



## Antitrust: Commission fines producers and distributors € 115 865 000 for operating retail food packaging cartels

Brussels, 24 June 2015

The European Commission has fined eight manufacturers and two distributors of retail food packaging trays a total of €115 865 000 for having participated in at least one of five separate cartels. The eight manufacturers are Huhtamäki of Finland, Nespak and Vitembal of France, Silver Plastics of Germany, Coopbox, Magic Pack and Sirap-Gema of Italy and Linpac of the UK. The two distributors are Ovarpack of Portugal and Propack of the UK.

The companies fixed prices and allocated customers of polystyrene foam or polypropylene rigid trays, in breach of EU antitrust rules. Polystyrene foam and polypropylene rigid trays are used for packaging food sold in shops or supermarkets, for products such as cheese, meat, fish or cake. Linpac benefited from full immunity under the Commission's 2006 Leniency Guidelines as it revealed the existence of the cartels to the Commission.

Commissioner Margrethe Vestager, in charge of competition policy, said: *"Millions of consumers buying food for themselves and their families have potentially been hit by these cartels. The companies concerned carved up the retail food packaging market and agreed on prices rather than competing on their merits. Cartels harm our entire economy when companies set prices instead of the market. This removes the incentive to innovate and will not be tolerated."*

The Commission's investigation revealed the existence of five separate cartels for retail food packaging in a large part of the European Economic Area (EEA), namely:

- In the markets for polystyrene foam trays and polypropylene rigid trays in North-West Europe ("NWE"). This refers to Belgium, Denmark, Finland, Germany, Luxembourg, the Netherlands, Norway and Sweden. The conduct occurred between June 2002 and October 2007.
- In the market for polystyrene foam trays in Central and Eastern Europe ("CEE"). This refers to the Czech Republic, Hungary, Poland and Slovakia. The conduct occurred between November 2004 and September 2007.
- In the market for polystyrene foam trays in South-West Europe ("SWE"). This refers to Portugal and Spain. The conduct occurred between March 2000 and February 2008.
- In the market for polystyrene foam trays in France. The conduct occurred between September 2004 and November 2005.
- In the market for polystyrene foam trays in Italy. The conduct occurred between June 2002 and December 2007.

The companies fined today by the Commission were part of at least one of these cartels. The following table details the participation and the duration of of each company's involvement in the five cartels:

	NWE	CEE	SWE	France	Italy
Linpac	Jun 2002 – Oct 2007	Nov 2004 – Sep 2007	Mar 2000 – Feb 2008	Sep 2004- Nov 2005	Jun 2002 – Dec 2007
Vitembal	Jun 2002 – Mar 2007		Oct 2004 – Jul 2007	Sep 2004 – Nov 2005	Jul 2002 – Dec 2007
Huhtamäki	Jun 2002 – Jun 2006		Dec 2000 – Jan 2005	Sep 2004 – Nov 2005	
Sirap-Gema		Nov 2004 – Sep 2007		Sep 2004 – Nov 2005	Jun 2002 – Dec 2007
Coopbox		Nov 2004 – Sep 2007	Mar 2000 – Feb 2008		Jun 2002 – Dec 2007
Nespak					Oct 2003 – Sep 2006
Magic Pack					Sep 2004 – Mar 2006

Silver Plastics	Jun 2002 –Oct 2007			Jun 2005 –Oct 2005	
Ovarpack			Dec 2000 –Jan 2005 and Oct 2007 – Feb 2008		
Propack		Dec 2004 –Sep 2006			

As can be seen in the table above, from the early 2000s and for periods ranging from just over a year to almost eight years, and with some differences between the cartels, the ten companies fixed prices, allocated customers and markets, engaged in bid-rigging and exchanged commercially-sensitive information.

Each of the cartels operated within the framework of multilateral and bilateral contacts usually held on the fringes of legitimate industry gatherings. Physical meetings were complemented by numerous emails and phone exchanges. In some of these cartels, the participants would refer to their illegal contacts as "the Club".

### Fines

The fines imposed per company for its participation in each cartel are as follows:

	NWE	CEE	SWE	France	Italy	Total
Linpac	0	0	0	0	0	0
Vitembal	265 000		295 000	265 000	295 000	1 120 000
Huhtamaki	10 806 000		0	4 756 000		15 562 000
Sirap-Gema		943 000		5 207 000	29 738 000	35 888 000
Coopbox		602 000	10 955 000		22 137 000	33 694 000
Nespak					4 996 000	4 996 000
Magic Pack					3 263 000	3 263 000
Silver Plastics	20 317 000			893 000		21 210 000
Ovarpack			67 000			67 000
Propack		65 000				65 000
						115 865 000

The fines were set on the basis of the [Commission's 2006 Guidelines on fines](#) (see [Press Release](#) and [MEMO](#)). In setting the level of fines, the Commission took into account, in particular, the companies' sales of the products concerned in the EEA, the serious nature of the infringement, its geographic scope and its duration. The fines achieve an appropriate level of deterrence while remaining proportional to the infringement.

Under the Commission's [2006 Leniency Notice](#), the following reductions were granted:

	NWE	CEE	SWE	France	Italy
Linpac	100%	100%	100%	100%	100%
Vitembal	50%	-	45%	50%	45%
Sirap-Gema	-	50%	-	30%	30%
Coopbox	-	30%	30%	-	20%
Magic Pack	-	-	-	-	10%
Silver Plastics	-	-	-	10%	-
Ovarpack	-	-	20%	-	-

Linpac received full immunity from fines as it was the first company to reveal the cartel to the Commission, thereby avoiding a fine of € 145 065 000. Other companies received reductions on their fines for their cooperation in the investigation under the Commission's leniency programme.

In the cases of Magic Pack's (regarding its participation in the cartel in Italy) and Silver Plastics' (regarding its participation in the cartel in France), the Commission took account of their lesser involvement in these cartels when setting the fines.

*Inability to pay*

Three of the undertakings have invoked their inability to pay the fine (under point 35 of the 2006 Guidelines on fines). The Commission assessed the applications on the basis of the companies' financial statements for recent years, projections for the current and coming years, ratios measuring the financial strength, profitability, solvency, liquidity, and relations with outside financial partners and with shareholders. On this basis, the Commission granted fine reductions to two undertakings and rejected one application.

## Background

Article 101 of the Treaty on the Functioning of the European Union (TFEU) and Article 53 of the EEA Agreement prohibit cartels and other restrictive business practices.

The Commission's investigation started with unannounced inspections in June 2008. The Commission issued a statement of objections in [September 2012](#) and carried out an oral hearing in June 2013.

More information on this case will be available under the case number [39563](#) in the [public case register](#) on the Commission's competition website, once confidentiality issues have been dealt with. For more information on the Commission's action against cartels, see its [cartels website](#).

## Action for damages

Any person or firm affected by anti-competitive behaviour as described in this case may bring the matter before the courts of the Member States and seek damages. The case law of the Court of Justice of the European Union and the [Antitrust Regulation 1/2003](#) both confirm that in cases before national courts, a Commission decision is binding proof that the behaviour took place and was illegal. Even though the Commission has fined the companies concerned, damages can be awarded without these being reduced on account of the Commission fine.

The [Antitrust Damages Directive](#), which the Member States have to implement in their legal systems by 27 December 2016, makes it [easier for victims of anti-competitive practices to obtain damages](#). More information on antitrust damages actions, including a practical guide on how to quantify antitrust harm, is available [here](#).

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