

Summary of Commission Decision

of 24 June 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

(Case AT.39563 — Retail food packaging)

(notified under document C(2015) 4336)

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

(2015/C 402/08)

On 24 June 2015, the Commission adopted a decision relating to a proceeding under Article 101 of the Treaty on the Functioning of the European Union and Article 53 of the EEA agreement. In accordance with the provisions of Article 30 of Council Regulation (EC) No 1/2003⁽¹⁾, the Commission herewith publishes the names of the parties and the main content of the decision, including any penalties imposed, having regard to the legitimate interest of undertakings in the protection of their business secrets.

1. INTRODUCTION

- (1) On 24 June 2015, the European Commission adopted a decision addressed to 41 legal entities for infringing Article 101 of the Treaty on the Functioning of the European Union and, for some of the addressees, also of Article 53 of the EEA Agreement (the 'Decision'). The Decision concerns five separate cartels, concerning polystyrene plastic trays ('foam trays') and, in respect of one of the cartels, also polypropylene plastic trays ('rigid trays')⁽²⁾, used for retail packaging of fresh food such as meat, poultry, fruits and fish.
- (2) The Decision is addressed to (i) Linpac⁽³⁾, (ii) Vitembal⁽⁴⁾, (iii) Coopbox⁽⁵⁾, (iv) Sirap-Gema⁽⁶⁾, (v) Silver Plastics⁽⁷⁾, (vi) Huhtamäki⁽⁸⁾, (vii) Nespak⁽⁹⁾, (viii) Magic Pack⁽¹⁰⁾, (ix) Propack⁽¹¹⁾ and (x) Ovarpack⁽¹²⁾.

2. CASE DESCRIPTION

2.1. Procedure

- (3) Following an immunity application by Linpac under the Leniency Notice, the Commission carried out unannounced inspections from 4 to 6 June 2008 at the premises of several manufacturers of trays for food packaging in various Member States.
- (4) Following the inspections, the Commission received applications for a reduction of the fines under the Leniency Notice from Vitembal, Sirap-Gema, Coopbox, Ovarpack, Silver Plastics and Magic Pack. During the investigation, the Commission sent several requests for information pursuant to Article 18 of Regulation (EC) No 1/2003 or point 12 of the Leniency Notice to the parties involved.
- (5) On 21 September 2012, the Commission adopted a Statement of Objections against the addressees of the Decision. All the addressees submitted a reply to the Statement of Objections and participated in an oral hearing which took place from 10 to 12 June 2013.
- (6) The Advisory Committee on Restrictive Practices and Dominant Positions issued a favourable opinion on 15 June 2015. The Commission adopted the Decision on 24 June 2015.

⁽¹⁾ OJ L 1, 4.1.2003, p. 1.

⁽²⁾ Only as regards the cartel in North-West Europe (see below).

⁽³⁾ LINPAC Group Ltd, LINPAC Packaging Verona Srl, LINPAC Packaging Holdings SL, LINPAC Packaging Pravia SA, LINPAC Packaging GmbH, LINPAC Packaging Polska Sp zoo, LINPAC Packaging Kereskedelmi Korlátolt Felelősségű Társaság, LINPAC Packaging Spol Sro, LINPAC Packaging Sro, LINPAC France SAS and LINPAC Distribution SAS.

⁽⁴⁾ VITEMBAL HOLDING SAS, VITEMBAL SOCIETE INDUSTRIELLE SAS, VITEMBAL GmbH Verpackungsmittel and VITEMBAL España, SL.

⁽⁵⁾ CCPL Sc, Coopbox Group SpA, Poliemme Srl, Coopbox Hispania Slu and Coopbox Eastern sro.

⁽⁶⁾ Italmobiliare SpA, Sirap-Gema SpA, Petruzalek GmbH, Petruzalek Kft., Petruzalek sro, Petruzalek Spol. sro and Sirap France SAS.

⁽⁷⁾ Johannes Reifenhäuser Holding GmbH & Co. KG, Silver Plastics GmbH & Co. KG, Silver Plastics GmbH and Silver Plastics SARL.

⁽⁸⁾ Huhtamäki Oyj, Huhtamäki Flexible Packaging Germany GmbH & Co. KG and COVERIS RIGID (AUNEAU) FRANCE SAS. In addition ONO PACKAGING PORTUGAL SA is an addressee of the Decision insofar as it is the legal successor of Huhtamäki Embalagens Portugal SA.

⁽⁹⁾ GROUPE GUILLIN SA and NESPAK SpA.

⁽¹⁰⁾ Magic Pack Srl.

⁽¹¹⁾ Bunzl plc and Propack Kft.

⁽¹²⁾ Ovarpack Embalagens SA.

2.2. Summary of the infringements

- (7) The Decision concerns five distinct cartels which each took place in a different geographical region within the EEA, namely Italy, South-West Europe ('SWE' covering Spain and Portugal), France, Central-Eastern Europe ('CEE' covering Poland, Slovakia, Czech Republic and Hungary) and North-West Europe ('NWE' covering Belgium, Denmark, Finland, Germany, Luxembourg, the Netherlands, Norway and Sweden). The cartels were undertaken by manufacturers of trays and, in relation to SWE and CEE, also by distributors. The table below illustrates the overall duration of each cartel as well as the participation of the undertakings in the cartels ⁽¹⁾.

Cartel and duration Companies	Italy 18 June 2002-17 Dec. 2007	SWE 2 Mar. 2000-13 Feb. 2008	NWE 13 June 2002-29 Oct. 2007	France 3 Sept. 2004-24 Nov. 2005	CEE 5 Nov. 2004-24 Sept. 2007
Linpac	✓	✓	✓	✓	✓
Vitembal	✓	✓	✓	✓	
Huhtamäki		✓	✓	✓	
Sirap-Gema	✓			✓	✓
Coopbox	✓	✓			✓
Nespak	✓				
Magic-Pack	✓				
Silver Plastics			✓	✓	
Ovarpack		✓			
Propack					✓

- (8) Although the cartels concerned the same product, to a certain extent involved some of the same participants and took place in partially overlapping time periods, the objective elements and the evidence linking the anticompetitive behaviour of the parties across all five regions are in this case not sufficient to establish that the undertakings were pursuing one overall plan to distort competition at EEA level or in more than one of the five regions. Therefore, the illegal practices undertaken in the five regions are considered as five separate cartels. However, in light of the similarities between the cartels, the Commission has treated the five cartels in one single administrative procedure for reasons of administrative effectiveness and expediency.
- (9) With some differences between the five cartels, the cartel participants participated in bilateral and multilateral meetings and contacts aimed at restricting competition by fixing prices, agreeing on customer allocation and market sharing, exchanging price sensitive information and bid-rigging ⁽²⁾. 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 distributors, Ovarpack and Propack, actively participated in some of the anticompetitive practices and enabled their implementation and monitoring.

2.3. Addressees

- (10) The following entities are held liable, for the periods indicated, for a single and continuous infringement of Article 101 of the Treaty in the geographical area indicated ⁽³⁾. Some of the entities listed are liable as direct participants, others as parent companies of directly participating entities and others again as both direct participants and parents of directly participating entities.

⁽¹⁾ The indicated overall duration of the cartels does not automatically correspond to the duration of individual participation of the undertaking listed and tagged. The period of participation of each undertaking is specified under Sections 2.3 and 2.4.1, point 15.

⁽²⁾ There were no instances of bid-rigging in the cartels in SWE and NWE and no customer allocation or market sharing in the cartel in NWE.

⁽³⁾ The NWE cartel also constitutes an infringement of Article 53 of the EEA Agreement.

Italy:

- (a) LINPAC Packaging Verona Srl and LINPAC Group Ltd (only as a parent), from 18 June 2002 to 17 December 2007;
- (b) Sirap-Gema SpA and Italmobiliare SpA (only as a parent), from 18 June 2002 to 17 December 2007;
- (c) Nespak SpA and Groupe Guillin SA (only as a parent), 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 Srl from 18 June 2002 to 29 May 2006, Coopbox Group SpA and CCPL Sc, from 18 June 2002 to 17 December 2007.

SWE:

- (g) LINPAC Packaging Pravia SA from 2 March 2000 to 26 September 2007, LINPAC Packaging Holdings SL and LINPAC Group Ltd (only as a parent), from 2 March 2000 to 13 February 2008;
- (h) Vitembal España, SL ⁽¹⁾ and Vitembal Holding SAS, from 7 October 2004 to 25 July 2007;
- (i) Coopbox Hispania Slu from 2 March 2000 to 13 February 2008, CCPL Sc (only as a parent) from 26 June 2002 to 13 February 2008;
- (j) ONO Packaging Portugal SA and Huhtamäki Oyj (only as a parent), from 7 December 2000 to 18 January 2005 ⁽²⁾;
- (k) Ovarpack Embalagens SA, from 7 December 2000 to 12 January 2005 and from 25 October 2007 to 13 February 2008.

NWE:

- (l) LINPAC Packaging GmbH and LINPAC Group Ltd (only as a parent), from 13 June 2002 to 29 October 2007;
- (m) Vitembal GmbH Verpackungsmittel and Vitembal Holding SAS (only as a parent), from 13 June 2002 to 12 March 2007;
- (n) Huhtamäki Flexible Packaging Germany GmbH & Co. KG from 13 June 2002 to 20 June 2006, Huhtamäki Oyj (only as a parent) from 1 January 2003 to 20 June 2006;
- (o) Silver Plastics GmbH, Silver Plastics GmbH & Co. KG and Johannes Reifenhäuser Holding GmbH & Co. KG (only as a parent), from 13 June 2002 to 29 October 2007.

CEE:

- (p) LINPAC Packaging Polska Sp zoo, LINPAC Packaging Kereskedelmi Korlátolt Felelősségű Társaság, LINPAC Packaging Spol Sro, LINPAC Packaging Sro, LINPAC Packaging GmbH and LINPAC Group Ltd (only as a parent), from 5 November 2004 to 24 September 2007;
- (q) Petruzalek GmbH, Petruzalek Kft., Petruzalek sro, Petruzalek Spol. sro, Sirap-Gema SpA and Italmobiliare SpA (only as a parent), from 5 November 2004 to 24 September 2007;
- (r) Coopbox Eastern sro from 5 November 2004 to 24 September 2007, CCPL Sc (only as a parent) from 8 December 2004 to 24 September 2007.
- (s) Propack Kft. from 13 December 2004 to 15 September 2006, Bunzl plc (only as a parent) from 1 July 2005 to 15 September 2006. Propack Kft. and Bunzl plc are liable for the infringement insofar as it relates to Hungary.

⁽¹⁾ The Commission refrained from imposing any fine on Vitembal España, SL as this entity was put into judicial liquidation.

⁽²⁾ ONO PACKAGING PORTUGAL SA and Huhtamäki Oyj were not imposed fines due to the expiry of the limitation periods for the imposition of penalties laid down in Article 25 of Regulation (EC) No 1/2003.

France:

- (t) LINPAC France SAS, LINPAC Distribution SAS and Linpac Group Ltd (only as a parent), from 3 September 2004 to 24 November 2005;
- (u) Sirap France SAS, Sirap-Gema SpA and Italmobiliare SpA (only as a parent), from 3 September 2004 to 24 November 2005;
- (v) Vitembal Societe Industrielle SAS ⁽¹⁾ and Vitembal Holding SAS, from 3 September 2004 to 24 November 2005;
- (w) Coveris Rigid (Auneau) France SAS and Huhtamäki Oyj (only as a parent), from 3 September 2004 to 24 November 2005;
- (x) Silver Plastics SARL, Silver Plastics GmbH (only as a parent) and Johannes Reifenhäuser Holding GmbH & Co. KG (only as a parent), from 29 June 2005 to 5 October 2005.

2.4. Remedies

- (11) The Decision applies the 2006 Guidelines on fines ⁽²⁾ and the 2006 Leniency Notice ⁽³⁾.

2.4.1. Basic amount of the fine

- (12) The basic amount of the fines imposed on the undertakings was set by reference to each undertaking's value of sales of the cartelised products made in the relevant geographic area during the last full business year of its participation in the cartel. For each of the five cartels, this includes all sales within the concerned region of foam trays for retail food packaging. For the NWE cartel, it also includes rigid trays. Since the duration of the cartel in France does not stretch to cover a 'full business year', the Commission established the value of sales by reference to the average annual sales for the period 2004-05 (a sum of the value of sales made in 2004 and 2005 divided by two). The Commission took this annual average value of sales as a proxy value of sales for the fines calculation.
- (13) For the 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. 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.
- (14) When setting the percentage for the variable amount of the fine ('gravity percentage') and the additional amount to deter undertakings from entering into cartel practices ('entry fee'), the Commission considered the nature of the infringements and the fact that each infringement was composed of several elements (price fixing, market sharing, exchange of sensitive information, etc.). On this basis, the Commission set a gravity percentage and an entry fee of 16 % for all undertakings in each of the cartels. In cases where an addressee was 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 applied the entry fee only in respect of the part of the fine for which it established joint and several liability.
- (15) For each undertaking and each cartel, the amount resulting from the application of the gravity percentage was multiplied by the number of years of participation in the infringement, rounded down on a monthly basis. This led to the following multipliers for duration of participation:

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	

⁽¹⁾ The Commission refrained from imposing any fine on Vitembal SOCIETE INDUSTRIELLE SAS as this entity was put into judicial liquidation.

⁽²⁾ OJ C 210, 1.9.2006, p. 2.

⁽³⁾ OJ C 298, 8.12.2006, p. 17.

Undertaking	Italy	SWE	NWE	CEE	France
Coopbox Hispania Slu ⁽¹⁾		2,25, 2			
Coopbox Eastern sro ⁽¹⁾				0,08	
Poliemme Srl ⁽¹⁾	0,33, 0,91				
Silver Plastics			5,33		0,25
Magic Pack	1,41				
Nespack	2,91				
Huhtamäki			3,41		1,16
Huhtamaki Flexible Packaging Germany GmbH & Co KG ⁽¹⁾			0,5		
Propack					
Propack Kft. ⁽¹⁾				0,5	
Bunzl plc ⁽¹⁾				1,16	
Ovarpack		0,25			

⁽¹⁾ Period of sole liability.

2.4.2. Adjustments to the basic amount

- (16) The Commission did not apply an increase in the basic amounts on account of aggravating circumstances. However, the Commission granted a reduction of 5 % to Magic Pack in relation to the cartel in Italy and to Silver Plastics in relation to the cartel in France due to their substantially limited involvement in those cartels. Silver Plastics was also granted a 5 % reduction for the fines imposed with regard to its participation in the cartel in NWE on account of its effective cooperation outside the scope of the Leniency Notice.

2.4.3. Application of the 10 % turnover limit

- (17) The individual amounts of the fines (prior to the application of the 2006 Leniency Notice) with regard to each cartel do not exceed 10 % of the worldwide 2014 turnovers of each undertaking involved in that cartel.
- (18) In addition, it is noted that none of the undertakings involved in more than one cartel were exposed to final fines which on accumulation exceeded 10 % of their worldwide turnover.

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

- (19) Linpac was the first undertaking to submit information and evidence meeting the conditions of point 8(a) of the 2006 Leniency Notice with regard to all five cartels. The fines to be imposed on Linpac were reduced by 100 %. The leniency reductions granted to the other undertakings in relation to each cartel are summarised in the table below.

	CEE	France	Italy	NWE	SWE
Linpac	100 %	100 %	100 %	100 %	100 %
Vitembal	—	50 %	45 %	50 %	45 %
Sirap-Gema	50 %	30 %	30 %	—	—

	CEE	France	Italy	NWE	SWE
Coopbox	30 %	—	20 %	—	30 %
Silver Plastics	—	10 %	—	—	—
Magic Pack	—	—	10 %	—	—
Ovarpack	—	—	—	—	20 %

- (20) The Commission concluded that Silver Plastic's leniency application with regard to the NWE cartel did not qualify for a reduction of fines under the 2006 Leniency Notice ⁽¹⁾.

2.4.5. Reduction of fines due to lapse of time

- (21) The Commission granted an exceptional 5 % reduction of the fine to each of the addressees in each cartel to reflect the considerable duration of the proceeding and the special circumstances of this case. The reduction was applied after the application of the 10 % turnover limit in order to ensure that it had an impact on the fines imposed on all addressees.

2.4.6. Inability to pay

- (22) Three undertakings invoked their inability to pay under point 35 of the 2006 Fining Guidelines. Based on an analysis of the undertakings' individual financial situations and the specific social and economic context, the Commission reduced the fines imposed on two of the three undertakings and rejected the claim from the third undertaking.

3. CONCLUSION

- (23) The following fines were imposed pursuant to Article 23(2) of Regulation (EC) No 1/2003:

For the infringement related to Italy:

- (1) LINPAC Packaging Verona Srl and LINPAC Group Ltd, jointly and severally: EUR 0;
- (2) Sirap-Gema SpA and Italmobiliare SpA, jointly and severally: EUR 29 738 000;
- (3) Nespak SpA and Groupe Guillin SA, jointly and severally: EUR 4 996 000;
- (4) VITEMBAL HOLDING SAS: EUR 295 000;
- (5) Magic Pack Srl: EUR 3 263 000;
- (6) Poliemme Srl: EUR 321 000;
- (7) Poliemme Srl, Coopbox Group SpA and CCPL Sc, jointly and severally: EUR 10 382 000;
- (8) Coopbox Group SpA and CCPL Sc, jointly and severally: EUR 11 434 000.

For the infringement related to SWE:

- (9) LINPAC Packaging Pravia SA: EUR 0;
- (10) LINPAC Packaging Holdings SL, LINPAC Group Ltd and LINPAC Packaging Pravia SA, jointly and severally: EUR 0;
- (11) VITEMBAL HOLDING SAS: EUR 295 000;
- (12) Coopbox Hispania Slu and CCPL Sc, jointly and severally: EUR 9 660 000;
- (13) Coopbox Hispania Slu: EUR 1 295 000;
- (14) Ovarpack Embalagens SA: EUR 67 000.

⁽¹⁾ As stated in paragraph 16 above, Silver Plastic was however granted a reduction for its cooperation outside the Leniency notice.

For the infringement related to NWE:

- (15) LINPAC Packaging GmbH and LINPAC Group Ltd, jointly and severally: EUR 0;
- (16) VITEMBAL GmbH Verpackungsmittel and VITEMBAL HOLDING SAS, jointly and severally: EUR 265 000;
- (17) Huhtamaki Flexible Packaging Germany GmbH & Co. KG and Huhtamäki Oyj, jointly and severally: EUR 10 727 000;
- (18) Huhtamaki Flexible Packaging Germany GmbH & Co. KG: EUR 79 000;
- (19) Silver Plastics GmbH, Silver Plastics GmbH & Co. KG and Johannes Reifenhäuser Holding GmbH & Co. KG, jointly and severally: EUR 20 317 000.

For the infringement related to CEE:

- (20) LINPAC Packaging Polska Sp zoo, LINPAC Packaging Kereskedelmi Korlátolt Felelősségű Társaság, LINPAC Packaging Spół Sro, LINPAC Packaging Sro, LINPAC Packaging GmbH and LINPAC Group Ltd, jointly and severally: EUR 0;
- (21) Petruzalek GmbH, Petruzalek Kft., Petruzalek sro, Petruzalek Spol. sro, Sirap-Gema SpA and Italmobiliare SpA, jointly and severally: EUR 943 000;
- (22) Coopbox Eastern sro and CCPL Sc, jointly and severally: EUR 591 000;
- (23) Coopbox Eastern sro: EUR 11 000.
- (24) Propack Kft. and Bunzl plc, jointly and severally: EUR 53 000;
- (25) Propack Kft.: EUR 12 000.

For the infringement related to France:

- (26) LINPAC France SAS, LINPAC Distribution SAS and Linpac Group Ltd, jointly and severally: EUR 0;
 - (27) Sirap France SAS, Sirap-Gema SpA and Italmobiliare SpA, jointly and severally: EUR 5 207 000;
 - (28) VITEMBAL HOLDING SAS: EUR 265 000;
 - (29) COVERIS RIGID (AUNEAU) FRANCE SAS and Huhtamäki Oyj, jointly and severally: EUR 4 756 000;
 - (30) Silver Plastics SARL, Silver Plastics GmbH and Johannes Reifenhäuser Holding GmbH & Co. KG, jointly and severally: EUR 893 000.
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