims that ONO PACKAGING PORTUGAL S.A. (formerly known as Huhtamäki Embalagens Portugal S.A.) cannot be held liable alongside Huhtamäki entities for the conduct of Huhtamäki.<sup>1080</sup> ONO Packaging SAS argues that upon its acquisition by ONO Packaging SAS, ONO PACKAGING PORTUGAL S.A. put an end to any participation in the collusive

---

<sup>1078</sup> In the SO, the Commission designated ONO PACKAGING PORTUGAL S.A. by the name '*ONO Embalagens Portugal S.A.*' This error was due to a clerical error on this entity's name in the power of attorney provided by ONO Packaging to the Commission on 8 June 2012. By a letter from ONO Packaging to the Commission dated 12 February 2013, ONO Packaging confirmed that it treated the original notification of the SO to '*ONO Embalagens Portugal SA*' as effective and duly notified to ONO Packaging Portugal S.A. ONO Packaging also confirmed that it had exercised its procedural rights. This letter is registered as **ID [...]**.

<sup>1079</sup> **ID [...]** (Huhtamäki - reply to RFI).

<sup>1080</sup> **ID [...]** (ONO Packaging reply to the SO).

practices in South-West Europe. In addition, ONO Packaging SAS claims that since the previous ultimate parent (Huhtamäki Oyj) is presumed to have and in fact directly controlled the commercial policy of all of its subsidiaries, including ONO PACKAGING PORTUGAL S.A. (formerly known as Huhtamäki Embalagens Portugal S.A.), there is no ground for holding ONO PACKAGING PORTUGAL S.A. liable and the previous parent undertaking (Huhtamäki) should bear the entire liability. The Commission rejects this argumentation and notes that under the principle of personal liability, a legal entity which has participated in an infringement and which has been acquired in the meantime by another undertaking continues to answer itself for its unlawful behaviour prior to its acquisition, when it has not been purely and simply absorbed by the acquirer, but continue its activities as subsidiary.<sup>1081</sup>

- (890) In its reply to the SO, Huhtamäki denies that the ultimate parent, Huhtamäki Oyj, exercised decisive influence over Huhtamäki Embalagens Portugal S.A. during the latter's participation in the infringement.<sup>1082</sup> The Commission notes that Huhtamäki's argumentation rests predominately on the apparent absence of Huhtamäki Oyj's involvement in the [business secret - internal group policy].
- (891) It is noted that establishing a certain degree (if indeed any) of commercial and strategic autonomy on the market is not in itself sufficient to rebut the presumption that Huhtamäki Oyj exercised decisive influence over the conduct of Huhtamäki Embalagens Portugal S.A. during the period of the infringement.<sup>1083</sup> Huhtamäki would have to prove that its subsidiary had total autonomy in the light of the organisational, economic, and legal links and not only of the conduct on the market or the commercial policy *stricto sensu* of the subsidiary.<sup>1084</sup> Furthermore, elements such as the lack of expertise on the part of the parent company<sup>1085</sup> and the lack of management overlaps<sup>1086</sup> are also not capable of rebutting this presumption.
- (892) In its attempt to rebut the liability presumption, Huhtamäki actually provides information according to which there were clear economic, organisational and legal

---

<sup>1081</sup> Case C-279/98 P *Cascades* ECLI:EU:C:2000:626, at paragraphs 78 to 80: "It falls, in principle, to the natural or legal person managing the undertaking in question when the infringement was committed to answer for that infringement, even if, when the Decision finding the infringement was adopted, another person had assumed responsibility for operating the undertaking. [...] Moreover, those companies were not purely and simply absorbed by the appellant but continued their activities as its subsidiaries. They must, therefore, answer themselves for their unlawful activity prior to their acquisition by the appellant, which cannot be held responsible for it" See also Case T-349/08 *Uralita SA v Commission*, ECLI:EU:T:2011:622, at paragraph 61: "In accordance with that principle, the Commission may not impute to the purchaser of a legal entity liability for that entity's conduct prior to the purchase, such liability having to be imputed to the company itself where that company still exists." See also Joined Cases T-259/02 to T-264/02 and T-271/02 *Raiffeisen Zentralbank Österreich AG*, ECLI:EU:T:2006:396, paragraph 333.

<sup>1082</sup> **ID [...]** (Huhtamäki – reply to SO).

<sup>1083</sup> See for example: C-508/11 P *Eni Spa v Commission*, ECLI:EU:C:2013:289, paragraphs 64-66 and case T-399/09, *HSE v Commission*, ECLI:EU:T:2013:647, paragraphs 53-54.

<sup>1084</sup> Case C-501/11 P, *Schindler Holding and Others v Commission*, ECLI:EU:C:2013:522, paragraph 112; Case C-97/08 P, *Akzo Nobel v Commission*, ECLI:EU:C:2009:536, paragraphs 73 referring to the Opinion of AG Kokott in that case, ECLI:EU:C:2009:262, paragraphs 89 and 91-93.

<sup>1085</sup> See for example: C-508/11 P *Eni Spa v Commission*, ECLI:EU:C:2013:289, paragraph 65 and T-399/09, *HSE v Commission*, ECLI:EU:T:2013:647, paragraph 54.

<sup>1086</sup> Case T-197/06, *FMC v Commission*, ECLI:EU:T:2011:282, paragraph 143; Case T-411/10, *Laufen Austria v Commission*, ECLI:EU:T:2013:443 paragraph 91.

links between Huhtamäki Oyj and its Southern European subsidiaries. For example, while claiming that [business secret - internal group policy], Huhtamäki states that Huhtamäki Oyj focused on [business secret - internal group policy]. As regards the reporting from the subsidiaries to the ultimate parent, Huhtamäki states that the reporting between [company representative] and representatives of Huhtamäki Oyj's senior management concerned mainly [business secret - internal group policy] and in any event never comprised discussions on anti-competitive conduct. Huhtamäki then reconfirms that [company representative], in turn, reported to [company representative].<sup>1087</sup>

(893) Rather than supporting the subsidiaries' autonomy, Huhtamäki's specification on the content of [company representative's] reporting further corroborates the presumption that Huhtamäki Oyj exercised decisive influence. In this respect, the argument that the Huhtamäki holding companies were not aware of or did not encourage the anti-competitive conduct does not demonstrate that they did not exercise decisive influence.<sup>1088</sup> The existence of a group-wide competition compliance program according to which all Huhtamäki employees, regardless of legal entity or business unit, were required to strictly adhere to applicable competition legislation supports, rather than weakens, the finding that the Huhtamäki entities were part of the same economic unit. Failure to comply with such a program cannot in any event, as claimed by Huhtamäki, show the specific autonomy of the French and Portuguese subsidiaries compared to the rest of the group, especially considered that anti-competitive activities were also undertaken by Huhtamäki in North-West Europe (see Recitals (902)-(904)). In addition, Huhtamäki's claim that Huhtamäki Oyj did not exercise decisive influence on Huhtamäki Embalagens Portugal S.A. is further weakened by examples in the Commission's file of [company representative] of Huhtamäki Embalagens Portugal S.A. indirectly receiving market information and instructions from [company representative] at Huhtamäki Oyj.<sup>1089</sup> Therefore, the Commission concludes that Huhtamäki's arguments are insufficient to rebut the presumption that Huhtamäki Oyj exercised decisive influence over the conduct of Huhtamäki Embalagens Portugal S.A. during the period of the infringement.

(894) The Commission therefore holds ONO PACKAGING PORTUGAL S.A. and Huhtamäki Oyj jointly and severally liable for the infringement committed by Huhtamäki.

#### 6.3.5. *Ovarpack*

(895) As established in Section 4.2, Ovarpack Embalagens S.A. was the direct participant for Ovarpack in the infringement in Spain and Portugal through the involvement and [company representative]. The Commission therefore holds Ovarpack Embalagens S.A. liable for the infringement.

### 6.4. North-West Europe (NWE)

#### 6.4.1. *Linpac*

(896) As established in Section 4.3 LINPAC Packaging GmbH was the main direct participant for Linpac in the infringement through the involvement of various

<sup>1087</sup> ID [...] (Huhtamäki – reply to SO).

<sup>1088</sup> See for example: C-508/11 *P Eni Spa v Commission*, ECLI:EU:C:2013:289, paragraphs 64-66.

<sup>1089</sup> ID [...] and ID [...] (ONO Packaging –reply to RFI).

employees and/or managers, in particular [company representative], [company representative], [company representative], [company representative], [company representative] and [company representative]. It is therefore held liable for its participation in the infringement.

- (897) During the entire period of the infringement LINPAC Group Ltd was the 100% indirect parent of LINPAC Packaging GmbH through the chain of control described in Recital (9). In line with the case law referred to in Recital (816), the Commission considers that that entity is presumed to have exercised decisive influence on the conduct of LINPAC Packaging GmbH. Although the Commission considers that this presumption is in itself sufficient to establish liability for LINPAC Packaging GmbH, the presumption is further strengthened by the fact that during the period of the infringement LINPAC Group Ltd addressed a manual to all companies controlled by it which set minimum standards and policies for the conduct and management of the Linpac group. The manual was to provide for procedures and thresholds for authorisations in relation to a number of governance issues, including: (i) capital expenditure, (ii) disposals, (iii) certain commercial decisions, (iv) procedures for internal reporting, (v) HR policy, (vi) legal affairs, and (vii) certain trading matters. The policies set out in the manual had to be complied with by all companies controlled by LINPAC Group Ltd.<sup>1090</sup> The manual demonstrates that LINPAC Group Ltd had the ability to exercise and in fact exercised decisive influence over all of its subsidiaries, including LINPAC Packaging GmbH. In its reply to the SO, Linpac did not provide any observations on the parental liability of LINPAC Group Ltd.
- (898) The Commission therefore holds LINPAC Packaging GmbH and LINPAC Group Ltd jointly and severally liable for the infringement committed by Linpac.

#### 6.4.2. *Vitembal*

- (899) As established in Section 4.3 VITEMBAL GmbH Verpackungsmittel was the main direct participant for Linpac in the infringement through the involvement of various employees and/or managers, in particular [company representative] and [company representative]. It is therefore held liable for its participation in the infringement.
- (900) During the entire period of the infringement VITEMBAL HOLDING SAS, was the 100% indirect parent of VITEMBAL GmbH Verpackungsmittel (see Recital (12)). In line with the case law referred to in Recital (816), the Commission considers that VITEMBAL HOLDING SAS is presumed to have exercised decisive influence on the conduct of VITEMBAL GmbH Verpackungsmittel. Although the Commission considers that this presumption is in itself sufficient to establish liability for VITEMBAL HOLDING SAS, there are additional elements corroborating it. First, it notes that [company representative], President of VITEMBAL HOLDING SAS as of 1 January 1981 attended one of the cartel meetings together with a representative from VITEMBAL GmbH Verpackungsmittel at the Hummerstübchen, Düsseldorf on 31 March 2003 (see Recital (525)). Furthermore [company representative], Marketing Director of VITEMBAL GmbH reported to [company representative].<sup>1091</sup> This further shows that VITEMBAL HOLDING SAS exercised decisive influence over VITEMBAL GmbH Verpackungsmittel. In its reply to the SO, Vitembal did not

---

<sup>1090</sup> ID [...] (Linpac - reply to RFI)

<sup>1091</sup> ID [...] (Vitembal – reply to RFI).

make any observations with regard to the presumed exercise of control over VITEMBAL GmbH Verpackungsmittel by VITEMBAL HOLDING SAS.

- (901) The Commission therefore holds VITEMBAL GmbH Verpackungsmittel and VITEMBAL HOLDING SAS jointly and severally liable for the infringement committed by Vitembal.

#### 6.4.3. *Huhtamäki*

- (902) As established in Section 4.3 the entity now called Huhtamäki Flexible Packaging Germany GmbH & Co. KG was the main direct participant for Huhtamäki in the infringement through the involvement of various employees and/or managers, in particular [company representative] and [company representative]. Therefore Huhtamäki Flexible Packaging Germany Deutschland GmbH & Co. KG is held liable for its participation in the infringement.

- (903) As of 1 January 2003, Huhtamäki Oyj was the 100% indirect parent of Huhtamäki Flexible Packaging Germany GmbH & Co. KG through the chain of control described in Recital (29). In line with the case law referred to in Recital (816), the Commission considers that Huhtamäki Oyj is presumed to have exercised decisive influence on the conduct of Huhtamäki Flexible Packaging Germany GmbH & Co. KG as of 1 January 2003. Although the Commission considers that this presumption would, in itself, be sufficient to establish liability for that entity, the presumption is further strengthened by the fact that [company representative], [function of company representative] in Huhtamäki Oyj from 2001 until 2003 and [function of company representative] from September 2003 until December 2003 was involved in at least two cartel contacts (see Recitals (515),(517)-(518) and (528)) in the early phase of the cartel. [Company representative] also reported to [company representative] until December 2003.<sup>1092</sup> In addition, the Huhtamäki Group operates in accordance with the Huhtamäki Group Corporate Governance Policy for Subsidiaries ("Huhtamäki Policy"), which is based on the Finnish corporate and securities legislation as well as the Rules of the Helsinki Stock Exchange. More precisely, pursuant to Huhtamäki Policy each direct or indirect subsidiary of Huhtamäki Oyj is obliged to follow set rules with regard to (i) corporate governance, (i) composition of boards of directors, (iii) allocation of duties, responsibilities and liabilities, (iv) holding of the meetings of the board of directors and (iv) signing on behalf of subsidiaries. [Business secret - internal group policy].<sup>1093</sup> The above facts show that Huhtamäki Oyj had the ability to exercise - and in fact exercised - decisive influence over Huhtamäki Flexible Packaging Germany GmbH & Co. KG as of 1 January 2003.

- (904) The Commission therefore holds Huhtamäki Flexible Packaging Germany GmbH & Co. KG solely liable between 13 June 2002 and 31 December 2002 and Huhtamäki Flexible Packaging Germany GmbH & Co. KG and Huhtamäki Oyj jointly and severally liable for the infringement committed by Huhtamäki between 1 January 2003 and 20 June 2006.

#### 6.4.4. *Silver Plastics*

- (905) As established in Section 4.3 Silver Plastics GmbH & Co. KG and Silver Plastics GmbH were the direct participants for Silver Plastics in the infringement through the

---

<sup>1092</sup> ID [...], Huhtamäki – reply to RFI).

<sup>1093</sup> ID [...] (Huhtamäki - reply to the RFI).



involvement of various employees or managers, in particular [company representative], [company representative] and [company representative]. Those two legal entities are therefore held liable for their participation in the infringement.

- (906) During the entire period of the infringement, Johannes Reifenhäuser Holding GmbH Co. KG ("JRH") was the [96-100%] direct parent of Silver Plastics GmbH and [96-100%] of Silver Plastics GmbH & Co. KG, as described in Recital (19). In line with the case law referred to in Recital (816), the Commission considers that JRH exercised decisive influence on the conduct of Silver Plastics GmbH & Co. KG and Silver Plastics GmbH.
- (907) JRH, Silver Plastics GmbH & Co. KG and Silver Plastics GmbH contest the parental liability presumption.<sup>1094</sup> More precisely, JRH argues that despite owning [96-100%] of Silver Plastics GmbH and [96-100%] of Silver Plastics GmbH & Co. KG, it has no possibility of control over its subsidiaries and has never exercised decisive influence over its Silver Plastics subsidiaries and that during the infringement period Silver Plastics GmbH & Co. KG was determining its conduct autonomously on the market as an independent undertaking.
- (908) JRH claims that it is a purely administrative vehicle/shell [business secret – internal group policy].<sup>1095</sup> [Business secret – internal group policy].
- (909) JRH maintains that the actual decision-makers with regard to Silver Plastics GmbH & Co. KG [business secret – internal group policy].
- (910) Throughout the period relevant to the case, [company representative] was the managing director of Silver Plastics GmbH & Co. KG with the sole power of legal representation according to the Silver Plastics GmbH & Co. KG articles of partnership. [Company representative] allegedly acted completely autonomously and received no instructions from JRH, from [company representative] or the shareholders in JRH. JRH has exceptionally intervened in Silver Plastic GmbH & Co. KG 's commercial conduct only on two occasions and only in order to protect the JRH shareholders' financial interests. [Business secret].
- (911) JRH also underlines that it is not an undertaking within the meaning of Article 101 of the Treaty as it is not a full function joint-venture and does not have separate legal personality. [Business secret – company structure].
- (912) JRH also claims that it conducts its business "at arm's length" with Silver Plastics GmbH & Co. KG [business secret – internal group policy].<sup>1096</sup> In addition, JRH points out that there is no overlapping in terms of personnel or structures between Silver Plastics GmbH & Co. KG and JRH [business secret – company structure].<sup>1097</sup>
- (913) In reply to those arguments, the Commission first notes that JRH seems to function as a form of holding company which seeks to protect its shareholders interest in various companies. It is therefore only logical that its tasks are different from those

---

<sup>1094</sup> ID [...] (JRH reply to the SO) and ID [...] (Silver Plastics reply to the SO). To support its arguments about the lack of control over Silver Plastics JRH also provides a number of statements see ID [...] (JRH reply to the SO – [...]).

<sup>1095</sup> ID [...] (JRH reply to the SO). [Business secret – company structure]

<sup>1096</sup> ID [...] (JRH reply to the SO - [...]).

<sup>1097</sup> See ID [...] (JRH reply to the SO) and ID [...] (JRH reply to the SO – [...]) hand-book on the operational holding structure of Reifenhäuser Maschinenfabrik and its subsidiaries.

of Silver Plastics GmbH & Co. KG and its immediate business management. According to the case-law,<sup>1098</sup> even supposing that JRH was no more than a non-operating holding company, that fact alone is insufficient to disprove that it exercised a decisive influence on Silver Plastics GmbH & Co. KG and Silver Plastics GmbH, [business secret – company structure]. Several of the arguments advanced by JRH, including for example the fact [business secret – company structure], seem to concern the control of JRH rather than JRH's control of Silver Plastics GmbH & Co. KG and Silver Plastics GmbH.<sup>1099</sup> Regarding the argument that JRH itself would not be an undertaking, the case-law has established that it is irrelevant whether each individual legal entity comprising the undertaking is itself economically active and therefore individually constitutes an undertaking.<sup>1100</sup>

- (914) Second, JRH does not dispute that during the infringement period [company representative], as managing director of JRH, consistently and continuously represented JRH at the Silver Plastics GmbH & Co. KG shareholders' meetings. In that capacity he [business secret – internal group policy].<sup>1101</sup> In addition, during the relevant period, [business secret – internal group policy].<sup>1102</sup>
- (915) Third, JRH submits that the business strategy of Silver Plastics GmbH & Co. KG [business secret – internal group policy].<sup>1103</sup> [Business secret – internal group policy].<sup>1104</sup> [Business secret – internal group policy].<sup>1105</sup> [Business secret – internal group policy].<sup>1106</sup> Therefore, the role and function of the Advisory Board of Silver Plastics GmbH & Co. KG [business secret – internal group policy] was able to exercise decisive influence over Silver Plastics GmbH & Co. KG and Silver Plastics GmbH.<sup>1107</sup>
- (916) Fourth, the minutes of the shareholders' meetings of both Silver Plastics GmbH & Co. KG and JRH demonstrate the involvement of JRH in the business operations of Silver Plastics GmbH & Co. KG. For example, the minutes of the Silver Plastics GmbH & Co. KG shareholders meeting of 20 November 2004,<sup>1108</sup> [business secret –

<sup>1098</sup> Case T-190/06, *Total and Elf Aquitaine v Commission*, ECLI:EU:T:2011:378, paragraph 68; Case T-360/09, *E.ON Ruhrgas AG and E.ON AG v Commission*, ECLI:EU:T:2012:332, paragraph 283.

<sup>1099</sup> T-384/09 *SKW Stahl Metallurgie Holding AG and others v. Commission*, ECLI:EU:T:2014:27, paragraph 83.

<sup>1100</sup> Case C-440/11 P, *Commission v Stichting Administratiekantoort Portielje*, ECLI:EU:C:2013:514, paragraph 43.

<sup>1101</sup> ID [...] (JRH reply to the SO -[...]) see minutes from Silver Plastics shareholders meetings of 20.12.2001

<sup>1102</sup> See also ID [...] (Silver Plastics reply to the SO – [...]) statement of [company representative] that [business secret – internal group policy].

<sup>1103</sup> See for example ID [...] (JRH reply to the SO); see also ID [...] (JRH reply to the SO – [...]): Company general meeting on 1 September 2004 (2. last bullet point): [Business secret – internal group policy].

<sup>1104</sup> ID [...] (JRH reply to the SO – [...]). See also article 7 paragraphs 2 and 3 of the Advisory Board Terms ID [...] (JRH reply to the SO – [...]).

<sup>1105</sup> ID [...] (JRH reply to the SO).

<sup>1106</sup> ID [...] (JRH reply to the SO).

<sup>1107</sup> See also paragraphs 69 and 70 of Commission Consolidated Jurisdictional Notice under Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings (2008/C 95/01) on the exercise of decisive influence through veto rights relating to the appointment/dismissal of senior management, to the determination of the budget as well as the approval of the business plan and decisions on investments.

<sup>1108</sup> ID [...] (JRH reply to the SO - [...]), Minutes of Silver Plastics GmbH & Co. KG shareholders' meeting on 20.11.2004 [...].

internal group policy]. The minutes of the JRH shareholders' meeting of 22 November 2002 [business secret – internal group policy].<sup>1109</sup> [Business secret – internal group policy.] These are concrete examples showing that JHR had and actually used its ability to exercise a decisive influence, even though the delegated powers ensured that such direct interventions were de facto reserved for certain particular situations.

- (917) Fifth, the Commission notes that JRH has not managed to explain why, as a common corporate construction under German law, it would not constitute an entity to which liability for an infringement under Article 101 of the Treaty could be attributed. In so far as it claims to simply be an administrative shell, the Commission notes that the total turnover of the JRH group amounted to [business secret] in the business year 2013/2014.<sup>1110</sup>
- (918) Sixth, the fact that transactions between Silver Plastics GmbH & Co. KG and JRH were conducted at arm's length does not in itself prove that JRH did not exercise decisive influence. Concluding contracts at arm's length between subsidiaries of the same group is a common practice applied within a group of companies. Similarly, the lack of reporting structures and links between JRH and Silver Plastics GmbH & Co. KG and Silver Plastics GmbH underlined by the auditors in the report in Annex 20 of JRH's reply to the SO, is not in itself sufficient proof of the lack of exercise of decisive influence over Silver Plastics GmbH & Co. KG and Silver Plastics GmbH, especially because the auditors themselves explain that in the relevant period they were auditing the accounts only for JRH and its direct subsidiary Reifenhäuser Maschinenfabrik and not for Silver Plastics GmbH & Co. KG and Silver Plastics GmbH. Therefore, they had no direct insight into the functioning and operations of Silver Plastics GmbH & Co. KG and Silver Plastics GmbH.
- (919) Finally, as clarified by case law, the fact that a parent company and its subsidiary are active in different economic sectors, the fact that there are no management overlaps<sup>1111</sup> or the fact that the parent company's personnel have no expertise in the commercial sector of the subsidiary, do not preclude the exercise of decisive influence by the parent company on the subsidiary, even if the latter enjoyed a certain level of autonomy in the management of its business.<sup>1112</sup>
- (920) In conclusion, for the reasons explained above, the Commission considers that JRH has failed to rebut the presumption that it is liable for the infringements committed by Silver Plastics. The Commission therefore holds Silver Plastics GmbH, Silver Plastics GmbH & Co. KG and Johannes Reifenhäuser Holding GmbH Co. KG jointly and severally liable for the infringement committed by Silver Plastics.

---

<sup>1109</sup> ID [...] (JRH reply to the SO – [...]); see also ID [...] (JRH reply to the SO – [...]) [...].

<sup>1110</sup> See ID [...] (JRH reply to RFI): its turnover amounted to [business secret] in the business year 2013/2014; however according to JRH's reply this figure does not include the turnover figures of Silver Plastics GmbH & Co. KG, because this subsidiary is not controlled by JRH.

<sup>1111</sup> Case T-197/06, *FMC v Commission*, ECLI:EU:T:2011:282, paragraph 143; Case T-411/10, *Laufen Austria v Commission*, ECLI:EU:T:2013:443 paragraph 91.

<sup>1112</sup> See case T-399/09, *HSE v Commission*, ECLI:EU:T:2013:647, paragraphs 54 and 56.

## 6.5. Central and Eastern Europe (CEE)

### 6.5.1. *Linpac*

- (921) As established in Section 4.4, LINPAC Packaging Polska Sp zo.o., LINPAC Packaging Kereskedelmi Korlátolt Felelősségű Társaság, LINPAC Packaging Spol S.r.o., LINPAC Packaging S.r.o. and LINPAC Packaging GmbH were the main direct participants for Linpac in the infringement through the involvement of various employees and/or managers, in particular [company representative], [company representative], [company representative], [company representative] and [company representative]. They are therefore held liable for their participation in the infringement.
- (922) During the entire period of the infringement, LINPAC Group Ltd was the indirect 100% parent of the entities listed in Recital (921) through the chain of control described in Recital (9). In line with the case law referred to in Recital (816), the Commission considers that LINPAC Group Ltd is presumed to have exercised decisive influence over the conduct on the market of its subsidiaries directly involved in the infringement. Although the Commission considers that this presumption is in itself sufficient to establish liability for these two entities, the presumption is further strengthened by the fact that during the period of the infringement, LINPAC Group Ltd addressed a manual to all companies controlled by it, which set minimum standards and policies for the conduct and management of the Linpac group. The manual was to provide for procedures and thresholds for authorisations in relation to a number of governance issues, including (i) capital expenditure, (ii) disposals, (iii) certain commercial decisions, (iv) procedures for internal reporting, (v) HR policy, (vi) legal affairs and (vii) certain trading matters. The policies set out in the manual had to be complied with by all companies controlled by LINPAC Group Ltd.<sup>1113</sup> The manual demonstrates that LINPAC Group Ltd had the ability to exercise and in fact exercised decisive influence over all of its subsidiaries, including the Linpac's entities directly involved in the infringement. In its reply to the Commission's SO, Linpac did not provide any observations on the presumed parental liability.
- (923) The Commission therefore holds LINPAC Packaging Polska Sp zo.o., LINPAC Packaging Kereskedelmi Korlátolt Felelősségű Társaság, LINPAC Packaging Spol S.r.o., LINPAC Packaging S.r.o., LINPAC Packaging GmbH and Linpac Group Ltd jointly and severally liable for the infringement committed by Linpac.

### 6.5.2. *Sirap-Gema/Petruzalek*

- (924) As established in Section 4.4, Petruzalek GmbH, Petruzalek Kft., Petruzalek s.r.o., Petruzalek Spol. s.r.o. and Sirap-Gema S.p.A. were the main direct participants for Sirap-Gema in the infringement through the involvement of various employees and/or managers, in particular [company representative], [company representative], [company representative], [company representative], [company representative], [company representative] and [company representative]. Those entities are therefore held liable for their participation in the infringement.
- (925) During the entire period of the infringement, Sirap-Gema S.p.A was the intermediate almost 100% parent of Petruzalek GmbH, Petruzalek Kft., Petruzalek s.r.o., Petruzalek Spol. s.r.o.; and Italmobiliare S.p.A. was the ultimate 100% parent of all

---

<sup>1113</sup> ID [...] (Linpac - reply to RFI)

the directly involved entities within the Sirap-Gema group. In line with the case law referred to in Recital (816), the Commission considers that Sirap-Gema S.p.A. and Italmobiliare S.p.A. are presumed to have exercised decisive influence over the conduct of their subsidiaries directly involved in the infringement. Although the Commission considers that this presumption is in itself sufficient to establish liability for these two entities, the presumption is further strengthened by the fact that Sirap-Gema S.p.A. and ultimately also Italmobiliare S.p.A. were kept informed through a system of reporting from the operating companies. During the entire period of the infringement, Sirap-Gema's subsidiaries had an obligation to report to [company representative], [functions of company representative] of Sirap-Gema S.p.A. In turn, [company representative] reported to [company representative], [function of company representative] of Sirap-Gema S.p.A. and at the same time [function of company representative] of Italmobiliare S.p.A. In his quality of [function of company representative] within Italmobiliare S.p.A., [company representative] reported to [functions of company representative] of Italmobiliare S.p.A. and proposed development and strategic opportunities to Italmobiliare S.p.A. for the subsidiaries active in the industrial sector. This further indicates that during the period of the infringement, Italmobiliare S.p.A. had the ability and in fact exercised decisive influence on Sirap-Gema S.p.A.

- (926) In its reply to the SO, Sirap-Gema denies that Italmobiliare S.p.A. exercised decisive influence on its subsidiaries involved in the infringement and underlines that Italmobiliare S.p.A. had no awareness of the cartel activities. Sirap-Gema argues that Italmobiliare S.p.A. is a mere financial holding and that the subsidiaries have complete autonomy in determining their commercial strategies. Sirap-Gema explains that Italmobiliare S.p.A. only issues [business secret] to ensure [business secret]. In this light, the system of reporting from individuals at the Sirap-Gema subsidiaries to individuals at Italmobiliare S.p.A. was limited to giving information on [business secret]. Sirap-Gema further points out that it decided upon its [business secret]. In addition, the managers of the retail food packaging subsidiaries were all appointed by [business secret]. Also, Sirap-Gema points out that in any event Italmobiliare S.p.A. would not have had any real interest in the food packaging business line, given that this was never part of Italmobiliare S.p.A.'s core business, its subsidiaries in this area representing [business secret]. Finally, Sirap-Gema underlines that the limited role of Italmobiliare S.p.A. is demonstrated by its limited number of employees [business secret].
- (927) The Commission considers that the arguments put forward by Sirap-Gema are insufficient, individually or taken together, to rebut the presumed exercise of actual control given Italmobiliare S.p.A.'s 100% shareholding in its subsidiaries involved in the infringement. It is noted that the fact that the parent company was not involved in the decision-making processes to define strategic and commercial plans<sup>1114</sup> or in the day-to-day commercial operations<sup>1115</sup> is not sufficient to rebut the presumption of decisive control.<sup>1116</sup> In order to ascertain whether a subsidiary determines its conduct on the market independently account must be taken of all the factors relied on in the light of the organisational, economic, and legal links and not only of the conduct on

---

<sup>1114</sup> C-508/11 *P, Eni Spa v Commission*, ECLI:EU:C:2013:289, paragraph 66.

<sup>1115</sup> C-508/11 *P, Eni Spa v Commission*, ECLI:EU:C:2013:289, paragraph 66.

<sup>1116</sup> C-508/11 *P Eni Spa v Commission*, ECLI:EU:C:2013:289, paragraph 66.

the market or the commercial policy *stricto sensu* of the subsidiary.<sup>1117</sup> The fact that Italmobiliare S.p.A. issued [business secret] actually shows that it did not refrain from exercising decisive influence on the Sirap-Gema subsidiaries on strategic matters.<sup>1118</sup> Also the alleged lack of awareness of the cartel cannot rebut the abovementioned presumption. According to the case-law, there is no requirement, in order to impute liability to a parent company for the acts undertaken by its subsidiary, to prove that that parent company was directly involved in, or was aware of, the offending conduct.<sup>1119</sup> Furthermore, the reporting mentioned in Recital (925), even if allegedly limited to [business secret], show the actual involvement of Italmobiliare S.p.A. in its subsidiaries. In this regard, the Commission's file also contains examples of employees of the food packaging subsidiaries sending detailed information on the market to [company representative], [function of company representative] of Sirap-Gema S.p.A. and at the same time [function of company representative] in Italmobiliare S.p.A., [business secret]. The allegedly low number of employees of Italmobiliare S.p.A. cannot rebut the presumption because this element does not demonstrate that Italmobiliare S.p.A. was unable to effectively coordinate the group.<sup>1120</sup> Finally, as regards the appointment of the manager of Sirap-Gema S.p.A. by the board of directors, it is clear that Italmobiliare S.p.A. influenced that decision, given the positions of [company representative] and [company representative], and given that the board of Sirap-Gema S.p.A. was composed of members appointed by Italmobiliare S.p.A.<sup>1121</sup>

- (928) The Commission therefore holds Petruzalek GmbH, Petruzalek Kft., Petruzalek s.r.o., Petruzalek Spol. s.r.o., Sirap-Gema S.p.A. and Italmobiliare S.p.A. jointly and severally liable for the infringement committed by Sirap-Gema.

#### 6.5.3. Coopbox

- (929) Throughout the infringement, Coopbox was subject to numerous internal restructurings. The Coopbox entities that are held liable for the infringement are those which were directly involved in the infringement and those that are successors of other entities that because of various intragroup restructurings during and after the infringement period, no longer exist (see Section 2.2.4).
- (930) As established in Section 4.4, Coopbox Eastern s.r.o. was the main direct participant for Coopbox in the infringement through the involvement of various employees and managers, in particular [company representative], [company representative] and [company representative].
- (931) As explained in Section 2.2.4, on 8 December 2004, CCPL S.c. became the ultimate parent company of Coopbox Eastern s.r.o. It remained its ultimate parent until the end of the infringement.

<sup>1117</sup> C-508/11 P *Eni Spa v Commission*, ECLI:EU:C:2013:289, paragraph 66; Case C-501/11 P, *Schindler Holding and Others v Commission*, ECLI:EU:C:2013:522, paragraph 112; Case C-97/08 P, *Akzo Nobel v Commission*, ECLI:EU:C:2009:536, paragraphs 73 referring to the Opinion of AG Kokott in that case, ECLI:EU:C:2009:262, paragraphs 89 and 91-93.

<sup>1118</sup> C-508/11 P, *Eni Spa v Commission*, ECLI:EU:C:2013:289, paragraph 64.

<sup>1119</sup> Case-T-77/08, *Dow Chemical v Commission*, ECLI:EU:T:2012:47, paragraph 106; C-508/11 P, *Eni Spa v Commission*, ECLI:EU:C:2013:289, paragraph 65.

<sup>1120</sup> Case T-376/06, *Legrís Industries v Commission*, ECLI:EU:T:2011:107, paragraph 55.

<sup>1121</sup> Reference is made to the statute of Sirap-Gema S.p.A. (**ID [...]**). See also C-508/11 P *Eni Spa v Commission*, ECLI:EU:C:2013:289, paragraph 67 with reference to paragraph 55.

- (932) For further information on the corporate history of CCPL S.c., see Recital (848).
- (933) In order to attribute parental liability, the Commission has first retraced the complex changes which have taken place in Coopbox's corporate structure with a view to establishing the shareholdings held by the ultimate and intermediate parents in the directly involved entities during the period of infringement. The Commission relies on the parental liability presumption referred to in Recital (816) that the parent exercised decisive influence during the period(s) in which at least one directly involved entity was wholly owned (or almost wholly owned) by the parent.
- (934) On that basis, and given the corporate links outlined in Section 2.2.4, CCPL S.c. is also held jointly and severally liable as 100% (or almost 100%) indirect parent from the acquisition of Coopbox Eastern s.r.o. on 8 December 2004, since it is presumed to have exercised actual control over the conduct of Coopbox Eastern s.r.o. on the market during the period of the infringement.
- (935) With regard to CCPL S.c., the Commission notes that its indirect shareholding in Coopbox Eastern s.r.o. dropped, between 18 April 2006 and the end of the infringement, from 100% to 93,864%. The Commission nevertheless considers that a shareholding of 93,864% is sufficient to trigger the presumption that a parent company exercises decisive influence over the conduct of its subsidiary. In these circumstances, it would be for the parent company to adduce sufficient evidence to rebut the presumption and to show that its subsidiary acted independently on the market. Although the Commission considers that the parental liability presumption is, in itself, sufficient to establish liability for the concerned entities concerned, taking into account the arguments introduced by Coopbox and the complexity of the corporate structure, the presumption is further strengthened by an analysis of the legal, personal and economic links between the entities which form part of the Coopbox undertaking. Since the underlying facts and the conclusions that the Commission draws from those facts for CEE are in this respect the same as for the Italian cartel, reference is made to Recitals (848)-(862).
- (936) As stated in Section 6.1, a parent company's awareness of and lack of distancing from the infringing conduct of its subsidiaries is not a necessary precondition for the establishment of parental liability.<sup>1122</sup> Nonetheless, in this case, the parent company must have been aware of collusive contacts with competitors. For example, [company representative], who was the Head of the Packaging Division at CCPL s.c.r.l.<sup>1123</sup>, participated in the initial discussions aimed at preventing Coopbox's entry into Poland (see Recitals (599)) which indeed significantly reduced Coopbox's operations in Poland. This can be seen from the facts set out in Section 4.4 and also from Coopbox's sales figures in Poland which, despite Poland being the biggest market in the CEE region, represent a small (almost insignificant) proportion compared to Coopbox's sales in the Czech Republic, Hungary and Slovakia.
- (937) The Commission therefore holds Coopbox Eastern s.r.o. solely liable for the period between 5 November 2004 and 8 December 2004 for its direct participation in the cartel in CEE. In addition, the Commission holds CCPL S.c. and Coopbox Eastern

<sup>1122</sup> See for instance T-72/06 *Groupe Gascogne SA v Commission*, ECLI:EU:T:2011:671, paragraph 81.

<sup>1123</sup> At the time, the entity was named "CCPL S.c.r.l.". Following a company law reform in Italy in 2003, the legal form "S.c.r.l." was replaced with the legal form "S.c.".

s.r.o. jointly and severally liable for Coopbox Eastern s.r.o.'s direct participation in the cartel in CEE during the period from 8 December 2004 until 24 September 2007.

#### 6.5.4. *Propack*

- (938) As established in Section 4.4, PROPACK Kft. was the main direct participant for Propack in the infringement through the involvement of various employees and managers, in particular [company representative] and [company representative]. That entity is therefore held liable for its participation in the infringement.
- (939) Following the acquisition of the entire shareholding in PROPACK Kft. on 1 July 2005, Bunzl plc was the indirect 100% parent of PROPACK Kft. (see Recital (32)). In line with the case law referred to in Recital (816), the Commission finds that as of 1 July 2005 Bunzl plc is presumed to have exercised decisive influence over the conduct of its subsidiary directly involved in the infringement. In its reply to the Commission's SO, Propack does not make any observations on the presumed parental liability of Bunzl plc.
- (940) The Commission therefore holds PROPACK Kft. liable for its direct participation in the infringement for the period between 13 December 2004 and 15 September 2006 and PROPACK Kft. and Bunzl plc jointly and severally liable for the infringement committed by Propack in the period between 1 July 2005 and 15 September 2006 .

### 6.6. **France**

#### 6.6.1. *Linpac*

- (941) As established in Section 4.5, LINPAC France SAS and LINPAC Distribution SAS were the main direct participants for Linpac in the infringement through the involvement of various employees and managers, in particular [company representative] and [company representative]. Those entities are therefore held liable for their participation in the infringement.
- (942) During the entire period of the infringement, LINPAC France SAS was the direct 100% parent of LINPAC Distribution SAS and LINPAC Group Ltd was the 100% indirect parent of LINPAC France SAS through the chain of control described in Recital (9). In line with the case law referred to in Recital (816), the Commission finds that LINPAC France SAS and LINPAC Group Ltd are therefore presumed to have exercised decisive influence over the conduct of their subsidiaries directly involved in the infringement. Although the Commission considers that this presumption is, in itself, sufficient to establish liability for those two entities, the presumption is further strengthened by the fact that during the period of the infringement LINPAC Group Ltd addressed a manual to all companies controlled by it which set minimum standards and policies for the conduct and management of the Linpac group. The manual was to provide for procedures and thresholds for authorisations in relation to a number of governance issues, including (i) capital expenditure, (ii) disposals, (iii) certain commercial decisions, (iv) procedures for internal reporting, (v) HR policy, (vi) legal affairs and (vii) certain trading matters. The policies set out in the manual had to be complied with by all companies controlled by LINPAC Group Ltd.<sup>1124</sup> The manual demonstrates that LINPAC Group Ltd had the ability to exercise and in fact exercised decisive influence over all of its

---

<sup>1124</sup> ID [...] (Linpac - reply to RFI)



subsidiaries, including the Linpac entities directly involved in the infringement. In its reply to the Commission's SO, Linpac did not provide any observations on the presumed parental liability.

- (943) The Commission therefore holds Linpac France SAS, LINPAC Distribution SAS and Linpac Group Ltd jointly and severally liable for the infringement committed by Linpac.

#### 6.6.2. *Sirap-Gema*

- (944) As established in Section 4.5, Sirap France S.A.S. and Sirap-Gema S.p.A. were the direct participants for Sirap-Gema in the infringement through the involvement of various employees and managers, in particular [company representative] and [company representative]. These entities are therefore held liable for their participation in the infringement.

- (945) During the entire period of the infringement, Sirap-Gema S.p.A. was the immediate 100% parent of Sirap France S.A.S. and Italmobiliare S.p.A. was the 100% parent of Sirap-Gema S.p.A. (see Recital (15)). In line with the case law referred to in Recital (816), the Commission finds that Sirap-Gema S.p.A. and Italmobiliare S.p.A. are therefore presumed to have exercised decisive influence over the conduct of their subsidiaries directly involved in the infringement. Although the Commission considers that this presumption is, in itself, sufficient to establish liability for those two entities, the presumption is further strengthened by the fact that Sirap-Gema S.p.A. and ultimately also Italmobiliare S.p.A. were kept informed through a system of reporting from the operating companies. During the entire period of the infringement, Sirap-Gema's subsidiaries had an obligation to report to [company representative], [functions of company representative] of Sirap-Gema S.p.A. In turn, [company representative] reported to [company representative], [function of company representative] of Sirap-Gema S.p.A. and at the same time [function of company representative] of Italmobiliare S.p.A. In his quality of [function of company representative] within Italmobiliare S.p.A., [company representative] reported to [functions of company representative] of Italmobiliare S.p.A. and proposed development and strategic opportunities to Italmobiliare S.p.A. for the subsidiaries active in the industrial sector. This indicates that, during the period of the infringement, Italmobiliare S.p.A. had the ability to exercise and in fact exercised decisive influence on Sirap-Gema S.p.A. as well as Sirap France SAS.

- (946) In its reply to the Commission's SO, Sirap-Gema denies that Italmobiliare S.p.A. exercised decisive influence on its subsidiaries involved in the infringement and underlines that Italmobiliare S.p.A. had no awareness of the cartel activities. Sirap-Gema argues that Italmobiliare S.p.A. is a mere financial holding and that the subsidiaries have [business secret - internal group policy]. Sirap-Gema explains that Italmobiliare S.p.A. only issues [business secret - internal group policy]. In this light, the system of reporting from individuals at the Sirap-Gema subsidiaries to individuals at Italmobiliare S.p.A. was limited to [business secret - internal group policy]. Sirap-Gema further points out that it decided upon [business secret - internal group policy]. In addition, the managers of the retail food packaging subsidiaries were all appointed by [business secret - internal group policy]. Also, Sirap-Gema points out that in any event Italmobiliare S.p.A. would not have had any real interest in the food packaging business line, given that this was never part of Italmobiliare S.p.A.'s core business, [business secret]. Finally, Sirap-Gema underlines that the limited role of Italmobiliare S.p.A. is demonstrated by its limited number of

employees (in the infringement period between [business secret]), mainly devoted to administrative tasks. In particular, the Strategy and Development department only had [business secret] employees.

- (947) The Commission considers that the arguments put forward by Sirap-Gema are insufficient, individually or taken together, to rebut the presumed exercise of actual control given Italmobiliare S.p.A.'s 100% shareholding in its subsidiaries involved in the infringement. It is noted that the fact that the parent company was not involved in the day-to-day commercial operations is not sufficient to rebut the presumption of decisive control.<sup>1125</sup> In order to ascertain whether a subsidiary determines its conduct on the market independently account must be taken of all the factors relied on in the light of the organisational, economic, and legal links and not only of the conduct on the market or the commercial policy *stricto sensu* of the subsidiary.<sup>1126</sup> The fact that Italmobiliare S.p.A. issued [business secret - internal group policy] actually shows that it did not refrain from exercising decisive influence on the Sirap-Gema subsidiaries on strategic matters<sup>1127</sup>. Also the alleged lack of awareness of the cartel cannot rebut the abovementioned presumption. According to the case-law, there is no requirement, in order to impute liability to a parent company for the acts undertaken by its subsidiary, to prove that that parent company was directly involved in, or was aware of, the offending conduct.<sup>1128</sup> Furthermore, the reporting mentioned in Recital (945), even if allegedly limited to financial results, shows the actual involvement of Italmobiliare S.p.A. in its subsidiaries. In this regard, the Commission's file also contains examples of employees of the food packaging subsidiaries sending detailed information on the market to [company representative], a member of Sirap-Gema S.p.A.'s board of directors and at the same time Business Development Manager in Italmobiliare S.p.A., in charge of identifying new opportunities (such as mergers and acquisitions, partnerships etc.) for Italmobiliare S.p.A.'s subsidiaries. The file also contains an example of [company representative] transmitting detailed market information to [company representative], [function of company representative] of Sirap-Gema S.p.A. and [function of company representative] in Italmobiliare S.p.A., as well as [company representative] himself corresponding with another market player in the retail food packaging business.<sup>1129</sup> The allegedly low number of employees of Italmobiliare S.p.A. cannot rebut the presumption because this element does not demonstrate that Italmobiliare S.p.A. was unable to effectively coordinate the group.<sup>1130</sup> Finally, as regards the appointment of the manager of Sirap-Gema S.p.A. by [business secret - internal group policy], it is clear that Italmobiliare S.p.A. influenced that decision, given the positions of [company representative] and

---

<sup>1125</sup> C-508/11 P *Eni Spa v Commission*, ECLI:EU:C:2013:289, paragraph 66.

<sup>1126</sup> C-508/11 P *Eni Spa v Commission*, ECLI:EU:C:2013:289, paragraph 66; Case C-501/11 P, *Schindler Holding and Others v Commission*, ECLI:EU:C:2013:522, paragraph 112; Case C-97/08 P, *Akzo Nobel v Commission*, ECLI:EU:C:2009:536, paragraph 73 referring to the Opinion of AG Kokott in that case, ECLI:EU:C:2009:262, paragraphs 89 and 91-93.

<sup>1127</sup> C-508/11 P, *Eni Spa v Commission*, ECLI:EU:C:2013:289, paragraph 64.

<sup>1128</sup> Case-T-77/08, *Dow Chemical v Commission*, ECLI:EU:T:2012:47, paragraph 106; C-508/11, *P Eni Spa v Commission*, ECLI:EU:C:2013:289, paragraph 65.

<sup>1129</sup> ID [...] (Sirap-Gema – inspection documents), ID [...], ID [...] (Sirap-Gema – inspection document).

<sup>1130</sup> Case T-376/06, *Legris Industries v Commission*, ECLI:EU:T:2011:107, paragraph 55.

[company representative], and given that the board of Sirap-Gema S.p.A. was composed of members appointed by [business secret - internal group policy].<sup>1131</sup>

- (948) The Commission therefore holds Sirap France S.A.S., Sirap-Gema S.p.A. and Italmobiliare S.p.A. jointly and severally liable for the infringement committed by Sirap-Gema.

#### 6.6.3. *Vitembal*

- (949) As established in Section 4.5, VITEMBAL SOCIETE INDUSTRIELLE SAS and VITEMBAL HOLDING SAS were the main direct participants for Vitembal in the infringement through the involvement of various employees and managers, in particular [company representative] and [company representative]. These entities are therefore held liable for their participation in the infringement.

- (950) During the entire period of the infringement, VITEMBAL HOLDING SAS was also the direct 100% parent of VITEMBAL SOCIETE INDUSTRIELLE SAS (see Recital (12)). In line with the case law referred to in Recital (816), the Commission finds that VITEMBAL HOLDING SAS is therefore presumed to have exercised decisive influence over the conduct on the market of its subsidiary directly involved in the infringement. In its reply to the Commission's SO, Vitembal did not provide any observations on the presumed parental liability.

- (951) On 11 May 2015, following a judgement of the Commercial Tribunal of Nîmes, VITEMBAL SOCIETE INDUSTRIELLE SAS was put into judicial liquidation. The Commission notes that the process for liquidation of VITEMBAL SOCIETE INDUSTRIELLE SAS does not affect VITEMBAL SOCIETE INDUSTRIELLE SAS's liability for its direct participation in the infringement or the imputation of liability for the conduct of that entity to its parent, VITEMBAL HOLDING SAS.

- (952) The Commission therefore holds VITEMBAL SOCIETE INDUSTRIELLE SAS and VITEMBAL HOLDING SAS jointly and severally liable for the infringement committed by Vitembal.<sup>1132</sup>

#### 6.6.4. *Huhtamäki*

- (953) As established in Section 4.5, the entity now called COVERIS RIGID (AUNEAU) FRANCE SAS was the main direct participant for Huhtamäki in the infringement through the involvement of various employees and/or managers, in particular [company representative] and [company representative]. That entity is therefore held liable for its participation in the infringement.

- (954) In its reply to the SO, Huhtamäki claims that COVERIS RIGID (AUNEAU) FRANCE SAS cannot be held liable for direct involvement in the infringement and that any liability should be attributed to ONO Packaging SAS (a legal entity which,

---

<sup>1131</sup> Reference is made to the statute of Sirap-Gema S.p.A. (**ID [...]** Sirap-Gema – reply to RFI). See also C-508/11 *P Eni Spa v Commission*, ECLI:EU:C:2013:289, paragraph 67 with reference to paragraph 55.

<sup>1132</sup> Although Vitembal Société Industrielle SAS was directly involved in the cartel activities, the Commission refrains from imposing a fine on it as it has been put into judicial liquidation. However, the Commission decides to impose a fine on Vitembal Holding SAS for Vitembal Société Industrielle SAS's unlawful behaviour as it has been established that Vitembal Holding SAS formed a single undertaking with its subsidiary during the period of the infringement. Reference is made to Case T-399/09 *Holding Slovenske elektrarne d.o.o. (HSE) v Commission*, ECLI:EU:T:2013:647, paragraphs 127-128.

pursuant to a management buy-out finalised after the end of the infringement on 19 June 2006, acquired Huhtamäki's entire French foam trays production assets). Huhtamäki argues that since the management buy-out took the form of both an asset transfer<sup>1133</sup> and a share transfer<sup>1134</sup>, it would be artificial for the Commission to distinguish between the two portions of the same management buy-out on the basis of purely formal criteria which would be highly artificial and would run counter to the fundamental principles of law and the economic reality. In support of its claim, Huhtamäki argues that the role played by [company representative], both in the operations of the foam trays business previously owned by Huhtamäki as well as his role in the management buy-out which concerned both the French and the SWE operations of Huhtamäki (for SWE, see also Section 6.3.4) should have led the Commission to adopt a "holistic" view of the two parts of the management buy-out. Huhtamäki thus claims that the Commission should treat the share transfer in SWE and the asset transfer in France in the same way, leading to the conclusion that ONO Packaging SAS should bear the entire liability for any collusive conduct and that Huhtamäki should be exonerated from any type of liability in both France and SWE.<sup>1135</sup>

- (955) In the light of well-established case-law, the Commission rejects Huhtamäki's arguments related to the liability of COVERIS RIGID (AUNEAU) FRANCE SA. The Commission notes that the exception to the principle of personal responsibility, which would enable the Commission to attribute a cartel offence to the new operator of the participating undertaking, would only apply if that new operator may in fact be regarded as the successor of the original operator.<sup>1136</sup> This so called "economic continuity" test applies in cases where the legal person responsible for running the undertaking has ceased to exist in law after the infringement has been committed<sup>1137</sup> or in cases of internal restructuring of an undertaking where the initial operator has not necessarily ceased to have legal existence but no longer carries out an economic activity on the relevant market and in view of the structural links between the initial operator and the new operator of the undertaking<sup>1138</sup>. The Commission concludes that none of the conditions required for economic continuity are met in this case and maintains its position with regard to the liability of COVERIS RIGID (AUNEAU) FRANCE SAS for the infringement in France.

<sup>1133</sup> In respect of the foam trays production assets transferred from Huhtamäki France SAS (later renamed Paccor France SAS and recently renamed Coveris Rigid (Auneau) France SA) to ONO Packaging SAS

<sup>1134</sup> In respect of the entire share capital in Huhtamäki Embalagens Portugal S.A. (now renamed to ONO Packaging Portugal SA) which was transferred, pursuant to a share transfer agreement dated 19 June 2006, to [non-addressee].

<sup>1135</sup> Huhtamäki's reply to the SO, at paragraphs 176-255

<sup>1136</sup> Opinion of Advocate General Kokott in Case C-280/06 *ETI SpA and others* ECLI:EU:C:2007:404, paragraphs 75 and 76; and Joined Cases C-204/00 P, C-205/00 P, C-211/00 P, C-213/00 P, C-217/00 P and C-219/00 P *Aalborg Portland and Others v Commission* ECLI:EU:C:2004:6, paragraph 59.

<sup>1137</sup> Case C-49/92 P *Commission v Anic Partecipazioni* ECLI:EU:C:1999:356, paragraph 145.

<sup>1138</sup> See judgement in Joined Cases C-204/00 P (and other), *Aalborg Portland A/S a.o. v Commission* ECLI:EU:C:2004:6, paragraphs 354-360, and Case T-43/02 *Jungbunzlauer AG v Commission*, ECLI:EU:T:2006:270, paragraphs 131-133, in Case T-161/05 *Hoechst v Commission*, ECLI:EU:T:2009:366, paragraphs 50 - 52 and 63 and the case law referred to in those paragraphs. See also, *mutatis mutandis*, the judgement in relation to Art. 65(1) and (5) of ECSC Treaty in Case T-134/94, *NMH Stahlwerke GmbH v Commission* ECLI:EU:T:1999:44, paragraph 126.

- (956) During the entire period of the infringement, Huhtamäki Oyj held 100% of the shareholdings in COVERIS RIGID (AUNEAU) FRANCE SAS. In line with the case law referred to in Recital (816), the Commission considers that Huhtamäki Oyj is therefore presumed to have exercised decisive influence over the conduct on the market of its subsidiary directly involved in the infringement.
- (957) In its reply to the Commission's SO Huhtamäki attempts to rebut the presumption by claiming that Huhtamäki Oyj was neither involved in the infringement nor in a position where it was able to exercise, and actually exercised, decisive influence over the commercial conduct of its French subsidiary.<sup>1139</sup> The Commission notes that Huhtamäki's argumentation rests predominately on the apparent absence of involvement by Huhtamäki Oyj in the commercial day-to-day operations and the apparent lack of alignment of commercial strategies between Huhtamäki Oyj and COVERIS RIGID (AUNEAU) FRANCE SAS. Establishing a degree (if indeed any) of commercial and strategic autonomy on the market is not in itself sufficient to rebut the presumption that Huhtamäki Oyj exercised decisive influence over the conduct of its COVERIS RIGID (AUNEAU) FRANCE SAS during the period of the infringement.<sup>1140</sup>
- (958) Huhtamäki also ignores the fact that during the period of the infringement, as shown by the information provided to the Commission by Huhtamäki, there were clear economic, organisational and legal links between Huhtamäki Oyj and COVERIS RIGID (AUNEAU) FRANCE SAS. This is, for example, also evidenced in Huhtamäki's reply to the SO where while claiming that the day-to-day business operations were at the discretion of the operative units (such as COVERIS RIGID (AUNEAU) FRANCE SAS), Huhtamäki Oyj focused on [business secret - internal group policy].<sup>1141</sup> Because of the internal reporting obligations, [company representative] (an employee of Huhtamäki France SAS (now COVERIS RIGID (AUNEAU) FRANCE SAS)) also reported to Huhtamäki Oyj's senior management: [company representative] ([function of company representative]); and [company representative] ([function of company representative]). In relation to internal reporting within the Huhtamäki group, Huhtamäki claims<sup>1142</sup> that it was limited to budgetary issues and did not include anticompetitive subjects. The Commission notes that the Court of Justice has confirmed that budgetary control is indicative of actual control exercised by the parent company. Furthermore, as confirmed by the Court of Justice, it is irrelevant that the internal communication between [company representative] and his superiors may not have included anticompetitive subjects or that Huhtamäki Oyj did not participate directly or encourage the infringement.<sup>1143</sup>
- (959) In addition to being an indirect 100% holding company of the subsidiaries directly involved in the infringement, the Commission notes that Huhtamäki Group operates in accordance with the Huhtamäki Group Corporate Governance Policy for Subsidiaries ("Huhtamäki Policy"). Huhtamäki Policy is based on the Finnish corporate and securities legislation as well as the Rules of the Helsinki Stock Exchange. Pursuant to Huhtamäki Policy each direct or indirect subsidiary of

<sup>1139</sup> ID [...] Huhtamäki's reply to the SO, [...].

<sup>1140</sup> See for example: C-508/11 *P Eni Spa v Commission*, ECLI:EU:C:2013:289, paragraphs 64-66.

<sup>1141</sup> ID [...] Huhtamäki's reply to the SO, [...].

<sup>1142</sup> ID [...] Huhtamäki's reply to the SO, [...].

<sup>1143</sup> See for example: C-508/11 *P Eni Spa v Commission*, ECLI:EU:C:2013:289, paragraphs 64-66.

Huhtamäki Oyj (including COVERIS RIGID (AUNEAU) FRANCE SAS) is obliged to follow set rules with regard to (i) corporate governance, (i) composition of boards of directors, (iii) allocation of duties, responsibilities and liabilities, (iv) holding of the meetings of the board of directors and (iv) signing on behalf of subsidiaries. [Business secret - internal group policy]<sup>1144</sup> The Commission considers that this further strengthens the presumption that Huhtamäki Oyj exercised decisive influence over COVERIS RIGID (AUNEAU) FRANCE SAS throughout the entire duration of the cartel.

- (960) The Commission therefore holds COVERIS RIGID (AUNEAU) FRANCE SAS and Huhtamäki Oyj jointly and severally liable for the infringement committed by Huhtamäki.

#### 6.6.5. *Silver Plastics*

- (961) As established in Section 4.5, Silver Plastics S.à r.l. was a direct participant in the infringement through the involvement of mainly [company representative]. That entity is therefore held held liable for its participation in the infringement.
- (962) During the entire period of the infringement, Johannes Reifenhäuser Holding GmbH & Co. KG (JRH) was a [96-100%] direct parent of Silver Plastics GmbH which was itself a [96-100%] direct parent of Silver Plastics S.à r.l. Hence, JRH was an almost [96-100%] indirect parent of Silver Plastics S.à r.l. In line with the case law referred to in Recital (816), JRH is therefore presumed to have exercised decisive influence on the conduct of Silver Plastics GmbH and Silver Plastics S.à r.l. Furthermore, by reference to the same case law referred to in Recital (816), Silver Plastics GmbH is presumed to have exercised decisive influence on the conduct of Silver Plastics S.à r.l. In addition to that presumption, [company representative] kept [company representative], a managing director of Silver Plastics GmbH, informed about his collusive discussions with other cartel participants (see for instance Recitals (680)-(681)).
- (963) Both JRH and Silver Plastics GmbH contest the parental liability presumption.<sup>1145</sup> The Commission's argumentation in this regard is outlined in Recitals (907)-(919) and applies equally to the infringement covering France.
- (964) The Commission therefore holds Silver Plastics S.à r.l., Silver Plastics GmbH and Johannes Reifenhäuser Holding GmbH & Co. KG jointly and severally liable for the infringement committed by Silver Plastics.

## 7. DURATION OF THE INFRINGEMENTS

### 7.1. Starting and end dates

- (965) In establishing the starting and end dates of each party's participation in each of the five cartels, the Commission has taken the specific features of the cartels into account, in particular the participation in meetings and other contacts of the parties. For most of the parties the starting date of their participation in the respective infringement(s) coincides with the date they first attended a bilateral or multilateral

<sup>1144</sup> ID [...] (Huhtamäki - reply toRFI).

<sup>1145</sup> ID [...] (JRH reply to the SO) and ID [...] (Silver Plastics reply to the SO). To support its arguments about the lack of control over Silver Plastics JRH also provides a number of statements see ID [...] (JRH reply to the SO –[...]).

cartel meeting. In establishing the end dates of each party's participation, the Commission has taken into account the last cartel event in which each of them were involved and the absence of any proof or evidence capable of being interpreted as a declared intention from the parties to distance themselves from the object of the agreement or concerted practice.

- (966) The duration of the parent companies' involvement is the period during which the parent exercised decisive influence over the subsidiary that was directly participating in the infringement and for which it is, as set out in Section 6, held jointly and severally liable with the subsidiary.

#### 7.1.1. *Italy*

- (967) The starting date of the cartel covering Italy is 18 June 2002 (see Recitals (83)-(84)) and the end date is 17 December 2007 (see Recitals (343)-(362)). The end date corresponds to the date of the Carrefour tender. Even though the Commission does not have any evidence of cartel contacts taking place on 17 December 2007, the cartel contacts related to that tender (that took place before or after the date of the actual tender) show that the cartel had effects until (at least) that date. The starting and end dates for each undertaking are separately outlined and explained below.

#### Linpac

- (968) The starting date of 18 June 2002 and the end date of 17 December 2007 apply to all the addressees liable for the infringement committed by Linpac (see Recitals (825)-(827)).
- (969) The end date represents the rigging of the Carrefour tender held on 17 December 2007. Even if there was no contact between the cartel participants on that date, the evidence shows that there were telephone and email contacts between the competitors, including Linpac, before and after the tender and that the cartel had effects until that date.<sup>1146</sup> Linpac's absence from the meeting in Fidenza on 7 December 2007 can be explained by [...] [;] Linpac, this time differently from in the past, was interested in taking a lot of the bid and tried to steal away the client from Coopbox by quoting a very low price.<sup>1147</sup> Nonetheless, as [...] evidenced by contemporaneous documents, Linpac was in contact with Coopbox and aware of the attempts to rig the tender. In the light hereof and given the regularity of Linpac's participation in the cartel until that moment, 17 December 2007 is the end date for Linpac.

#### Sirap Gema

- (970) The starting date of 18 June 2002 and the end date of 17 December 2007 apply to all the addressees liable for the infringement committed by Sirap-Gema (see (828)-(833)).

#### Coopbox

- (971) Coopbox also participated in the infringement from 18 June 2002 to 17 December 2007. Within that period the following addressees are liable for the infringement committed by Coopbox in the following periods (see Recitals (844)-(863)):

---

<sup>1146</sup> ID [...]; ID [...]; ID [...]; ID [...]; ID [...]; ID [...]  
<sup>1147</sup> ID [...]

- (1) Poliemme S.r.l. (ex-Turris Pack) as a direct participant from 18 June 2002 to 29 May 2006 (see Recital (845));
- (2) CCPL S.c. as a direct participant from 18 June 2002 to 31 December 2002 and as a parent company of directly participating Coopbox entities from 18 June 2002 to 17 December 2007 (see Recital (847));
- (3) Coopbox Group S.p.A. as a direct participant from 18 June 2002 to 17 December 2007 and as a parent company of directly participating Coopbox entities from 28 October 2002 to 27 February 2003 and from 27 April 2006 to 29 May 2006 (see Recital (847)).

#### Vitembal

- (972) Vitembal participated in the infringement from 5 July 2002 (see (86)) to 17 December 2007 (see Recital (343)-(362)).
- (973) VITEMBAL HOLDING SAS is held liable as a direct participant for Vitembal's infringement from 13 November 2003 (see Recital (130)) to 23 February 2005 (see Recital (242)). It is also held liable as the parent company of VITEMBAL Italia S.r.l. from 5 July 2002 to 17 December 2007 and of VITEMBAL SOCIETE INDUSTRIELLE SAS from 13 November 2003 to 19 December 2006 (see Recitals (839)-(842)).

#### Magic Pack

- (974) Magic Pack participated in the infringement in Italy from 13 September 2004 (see Recitals (146)-(148)) to 7 March 2006 (see Recitals (259)-(261)). Those starting and end dates apply to the addressee liable for the infringement committed by Magic Pack (see Recital (843)).
- (975) Magic Pack ended its participation in the cartel on 7 March 2006, the date on which it distanced itself and definitively abandoned the cartel (see Recitals (259)-(261)). Magic Pack's distancing on that date is confirmed by [company name] in its reply to the SO. Indeed, Magic Pack did not attend any of the following multilateral meetings. However, Magic Pack attended the last meeting between competitors on 7 December 2007, referred in Recitals (344)-(352). At that meeting, competitors discussed the upcoming Carrefour tender. Magic Pack confirms its presence at the meeting but denies thereby re-entering the cartel. [...] its owner, [company representative], sent [company representative] to the meeting to confirm its intention not to take part in the cartel. After having ironically proposed that Vitembal gave up two of its major clients in exchange for Magic Pack's passivity in the Carrefour tender and having declared Magic Pack's intention to compete aggressively, [company representative] (Magic Pack) left the meeting before the others. Magic Pack actually submitted a low offer during the Carrefour tender and won the hypermarket and supermarket lots.<sup>1148</sup> [Company name] and [company name] submit diverging statements as to Magic Pack's conduct during that meeting. While [company name] reports that an agreement was reached with Magic Pack, [company name] submits that Magic Pack declared its intention to compete at the tender. Given the uncertainty as to what happened during the meeting as well as the fact that Magic Pack did not participate in any other cartel meetings subsequent to its distancing on 7

---

<sup>1148</sup>

ID [...]



March 2006, the Commission maintains that Magic Pack ended its participation in the cartel on 7 March 2006 in spite of its presence at a meeting on 7 December 2007.

### Nespak

- (976) Nespak participated in the Italian cartel from 7 October 2003 (see Recital (128)) to 6 September 2006 (see Recitals (271)-(279)). Those starting and end dates apply to all the addressees liable for the infringement committed by Nespak (see (834)-(838)). Although there is evidence indicating Nespak's participation already from the beginning of the Italian infringement (see Recitals (80), (82), (110) and (118)), the meeting with Coopbox on 7 October 2003 is the first dated anticompetitive meeting at which Nespak's participation has been proven to the requisite standard.
- (977) Even though there are indications of Nespak's participation in the cartel after the established end date on 6 September 2006 (see Recitals (286), (287), (297), (346)-(347) and (351)), that date corresponds to the last dated meeting at which Nespak's participation in the cartel is proven to the requisite standard.

### *7.1.2. South-West Europe*

- (978) The starting date of the cartel covering SWE is 2 March 2000 (see Recitals (383)-(385))<sup>1149</sup> and the end date is 13 February 2008 (see Recitals (500)-(502)). The starting and end dates for each undertaking are separately outlined and explained below.

### Linpac

- (979) Linpac participated in the infringement from 2 March 2000 to 13 February 2008. Within that period the following addressees are liable for the infringement committed by Linpac in the following periods:
- (1) LINPAC Packaging Pravia S.A. as a direct participant from 2 March 2000 to 26 September 2007 (see Recital (864));
  - (2) LINPAC Packaging Holdings S.L. as a direct participant from 2 March 2000 to 13 February 2008 and as the parent company of LINPAC Packaging Pravia S.A. from 9 November 2006 to 26 September 2007 (see Recitals (864)-(867));
  - (3) LINPAC Group Ltd as the parent company of LINPAC Packaging Pravia S.A. from 9 November 2006 to 26 September 2007 and of LINPAC Packaging Holdings S.L. from 2 March 2000 to 13 February 2008 (see Recitals (864)-(867)).

### Coopbox

- (980) Coopbox also participated in the infringement from 2 March 2000 to 13 February 2008. Within that period the following addressees are liable for the infringement committed by Coopbox in the following periods (see Recitals (872)-(884)):
- (1) Coopbox Hispania S.l.u. as a direct participant from 2 March 2000 to 13 February 2008;

---

<sup>1149</sup>

As explained in among others Recitals (393) and (779), although the cartel was initially limited to Spain, evidence in the Commissions file shows that on 8 June 2000 it had been extended to cover also Portugal.

- (2) CCPL S.c. as a parent company of Coopbox Hispania S.l.u. from 26 June 2002 (the date when Dynaplast Ibérica de Embalaje S.L.U. started its participation) to 13 February 2008.
- (981) [...] that solid proof of its active participation in the infringement with regard to Portugal can only be found from 17 August 2001 (see Recital (403)) and onwards, and that the duration of its participation as regards Portugal should be reduced accordingly. Coopbox refers to [...] according to which only at the meeting on 17 August 2001 did the competitors agree on the conditions for Coopbox's entry on the Portuguese market. Coopbox points out that its participation before that date is incompatible with the fact that in 2000 Coopbox was still preparing its entry into Portugal and was being opposed by the other competitors, as can be inferred from [the] [...] description of the meeting of 7 December 2000 (see Recital (402)). Furthermore, according to Coopbox, it adopted a competitive conduct in spite of its competitors' attempts to threaten and dissuade it from entering the Portuguese market.<sup>1150</sup>
- (982) The Commission notes that evidence shows that Coopbox was fully aware of the Portuguese aspect of the single and continuous infringement in SWE for its entire duration [...].<sup>1151</sup> Second, Coopbox already actively participated in anti-competitive discussions concerning Portugal before 17 August 2001. Internal notes show that Coopbox discussed the "*situation in Portugal*" at a bilateral meeting with Linpac on 8 June 2000 and, as explained by Coopbox itself, announced price increases on 12 June 2000 to be applied in Spain and Portugal in compliance with a prior agreement amongst competitors (see Recital (396)).<sup>1152</sup> The meeting on 7 December 2000 in Lisbon (see Recital (398)) was [...] organised by Coopbox, Linpac and Huhtamäki, and even though the competitors expressed their discontent with Coopbox's activity in Portugal, prices were nonetheless discussed. According to the notes of [company representative] (Coopbox), the competitors also talked about price increases in Portugal on 6 March 2001 (see Recital (408)).
- (983) Therefore, Coopbox's argument that its period of participation should start on 17 August 2001 as regards the Portuguese part of the infringement is rejected. The fact that Coopbox for a brief period of time was trying to gain market shares in Portugal and thereby adopted a conduct which was in contrast with the expressed interests of the other competitors in the cartel, does not affect its liability for the infringement pursuant to Article 101(1) of the Treaty.<sup>1153</sup>

#### Vitembal

- (984) Vitembal participated in the infringement from 7 October 2004 (see Recitals (443)-(446)) to 25 July 2007 (see Recital (485)). Those starting and end date apply to the entities liable for the infringement committed by Vitembal in the following manner:
- (1) VITEMBAL España, S.L. as a direct participant from 7 October 2004 to 25 July 2007.

---

<sup>1150</sup> ID [...] (Coopbox reply to the SO).

<sup>1151</sup> ID [...]

<sup>1152</sup> ID [...] (Coopbox – inspection document) and ID [...]

<sup>1153</sup> See Joined Cases C-204/00P C-205/00P, C-211/00P, C-213/00P, C-217/00P and C-219/00P *Aalborg Portland A/S and Others v. Commission*, ECLI:EU:C:2004:6, paragraph 85, Case T-334/94 *Sarrió SA v. Commission* ECLI:EU:T:1998:97, paragraph 118.

- (2) VITEMBAL HOLDING SAS is held liable as a direct participant from 7 October 2004 to 18 January 2005 (see Recitals (456)-(460)) and as the parent company of VITEMBAL España, S.L. from 7 October 2004 to 25 July 2007 and of VITEMBAL SOCIETE INDUSTRIELLE SAS from 7 October 2004 to 18 January 2005 (see Recitals (868)-(871)).
- (985) It is noted that there are indications that Vitembal was involved in anti-competitive contacts before 2004. [...] it took part in the anti-competitive contacts in SWE from its entry on that market in 1998.<sup>1154</sup> Also, the internal notes of Coopbox from April 2000 (see Recital (390)) as well as [...] referred to in Recital (391) indicate that Vitembal was already considered part of the cartel in 2000.<sup>1155</sup> This seems to be confirmed by the instance referred to in Recital (407) regarding a meeting on 6 March 2001. However, it is only from 7 October 2004 that there is sufficient evidence of a series of specific contacts proving Vitembal's corroborated and continuous participation in the cartel.

#### Ovarpack

- (986) Ovarpack participated in the infringement from 7 December 2000 (see Recitals (398)-(402)) to 12 January 2005 (see Recitals (453)-(455)) and from 25 October 2007 (see Recital (493)) to 13 February 2008 (see Recitals (500)-(502)).
- (987) From 12 January 2005 to 25 October 2007, there is no evidence of Ovarpack taking part in anti-competitive contacts. In the light of the long duration of the time gap (almost two years and nine months) and the frequency of contacts in that time period between the other cartel participants, in particular Linpac, Coopbox and Vitembal (see Section 4.2.3), the Commission considers that the time gap amounts to an interruption of Ovarpack's participation in the cartel. On 25 October 2007 Ovarpack resumed its participation in the same cartel, with the same participants.

#### Huhtamäki

- (988) Huhtamäki participated in the infringement from 7 December 2000 (see Recitals (398)-(402)) to 18 January 2005 (see Recitals (456)-(458)). Those starting and end date apply to all the addressees liable for the infringement committed by Huhtamäki (see Recitals (885)-(894)).

#### *7.1.3. North-West Europe*

- (989) Although the evidence provided in Section 4.3 shows clear indications of earlier collusion, the starting date of the NWE cartel infringement for all participants (namely for Linpac, Vitembal, Silver Plastics and Huhtamäki) is 13 June 2002 (see Recitals (517)-(518)). On that day, all the companies participated in the EQA fringe meeting at the Sheraton Hotel in Frankfurt. The participation of all the companies and the anticompetitive nature of the meeting is supported by [...] handwritten notes from the meeting as well as price increase letters pre- and postdating the meeting found at the premises of the companies during the inspection. The arguments advanced by Silver Plastics and Huhtamäki in their replies to the SO are not

<sup>1154</sup> ID [...]; ID [...] and ID [...]

<sup>1155</sup> ID [...]; ID [...] (Coopbox inspection documents); ID [...]. [...] two incidents of anti-competitive contacts with Vitembal in respectively 2001 and 2003, see ID [...]. Regardless of the existence or nature of these contacts, [...] further support [...] Vitembal as taking part in the SWE infringement at that time.

sufficient to cast doubt about the credibility of that evidence (see Recital (520)-(521)).

- (990) The end date for Linpac and Silver Plastics has been set at 29 October 2007, the date on which the two companies met at the Reifenhäuser stand at the K trade fair in Düsseldorf (see Recitals (588)-(591)). The end date for Vitembal has been set at 12 March 2007, the date on which an EQA fringe meeting took place at the Airport Conference Centre in Frankfurt (see Recital (584)). The end date for Huhtamäki in the cartel has been set at 20 June 2006 which is the date when Huhtamäki contacted [company name] regarding rigid trays to customers Wiesenhof and Emsland in Germany (see Recital ([...])). Although there are indications that Huhtamäki was also present at the MAP IK fringe meeting at the Sheraton Hotel Nürnberg on 20 September 2007 (see Recital (580)), taking into account the lack of evidence of Huhtamäki's participation in anticompetitive contacts from 20 June 2006 until 20 September 2007 as well as the circumstances surrounding the meeting on 20 September 2007, including notably the absence of Huhtamäki from the multilateral EQA meetings on 16 October 2006<sup>1156</sup> and 12 March 2007 (see Recitals (573) and (584)), there is no convincing evidence that Huhtamäki continued its involvement in the infringement after that date.
- (991) Those starting and end dates apply to the respective addressees liable either as directly involved or as parents for the infringement committed by Linpac, Vitembal and Silver Plastics whereas the starting date differs for the addressees held liable for the infringement committed by Huhtamäki<sup>1157</sup> (see Section 6.4).
- (992) There is hardly any evidence in the Commission's file of anticompetitive contacts involving Vitembal from 2 December 2004 until 25 September 2006.<sup>1158</sup> However, this can partly be explained by the fact that in 2005 the cartel members started to increasingly discuss rigid trays, which Vitembal did not produce (see Recital (549)). For this reason Vitembal was not invited to participate in the [company name] in house exhibition on 12 October 2005 (see Recital ([...])). Moreover, the rest of the contacts relied on in this Decision during that period are bilateral contacts involving the other parties and most of them, that is to say, at least six contacts out of a total of ten, concern rigid trays (see Recitals (550), (551), (553), (557), (558) and (559)). There is no evidence in the file that Vitembal distanced itself from the cartel or that it was perceived by the other participant as no longer part of the arrangement. To the contrary, there is ample evidence in the file that Vitembal continued to be involved in all foam tray related contacts postdating the meeting on 25 September 2006. For example, as of September 2006 Vitembal was again involved in the exchange of price increase letters<sup>1159</sup> and it participated in the EQA fringe meeting on 16 October 2006, as well as in the meeting on 23 October 2006 (see Recitals (567), (575) and (576)). After the meeting on 23 October 2006, Vitembal proceeded to price increases

---

<sup>1156</sup> See also in **ID [...]** the minutes of the EQA official meeting on 16 October 2006 stating that "*in order to better articulate the common interests of the manufacturers of EPS trays the secretariat is asked to get in touch with Huhtamäki (to improve participation in EQA-meetings)*".

<sup>1157</sup> The starting date of 13 June 2002 applies only to Huhtamäki Flexible Packaging Germany GmbH & Co. KG. The starting date for Huhtamäki Oyj is 1 January 2003. The end date is the same for both entities, namely 20 June 2006.

<sup>1158</sup> With one exception, namely according to [company name], Vitembal participated in the discussions on the shift in the market from foam trays to rigid trays in September 2005 - Recital (552).

<sup>1159</sup> **ID [...]**

that took effect at least until the meeting on 12 March 2007 (see Recitals (583)-(584)). Vitembal, in its reply to the SO, argues that no anticompetitive agreement or decision was reached at that meeting. However, the evidence shows that the meeting on 12 March 2007 had an anticompetitive content (see Recital (584)). It is therefore considered as Vitembal's last cartel contact and the end date for its participation in the NWE cartel.

#### 7.1.4. *Central and Eastern Europe*

- (993) As set out in Section 4.4, the starting date of the cartel covering the CEE is 5 November 2004 (see Recitals (602)-(618)) and the end date is 24 September 2007 (see Recitals (653)-(654)). Those starting and end dates apply to all the addressees liable for the infringement committed by Linpac and Sirap-Gema/Petruzalek.
- (994) In respect of Coopbox's involvement in the infringement, the starting date for Coopbox Eastern s.r.o. is 5 November 2004 (see Recitals (602)-(618)) and the end date is 24 September 2007 (see Recitals (653)-(654)). The starting date for CCPL S.c. is 8 December 2004 (the date on which it acquired Coopbox Eastern s.r.o. – see Section 2.2.4) and the end date is 24 September 2007 (see Recitals (653)-(654)).
- (995) In respect of Propack's involvement in the infringement, the starting date for PROPACK Kft. is 13 December 2004 (see Recitals (619)-(623)) and the end date is 15 September 2006 (see (646)). The starting date for Bunzl plc is 1 July 2005 (the date on which it acquired PROPACK Kft. – see Section 2.2.9) and the end date is 15 September 2006 (see Recital (646)).
- (996) In its reply to the SO<sup>1160</sup>, Coopbox, [...], claims that following the appointment of its new general manager, [company representative], Coopbox gradually started distancing itself from the anti-competitive conduct. Coopbox also claims that for fairly long periods of time, it adopted a separate commercial strategy and was not constrained by agreements with competitors. In this regard, it should be pointed out that Coopbox participated in approximately 10 out of 27 collusive contacts throughout the infringement period including the last collusive contact on 24 September 2007 (see Recitals (653)-(654)).

#### 7.1.5. *France*

- (997) As set out in Section 4.5, the starting date of the cartel covering France for Huhtamäki, Linpac, Sirap-Gema and Vitembal addressees listed in Section 6.6 is 3 September 2004 (see Recitals (660)-(665)). For Silver Plastics addressees listed in Section 6.6, the starting date of their participation in the cartel is 29 June 2005 (see Recitals (678)-(679)). For Silver Plastics, the infringement ended on 5 October 2005 (see Recitals (682)-(683)). For Huhtamäki, Linpac, Sirap-Gema and Vitembal, the infringement ended on 24 November 2005 (see Recitals (684)-(686)).

## 8. REMEDIES

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

- (998) Where the Commission finds that there is an alleged infringement of Article 101 of the Treaty and Article 53 of the EEA Agreement it may by decision require the

---

<sup>1160</sup> ID [...] (Coopbox – reply to the SO).

undertakings concerned to bring such alleged infringement to an end in accordance with Article 7 of Regulation (EC) No 1/2003.

- (999) Given the secrecy in which the cartel arrangements were carried out, it is not possible to declare with absolute certainty that each of the five cartels addressed by this Decision has ceased for all the participants.
- (1000) It is therefore necessary for the Commission to require the undertakings to which this Decision is addressed to bring the alleged infringements to an end (if they have not already done so) and to refrain from any agreement, concerted practice or decision of an association which may have the same or a similar object or effect.

## **8.2. Article 23(2) of Regulation (EC) No 1/2003 and Article 15(2) of Regulation No 17**

- (1001) Under Article 23(2) of Regulation (EC) No 1/2003<sup>1161</sup> and Article 15(2) of Regulation No 17, the Commission may by decision impose on undertakings fines where, either intentionally or negligently, they infringe Article 101 of the Treaty and/or Article 53 of the EEA Agreement.
- (1002) The Commission considers that, based on the facts described in this Decision, the infringements have been committed intentionally. This is concluded from the facts referred to in Section 4 showing for all five cartels the intensity of contacts between the participating undertakings with a clear anticompetitive purpose as well as the precaution taken to conceal their arrangements and to avoid their detection. With respect to all of the five cartels, the parties cannot claim that they did not act deliberately.<sup>1162</sup> In any event, the parties in all of the five cartels covered by this Decision acted at least negligently.
- (1003) The Commission therefore intends to impose fines on the undertakings to which this Decision is addressed. The Commission will impose separate fines in respect each of the five separate cartels covered by this Decision.
- (1004) Pursuant to Article 23(3) of Regulation (EC) No 1/2003 and Article 15(2) of Regulation No 17, the Commission must, in fixing the amount of the fines, have regard to all relevant circumstances and particularly to the gravity and to the duration of that alleged infringement, which are the two criteria explicitly referred to in the Regulations. In doing so, the Commission should set the fines at a level sufficient to ensure deterrence. Moreover, the role played by each undertaking in each of the five cartels should be assessed on an individual basis. In setting the fines to be imposed, the Commission will refer 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

---

<sup>1161</sup> Under Article 5 of Council Regulation (EC) No 2894/94 of 28 November 1994 concerning arrangements of implementing the Agreement on the European Economic Area “the Community rules giving effect to the principles set out in Articles 85 and 86 [now Articles 101 and 102] of the EC Treaty [...] shall apply *mutatis mutandis*”. (OJ L 305, of 30.11.1994, p.6).

<sup>1162</sup> See, e.g., Case T-11/05 *Wieland-Werke AG v Commission*, judgment of 19 May 2010, ECLI:EU:T:2010:201, paragraph 140; Case T-143/89 *Ferriere Nord v Commission* ECLI:EU:T:1995:64, paragraph 42; Case C-219/95 P *Ferriere Nord v Commission* ECLI:EU:C:1997:375, paragraph 50.

1/2003<sup>1163</sup> (hereafter, “*the Guidelines on fines*”).<sup>1164</sup> Finally, the Commission will apply the provisions of the Leniency Notice, as appropriate.

### 8.3. Article 25 of Regulation (EC) No 1/2003

- (1005) Pursuant to Article 25(1)(b) of Regulation (EC) No 1/2003, the power of the Commission to impose fines or penalties for infringements of the substantive rules relating to competition is subject to a limitation period of five years. For continuing or repeated infringements, the limitation period begins to run on the day the infringement ceases.<sup>1165</sup> Any action taken by the Commission for the purpose of the investigation or proceedings in respect of an infringement interrupts the limitation period and each interruption starts time running afresh.<sup>1166</sup> However, the limitation period expires at the latest on the day on which a period equal to twice the limitation period has elapsed without the Commission having imposed a fine or a periodic penalty payment.<sup>1167</sup>
- (1006) As explained in Recital (988), ONO PACKAGING PORTUGAL S.A.'s and Huhtamäki Oyj's liability for Huhtamäki's involvement in the SWE cartel ends on 18 January 2005. As a result, the Commission does not have the power to impose a fine on those two entities for their involvement in that cartel. The same applies to Ovarpack's involvement in the SWE cartel between December 2000 and 12 January 2005. As explained in Recital (987) the Commission considers that the time gap between 12 January 2005 and 25 October 2007 amounts to an interruption of Ovarpack's participation in the cartel and that Ovarpack's participation in the period thereafter (25 October 2007 and 13 February 2008) cannot be qualified as a repeated infringement. However, taking into account the particular circumstances of this case, the Commission considers that it has a legitimate interest to hold both ONO PACKAGING PORTUGAL S.A. and Huhtamäki Oyj as well as Ovarpack liable for their respective periods of participation in the SWE cartel. Those circumstances include notably the very serious nature of the SWE cartel, the need to find an infringement in order to explain the Commission's overall assessment of the entire SWE cartel<sup>1168</sup> and to facilitate damage actions against the participants in the SWE cartel<sup>1169</sup> as well as the fact that the infringements committed by these undertakings have come to an end fairly recently.

---

<sup>1163</sup> Guidelines on the method of setting fines imposed pursuant to Article 23(2)(a) of Regulation No 1/2003, OJ C 210, 1.9.2006, p. 2.

<sup>1164</sup> The Commission has not identified any grounds that would justify departing from the general methodology outlined in the Guidelines on fines, such as for instance the application of a symbolic fine.

<sup>1165</sup> Article 25(2) of Regulation (EC) No 1/2003.

<sup>1166</sup> Article 25(3) of Regulation (EC) No 1/2003.

<sup>1167</sup> Article 25(5) of Regulation (EC) No 1/2003.

<sup>1168</sup> See for example Commission Decision c(2010) 4185 final of 23 June 2010 relating to a proceeding under article 101 TFEU and Article 53 EEA in case COMP/39092-BathroomFittings and Fixtures, paragraph 1179.

<sup>1169</sup> Although the Commission is not aware of any ongoing damage actions concerning the SWE cartel, such actions usually only commence after the adoption of a decision (or even after the decision has been reviewed by the General Court). The possibility of damage actions against the participants in the SWE cartel (including ONO PACKAGING PORTUGAL S.A, Huhtamäki Oyj and Ovarpack), is therefore a factor which supports the interest to find that an infringement has been committed in the past, although fines can no longer be imposed.

## 8.4. Calculation of the fines

(1007) In applying the Guidelines on fines, the basic amounts of the fine to be imposed on each party result from the addition of a variable amount and an additional amount (also called "entry fee"). The variable amount results from a proportion of the value of sales of goods or services to which the infringement directly or indirectly relates in a given year (normally, the last year of the infringement) multiplied by the number of years of the undertaking's participation in the infringement. The additional amount is calculated as a proportion of the value of sales in the same given year. The resulting basic amount can then be increased or reduced for each undertaking, depending on aggravating or mitigating circumstances.

### 8.4.1. The value of sales

(1008) The basic amount of the fine to be imposed on the undertakings concerned is to be set by reference to the value of each undertaking's sales of the cartelised products (directly or via distributors) in the respective geographic areas covered by each of the five cartels. For each of the five cartels, this includes all sales within the concerned region of foam trays (including standard, absorbent and barrier trays) for retail food packaging. For the NWE cartel, it also includes rigid trays. For a detailed description of the cartelised products, please refer to Section 2.1.

(1009) In its reply to the SO,<sup>1170</sup> Vitembal argues that barrier trays, a subcategory of foam trays, were not part of the arrangements in which it participated. Vitembal has not submitted any evidence in support of its claim. At the same time, the evidence in the Commission's possession demonstrates that all categories of foam trays (standard, absorbent and barrier) were the objects of the cartels in which Vitembal participated. This is, for instance, shown by the price letters sent by Vitembal to its customers announcing the agreed price increases of foam trays without distinguishing between any subcategories<sup>1171</sup> (see Recitals (660)-(665) concerning the French cartel); the price increase discussions in September 2006 in the Italian cartel which [...] also included barrier trays (Recitals (271)-(277)); the price letters sent out in the summer of 2007 (see Recital (486)) in the SWE cartel which clearly mention that the agreed price increase also refers to foam barrier trays (see Recital (485)) and the price offer in the CEE cartel which refers to foam trays in general (see Recital (642)). In addition, in its replies to the Commission's request for information, Vitembal does not exclude barrier trays from the scope of the cartelised product.<sup>1172</sup> The inclusion of foam barrier trays is also supported by the evidence provided by the other parties.<sup>1173</sup>

(1010) During a state of play meeting held on 27 April 2015, Nespak claimed that the cartel in Italy concerned only foam trays used for the packaging of meat. Based on the

---

<sup>1170</sup> ID [...] (Vitembal reply to the SO).

<sup>1171</sup> See for instance: ID [...] (Vitembal – inspection document).

<sup>1172</sup> See for instance: ID [...] (Vitembal – reply to RFI) in which Vitembal consistently refers to "*barquettes PSE*" without excluding barrier foam trays. At the oral hearing on 10 June 2010, Vitembal explained that it distributed barrier foam trays through an independent distributor, [non-addressee], and that prices were set by market conditions and [non-addressee]. Vitembal pointed out that [non-addressee] never participated in any anti-competitive meeting. The Commission observes that the fact that certain of these trays were sold through a distributor does not change the unlawful nature of the contacts in which Vitembal took part.

<sup>1173</sup> See for instance: ID [...]; ID [...]; ID [...]; ID [...]; ID [...] ID [...]



evidenced presented in Section 4.1, the Commission concludes that the cartel concerned all types of foam trays irrespective of their intended use. This conclusion is drawn from, for instance, the meeting on 2 May 2005 where the participants, including Nespak, discussed "prezzi da praticare ai confezionatori di banana",<sup>1174</sup> Recital (92), the reference to the "fruit sector", Recital (177), the reference to the "fruit and vegetable sector", and Recital (209) and the reference therein to "major fruit clients".

- (1011) For distributors, the Commission's calculation is based on the value of the distribution/service fee charged in respect of the cartelised product, that is to say, the distributor's gross margin. In their replies to the Commission's SO, Propack and Ovarpack agreed with this methodology.<sup>1175</sup> This calculation method ensures that there is no risk of double-counting of the sales made by other cartel participants via the distributors involved in the cartel.
- (1012) Pursuant to Point 13 of the Guidelines on fines, the Commission will normally take the sales made by the undertakings during the last full business year of their participation in the infringement. If the last year is unrepresentative, the infringement does not cover a full business year or the individual involvement in the cartel is shorter than a full business year, the Commission may take into account a different period, or other years for the determination of the value of sales.<sup>1176</sup>
- (1013) In their replies to the SO, Coopbox and Propack argue that the Commission should depart from the standard methodology set out in Point 13 of the Guidelines on fines and should instead base its calculation on the combined actual sales of products to which the infringement relates or the annual average value of sales.<sup>1177</sup> The Commission notes that a departure from the methodology of Point 13 of the Guidelines on fines could be envisaged where the last year was not representative due to for instance "*the exponential growth of the sales [...] for all the undertakings*"<sup>1178</sup> or in cases of significant variations in the territories of the cartel.<sup>1179</sup> None of those criteria are present in this case. Any increases in sales would not be exponential and would, at most and with some minor fluctuations over the years, increase by a relatively small percentage. It would also not affect all the undertakings concerned to the same extent. For instance, Coopbox's sales of foam trays in Italy (Coopbox's main market) in 2006 (that is to say, the last full business year of the infringement) were only approximately 2% higher than in 2005 and, given the long duration of the cartel in Italy, only approximately 25% higher than at

---

<sup>1174</sup> See also **ID [...]** (Coopbox - reply to RFI). English translation: "Prices to be applied to banana packers".

<sup>1175</sup> **ID [...]** (Ovarpack reply to the SO); **ID [...]** (Propack reply to the SO).

<sup>1176</sup> Point 13 of the Guidelines on fines also allows the Commission to deviate from the general principle that the sales of the last full business year of the infringement be taken for determining the basic amount of the fine. See for instance the Decision of 7 October 2009 in Case COMP/39.129 - Power Transformers, Recital 228.

<sup>1177</sup> **ID [...]** (Coopbox reply to the SO); **ID [...]** (Propack reply to the SO).

<sup>1178</sup> COMP/39309, LCD, Recital 384.

<sup>1179</sup> In the case COMP/38866, Animal Feed Phosphates, the Commission uses the historical real sales to determine the basic amount of the fine. It is stated in the decisions paragraph 200 that: *Due to the particularly long duration of this cartel, the geographic areas concerned by the cartel and the Commission's jurisdiction to apply Article 101 [...] on the territories covered by the infringement have varied significantly as the value of sales for the parties. Taking that into account, the relevant value of sales should be calculated by adding up the actual (real) value of sales [...]*.

the beginning of the cartel in Italy in 2002. While Coopbox's sales indeed more than doubled during the SWE cartel, for Linpac they only grew by approximately [...]%. In addition, for some undertakings (for example, Vittembal), the SWE sales in the last year of the cartel (2006) were lower than the corresponding sales made in 2005. Propack's Hungarian sales (that is to say, its distributor's gross margin) in 2005 (namely last full business year of the infringement) were approximately 25% higher than at the beginning of the cartel in 2004. In 2006, when Propack no longer participated in the CEE cartel, they dropped by approximately 15%.

- (1014) The sales made by the undertakings during the last full business year of their individual participation in the infringement(s) are therefore sufficiently representative. In respect of France, and only because the duration of the cartel in France (see Section 7.1.5) does not stretch to cover a "full business year", the Commission establishes the value of sales by reference to the average annual sales for the period 2004-2005 (a sum of the value of sales made in 2004 and 2005 divided by two). The Commission takes this annual average value of sales as a proxy value of sales for the fines calculation (see further Section 8.4.1.5). This methodology applies to the fines for the cartel in France imposed on Linpac, Vittembal, Sirap-Gema and Huhtamaki. For Silver Plastics, and owing to its shorter participation in the cartel (see Section 7.1.5), the Commission refers to Silver Plastics' value of sales of the cartelised product only from the financial year 2005/2006.<sup>1180</sup>
- (1015) In their replies to the SO, Coopbox and Sirap-Gema made a number of claims concerning deductions that should be made from the value of sales.<sup>1181</sup> It is claimed that transportation costs, commissions to agents and bonuses to customers should be deducted from their value of sales when determining the basic amount of the fine. Sirap-Gema argues that those components are only transitory elements in its turnover, since they are passed on to transportation companies, agents and customers respectively. It is established case-law that in all industries there are costs inherent in the final product which the manufacturer cannot control but which nevertheless constitute an essential element of its business as a whole and which cannot be excluded from its turnover when fixing the starting amount of the fine.<sup>1182</sup> Those costs are therefore not excluded from the relevant value of sales. At the same time, in order to reflect the net value of sales, the Commission allows for the deduction of commercial rebates that have been granted on the sales achieved in that year (but not financial rebates). The Commission's detailed methodology, including all permitted and not accepted deductions from the value of sales, have been communicated to all the parties and all of them supplied the value of sales data complying with the instructions set out by the Commission.<sup>1183</sup>
- (1016) The Commission excludes sales between the cartel participants liable for the same cartel (for example, cross-supply relationships). Such exclusions of sales are

---

<sup>1180</sup> Silver Plastics' financial years start on 1 July and end on 30 June the following year. The financial year 2005/2006 started therefore on 1 July 2005 and ended on 30 June 2006 and covers Silver Plastics' participation in the cartel in France.

<sup>1181</sup> ID [...] (Sirap-Gema reply to the SO); ID [...] (Coopbox reply to the SO).

<sup>1182</sup> T-127/04, *KME Germany and others v. Commission* ECLI:EU:T:2009:142, paragraph 91; T-406/08 *ICF v Commission*, ECLI:EU:T:2013:322, paragraphs 175-176.

<sup>1183</sup> For instance, the Commission sent out a round of request for information on the value of sales (including the detailed explanation of the methodology the parties should follow when providing their value of sales) in March 2015.

however only made insofar as the cartel participant to whom those sales were made also participated in the cartel during the relevant reference year. Because the distributors' value of sales is calculated on the basis of their distribution fee (that is to say, gross margin – see Recital (1011)), any sales made to them by the addressees of this Decision are not excluded. None of the addressees are vertically integrated companies to the extent that cartelised product(s) were to be sold within the same undertaking in order to be further processed and integrated into a final product that was later sold on the market. The sales figures provided to the Commission therefore include all sales made to the market (directly or through distributors) without any discrimination between vertically and non-vertically integrated companies.

(1017) On the basis of the sales data provided by the parties during the investigation, the Commission will use the value of sales set out in Sections 8.4.1.1-8.4.1.5:

#### 8.4.1.1. Italy

(1018) The Commission uses the parties' sales of foam trays in Italy in 2006. However, for Magic Pack and Nespak, owing to their shorter participation in the cartel (see Section 7.1.1), the sales figures for 2005 are used. In addition, because Poliemme S.r.l. (ex-Turris Pack), Coopbox Group S.p.A.'s subsidiary, is held solely liable for certain periods (18 June 2002 till 27 October 2002 and 1 January 2004 till 19 December 2004), the Commission uses Poliemme S.r.l. (ex-Turris Pack)'s own value of sales from respectively 2002 and 2004 to calculate the fines for which Poliemme S.r.l. (ex-Turris Pack) is held solely liable. Poliemme S.r.l. (ex-Turris Pack) is also jointly and severally liable with its parent companies for the periods 28 October 2002 till 31 December 2003 and 20 December 2004 till 29 May 2006.<sup>1184</sup>

**Table 2**

<b>Undertaking</b>	<b>EUR</b>
Linpac <sup>1185</sup>	[17 000 000 – 31 000 000]
Vitembal <sup>1186</sup>	[6 000 000 – 10 000 000]
Sirap-Gema <sup>1187</sup>	[31 000 000 – 57 000 000]
Coopbox <sup>1188</sup>	[26 000 000 – 48 000 000]
<i>Poliemme S.r.l. (18.6.2002 – 27.10.2002) (sole liability)</i>	[3 000 000 – 6 000 000]

<sup>1184</sup> CCPL S.c. and Coopbox Group S.p.A. participated in the cartel in Italy for 2009 days (18 June 2002 – 17 December 2006). In this period, they are both presumed to have exercised control over Poliemme S.r.l. (ex-Turris Pack) during 956 days. As a result, Poliemme S.r.l. (ex-Turris Pack) is also jointly and severally liable for a part of the fine to be imposed on its parents which is proportionate to the time period during which it is presumed to have been controlled by them.

<sup>1185</sup> ID [...], ID [...] and [...] (Linpac – reply to RFI).

<sup>1186</sup> ID [...], ID [...], ID [...] (Vitembal – reply to RFI).

<sup>1187</sup> ID [...], ID [...], ID [...] (Sirap-Gema – reply to RFI).

<sup>1188</sup> ID [...], ID [...], ID [...] (Coopbox – reply to RFI).

<i>Poliemme S.r.l. (1.1.2004 – 19.12.2004) (sole liability)</i>	[3 000 000 – 6 000 000]
Nespak <sup>1189</sup>	[6 000 000 – 11 000 000]
Magic Pack <sup>1190</sup>	[7 000 000 – 14 000 000]

#### 8.4.1.2. South-West Europe

- (1019) The Commission uses the parties' sales of foam tray in South-West Europe (Spain and Portugal) in 2007, except for Vitembal where, owing to its shorter participation in the cartel (see Section 7.1.2), the sales figures for 2006 will be used. Because of the shorter duration of its involvement in the cartel (see Recital (988) and also Recitals (885)-(894)), and given Article 25 of Regulation (EC) No 1/2003, the Commission does not impose a fine on Huhtamäki Oyj or ONO PACKAGING PORTUGAL S.A. As stated in Recitals (894) and (1006), both Huhtamäki Oyj and ONO PACKAGING PORTUGAL S.A. are nevertheless held jointly and severally liable for the infringement committed by Huhtamäki. In addition, because Coopbox Hispania S.l.u. is held solely liable for the period from 2 March 2000 to 25 June 2002, the Commission uses Coopbox Hispania S.l.u.'s own value of sales from 2001 to calculate the fine for which Coopbox Hispania S.l.u. is held solely liable.

**Table 3**

<b>Undertaking</b>	<b>EUR</b>
Linpac <sup>1191</sup>	[32 000 000 – 60 000 000]
Vitembal <sup>1192</sup>	[17 000 000 – 31 000 000]
Coopbox <sup>1193</sup>	[13 000 000 – 24 000 000]
<i>Coopbox Hispania S.l.u. (2.3.2000 – 25.6.2002)<sup>1194</sup> (sole liability)</i>	[5 000 000 – 10 000 000]
Ovarpack <sup>1195</sup>	[300 000 – 600 000]

#### 8.4.1.3. North-West Europe

- (1020) The Commission uses the parties' sales of foam and rigid trays in North-West Europe (Belgium, Denmark, Finland, Germany, Luxembourg, the Netherlands, Norway and

<sup>1189</sup> ID [...], ID [...] (Nespak – reply to RFI).

<sup>1190</sup> ID ID [...], ID [...], ID [...], ID [...] (Magic Pack – reply to RFI).

<sup>1191</sup> ID [...], ID [...], ID [...] (Linpac – reply to RFI). Because Linpac benefits from total immunity from fines, the Commission takes the same value of sales irrespective of any periods of sole and/or joint and several liability of Linpac addressees.

<sup>1192</sup> ID [...], ID [...], ID [...] (Vitembal – reply to RFI).

<sup>1193</sup> ID [...], ID [...], ID [...] (Coopbox – reply to RFI).

<sup>1194</sup> ID [...] (Coopbox – reply to RFI). The relevant value of sales consists of EUR [5 000 000 – 9 000 000] in respect of Spain, and EUR [140 000 - 260 000] in respect of Portugal.

<sup>1195</sup> ID [...], ID [...] (Ovarpack – reply to RFI).

Sweden) in 2006, except for Huhtamäki where, owing to its shorter participation in the cartel, the sales figures for 2005 are used. In addition, because Huhtamäki Flexible Packaging Germany GmbH & Co KG is solely liable for the period from 13 June 2002 to 31 December 2002, the Commission uses Huhtamäki Flexible Packaging Germany GmbH & Co KG's own value of sales from 2002 to calculate the fine for which Huhtamäki Flexible Packaging Germany GmbH & Co KG is held solely liable.

**Table 4**

<b>Undertaking</b>	<b>EUR</b>
Linpac <sup>1196</sup>	[38 000 000 – 70 000 000]
Vitembal <sup>1197</sup>	[7 000 000 – 13 000 000]
Huhtamäki <sup>1198</sup>	[11 000 000 – 21 000 000]
<i>Huhtamäki Flexible Packaging Germany GmbH &amp; Co KG (13.6.2002-31.12.2002) (sole liability)</i>	[700 000 – 1 400 000]
Silver Plastics <sup>1199</sup>	[16 000 000 – 29 000 000]

#### 8.4.1.4. Central and Eastern Europe

- (1021) The Commission uses the parties' sales of foam trays in the Czech Republic, Hungary, Poland and Slovakia in 2006.
- (1022) In respect of Propack, a distributor, the Commission will take the distribution fee (the distributor's gross margin) originating only from Hungary. This is because Propack's participation in and liability for the CEE cartel is limited to the Hungarian market (see for instance – 13 December 2004 (Recitals (619)-(623); or 15 September 2006 (Recital (646)). In addition, owing to Propack's shorter participation in the infringement - see Section 7.1.4, the Commission uses Propack's value of sales (distributor's gross margin) in 2005, which is the last full business year of Propack's participation in the infringement. In addition, because Coopbox Eastern s.r.o., Coopbox's subsidiary, and PROPACK Kft., Bunzl plc's subsidiary, are held solely liable for certain periods (Coopbox Eastern s.r.o. from 5 November 2004 till 7 December 2004; and PROPACK Kft. from 13 December 2004 till 30 June 2005), the Commission uses their own value of sales from 2005, for PROPACK Kft., and from 2004, for Coopbox Eastern s.r.o., to calculate the fines for which Coopbox Eastern s.r.o. and PROPACK Kft. are held solely liable.
- (1023) On that basis, the following value of sales are used for the respective parties:

**Table 5**

- 
- <sup>1196</sup> ID [...], [...], ID [...] (Linpac – reply to RFI).  
<sup>1197</sup> ID [...], ID [...], ID [...] (Vitembal – reply to RFI).  
<sup>1198</sup> ID [...], ID [...], ID [...] (Huhtamäki – reply to RFI).  
<sup>1199</sup> ID [...] (Silver Plastics – reply to RFI).

Undertaking	EUR
Linpac <sup>1200</sup>	[7 000 000 – 14 000 000]
Sirap-Gema <sup>1201</sup>	[2 000 000 – 5 000 000]
Coopbox <sup>1202</sup>	[1 000 000 – 3 000 000]
<i>Coopbox Eastern s.r.o. (5.11.2004-7.12.2004) (sole liability)</i>	[1 000 000 – 3 000 000]
Propack <sup>1203</sup>	[100 000 – 250 000]
<i>PROPACK Kft. (13.12.2004-30.06.2005) (sole liability)</i>	[100 000 – 250 000]

#### 8.4.1.5. France

- (1024) Because the cartel in France does not cover a "full business year", the Commission has established the value of sales by reference to the annual average sales for the period 2004-2005 (a sum of the value of sales made in 2004 and 2005 divided by two). The resulting annual average is taken as a proxy of the value of affected sales. Only in respect of Silver Plastics, and owing to its shorter involvement in the cartel (see Section 7.1.5), the Commission, refers to Silver Plastics' value of sales of the cartelised product from the financial year 2005/2006.<sup>1204</sup>

**Table 6**

Undertaking	EUR
Linpac <sup>1205</sup>	[20 000 000 – 38 000 000]
Vitembal <sup>1206</sup>	[23 000 000 – 43 000 000]
Sirap-Gema <sup>1207</sup>	[16 000 000 – 30 000 000]

<sup>1200</sup> ID [...], ID [...], ID [...] (Linpac – reply to RFI).

<sup>1201</sup> ID [...], ID [...], ID [...] (Sirap-Gema – reply to RFI).

<sup>1202</sup> ID [...], ID [...], ID [...] (Coopbox – reply to RFI).

<sup>1203</sup> ID [...] (Propack – reply to RFI). The Commission uses the same 2005 value of sales (distributor's gross margin) to: (i) calculate the fine for PROPACK Kft. in respect of the period of 13 December 2004 to 30 June 2005, for which PROPACK Kft. is solely liable; and (ii) calculate the fine for Bunzl plc and PROPACK Kft. in respect of the period of 1 July 2005 to 15 September 2006, for which Bunzl plc and PROPACK Kft. are jointly and severally liable. To avoid any double-counting, the Commission applies individual duration multipliers to reflect the periods of sole and joint and several liability – see further Section [8.4.2.2(1)].

<sup>1204</sup> Silver Plastics' financial years start on 1 July and end on 30 June the following year. The financial year 2005/2006 started therefore on 1 July 2005 and ended on 30 June 2006.

<sup>1205</sup> ID [...], ID [...], ID [...] (Linpac – reply to RFI).

<sup>1206</sup> ID [...], ID [...], ID [...] (Vitembal – reply to RFI).

<sup>1207</sup> ID [...], ID [...], ID [...] (Sirap-Gema – reply to RFI).

Huhtamäki <sup>1208</sup>	[10 000 000 – 19 000 000]
Silver Plastics <sup>1209</sup>	[4 000 000 – 7 000 000]

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

- (1025) The basic amount consists of a variable amount of up to 30% of an undertaking's relevant sales in each of the cartel regions, depending on the degree of gravity of each cartel 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.<sup>1210</sup>

##### 8.4.2.1. *Determination of the variable amount of the fines*

- (1026) The gravity of the infringement determines the percentage of the value of sales taken into account when setting the fine. When assessing the gravity of each of the cartels addressed by this Decision, the Commission has had regard to a number of factors, such as the nature of each of the infringements, the combined market share of all the undertakings concerned with regard to each infringement, the geographic scope of each of the infringement and the extent to which the anticompetitive arrangements have been implemented.<sup>1211</sup> Horizontal price-fixing, market-sharing and bid-rigging are by their 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.<sup>1212</sup> These elements are assessed as follows:

#### *Nature of the infringement*

- (1027) The addressees of this Decision participated in one or several of the five cartels, each comprising a single and continuous infringement of Article 101 of the Treaty and, in respect of NWE, of Article 53 of the EEA Agreement. As outlined in Section 5.3.2, each of the five separate cartels consisted of many anti-competitive facets: price increases (CEE, France, Italy, NWE and SWE), market sharing (CEE, France and SWE), customer allocation (CEE, France, Italy and SWE) and bid-rigging (CEE, France and Italy). According to point 23 of the Guidelines on fines, those practices will, as a matter of policy, be heavily fined and the gravity percentage is generally set at the higher end of the scale. In this case, and given the multi-faceted character of each of the five separate cartels, the Commission believes that those elements would justify a gravity percentage of 16% for each of the five separate cartels.
- (1028) In the replies to the SO, a number of parties<sup>1213</sup> claimed that the Commission should consider a number of additional factors (for example, **poor financial situation of the retail food packaging market**, presence of intent and/or negligence, actual effects that the cartels had on the market) when setting the gravity percentage. The Commission has considered all of the arguments made by the parties and concludes that none of

<sup>1208</sup> ID [...], ID [...], (Huhtamäki – reply to RFI).

<sup>1209</sup> ID [...] (Silver Plastics – reply to RFI).

<sup>1210</sup> Points 19-26 of the Guidelines on fines.

<sup>1211</sup> Point 22 of the Guidelines on fines.

<sup>1212</sup> Point 23 of the Guidelines on fines.

<sup>1213</sup> For instance, ID [...] (Silver Plastics – reply to the SO); ID [...] (Coopbox – reply to the SO); ID [...] (Propack – reply to the SO); ID [...] (Magic Pack – reply to the SO). See also ID [...]

them justifies any further adjustment to the gravity percentages applied for each of the five cartels.

- (1029) In addition, the fact that some of the addressees of this Decision may not have been involved in all the anticompetitive aspects of the cartel(s), in respect of which this Decision is addressed to them, or that their individual involvement may have been less intensive or regular or was shorter, would in this case not require the Commission to make a further differentiation in the gravity percentage in view of the seriousness and gravity of the parts for which those addressees are held liable.<sup>1214</sup> In particular, with regard to Propack's involvement in the cartel covering CEE (see Recitals (730)-(734)), the Commission considers that the fact that Propack is held liable only insofar as Hungary is concerned within the CEE cartel does not require any differentiation in the gravity percentage for Propack. The fact that Propack is held liable only for Hungary within the CEE cartel is already sufficiently reflected in the fact that only Propack's value of sales in Hungary is taken into account (see Recital (1022)).

#### *Combined market share*

- (1030) As set out in Recital (40), the Commission is unable to credibly estimate the market shares within each of the five separate cartels. The Commission does not therefore use this factor to increase the gravity percentages.

#### *Geographic scope*

- (1031) As set out in Recital (3), the five separate cartels were delineated on the basis of their geographic scope and none of them covered the entire or most of the EEA: CEE (covering the Czech Republic, Hungary, Poland and Slovakia), Italy, France, NWE (covering Belgium, Denmark, Finland, Germany, Luxembourg, the Netherlands, Norway and Sweden) and SWE (covering Spain and Portugal). The Commission does not therefore use this factor to increase the gravity percentages.

#### *Implementation*

- (1032) As set out in Recital (804), the anticompetitive arrangements in relation to each of the five separate cartels were often implemented. The arrangements in place were, however, not of the nature and intensity that require an increase in the gravity percentage. Neither would the alleged lack of implementation of the cartel arrangements, effects or awareness/participation in certain conducts justify a reduction in the gravity percentage.

#### *Conclusion on gravity*

- (1033) Further to the criteria in Recitals (1027)-(1032) and the individual circumstances of each of the five separate cartels, the Commission considers that the proportion of the value of sales to be taken for each separate cartel and in respect of all their individual addressees are: Italy – 16%, SWE – 16%, NWE – 16%, CEE – 16% and France – 16%.

---

<sup>1214</sup> See Case T-348/08 – *Aragonesas Industrias y Energía v Commission*, ECLI:EU:T:2011:621, paragraph 273.



#### 8.4.2.2. Duration

- (1034) The Commission will take into account the actual duration of each undertaking's participation in the separate cartels as summarised in Section 7 on a rounded down monthly and *pro rata* basis. Hence, if for example, the duration is 7 years and one month and 12 days, the calculation should take into account 7 years and one month without counting the number of days less than a month.
- (1035) As stated in Recitals (986) and (1006), due to its interruption in the cartel and given Article 25 of Regulation (EC) No 1/2003, the Commission does not impose a fine on Ovarpack for its involvement in the cartel before the period of its interruption. The below duration multiplier therefore only includes the period from 25 October 2007 until 13 February 2008 (See Table 7).

**Table 7 – Duration multipliers**

Undertaking	Italy	SWE	NWE	CEE	France
Linpac	5.5	7.91	5.33	2.83	1.16
Vitembal	5.41	2.75	4.75		1.16
Sirap-Gema	5.5			2.83	1.16
Coopbox	5.5	5.58		2.75 <sup>1215</sup>	
<i>Coopbox Hispania S.l.u.</i> <sup>1216</sup>		2.25, 2			
<i>Coopbox Eastern s.r.o.</i> <sup>1217</sup>				0.08	
<i>Poliemme S.r.l.</i> <sup>1218</sup>	0.33, 0.91				
Silver Plastics			5.33		0.25
Magic Pack	1.41				
Nespak	2.91				

<sup>1215</sup> Duration multiplier in respect of CCPL S.c. and Coopbox Europe s.r.o.'s joint and several liability for the period of 8 December 2004 to 24 September 2007.

<sup>1216</sup> Duration multiplier in respect of Coopbox Hispania SLU's sole liability for the period 2 March 2000 to 25 June 2002. Because Portugal only became part of the SWE cartel on 8 June 2000, the Commission applies a shorter duration multiplier to Coopbox Hispania SLU's Portuguese value of sales in the relevant year. This multiplier is set at 2. A longer duration multiplier, that is to say 2.25, is only applied to Coopbox Hispania S.l.u.'s Spanish value of sales in the relevant year.

<sup>1217</sup> Duration multiplier in respect of Coopbox Eastern s.r.o. sole liability for the period 4 November 2004 to 7 December 2004.

<sup>1218</sup> Duration multipliers in respect of Poliemme S.r.l. (ex-Turris Pack)'s sole liability for the periods 18 June 2002 till 27 October 2002 (0.33) and 1 January 2004 till 19 December 2004 (0.91).

Huhtamäki			3.41		1.16
<i>Huhtamaki Flexible Packaging Germany GmbH &amp; Co KG</i> <sup>1219</sup>			0.5		
Propack					
<i>PROPACK Kft.</i> <sup>1220</sup>				0.5	
<i>Bunzl plc</i> <sup>1221</sup>				1.16	
Ovarpack		0.25			

#### 8.4.2.3. Determination of the additional amounts

- (1036) The Commission includes in the basic amount a sum of between 15% and 25% of the value of sales in order to deter undertakings from even entering into horizontal price-fixing and market-sharing agreements irrespective of the duration of the undertakings' participation in the infringement ("entry fee").<sup>1222</sup> In deciding the specific percentage to be applied, the factors referred to in Recitals (1027)-(1032) are considered. As a result, the percentage to be applied for the additional amounts in respect of all the cartels covered by this Decision is 16%.
- (1037) In cases where an addressee is held solely liable for parts of the infringement and, together with its parent company, jointly and severally liable for the remainder of the infringement, the Commission, to avoid imposing overdeterrent fines, applies the entry fee only in respect of part of the fine for which it establishes joint and several liability.<sup>1223</sup>

#### *Calculation and conclusion on basic amounts*

- (1038) Based on the value of sales, the percentages to be applied to them and the duration multipliers set out in Table 7 above, the basic amounts used to calculate the fines in respect of each of the five separate cartels are set out in Table 8 below.

<sup>1219</sup> Duration multiplier in respect of Huhtamaki Flexible Packaging Germany GmbH & Co KG sole liability for the period of 13 June 2002 till 31 December 2002.

<sup>1220</sup> Duration multiplier in respect of PROPACK Kft.'s sole liability for the period 13 December 2004 to 30 June 2005.

<sup>1221</sup> Duration multiplier in respect of Bunzl plc's and PROPACK Kft.'s joint and several liability for the period of 1 July 2005 to 15 September 2005.

<sup>1222</sup> Point 25 of the Guidelines on fines.

<sup>1223</sup> As a result, no entry fee is added to the fine imposed on: (i) CEE – Coopbox Eastern s.r.o. for its sole liability for its direct participation in the CEE cartel in the period of 5 November 2004 – 7 December 2004; Propack – PROPACK Kft. for its sole liability for its direct participation in the CEE cartel (insofar as Hungary is concerned) for the period 13 December 2004 – 30 June 2005; (ii) Italy – Poliemme S.r.l. (ex-Turris Pack) for its sole liability for its direct participation in the cartel in Italy in the period of 18 June 2002 – 27 October 2002 and from 1 January 2004 – 19 December 2004; (iii) SWE – Coopbox Hispania S.l.u. for its sole liability for its direct participation in the SWE cartel from 2 March 2000 till 25 June 2002; (iv) NWE - Huhtamaki Flexible Packaging Germany GmbH & Co KG for its sole liability for its direct participation in the NWE cartel from 13 June 2002 till 31 December 2002.

**Table 8 – Basic amounts of the fines (EUR)**

Undertaking	Italy	SWE	NWE	CEE	France
Linpac	[17 000 000 – 33 000 000]	[46 000 000 – 86 000 000]	[38 000 000 – 71 000 000]	[5 000 000 – 8 000 000]	[7 000 000 – 13 000 000]
Vitembal	[6 000 000 – 11 000 000]	[10 000 000 – 19 000 000]	[7 000 000 – 12 000 000]		[8 000 000 – 15 000 000]
Sirap-Gema	[32 000 000 – 59 000 000]			[1 000 000 – 3 000 000]	[6 000 000 – 10 000 000]
Coopbox	[27 000 000 – 50 000 000]	[14 000 000 – 26 000 000]		[800 000 – 1 600 000]	
<i>Coopbox Hispania S.l.u. (sole liability)<sup>1224</sup></i>		[2 000 000 – 3 000 000]			
<i>Coopbox Eastern s.r.o. (sole liability)</i>				[17 000 – 31 000]	
<i>Poliemme S.r.l. (sole liability – combined amount for both sole liability periods)</i>	[600 000 – 1 200 000]				
Silver Plastics			[16 000 000 – 29 000 000]		[800 000 – 1 400 000]
Magic Pack	[3 000 000 – 5 000 000]				
Nespak	[4 000 000 – 7 000 000]				
Huhtamäki			[8 000 000 – 15 000 000]		[3 000 000 – 7 000 000]
<i>Huhtamaki</i>			[58 000 –		

1224

This basic amount combines the basic amounts calculated separately for Spain and Portugal. Apart from relying on separate values of sales and different duration multipliers, the remaining steps of the fine calculation are identical for both Spain and Portugal.

<i>Flexible Packaging Germany GmbH &amp; Co KG (sole liability)</i>			110 000]		
Propack				[30 000 – 80 000]	
<i>PROPACK Kft. (sole liability)</i>				[10 000 – 20 000]	
Ovarpack		[60 000 – 120 000]			

#### 8.4.3. *Adjustments to the basic amount*

##### 8.4.3.1. Aggravating circumstances

- (1039) In relation to each undertaking, the Commission may reflect in the fine imposed any aggravating circumstances, such as the ones listed, in a non-exhaustive way, in point 28 of the Guidelines on fines.
- (1040) There are no circumstances that would require an increase in the basic amount of the fine for any addressee.

##### 8.4.3.2. Mitigating circumstances

- (1041) The basic amount of the fine imposed on an undertaking can also be reduced in cases where the Commission finds the existence of mitigating circumstances. Among these circumstances, point 29 of the Guidelines on fines includes situations where the undertaking provides evidence showing that its involvement in the infringement is substantially limited. Other situations include those where the undertaking has effectively cooperated with the Commission outside the scope of the Leniency Notice.

#### *Substantially limited role*

- (1042) In their replies to the Commission's SO, a number of parties have claimed that their individual involvement in the cartel(s) justifies a reduction on account of mitigating circumstances.<sup>1225</sup> In this context, the parties claimed that the fact that they did not participate in all cartel meetings, that their participation was at times less frequent, that they adopted at times a more passive role in the cartel, or that they occasionally adopted a competitive strategy necessitate to be rewarded by a reduction on the grounds of mitigating circumstances.
- (1043) Point 29 of the Guidelines on fines provides that the basic amount of the fine may be reduced where the undertaking provides evidence that its involvement in the infringement is substantially limited. The 2006 Guidelines on fines do not, in

<sup>1225</sup> For instance **ID [...]** (Ovarpack – reply to the SO); **ID [...]** (Silver Plastics – reply to the SO); **ID [...]** (Coopbox – reply to the SO); **ID [...]** (Nespak – reply to the SO); **ID [...]** (Magic Pack – reply to the SO); **ID [...]** (Vitembal – reply to the SO).

contrast to the 1998 Guidelines on fines<sup>1226</sup>, provide for a reduction on the basis of a passive or minor role. Thus, the Commission no longer considers that a passive role constitutes a mitigating circumstance that justifies a reduction in fines,<sup>1227</sup> whereas a minor role can only constitute a mitigating circumstance if the involvement of the undertaking in the infringement is substantially limited. In any event, it is clear from the evidence set out in Section 4 that none of the parties played a passive role within the meaning of the case-law of the Court of Justice that would justify a reduction in fines.<sup>1228</sup>

- (1044) As is clear from the evidence set out in Sections 4.1-4.5 in relation to each of the five separate cartels, the Commission considers that it is only in case of Magic Pack, in relation to the cartel in Italy, and in case of Silver Plastics, and only in relation to the cartel in France, that the evidence demonstrates that the two undertakings had a level of involvement that distinguishes them from the core group in the respective cartels qualifying them as marginal players.
- (1045) In relation to Magic Pack, and as set out in Section 4.1, the evidence indicates that Magic Pack was perceived by the other cartel participants as a disturbing element in the cartel in Italy.<sup>1229</sup> This disturbing role is very much evident in, for instance, the events surrounding the Carrefour tender in December 2005 (Recitals (250)-(257)). The evidence clearly indicates that Magic Pack did not adhere to the agreement that the cartel participants concluded in relation to that tender and Magic Pack's aggressive bidding strategy has led to price erosion. In order to ensure that Magic Pack's degree of involvement is duly reflected in the fine, it is deemed appropriate to grant a reduction of 5% of the fine imposed on it for involvement in the cartel in Italy on account of its substantially limited involvement in that cartel.
- (1046) In relation to Silver Plastics, and as set out in Section 4.5, the evidence indicates that it was Silver Plastics' aggressive competition on the French market that made the other core cartel participants invite Silver Plastics to join the cartel in France (see Recitals (675)-(679) and (678)-(679)). It was especially Vitemabl and Linpac that were worried about Silver Plastics' aggressive stance on the French market (see Recital (677)) and hence they insisted on inviting Silver Plastics to the cartel. The evidence demonstrates that there the interest of Silver Plastics and the other cartel participants were too divergent for Silver Plastics to remain in the cartel for longer than approximately 3 months. While the incumbent cartel participants aimed to preserve the status quo on the French market, Silver Plastics was very keen to push and expand on the lucrative French market where prices were much higher than in the other regions. Despite the fact that Silver Plastics attended a number of anticompetitive meetings (see Recitals (678)-(683)), the evidence suggests that Silver Plastics' attendance was often opportunistic and self-serving. While the evidence in Section 4.5 demonstrates that Silver Plastics became privy to the anti-competitive discussions, it also shows that Silver Plastics maintained a disruptive and fringe role

---

<sup>1226</sup> Guidelines on the method of setting fines imposed pursuant to Article 15(2) of Regulation No 17 and Article 65(5) of the ECSC Treaty (OJ C 9, 14.01.1998, p. 3-5)

<sup>1227</sup> Case T-83/08 *Denki Kagaku Kogyo Kabushiki Kaisha and Denka Chemicals GmbH v Commission* ECLI:EU:T:2012:48, paragraph 253.

<sup>1228</sup> See case T-83/08 *Denki Kagaku Kogyo Kabushiki Kaisha and Denka Chemicals GmbH v Commission* ECLI:EU:T:2012:48, paragraph 253.

<sup>1229</sup> See for instance, **ID [...]**; **ID [...]**; **ID [...]**; **ID [...]** (Coopbox inspection documents). See also **ID [...]**

in the cartel by being often unable to commit to a particular collusive course. This disruptive character of Silver Plastics' brief participation in the cartel is also highlighted by the fact that Silver Plastics was not invited to the follow-up meeting on 24 November 2005 (see Recitals (684)-(686)).

- (1047) In order to ensure that Silver Plastics' degree of involvement is duly reflected in the fine, it is deemed appropriate to grant a reduction of 5% of the fine imposed on it for involvement in the cartel in France on account of its substantially limited involvement in that cartel.

#### Effective cooperation outside the scope of the Leniency Notice

- (1048) According to the Guidelines on fines, the Commission may reduce the basic amount of the fine for effective cooperation outside the scope of the Leniency Notice should that cooperation be beyond the legal obligation of the undertaking concerned. Simply complying with legal requirements to disclose information cannot be regarded as such cooperation. Moreover such cooperation should be effective, meaning that it should provide added value to the investigation, providing facts and explanations that lead to a better understanding of the case, or admissions facilitating the work of the Commission. According to the practice of the Commission, in cases where the Leniency Notice may find application, cooperation by undertakings which are party to the proceeding should, as a matter of principle, be assessed within the framework of the Leniency Notice and reduction outside the Leniency Notice can be awarded only under exceptional circumstances.
- (1049) In relation to the cartel covering NWE, Silver Plastics has in its leniency application acknowledged its participation in and has provided some evidence concerning exchanges of commercially-sensitive information, including on prices. This concerns notably the 20 September 2007 MAP IK fringe meeting and the 29 October 2007 meeting (see Recitals (580)-(581) and (588)-(591)). Although the evidence does not qualify for a reduction under the Leniency Notice<sup>1230</sup>, it did bring some limited added value to the investigation and did to some extent facilitate the work of the Commission (see for example Recitals (581) and (591)).<sup>1231</sup> Since the evidence was submitted on a voluntarily basis and is relied upon in this Decision, the Commission believes that it is in this case appropriate to grant Silver Plastics a reduction of 5% of the fine imposed on it for its involvement in the cartel in NWE on account of effective cooperation outside the scope of the Leniency Notice.

#### Other arguments raised by the parties

- (1050) In their replies to the SO, Magic Pack and Coopbox claimed that the Commission should use its discretion under point 37 of the Guidelines on fines to grant reductions which take into account the proportion of the sales of the cartelised product in the total turnovers of the undertakings involved. The parties both refer to the Commission's decision of 28 March 2012, *Mountings* (COMP/39.452) where reductions were granted taking into account, amongst other considerations, such proportions. The Commission observes that with respect to this case, there are no particular circumstances similar to those applicable in the *Mountings* case (and other

---

<sup>1230</sup> See Section [8.6.5.] below for further explanations concerning the rejection of Silver Plastics' leniency application.

<sup>1231</sup> See, in this respect, Case T-384/09 SKW Stahl-Metallurgie Holding AG and SKW Stahl-Metallurgie GmbH v Commission ECLI:EU:T:2014:27, paragraph 186.

cases where similar reductions have been made) that would warrant a departure from the general methodology in the Guidelines on fines.

- (1051) Vitembal and Sirap-Gema have also claimed that the Commission should reduce the fines with general reference to the alleged crisis of the retail food packaging sector.<sup>1232</sup> The Commission observes that whereas the previous Guidelines on fines (1998) indeed indicated "a specific economic context" as a separate ground for reductions, the current Guidelines on fines foresee that the economic context is taken into account when determining whether an undertaking qualifies for a reduction under point 35 on ability to pay. This assessment has been carried out separately in Section 8.8 for those undertakings that have requested a reduction under point 35 of the Guidelines on fines. The Commission considers that their claims have been sufficiently addressed in that context and that there are no other circumstances that would require the Commission to take the general state of the industry into account when setting the fines.

#### 8.4.4. Deterrence

- (1052) Point 30 of the Guidelines on fines provides that the Commission will pay particular attention to the need to ensure that fines have a sufficiently deterrent effect and that, to that end, it may increase the fine to be imposed on undertakings which have a particularly large turnover beyond the sales of goods or services to which the infringement relates.
- (1053) In view of the total turnovers of the undertakings concerned by this Decision and the fine to be imposed on each of them, it is not necessary to apply a multiplier for deterrence for any of the addressees.

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

- (1054) Article 23(2) of Regulation (EC) No 1/2003 provides that the fine imposed on each undertaking in respect of a single infringement shall not exceed 10% of its total turnover relating to the business year preceding the date of the Commission decision.<sup>1233</sup> The Court has confirmed that it is irrelevant, for the application of the upper limit of 10% of the undertaking's total turnover, whether fines are imposed for various infringements of the Union competition rules in a single set of proceedings or in separate proceedings at different points in time, as the maximum limit of 10% applies to each infringement of Article 101 of the Treaty.<sup>1234</sup>
- (1055) In its reply to the SO, Coopbox argued that its total turnover should be established by reference to Coopbox Group S.p.A.'s total turnover or that turnover not related to the retail food packaging sector should be deducted.<sup>1235</sup> The Commission rejects this argument based on its finding that CCPL S.c. was the ultimate parent of the Coopbox group. Irrespective of the internal business structure or corporate restructuring of the Coopbox group, which may, at times, have affected the actual shareholding that CCPL S.c. held in its subsidiaries, the Commission considers the use of CCPL S.c.'s total turnover to be in line with Article 23(2) of Regulation (EC) No 1/2003.

---

<sup>1232</sup> ID [...] (Vitembal – reply to the SO); ID [...]; ID [...]

<sup>1233</sup> Article 23(2) of Regulation (EC) No 1/2003.

<sup>1234</sup> Case T-68/04 *SGL Carbon v Commission* ECLI:EU:T:2008:414, paragraph 132, Case T-27/10 *AC-Treuhand AG v Commission* ECLI:EU:T:2014:59, paragraph 232.

<sup>1235</sup> ID [...] (Coopbox - reply to the SO).

- (1056) Similarly, in a submission to the Commission of 20 May 2015, Sirap-Gema argued that the Commission should only consider the part of its total turnover generated by Sirap-Gema S.p.A. and the Petruzalek entities. Sirap-Gema claimed that taking Italmobiliare S.p.A.'s turnover into account would lead to disproportionate results on the basis that Italmobiliare S.p.A. is a pure financial holding not involved in the anti-competitive conduct described in this Decision, it is active in different sectors, the food packaging business represents only a minimal part of its activity and applying Italmobiliare S.p.A.'s turnover would be discriminatory compared to the other addressees of the Decision which are not controlled by a financial holding.<sup>1236</sup> The Commission rejects this argument based on its finding that Italmobiliare S.p.A. was the ultimate parent of the Sirap-Gema entities directly participating in the infringement as described in Recitals (829)-(833), (925)-(927) and (945)-(947). As confirmed by case law, the concept of undertaking cannot be subject to differing interpretations for the purposes of attribution of responsibility for the infringement and for the purposes of application of the 10% upper limit.<sup>1237</sup> Therefore, the Commission considers the use of Italmobiliare S.p.A.'s total turnover to be in line with Article 23(2) of Regulation (EC) No 1/2003. The Commission observes that Sirap-Gema's argument that this approach leads to discrimination is unfounded, given that the same methodology is applied for all the undertakings concerned. Conversely, if the Commission were to follow Sirap-Gema's claim, this would result in an unjustified differential treatment vis-à-vis the other addressees of this Decision.
- (1057) In its reply to the SO, Magic Pack claimed that the Commission should take into account its 2005 turnover rather than the turnover relating to the business year preceding the date of this Decision. The Commission rejects this claim and recalls that the purpose of the upper limit of 10% established in Article 23(2) of Regulation (EC) No 1/2003 is to reflect the capacity of the undertaking to pay at the time when the decision is adopted and the fine is imposed.<sup>1238</sup> In addition, the Commission considers that Magic Pack's turnover in the year 2014 does not give rise to any concerns as to whether that year was a full year of normal economic activity for Magic Pack and the turnover figure reliably reflects that activity.<sup>1239</sup> Hence, the turnover figures do not as such justify any deviation from the main rule of applying the turnover of the business year preceding this Decision.
- (1058) For all the addressees of this Decision, the Commission uses their respective turnover figures for 2014.<sup>1240</sup> For Coopbox, the Commission takes note of the information presented by it according to which the Coopbox group is undergoing restructuring. Although the undertaking's ultimate parent company CCPL S.c.'s 2014 accounts are

---

<sup>1236</sup> ID [...] (Sirap-Gema – written submission).

<sup>1237</sup> See for instance, Case C-408/12P *YKK Corporation and Others vs. Commission*, ECLI:EU:C:2014:2153, paragraph 59.

<sup>1238</sup> See for instance Case C-408/12P *YKK Corporation vs. Commission*, ECLI:EU:C:2014:2153, paragraph 63.

<sup>1239</sup> See for instance Case T-392/09, *I. Ga rantovana a.s. vs. Commission*, ECLI:EU:T:2012:674 paragraph 86

<sup>1240</sup> See in this respect, Case T-410/09, *Almamet GmbH Handel mit Spänen und Pulvern aus Metall v Commission* ECLI:EU:T:2012:676, paragraph 215. For Silver Plastics, and because its financial year runs from 1 July until 30 June, the Commission relies on the financial year 2013/2014 which started on 1 July 2013 and which ended on 30 June 2014. The Commission notes that [business secret - information on internal company restructuring].



already drawn up at the time of this Decision, Coopbox has informed the Commission that it has, due to the ongoing restructuring, obtained an authorisation from the competent national authorities to close its consolidated accounts at a later date in 2015. . Nevertheless, CCPL S.c. has provided the Commission with its draft figures for 2014 and the Commission concludes that they are sufficiently representative and result from a normal business year.<sup>1241</sup> Coopbox has however argued that a large part of its turnover, resulting from discontinued operations, could be deducted from its consolidated 2014 worldwide turnover, because it is permitted by the applicable accounting rules. Without taking any position as to whether such deductions would be permitted under the applicable accounting rules, the Commission notes that parts of the business for which the deductions are claimed have not yet been sold by Coopbox. The Commission therefore uses Coopbox's 2014 worldwide turnover as communicated by Coopbox without the claimed deductions for those parts of Coopbox's business that have not been disposed and which therefore still form part of the CCPL S.c. group at the time of this Decision. Moreover, the Commission also notes that even if it were to rely on Coopbox's last closed accounts, that is to say consolidated turnover figures for 2013, this would in any event not impact the amount of the fines imposed on Coopbox.

- (1059) The global turnover achieved in 2014 by each of the undertakings concerned is set out in Table X. In respect of any periods for which an addressee of this Decision is held solely liable, the Commission ensures that the fine imposed on that addressee in respect of its sole liability does not exceed 10% of its own individual total turnover relating to the business year preceding the date of the Commission's decision. In addition, the Commission ensures that the cumulation of fines imposed in each cartel on addressees belonging to the same undertaking at the time of this Decision, and for which these addressees may be solely or jointly and severally liable, does not, before leniency, exceed 10% of the undertaking's 2014 worldwide turnover.

**Table 9 – Worldwide turnover in 2014**

Addressees	EUR
Linpac	[390 000 000 – 730 000 000]
Vitembal	23 627 271
Sirap-Gema	4 451 330 000
Coopbox	[400 000 000 – 700 000 000]
<i>Coopbox Eastern s.r.o.</i>	[11 000 000 – 20 000 000]
<i>Coopbox Hispania S.l.u.</i>	[29 000 000 – 53 000 000]
<i>Poliemme S.r.l.</i>	[4 000 000 – 7 000 000]

<sup>1241</sup> See for instance Case T-392/09, *I. Garantovana a.s. vs. Commission*, ECLI:EU:T:2012:674 paragraph 334.

Nespak	497 172 730
Huhtamäki	2 235 700 000
<i>Huhtamaki Flexible Packaging Germany GmbH &amp; Co KG</i>	[260 000 000 – 480 000 000]
Magic Pack	[34 000 000 – 64 000 000]
Silver Plastics	[200 000 000 – 370 000 000]
Ovarpack	[6 650 000 – 12 350 000]
Propack	7 617 320 019
<i>PROPACK Kft.</i>	20 979 981

## 8.6. Leniency

- (1060) According to point 8(a) of the Leniency Notice, the Commission will grant immunity from any fine which would otherwise have been imposed on an undertaking disclosing its participation in an alleged cartel affecting the Union if that undertaking is the first to submit information and evidence which in the Commission's view will enable it to carry out a targeted inspection in connection with the alleged cartel.
- (1061) Under point 23 and 24 of the Leniency Notice, undertakings disclosing their participation in an alleged cartel affecting the Union that do not meet the conditions for immunity may be eligible to benefit from a reduction of any fine that would otherwise have been imposed on them if they provide the Commission with evidence of the alleged infringement which represents significant added value with respect to the evidence already in the Commission's possession and meet the cumulative conditions set out in points 12(a) to 12(c) of the Leniency Notice.

### 8.6.1. Linpac

- (1062) On 18 March 2008, Linpac submitted an application under point 8(a) of the Leniency Notice. On 4 June 2008, the Commission granted Linpac conditional immunity for all five cartels covered by this Decision.
- (1063) Linpac cooperated fully and on a continuous and expeditious basis throughout the procedure and has gradually complemented its original application by further submissions as it proceeded with its internal investigation and conducted interviews with the individuals concerned. It remained at the disposal of the Commission to provide explanations and clarifications. There is no evidence that Linpac continued its involvement in the cartel after its first submission of evidence.<sup>1242</sup> In its reply to the SO, Sirap-Gema claimed that Linpac had continued in the collusive contacts, at least relating to France and Italy, after its immunity application on 18 March 2008. In relation to France, Sirap-Gema refers to Silver Plastics' statement which alleges that the collusive contacts had taken place in the second half of 2008. The Commission notes that both Silver Plastics and Linpac confirm that the contacts between the

<sup>1242</sup>

Except for what was reasonably necessary to preserve the integrity of the inspections.

relevant individuals were private in nature and were connected to Silver Plastics' attempts to hire the relevant person employed at that time by Linpac.<sup>1243</sup> It is only Silver Plastics that alleged that the meeting also concerned the anticompetitive subjects. On that basis, and given the lack of sufficient corroboration, the Commission concludes that there is no sufficient evidence to demonstrate that Linpac in any way continued in the cartel covering France after its immunity application in March 2008. As regards Italy, Sirap-Gema refers to a bilateral meeting between [company representative] (Sirap-Gema) and [company representative] (Linpac) at an unspecified date in May 2008. However, the Commission notes that there is no other evidence than Sirap-Gema's statements to support that this meeting took place. Accordingly, the Commission cannot rely on this statement as a basis for revoking Linpac's immunity. There is no evidence that Linpac took any steps to coerce other undertakings to participate in the infringement. Linpac should therefore be granted immunity from any fines that would otherwise have been imposed on it in respect of each of the five separate cartels.

#### 8.6.2. *Vitembal*

- (1064) On 6 June 2008, Vitembal submitted an application for immunity, or in the alternative, for a leniency reduction under the Leniency Notice.
- (1065) Within the framework of its cooperation, and in relation to all the cartels in which it was involved and for which it is held liable, Vitembal provided the Commission with a significant number of corporate statements which were supported by documentary evidence. In relation to the separate cartels covering Italy, SWE, NWE and France, Vitembal was the first to provide significant added value by corroborating and confirming evidence in the Commission's possession at that time. As a result, Vitembal qualifies for leniency reductions in the leniency band of 30-50% in relation to all the cartels in which it participated and for which it is held liable.
- (1066) Vitembal cooperated fully and on a continuous and expeditious basis throughout the procedure and has gradually complemented its original application by further submissions as it proceeded with its internal investigation and conducted interviews with the individuals concerned in relation to each of the cartels in which Vitembal was involved. It remained at the disposal of the Commission to provide explanations and clarifications. There is no evidence that Vitembal continued its involvement in the cartel after its first submission of evidence.
- (1067) In relation to Italy, Vitembal submitted corroborating evidence relating to a series of anti-competitive meetings, for instance, on [...]. Vitembal has supported its corporate statements with numerous pieces of contemporaneous evidence. The Commission notes, however, that Vitembal's significant added value relates only to a limited number of collusive instances covered by the cartel in Italy. Taking everything into account, Vitembal is entitled to a 45% reduction of the fine that would otherwise have been imposed on it for the cartel in Italy.
- (1068) In relation to SWE, Vitembal submitted some evidence relating to, for example, a series of meetings during which the cartel participants discussed price increases for SWE customers, for instance: [...]. In addition, Vitembal has provided some evidence corroborating a number of multilateral meetings, for instance: [...]. The

---

<sup>1243</sup>

ID [...]; ID [...]

Commission notes, however, that Vitembal's significant added value relates only to a limited number of collusive instances covered by the SWE cartel and that the overall value of that evidence, in terms of its nature and level of detail was comparatively low. Taking everything into account, Vitembal is entitled to a 45% reduction of the fine that would otherwise have been imposed on it for the cartel in SWE.

- (1069) In relation to NWE the evidence submitted by Vitembal corroborated, amongst others, the information in the Commission's possession regarding the multilateral price increase arrangements on both foam and rigid trays and covering all the countries included in the NWE region (see for example [...]). Vitembal also submitted contemporaneous evidence on new bilateral cartel contacts (see for example [...]). Taking everything into account, Vitembal is entitled to a 50% reduction of the fine that would otherwise have been imposed on it for the cartel in NWE.
- (1070) In relation to France, the evidence submitted by Vitembal corroborated, amongst others, the information in the Commission's possession indicating the collusion on prices with a view to passing on the increasing cost of polystyrene (see for example – [...]). Taking everything into account, Vitembal is entitled to a 50% reduction of the fine that would otherwise have been imposed on it for the cartel in France.

#### 8.6.3. *Sirap-Gema*

- (1071) On 1 July 2008, Sirap-Gema submitted an application for immunity, or in the alternative, for a leniency reduction under the Leniency Notice.
- (1072) Within the framework of its cooperation, and in relation to all the cartels in which it was involved and for which it is held liable, Sirap-Gema provided the Commission with a significant number of corporate statements which were supported by documentary evidence. In relation to the separate cartel in CEE, Sirap-Gema was the first to provide significant added value to the evidence in the Commission's possession at that time. In relation to the separate cartels in Italy, CEE and France, Sirap-Gema was the second to corroborate and confirm evidence in the Commission's possession which constituted significant added value. As a result, Sirap-Gema qualifies for reductions in the following leniency bands: (i) 30-50% leniency band – in relation to the cartel in CEE; and (ii) 20-30% leniency band – in relation to the separate cartels in Italy and France.
- (1073) Sirap-Gema cooperated fully and on a continuous and expeditious basis throughout the procedure and has gradually complemented its original application by further submissions as it proceeded with its internal investigation and conducted interviews with the individuals concerned in relation to each of the cartels in which Sirap-Gema was involved. It remained at the disposal of the Commission to provide explanations and clarifications. There is no evidence that Sirap-Gema continued its involvement in the cartel after its first submission of evidence.
- (1074) In relation to Italy, Sirap-Gema corroborated the evidence relating to a large number of anti-competitive meetings, for instance: [...]. Sirap-Gema has supplemented its corporate statements with numerous contemporaneous documents such as [...]. Taking everything into account, Sirap-Gema is entitled to a 30% reduction of the fine that would otherwise have been imposed on it for the cartel in Italy.
- (1075) In relation to CEE, Sirap-Gema corroborated the evidence relating to, for example, the Vienna agreement which formalised the cartel conduct in CEE as well as provided details of the customer allocation agreed pursuant to this anticompetitive

agreement (see Recitals (602)-(618)). The evidence submitted by Sirap-Gema has also provided significant added value in relation to [...]. Taking everything into account, Sirap-Gema is entitled to a 50% reduction of the fine that would otherwise have been imposed on it for the cartel in CEE.

- (1076) In relation to France, Sirap-Gema corroborated the evidence relating to, for example, [...]. In this regard, Sirap-Gema provided significant added value in relation to [...]. Sirap-Gema also corroborated the evidence relating to [...]. Taking everything into account, Sirap-Gema is entitled to a 30% reduction of the fine that would otherwise have been imposed on it for the cartel in France.

#### 8.6.4. *Coopbox*

- (1077) On 5 August 2008, Coopbox submitted an application for immunity, or in the alternative, for a leniency reduction under the Leniency Notice.
- (1078) Within the framework of its cooperation, and in relation to all the cartels in which it was involved and for which it is held liable, Coopbox provided the Commission with a significant number of corporate statements which were supported by documentary evidence. In relation to the separate cartels in CEE and SWE, Coopbox was the second to provide significant added value in comparison to the evidence in the Commission's possession at that time. In relation to the separate cartel in Italy, Coopbox was the third leniency applicant to provide significant added value. As a result, Coopbox qualifies for reductions in the following leniency bands: (i) 20-30% leniency band – in relation to the separate cartels in CEE and SWE, and (ii) 0-20% leniency band – in relation to the cartel in Italy.
- (1079) Coopbox cooperated fully and on a continuous and expeditious basis throughout the procedure and has gradually complemented its original application by further submissions as it proceeded with its internal investigation and conducted interviews with the individuals concerned in relation to each of the cartels in which Coopbox was involved. It remained at the disposal of the Commission to provide explanations and clarifications. There is no evidence that Coopbox continued its involvement in the cartel after its first submission of evidence.
- (1080) In relation to Italy, Coopbox corroborated the evidence in the Commission's possession by, for example, [...]. In addition, Coopbox has provided [...]. The evidence provided by Coopbox has been instrumental in, for example, [...]. Taking everything into account, Coopbox is entitled to a 20% reduction of the fine that would otherwise have been imposed on it for the cartel in Italy.
- (1081) In relation to SWE, Coopbox corroborated the evidence in the Commission's possession and provided additional contemporaneous evidence relating to, for example, the details and content of the anticompetitive meetings on [...]. Taking everything into account, Coopbox is entitled to a 30% reduction of the fine that would otherwise have been imposed on it for the cartel in SWE.
- (1082) In relation to CEE, Coopbox corroborated the evidence relating to, for example, [...]. Furthermore, Coopbox provided [...]. Taking everything into account, Coopbox is entitled to a 30% reduction of the fine that would otherwise have been imposed on it for the cartel in CEE.

#### 8.6.5. *Silver Plastics*

- (1083) On 22 December 2008, Silver Plastics submitted an application for immunity, or in the alternative, for a leniency reduction under the Leniency Notice.

- (1084) Within the framework of its cooperation Silver Plastics provided the Commission with corporate statements and some documentary evidence in relation to the cartel in France. Silver Plastics was the third to provide significant added value in relation to the cartel in France, which qualifies it for a reduction in the leniency band of 0-20%. Silver Plastics strengthened the Commission's case in relation to [...]. The statements and evidence provided by Silver Plastics helped the Commission to establish Silver Plastics' and other parties' participation in the collusive discussions. At the same time, the Commission concludes that Silver Plastics' contribution covered [...] but provided limited significant added value in relation to [...]. Taking everything into account, Silver Plastics is entitled to a 10% reduction of the fine that would otherwise have been imposed on it for the cartel in France.
- (1085) Silver Plastics has also provided the Commission with corporate statements and documentary evidence in relation to the NWE cartel. Silver Plastics has in that context disclosed its participation in some instances relating to exchanges of commercially sensitive information, including on prices, although it has throughout the investigation argued that these were sporadic exchanges that cannot be regarded as hard-core cartel activities.<sup>1244</sup> Moreover, it did not disclose and even disputes its involvement in the other cartel activities for which it is held liable in this Decision arguing that, unlike in the French cartel, price-fixing arrangements in this market were not possible and have not taken place<sup>1245</sup> Silver Plastics claims that any discussions between the cartel participants never went beyond mere bemoaning of prices and were always very general. It also argues that the information exchanged inside and outside EQA or MAP IK meetings was not of a nature to influence the independence of the market players in their decision-making.<sup>1246</sup>
- (1086) At the time of Silver Plastic's application, the Commission was already in possession of a significant number of documents and statements gathered during the inspections and received from Linpac and Vitembal on the basis of which it was able to prove the main elements of the cartel including Silver Plastics' role therein. In fact, a substantial part of the information provided by Silver Plastic in the context of its leniency application aim to support its position that there were no agreement or concertation between the cartel participants beyond information exchanges and that such exchanges had no influence on its own or other market players' price-setting or commercial behaviour on the market. In light of the above, the Commission considers, that Silver Plastic has failed to provide evidence that constitutes significant added value within the meaning of point 24 of the Leniency Notice. Moreover, by disputing its participation in and the very existence of the cartel, despite the evidence to the contrary, Silver Plastics' conduct and submissions cannot be considered to demonstrate a genuine spirit of cooperation on its part. Based on an overall assessment, its application does therefore also not meet the conditions of points 23 and 12 of the Leniency Notice, Silver Plastics should for these reasons not be granted any reduction of the fine under the Leniency Notice for the cartel in NWE.

---

<sup>1244</sup> See for example **ID [...]**, **ID [...]**, **ID [...]**, **ID [...]**, **ID [...]** (Silver Plastics statements and replies to RFIs) and **ID [...]** (Silver Plastics reply to the SO).

<sup>1245</sup> See notably **ID [...]** (Silver Plastics supplementary reply to the SO) dated 3 June 2015.

<sup>1246</sup> See also **ID [...]** (Silver Plastics supplementary reply to the SO) dated 3 June 2015.

#### 8.6.6. Ovarpack

- (1087) Ovarpack, a distributor of Linpac in Portugal, was acquired by Linpac on 18 July 2008. The Commission concludes that Ovarpack is therefore not covered by Linpac's immunity decision dated 4 June 2008 (see Section 8.6.1) since Ovarpack was not part of the Linpac undertaking at the time of the application.
- (1088) On 17 December 2008, Ovarpack submitted a separate application for a leniency reduction under the Leniency Notice.
- (1089) In its reply to the SO, Ovarpack claims that it should benefit from partial immunity for its involvement in the Portuguese limb of the SWE cartel from 7 December 2000 until the end of 2004, pursuant to paragraph 26 of the Leniency Notice. The Commission rejects Ovarpack's claim on the basis that, at the time of Ovarpack's application, the Commission already had evidence relating to Portugal. The Commission had been informed about the anti-competitive conduct relating to Portugal by Linpac in its statements predating both Ovarpack's application and the inspections.<sup>1247</sup> Although the evidence provided by Ovarpack is relied upon to reinforce facts already known, it does not allow the Commission to establish additional facts. The Court has made it clear that the leniency rules must be interpreted strictly, since they constitute an exception to the rule that an undertaking must be punished for any infringement of the competition rules.<sup>1248</sup> This is why the Court has confirmed that partial immunity should be limited to cases in which a company provides the Commission with new information relating to the gravity or the duration of the infringement and not to cases where a company has merely provided information which strengthens the evidence of the existence of the infringement.<sup>1249</sup>
- (1090) At the same time, the Commission concludes that the evidence brought by Ovarpack represents significant added value and therefore qualifies Ovarpack for a reduction under the Leniency Notice in the band of 0-20%. The evidence brought by Ovarpack has strengthened the Commission's case as far as, for instance, [...] are concerned.
- (1091) Ovarpack cooperated fully and on a continuous and expeditious basis throughout the procedure and has gradually complemented its original application by further submissions as it proceeded with its internal investigation and conducted interviews with the individuals concerned in relation to the SWE cartel. It remained at the disposal of the Commission to provide explanations and clarifications. There is no evidence that Ovarpack continued its involvement in the cartel after its first submission of evidence. Taking everything into account, Ovarpack is entitled to a 20% reduction of the fine that would otherwise have been imposed on it for the cartel in SWE.

---

<sup>1247</sup>

**ID [...]; ID [...]**

<sup>1248</sup>

Case T-370/06, *Kuwait Petroleum Corp and others v Commission*, ECLI:EU:T:2012:493, paragraph 34.

<sup>1249</sup>

Ibid., paragraph 33. See also Case T-128/11 *LG Display Co. Ltd v Commission* ECLI:EU:T:2014:88, paragraphs 166-168. Although these judgments were rendered for cases in which the 2002 Leniency Notice has been applied, the changes in the wording of point 26 of the 2006 Leniency notice compared to point 23 of the 2002 Leniency notice do not mean that partial immunity has under the 2006 Leniency notice been extended to situations where evidence merely reinforced the Commission's ability to prove certain facts with regard to which the Commission already had evidence on the file.

#### 8.6.7. *Magic Pack*

- (1092) On 1 February 2010, Magic Pack applied for a reduction of fines under the Leniency Notice.
- (1093) Within the framework of its cooperation, and in relation to the cartel in Italy in which Magic Pack was involved and for which it is held liable, Magic Pack provided the Commission with corporate statements and documentary evidence. The evidence submitted by Magic Pack brought significant added value to the Commission's investigation as far as, for instance, [...] are concerned. As a result, Magic Pack qualifies for a reduction in the leniency band of 0-20%.
- (1094) While Magic Pack cooperated fully and on a continuous basis throughout the procedure, the Commission notes the fact that Magic Pack was only the fourth applicant to approach the Commission under the Leniency Notice and its application took place over 18 months after the Commission's inspections. The lateness of its application also affected the extent of the significant added value it brought to the Commission's investigation. The Commission also notes that Magic Pack's cooperation resulted mainly from the Commission's questions rather than Magic Pack's spontaneous actions. Taking everything into account, Magic Pack is entitled to a 10% reduction of the fine that would otherwise have been imposed on it for the cartel in Italy. There is no evidence that Magic Pack continued its involvement in the cartel after its first submission of evidence.

### 8.7. **Reduction of the fines due to lapse of time**

- (1095) The general principle of Union law that decisions following administrative proceedings relating to competition policy must be adopted within a reasonable time must be respected. The reasonableness of the period, however, depends on the specific circumstances of each case. The Commission considers that, given the circumstances of this case, the investigation was carried out within a reasonable period. However, the duration of the proceedings has been considerable which resulted in some of the anticompetitive conduct being prescribed under Article 25 of Regulation (EC) 1/2003 against some of the cartel participants (see further Section 8.3). This justifies an exceptional 5% reduction of the fine to be imposed on each of the addressees. This decision is taken by the Commission in the exercise of its discretion when setting fines and does not affect the finding that the reasonable time principle is not infringed in this case.<sup>1250</sup> This reduction applies after the application of the 10% turnover limit in order to ensure that it has an impact on the fines imposed on all addressees.

### 8.8. **Ability to Pay**

#### 8.8.1. *Introduction*

- (1096) According to point 35 of the Guidelines on fines, *"In exceptional cases, the Commission may, upon request, take account of the undertaking's inability to pay in a specific social and economic context. It will not base any reduction granted for this reason in the fine on the mere finding of an adverse or loss-making financial situation. A reduction could be granted solely on the basis of objective evidence that the imposition of the fine as provided for in these Guidelines would irretrievably*

---

<sup>1250</sup> See T-276/04 *Compagnie Maritime Belge* ECLI:EU:T:2008:237, paragraph 46.



*jeopardise the economic viability of the undertaking concerned and cause its assets to lose all their value."*

- (1097) In exercising its discretion under point 35 of the Guidelines on fines, the Commission carries out an overall assessment of the undertaking's financial situation, with the primary focus on the undertaking's capacity to pay the fine in a specific social and economic context.
- (1098) Among the addressees on which a fine is imposed by this Decision the following legal entities have lodged applications claiming their 'inability to pay' under point 35 of the Guidelines on fines:
- (1) [Company name], [company name], and [company name] [company name];
  - (2) [Company name] and [company name];
  - (3) [Company name], [company name], [company name], [company name], [company name], [company name] and [company name].

The Commission has considered those claims and carefully analysed the available financial data of the undertakings to which those addressees belong. All undertakings concerned received requests pursuant to Article 18(1) and (2) of Regulation (EC) No 1/2003 asking them to submit details about their individual financial situation and the specific social and economic context they are in.

- (1099) In principle, insofar as the addressees argue that the estimated fine would have a negative impact on their financial situation, without adducing credible evidence demonstrating their inability to pay the expected fine, the Commission points to settled case law according to which the Commission is not required, when determining the amount of the fine to be imposed, to take into account the poor financial situation of an undertaking, since recognition of such an obligation would be tantamount to giving unjustified competitive advantages to undertakings least well adapted to the conditions of the market.<sup>1251</sup>
- (1100) Accordingly, in the confidential Annexes II to IV accessible to respectively [company name's], [company name's] and [company name's] ITP applicants, the individual financial position of each of the undertakings concerned and the impact of the fine is assessed in the respective specific social and economic context. The respective financial situation of the undertakings concerned is assessed at the time the Decision is adopted and on the basis of the financial data and information submitted by the undertakings.
- (1101) In assessing the undertakings' financial situation, the Commission considers the annual financial statements (including the balance sheet, the income statement, the statement of changes in equity, the cash-flow statement and the notes) of the last (usually five) financial years, as well as their projections for the current year and next (usually) two years. The Commission takes into account and relies upon a number of

---

<sup>1251</sup>

See Joined Cases 96/82 to 102/82, 104/82, 105/82, 108/82 and 110/82, *IAZ International Belgium and Others v Commission* ECLI:EU:C:1983:310, paragraphs 54 and 55, and Joined Cases C-189/02 P, C-202/02 P, C-205/02 P to C-208/02 P and C-213/02 P, *Dansk Rørindustri and Others v Commission* ECLI:EU:C:2005:408 paragraph 327, Case C-308/04 P, *SGL Carbon AG v Commission* ECLI:EU:C:2006:433, paragraph 105.

financial ratios to measure the solidity (in this case, the proportion which the expected fine would represent of the undertakings' equity and assets), profitability, solvency and liquidity, all of which are commonly used when evaluating risks of bankruptcy. The analysis is both prospective and retrospective but with a focus on the present and immediate future of the concerned undertakings. The analysis is not purely static but rather dynamic, whilst taking into account consistency over time of the submitted projections. The analysis takes into account possible restructuring plans and their state of implementation. In addition, the Commission takes into account relations with outside financial partners such as banks, on the basis of copies of contracts concluded with those partners in order to assess the undertakings' access to finance and, in particular, the scope of any undrawn credit facilities they may have. The Commission also includes in its analysis the relations with shareholders in order to assess the ability of those shareholders to assist the undertakings concerned financially.<sup>1252</sup>

- (1102) In its analysis, the Commission considers that the fact that an addressee may go into liquidation as a result of the imposition of a fine does not necessarily mean that there will always be a total loss of asset's value and, therefore, this may not, in itself, justify a reduction in the fine which would have otherwise been imposed.<sup>1253</sup> This is because liquidations sometimes take place in an organised, voluntary manner, as part of a restructuring plan in which new owners or new management continue to develop the undertaking and its assets. Therefore, each applicant which has invoked an inability to pay needs to demonstrate that good and viable alternative solutions are not available. If there is no credible indication of alternative solutions being available within a reasonably short period of time, which would ensure maintaining the undertaking as a going concern, the Commission considers that there is a sufficiently high risk that the undertaking's assets would lose a significant part of their value if, as a result of the fine to be imposed, the addressees were to be forced into liquidation.
- (1103) Consequently, where the conditions laid down in point 35 of the 2006 Guidelines on fines are met, the reduction of the final amount of the fine imposed on each of the addressees is established on the basis of the financial and qualitative analysis of the concerned undertakings as described in Recitals (1100) to (1102) also taking into account their ability to pay the final amount of the fines imposed and the likely effect that such payments would have on the economic viability of the concerned undertaking.

---

<sup>1252</sup> By analogy to the assessment of "*serious and irreparable harm*" in the context of interim measures, the Commission bases its assessment of the undertaking's ability to pay on the financial situation of the undertaking as a whole, including its shareholders, irrespective of the finding of liability (Case C-335/99 P (R), *HFB v. Commission*, ECLI:EU:C:1999:608; Case C-7/01 P(R), *FEG v. Commission*, ECLI:EU:C:2001:183, and Case T-410/09 R *Almamet v. Commission* ECLI:EU:T:2012:676, at paragraphs 47 *et seq.*

<sup>1253</sup> See case law above as well as Joined Cases T-236/01, T-239/01, T-244/01 to T-246/01, T-251/01 and T-252/01 *Tokai Carbon and Others v Commission* ECLI:EU:T:2004:118, paragraph 372 and Case T-64/02 *Heubach v Commission* ECLI:EU:T:2005:431, paragraph 163.

8.8.2. *[Company name]*

- (1104) The ITP claim of [company name], [company name] and [company name] should be rejected for the reasons set out in confidential Annex II accessible to [company name's] ITP applicants and [company name].

8.8.3. *[Company name]*

- (1105) The inability to pay claim submitted by [company name] and [company name] should be partially accepted for the reasons set out in confidential Annex III accessible to Vittembal's ITP applicants..
- (1106) On the basis of the evidence described in Annex III and in order to avoid the imposition of the fine seriously jeopardising the economic viability of the [company name] group, the final amount imposed on the [company name] group should be reduced by 75% to the following amounts in application of point 35 of the 2006 Guidelines on fines
- (a) [...]
  - (b) [...]
  - (c) [...]
  - (d) [...]

8.8.4. *[Company name]*

- (1107) The inability to pay claim submitted by [company name], [company name], [company name], [company name], [company name] and [company name] should be partially accepted for the reasons set out in confidential Annex IV accessible to [company name's] ITP applicants.
- (1108) On the basis of the evidence described in Annex IV and in order to avoid the imposition of a fine which might very likely seriously jeopardise the economic viability of [company name], the final amount of the fine imposed on [company name] should be reduced by 25% to the following amounts in application of point 35 of the 2006 Guidelines on fines:
- (a) [...]
  - (b) [...]
  - (c) [...]

8.8.5. *Conclusion*

- (1109) It follows from the analysis in this section including confidential Annexes II to IV that a reduction of the fine which would otherwise be imposed should be granted on the grounds of inability to pay, to [company name] and to [company name], and that the request for a reduction of the fine on the grounds of inability to pay from [company name] and [company name] should be rejected.

**8.9. Final amount of the fines**

- (1110) The final amounts of the fines to be imposed pursuant to Article 23(2) of Regulation (EC) No 1/2003 are set out in Table X.
- (1111) In its reply to the SO, Huhtamäki claimed that the Commission should, where it intends to hold different legal entities jointly and severally liable for a fine, determine the respective share of the fine for which each legal entity is responsible.

As confirmed by case law, the Commission's legal powers under Article 101 of the Treaty and Article 23(2) of Regulation (EC) No 1/2003 are limited to finding infringements and imposing sanctions on undertakings. However the Commission has no legal basis to determine the respective shares that each legal entity should pay compared to the other legal entity/ies that is/are held liable for (part of) the same fine.<sup>1254</sup> The Commission will therefore not determine such shares.

**Table 10: Final amount of the fines per undertaking and per each separate cartel (after inability to pay claims).<sup>1255</sup>**

Addressees	Italy	NWE	SWE	CEE	France
Linpac	0	0	0	0	0
Vitembal	295 000	265 000	295 000		265 000
Huhtamäki		10 806 000	0		4 756 000
Sirap-Gema	29 738 000			943 000	5 207 000
Coopbox	22 137 000		10 955 000	602 000	
Nespak	4 996 000				
Magic Pack	3 263 000				
Silver Plastics		20 317 000			893 000
Ovarpack			67 000		
Propack				65 000	

HAS ADOPTED THIS DECISION:

#### *Article 1*

1. The following undertakings infringed Article 101 of the Treaty by participating, for the periods indicated, in a single and continuous infringement, which consisted of several separate infringements, in the foam trays for retail food packaging sector and covering the territory of Italy:
  - (a) LINPAC Packaging Verona S.r.l. and LINPAC Group Ltd, from 18 June 2002 to 17 December 2007;
  - (b) Sirap-Gema S.p.A. and Italmobiliare S.p.A., from 18 June 2002 to 17 December 2007;

<sup>1254</sup>

<sup>1255</sup>

Joined Cases C-231/11 P to C-233/11 P, *Siemens VA Tech*, ECLI:EU:T:2011:70, paragraphs 58-64.

The table does not distinguish between the fines for which the addressees belonging to the same undertaking are solely and/or jointly and severally liable but states the total amount of the fine for each undertaking.

- (c) NESPAK S.p.A. and GROUPE GUILLIN SA, from 7 October 2003 to 6 September 2006;
  - (d) VITEMBAL HOLDING SAS from 5 July 2002 to 17 December 2007;
  - (e) Magic Pack Srl from 13 September 2004 to 7 March 2006;
  - (f) Poliemme S.r.l. from 18 June 2002 to 29 May 2006, Coopbox Group S.p.A. and CCPL S.c., from 18 June 2002 to 17 December 2007.
2. The following undertakings infringed Article 101 of the Treaty by participating, for the periods indicated, in a single and continuous infringement, which consisted of several separate infringements, in the foam trays for retail food packaging sector and covering the territory of Spain, from the beginning of the infringement, and Portugal, from 8 June 2000 (jointly referred to as "SWE"):
- (a) LINPAC Packaging Pravia S.A. from 2 March 2000 to 26 September 2007, LINPAC Packaging Holdings S.L. and LINPAC Group Ltd, from 2 March 2000 to 13 February 2008;
  - (b) VITEMBAL España, S.L. and VITEMBAL HOLDING SAS, from 7 October 2004 to 25 July 2007;
  - (c) Coopbox Hispania S.l.u. from 2 March 2000 to 13 February 2008, CCPL S.c. from 26 June 2002 to 13 February 2008;
  - (d) ONO PACKAGING PORTUGAL S.A. and Huhtamäki Oyj, from 7 December 2000 to 18 January 2005;
  - (e) Ovarpack Embalagens S.A., from 7 December 2000 to 12 January 2005 and from 25 October 2007 to 13 February 2008.
3. The following undertakings infringed Article 101 of the Treaty and Article 53 of the EEA Agreement by participating, for the periods indicated, in a single and continuous infringement, which consisted of several separate infringements, in the foam and rigid trays for retail food packaging sector and covering the territory of Belgium, Denmark, Finland, Germany, Luxembourg, the Netherlands, Norway and Sweden (jointly referred to as "NWE"):
- (a) LINPAC Packaging GmbH and LINPAC Group Ltd, from 13 June 2002 to 29 October 2007;
  - (b) VITEMBAL GmbH Verpackungsmittel and VITEMBAL HOLDING SAS, from 13 June 2002 to 12 March 2007;
  - (c) Huhtamäki Flexible Packaging Germany GmbH & Co. KG from 13 June 2002 to 20 June 2006, Huhtamäki Oyj from 1 January 2003 to 20 June 2006;
  - (d) Silver Plastics GmbH, Silver Plastics GmbH & Co. KG and Johannes Reifenhäuser Holding GmbH & Co. KG, from 13 June 2002 to 29 October 2007.
4. The following undertakings infringed Article 101 of the Treaty by participating, for the periods indicated, in a single and continuous infringement, which consisted of several separate infringements, in the foam trays for retail food packaging sector and covering the territory of the Czech Republic, Hungary, Poland and Slovakia (jointly referred to as "CEE"):

- (a) LINPAC Packaging Polska Sp zo.o., LINPAC Packaging Kereskedelmi Korlátolt Felelősségű Társaság, LINPAC Packaging Spol S.r.o., LINPAC Packaging S.r.o., LINPAC Packaging GmbH and LINPAC Group Ltd, from 5 November 2004 to 24 September 2007;
  - (b) Petruzalek GmbH, Petruzalek Kft., Petruzalek s.r.o., Petruzalek Spol. s.r.o., Sirap-Gema S.p.A. and Italmobiliare S.p.A., from 5 November 2004 to 24 September 2007;
  - (c) Coopbox Eastern s.r.o. from 5 November 2004 to 24 September 2007, CCPL S.c. from 8 December 2004 to 24 September 2007.
  - (d) PROPACK Kft. from 13 December 2004 to 15 September 2006, Bunzl plc from 1 July 2005 to 15 September 2006. Propack Kft. and Bunzl plc are liable for the infringement insofar as it relates to Hungary.
5. The following undertakings infringed Article 101 of the Treaty by participating, for the periods indicated, in a single and continuous infringement, which consisted of several separate infringements in the foam trays for retail food packaging sector and covering the territory of France:
- (a) LINPAC France SAS, LINPAC Distribution SAS and Linpac Group Ltd, from 3 September 2004 to 24 November 2005;
  - (b) Sirap France S.A.S., Sirap-Gema S.p.A. and Italmobiliare S.p.A., from 3 September 2004 to 24 November 2005;
  - (c) VITEMBAL SOCIETE INDUSTRIELLE SAS and VITEMBAL HOLDING SAS, from 3 September 2004 to 24 November 2005;
  - (d) COVERIS RIGID (AUNEAU) FRANCE SAS and Huhtamäki Oyj, from 3 September 2004 to 24 November 2005;
  - (e) Silver Plastics S.à r.l., Silver Plastics GmbH and Johannes Reifenhäuser Holding GmbH & Co. KG, from 29 June 2005 to 5 October 2005.

## *Article 2*

1. For the infringement referred to in Article 1.1, the following fines are imposed:
- (a) LINPAC Packaging Verona S.r.l. and LINPAC Group Ltd, jointly and severally: EUR 0;
  - (b) Sirap-Gema S.p.A. and Italmobiliare S.p.A., jointly and severally: EUR 29 738 000;
  - (c) NESPAK S.p.A. and GROUPE GUILLIN SA, jointly and severally: EUR 4 996 000;
  - (d) VITEMBAL HOLDING SAS: EUR 295 000;
  - (e) Magic Pack Srl: EUR 3 263 000;
  - (f) Poliemme S.r.l.: EUR 321 000;
  - (g) Poliemme S.r.l., Coopbox Group S.p.A. and CCPL S.c., jointly and severally: EUR 10 382 000;
  - (h) Coopbox Group S.p.A. and CCPL S.c., jointly and severally: EUR 11 434 000.

2. For the infringement referred to in Article 1.2, the following fines are imposed:
  - (a) LIMPAC Packaging Pravia S.A.: EUR 0;
  - (b) LIMPAC Packaging Holdings S.L., LIMPAC Group Ltd and LIMPAC Packaging Pravia S.A., jointly and severally: EUR 0;
  - (c) VITEMBAL HOLDING SAS: EUR 295 000;
  - (d) Coopbox Hispania S.l.u. and CCPL S.c., jointly and severally: EUR 9 660 000;
  - (e) Coopbox Hispania S.l.u.: EUR 1 295 000;
  - (f) Ovarpack Embalagens S.A.: EUR 67 000.
3. For the infringement referred to in Article 1.3, the following fines are imposed:
  - (a) LIMPAC Packaging GmbH and LIMPAC Group Ltd, jointly and severally: EUR 0;
  - (b) VITEMBAL GmbH Verpackungsmittel and VITEMBAL HOLDING SAS, jointly and severally: EUR 265 000;
  - (c) Huhtamaki Flexible Packaging Germany GmbH & Co. KG and Huhtamäki Oyj, jointly and severally: EUR 10 727 000;
  - (d) Huhtamaki Flexible Packaging Germany GmbH & Co. KG: EUR 79 000;
  - (e) Silver Plastics GmbH, Silver Plastics GmbH & Co. KG and Johannes Reifenhäuser Holding GmbH & Co. KG, jointly and severally: EUR 20 317 000.
4. For the infringement referred to in Article 1.4, the following fines are imposed:
  - (a) LIMPAC Packaging Polska Sp zo.o., LIMPAC Packaging Kereskedelmi Korlátolt Felelősségű Társaság, LIMPAC Packaging Spol S.r.o., LIMPAC Packaging S.r.o., LIMPAC Packaging GmbH and LIMPAC Group Ltd, jointly and severally: EUR 0;
  - (b) Petruzalek GmbH, Petruzalek Kft., Petruzalek s.r.o., Petruzalek Spol. s.r.o., Sirap-Gema S.p.A. and Italmobiliare S.p.A., jointly and severally: EUR 943 000;
  - (c) Coopbox Eastern s.r.o. and CCPL S.c., jointly and severally: EUR 591 000;
  - (d) Coopbox Eastern s.r.o.: EUR 11 000.
  - (e) PROPACK Kft. and Bunzl plc, jointly and severally: EUR 53 000;
  - (f) PROPACK Kft.: EUR 12 000.
5. For the infringement referred to in Article 1.5, the following fines are imposed:
  - (a) LIMPAC France SAS, LIMPAC Distribution SAS and LIMPAC Group Ltd, jointly and severally: EUR 0;
  - (b) Sirap France S.A.S., Sirap-Gema S.p.A. and Italmobiliare S.p.A., jointly and severally: EUR 5 207 000;
  - (c) VITEMBAL HOLDING SAS: EUR 265 000;

- (d) COVERIS RIGID (AUNEAU) FRANCE SAS and Huhtamäki Oyj, jointly and severally: EUR 4 756 000;
- (e) Silver Plastics S.à r.l., Silver Plastics GmbH and Johannes Reifenhäuser Holding GmbH & Co. KG, jointly and severally: EUR 893 000.

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

BANQUE ET CAISSE D'EPARGNE DE L'ETAT  
1-2, Place de Metz  
L-1930 Luxembourg

IBAN: LU02 0019 3155 9887 1000  
BIC: BCEELULL  
Ref.: European Commission – BUFI/AT.39563

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 by either providing an acceptable bank guarantee or making a provisional payment of the fine in accordance with Article 90 of Commission Delegated Regulation (EU) No 1268/2012<sup>1256</sup>.

### *Article 3*

The undertakings listed in Article 1 shall immediately bring to an end the infringements 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

LINPAC Group Ltd, Wakefield Road, Featherstone, West Yorkshire, WF7 5DE, United Kingdom;

LINPAC Packaging Verona S.r.l., Via Monte Pastello 40, IT- 37057 VR San Giovanni Lupatoto, Verona, Italy;

LINPAC Packaging Pravia S.A., Vegafriosa, La Calzada, E-33128 Pravia, Spain;

LINPAC Packaging Holdings S.L., Vegafriosa, La Calzada, E-33128 Pravia, Asturias, Spain;

LINPAC Packaging GmbH, Deltastrasse 1, D-27721 Ritterhude, Germany;

---

<sup>1256</sup>

Commission Delegated Regulation (EU) No 1268/2012 of 29 October 2012 on the rules of application of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council on the financial rules applicable to the general budget of the Union (OJ L 362, 31.12.2012, p. 1–111).



LINPAC Packaging Polska Sp zo.o., Ul Zwirowa, 53/55, PL-05506 Wladyslawów, Poland;

LINPAC Packaging Kereskedelmi Korlátolt Felelősségű Társaság, Depo, 3/A, Törökbálint, HU-2045, Hungary;

LINPAC Packaging Spol S.r.o., Cerna Ulice 1457, CZ-29501 Mnichovo Hradiste Czech Republic;

LINPAC Packaging S.r.o., Vasinova 61, SK-94901 Nitra, Slovakia;

LINPAC France SAS, Parc D'Activités de Kerguilloten, F-56920 Noyal-Pontivy, France;

LINPAC Distribution SAS, Parc D'Activités de Kerguilloten, F-56920 Noyal-Pontivy, France;

Ovarpack Embalagens S.A., Z. Ind. de Ovar, Rua de Cabo Verde, 3881-902 Ovar, Portugal;

Italmobiliare S.p.A., Via Borgonuovo 20, 20120 Milan, Italy;

Sirap-Gema S.p.A., Via Industriale 1/3, 25028 Verolanuova, Brescia, Italy;

Petruzalek GmbH, Gewerbepark Mitterfeld 8, A-2523 Tattendorf – Vienna, Austria;

Petruzalek Kft., Sörház Utca 3/b, HU – 1222, Budapest, Hungary;

Petruzalek s.r.o., Bratislavská č.p. 3228, č.o. 50, 690 02 Breclav, Czech Republic;

Petruzalek Spol. s.r.o., Domové role 71, 821 05 Bratislava, Slovakia;

Sirap France S.A.S., Route Nationale 7, 13550 Noves, France;

VITEMBAL HOLDING SAS, Usine St André, 30210 Remoulins, France;

VITEMBAL SOCIETE INDUSTRIELLE SAS, Usine St André, 30210 Remoulins, France;

VITEMBAL España, S.L., C/ Lluís Vives, 35 bajos, 08402 Granollers, Barcelona, Spain;

VITEMBAL GmbH Verpackungsmittel, Kopernikusstrasse, 21, 50126 Bergheim/Erft, Germany;

CCPL S.c., Via Gandhi 8, 42123 Reggio Emilia, Italy;

Coopbox Group S.p.A., Via Gandhi 8, 42123 Reggio Emilia, Italy;

Poliemme S.r.l., Via Gandhi 8, 42123 Reggio Emilia, Italy;

Coopbox Hispania S.l.u., Poligono Saprelorca CTRA NAC. 240 KM, 260 Parcelas 13 – 17, 30817 Lorca, Murcia, Spain;

Coopbox Eastern s.r.o., Trenčianska 17, SK-915 01 Nové Mesto n/V, Slovakia;

Huhtamäki Oyj, Miestentie 9, 02150 Espoo, Finland;

Huhtamäki Flexible Packaging Germany GmbH & Co. KG, Heinrich-Nicolaus-Strasse 6, 87671 Ronsberg, Germany;

COVERIS RIGID (AUNEAU) FRANCE SAS, 10 Route de Roinville, 28700 Auneau - Cedex, France;

Johannes Reifenhäuser Holding GmbH & Co. KG, Spicher Strasse 46, D-53844 Troisdorf, Germany;

Silver Plastics GmbH & Co. KG, Godesberger Str.9, 53842 Troisdorf, Germany;

Silver Plastics GmbH, Godesberger Str.9, 53842 Troisdorf, Germany;

Silver Plastics S.à r.l., 611 rue Paul Boucherot, ZAC Object'Ifs Sud, 14123 Ifs, France;

GROUPE GUILLIN SA, Avenue du Maréchal de Lattre de Tassigny – Zone industrielle, 25290 Ornans, France;

NESPAK S.p.A., Via Damano 1, 48024 Massa Lombarda (RA), Italy;

Magic Pack Srl, Via del Lavoro 1, 26030 Gadesco Pieve Delmona (Cremona), Italy;

Bunzl plc, York House, 45 Seymour Street, London W1H 7JT; United Kingdom;

PROPACK Kft., H-2310 Szigetszentmiklós, Kántor út 10, Hungary;

ONO PACKAGING PORTUGAL SA, Avenida Antonio Augusto de Aguiar, 19 – 4º Dto, Sala B, 1050 012 Lisboa, Portugal.

This Decision shall be enforceable pursuant to Article 299 of the Treaty and Article 110 of the EEA Agreement.

Done at Brussels, 24.6.2015

*For the Commission*  
*Margrethe VESTAGER*  
*Member of the Commission*