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***Case No COMP/M.7104 - CROWN HOLDINGS/ MIVISA***

Only the English text is available and authentic.

**REGULATION (EC) No 139/2004  
MERGER PROCEDURE**

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Article 6(1)(b) in conjunction with Art 6(2)  
Date: 14/03/2014

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## EUROPEAN COMMISSION

Brussels, 14.3.2014  
C(2014) 1791 final

In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EC) No 139/2004 concerning non-disclosure of business secrets and other confidential information. The omissions are shown thus [...]. Where possible the information omitted has been replaced by ranges of figures or a general description.

PUBLIC VERSION

MERGER PROCEDURE

### To the notifying party

Dear Sirs,

**Subject: Case No M.7104 - CROWN HOLDINGS/ MIVISA  
Commission decision pursuant to Article 6(1)(b) in conjunction with  
Article 6(2) of Council Regulation No 139/2004<sup>1</sup>**

- (1) On 24 January 2014 the European Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 by which the undertaking Crown Holdings, Inc. ('Crown', USA) intends to acquire, within the meaning of Article 3(1)(b) of the Merger Regulation, sole control over Mivisa Envases, S.A.U. ('Mivisa', Spain) by way of purchase of shares.<sup>2</sup> Crown is hereafter referred to as the 'Notifying Party', Crown and Mivisa are hereafter collectively referred to as the 'Parties' or the 'Merged Entity'.

#### **I. THE PARTIES**

- (2) **Crown** is a multinational company headquartered in Philadelphia, Pennsylvania, active in the design, manufacturing and sale of packaging products for consumer goods. The main business areas where Crown is present include: (i) aerosol packaging; (ii) beverage packaging (including cans, can ends and crowns); (iii) rigid metal packaging for fruit, fish, pet food and vegetables (including steel cans, aluminium cans, 2-piece and 3-piece food cans in a variety of shapes as well as can

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<sup>1</sup> OJ L 24, 29.1.2004, p. 1 ('the Merger Regulation'). With effect from 1 December 2009, the Treaty on the Functioning of the European Union ('TFEU') has introduced certain changes, such as the replacement of 'Community' by 'Union' and 'common market' by 'internal market'. The terminology of the TFEU will be used throughout this decision.

<sup>2</sup> Publication in the Official Journal of the European Union No C 28, 31.1.2014, p. 15.

ends); (iv) metal closures and (v) speciality packaging. Crown operates 149 production plants in Europe, the Middle East, Africa, the Americas, China and Southeast Asia. Crown is listed on the New York Stock Exchange.

- (3) **Mivisa**, headquartered in Murcia, Spain, is primarily active in tinsplate food can manufacturing, including 2-piece and 3-piece food cans, metal closures and stand-alone can ends. Mivisa operates through its manufacturing and assembling facilities in Spain, Hungary, the Netherlands, Morocco and Peru. Mivisa is currently controlled by The Blackstone Group L.P. ('Blackstone'), a global investment firm with participations in companies active in various sectors.

## **II. THE OPERATION**

- (4) The proposed transaction (hereafter referred to as the 'Transaction') entails the acquisition of sole control of Mivisa by Crown through the purchase by Crown of 100% of the shares of Lata Lux Holdings S.à.r.l., a company that owns 100% of the shares of Adularia Inversiones 2010, S.L.U., which in turn owns 100% of Mivisa's shares.
- (5) The Transaction therefore constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

## **III. EU DIMENSION**

- (6) The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5,000 million<sup>3</sup> (Crown: EUR 6,585 million, Mivisa EUR [...]). Each of them has an EU-wide turnover in excess of EUR 250 million (Crown: EUR [...], Mivisa: EUR [...]), but they do not achieve more than two-thirds of their aggregate EU-wide turnover within one and the same Member State. The notified operation therefore has an EU dimension.

## **IV. COMMISSION'S ASSESSMENT**

### **IV.1. Relevant product markets**

- (7) The activities of the Parties overlap mainly in the manufacturing and sale of: metal food cans, stand-alone can ends and metal closures.<sup>4</sup>

#### *IV.1.1. Metal food cans*

##### *The Notifying Party's view*

- (8) The Notifying Party submits that, in line with past Commission decisions, metal food cans constitute a separate product market from beverage food cans<sup>5</sup> and from other glass or plastic food containers.<sup>6</sup>

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<sup>3</sup> Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Consolidated Jurisdictional Notice (OJ C 95, 16.4.2008, p. 1.).

<sup>4</sup> In addition Crown produces can-making machines; however, the last external sale of food can-making machinery was made in [...] and represented around [...] of Crown's total turnover.

<sup>5</sup> COMP/M.6128 *Blackstone/Mivisa*, Commission Decision dated 25 March 2011, para. 9.

- (9) In addition to metal food cans, Crown also produces general line cans and speciality packaging cans. According to the Notifying Party both types refer to straight walled or conical cans (with associated lids) but the former are used for packaging decorative paints, inks, lacquers, coatings, industrial chemicals, industrial solvents, industrial lubricants or household chemicals, while speciality cans are used for fast-moving consumer goods, such as confectionery, biscuits, tobacco, coffee, edible oil fragrances, wines and spirits. The Notifying Party argues that these types of cans are not substitutable with ordinary metal food cans due to supply and demand side considerations. In particular the Notifying Party claims that (i) the production lines used to manufacture these types of cans are technically different from those used for metal food cans, (ii) general line and speciality cans are not used for the same types of products as those put into metal food cans and (iii) different filling lines are needed for the general line and speciality cans.

*The Commission's market investigation*

- (10) The vast majority of customers consider that it is not possible to replace metal food cans by another packaging product (e.g. plastic or glass) in their production process.<sup>7</sup> The main reasons for this lack of substitutability are the habits and preferences of the final consumers<sup>8</sup> and the long time and high costs of adjusting can fillers' production processes, including the sterilization lines, to the new type of packaging. Amongst the few customers who replied that it would be possible to replace metal food cans with other products, many specified that such a possibility is merely theoretical and in practice they have to use metal cans due to consumer preferences, price differences between metal and glass packaging or the physical properties of glass packaging (i.e. it being more prone to damage).<sup>9</sup> On the other hand, the majority of competitors consider that it is possible for their customers to replace metal food cans by other products such as plastic bags, trays, carton packing or glass jars.<sup>10</sup> However, competitors also recognise that such a switch would require investment in new machinery and that for products which require sterilisation, finding a replacement to metal food cans is not easy.<sup>11</sup> Taking account of the market investigation, the Commission considers metal food cans constitute a distinct product market from other packaging products, such as plastic packaging or glass jars.
- (11) The products put into metal food cans are usually: fruit and vegetables, fish, pet food and ready-made meals. The majority of customers believe that there are differences between metal food cans used for these different types of food products. Such differences relate mainly to sizes, lacquering (resulting from different pH levels and various food safety legislation), thickness of the can and ultimately, final consumer

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<sup>6</sup> Cases: COMP/M.6025 *Ardagh/Impress*, Commission Decision dated 29 November 2010, paras. 11, 13 and 15, COMP/M.1109 *Owens-Illinois/BTR Packaging*, Commission Decision dated 21 April 1998, paras. 11 and 19, COMP/M.3397 *Owens-Illinois/BSN Glasspack*, Commission Decision dated 9 June 2004, paras. 11 and 12, and COMP/M.603 *Crown Cork & Seal/Carnaud Metalbox*, Commission Decision dated 14 November 1995, paras. 27 and 28.

<sup>7</sup> Responses to question 6 of "Questionnaire Q1 – Customers".

<sup>8</sup> Throughout this Decision 'final customers' mean clients who purchase canned food products.

<sup>9</sup> Responses to question 6 of "Questionnaire Q1 – Customers".

<sup>10</sup> Responses to question 5 of "Questionnaire Q2 – Competitors".

<sup>11</sup> Response to question 5.1 of "Questionnaire Q2 – Competitors".

preferences.<sup>12</sup> Competitors also point to some differences between cans used for pet food, seafood, fish, fruit or vegetables (in particular in terms of their shape, size or inside coating) but they admit that these differences have limited impact on production, due to a high level of supply-side substitutability, since manufacturers of metal food cans are in general able to adjust their production lines to different shapes or sizes or to apply different coatings.<sup>13</sup> For the purposes of this case, it is therefore not necessary to distinguish between various metal food cans according to the type of product with which they are filled.

- (12) There is also no need to sub-segment metal food cans according to the ultimate customer group to which the filled cans are sold, i.e. the retail or the food service sector. The only difference between cans destined for retail and cans destined for the food service sector relates to the size of the can with larger cans (i.e. of 800 g., 1 kg., 2.5 kg., 3 kg.) being mainly sold to the latter group of customers<sup>14</sup>.

#### IV.1.1.1. Aluminium and tinplate food cans

##### *The Notifying Party's view*

- (13) According to the Notifying Party there are no relevant differences between aluminium and tinplate food cans since all products can be canned in both. Nevertheless, the Notifying Party admits that there are countries where aluminium has traditionally been used for more premium products, as well as other countries where sales of aluminium food cans are non-existent. The Notifying Party argues that, as long as the can customers do not use production lines based on magnetic handling<sup>15</sup>, the same machines can be used for filling both aluminium and tinplate cans. It also cites examples of switching between aluminium and tinplate cans. As a result the Notifying Party submits that aluminium and tinplate cans should be considered as belonging to the same relevant market.

##### *Previous Commission case-practice*

- (14) The Commission has previously considered that aluminium cans constitute a distinct market from tinplate cans.<sup>16</sup>

##### *The Commission's market investigation*

- (15) Despite the fact that aluminium cans are not commonly used by the respondents to the market investigation (i.e. the majority of customers does not use them<sup>17</sup>), both customers and competitors consider that aluminium and tinplate cans are in general comparable in terms of their preservation properties (although some note that

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<sup>12</sup> Responses to question 7 of "Questionnaire Q1 – Customers".

<sup>13</sup> Responses to question 7 of "Questionnaire Q2 – Competitors".

<sup>14</sup> Responses to question 8 of "Questionnaire Q1 – Customers" and to question 8 of "Questionnaire Q2 – Competitors".

<sup>15</sup> Magnetic handling cannot be used for aluminium cans.

<sup>16</sup> COMP/M.2702 *Norsk Hydro/VAW*, Commission Decision dated 4 March 2002, para.12 and COMP/M.3225 *Alcan/Pechiney (II)*, Commission Decision dated 29 September 2003, para. 65.

<sup>17</sup> Responses to question 12 of "Questionnaire Q1 – Customers".

aluminium is less prone to rust but at the same time less resistant and thus not suitable for all food products).<sup>18</sup> On the other hand, many customers note that switching from tinsplate to aluminium would require a change in their filling process (due to the necessary modification of the customers' magnetic filling lines and the fact that aluminium is less rigid and thus could require different handling than tinsplate<sup>19</sup>) and, it would necessitate investment.<sup>20</sup> Most competitors also confirm that filling lines for tinsplate and aluminium cans are indeed different.<sup>21</sup> Similarly, the prices for tinsplate and aluminium cans appear to be different, as a result of the differences and volatility in raw material prices.<sup>22</sup> A few customers, including those who use aluminium cans, stated that not all can sizes are available in both tinsplate and aluminium.<sup>23</sup> The market investigation was inconclusive on the question of whether these two types of cans are comparable in terms of final consumer preferences. Some respondents noted that final customers appreciate the ease of opening characteristic of aluminium cans and that lithography looks better on these cans while other respondents consider that final consumers see no difference between the two metals.<sup>24</sup>

- (16) The activities of the Parties overlap only in the manufacturing and sale of tinsplate food cans since Mivisa does not produce aluminium cans.

#### IV.1.1.2. 2-piece and 3-piece metal food cans

##### *The Notifying Party's view*

- (17) 2-piece cans have a top lid (can end) and a seamless body, of which the bottom is an integral part, with a typically rectangular or round base. 2-piece cans are produced through two main technologies: draw and redraw ("DRD") and draw and wall ironing ("DWI"), both described in paragraph (23) below.
- (18) 3-piece cans are assembled through a welding process and composed of a cylindrical body to which a bottom lid and a top lid (can ends) are attached.
- (19) According to the Notifying Party, both 2-piece and 3-piece metal food cans should be considered as part of the same relevant product market. To support this conclusion the Notifying Party claims that producers manufacture both types of cans and from the perspective of the customers they are easily interchangeable because adapting the filling lines takes minimal time and cost. On the other hand, the Notifying Party admits that certain fish products (e.g. sardines) are packed in small rectangular 2-piece cans since these cans naturally fit the shape of the fish; while certain fruit and vegetables are, due to their size, better suited for taller 3-piece cans.

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<sup>18</sup> Responses to question 17.1 of "Questionnaire Q1 – Customers" and to question 13.1 of "Questionnaire Q2 – Competitors".

<sup>19</sup> Responses to question 17.4 of "Questionnaire Q1 – Customers".

<sup>20</sup> Responses to question 13.2 of "Questionnaire Q1 – Customers".

<sup>21</sup> Responses to question 13.4 of "Questionnaire Q2 – Competitors".

<sup>22</sup> Responses to question 17.3 of "Questionnaire Q1 – Customers" and to question 13.2 of "Questionnaire Q2 – Competitors".

<sup>23</sup> Responses to questions 12 and 13 of "Questionnaire Q1 – Customers".

<sup>24</sup> Responses to question 17.2 of "Questionnaire Q1 – Customers".

- (20) The Notifying Party also submits that the overlap between the Parties in 2-piece cans is more limited because Mivisa's production of these cans is smaller and sales of 2-piece cans are limited or non-existent in countries such as Hungary or regions such as the Benelux.

*Previous Commission case-practice*

- (21) The previous decisions of the Commission are not decisive as to whether 2-piece and 3-piece cans belong to the same market. In one case the Commission noted that these two types of cans compete with each other,<sup>25</sup> while in another case the market investigation was inconclusive (albeit suggesting substitutability).<sup>26</sup>

*The Commission's market investigation*

- (22) The majority of customers and competitors consider 2-piece and 3-piece cans to be comparable in terms of preservation properties and the majority of customers find them comparable also in terms of preferences of their final customers (although one customer referred to differences in national preferences).<sup>27</sup> The market investigation was inconclusive as to the existence of differences in price between these two types of cans.<sup>28</sup> However one of the differences the customers note is that not all sizes are available as 2-piece cans. Regarding filling technology, the respondents were divided with some customers and competitors claiming that 2-piece and 3-piece cans can be filled with the same lines and others claiming that there are differences mainly because 2-piece cans are more fragile and thus more prone to damage during that process and 3-piece being thus easier to fill.<sup>29</sup> Generally, however, the vast majority of customers have never switched between 3-piece and 2-piece cans in the last 10 years.<sup>30</sup> Those customers that have switched explain that they did so because of price difference between 3-piece and 2-piece cans. According to the majority of competitors, it would take more than one year to switch their production from 2-piece to 3-piece cans or vice versa, since they would need to invest in new technology (welding for 3-piece, while seaming for 2-piece).<sup>31</sup>

IV.1.1.3. DRD and DWI metal food cans

*The Notifying Party's view*

- (23) In the DRD process a metal sheet is shaped in a single draw into a cup, the sides of which preserve the same thickness as that of the original plate and the enamel coating remains intact. As a result 2-piece DRD cans are typically relatively shallow. In the

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<sup>25</sup> M.603 *Crown Cork & Seal/Carnaud Metalbox*, *ibidem*, para. 30.

<sup>26</sup> COMP/M.6128 *Blackstone/Mivisa*, *ibidem*, para. 10.

<sup>27</sup> Responses to questions 16.1 and 16.2 of "Questionnaire Q1 – Customers" and to question 6.1 of "Questionnaire Q2 – Competitors".

<sup>28</sup> Responses to question 16.3 of "Questionnaire Q1 – Customers" and to question 6.1 of "Questionnaire Q2 – Competitors".

<sup>29</sup> Responses to question 16.4 of "Questionnaire Q1 – Customers" and to question 6.4 of "Questionnaire Q2 – Competitors".

<sup>30</sup> Responses to question 11 of "Questionnaire Q1 – Customers".

<sup>31</sup> Responses to question 9 of "Questionnaire Q2 – Competitors".

DWI process the walls of the cup are stretched and thinned by ironing and as a result they are 25% thinner than the original un-lacquered plate. 2-piece DWI cans are taller and therefore, according to the Notifying Party, are in the industry considered as substitutes to 3-piece cans and that there is evidence of customers switching between these two types of cans. Aluminium is only used in the production of 2-piece DRD cans.

- (24) The Notifying Party claims that, since the relevant product market should comprise all metal food cans, due to the high degree of substitutability between all the types of metal food cans, the distinction between 2-piece DWI cans and 2-piece DRD cans would not be appropriate.

*Previous Commission case-practice*

- (25) While the DWI and DRD technologies were mentioned in a recent Commission decision<sup>32</sup>, the issue whether cans made according to these different technologies belong to the same relevant market was left open.

*The Commission's market investigation*

- (26) An overwhelming majority of competitors contacted in the course of the market investigation do not produce DWI cans. However, the majority of competitors consider DWI and DRD cans as comparable in terms of their preservation properties and product characteristics.<sup>33</sup> The responses as to the differences in prices, in filling lines or preferences of final customers between DRD and DWI cans were inconclusive.<sup>34</sup>
- (27) Regarding the comparison between DWI 2-piece and 3-piece cans, the majority of customers considers these two types of cans to be comparable in terms of preservation properties and final customer preferences.<sup>35</sup> However, DWI 2-piece cans are generally regarded non-comparable with 3-piece cans in terms of price (customers estimate that DWI 2-piece cans are approximately 3-8% cheaper).<sup>36</sup> Regarding filling technology<sup>37</sup> and characteristics of the product, the customer responses were inconclusive, although some stated that DWI 2-piece cans are less prone to leakage.<sup>38</sup>
- (28) The activities of the Parties overlap only in the manufacturing and sale of 2-piece DRD cans since Mivisa does not produce 2-piece DWI cans.

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<sup>32</sup> COMP/M.6128 *Blackstone/Mivisa*, *ibidem*, para. 11.

<sup>33</sup> Responses to questions 18.1 and 18.5 of "Questionnaire Q2 – Competitors".

<sup>34</sup> Responses to questions 18.2, 18.3 and 18.4 of "Questionnaire Q2 – Competitors".

<sup>35</sup> Responses to questions 18.1, 18.2 of "Questionnaire Q1 – Customers".

<sup>36</sup> Responses to question 18.3 of "Questionnaire Q1 – Customers".

<sup>37</sup> Responses to question 18.4 of "Questionnaire Q1 – Customers".

<sup>38</sup> Responses to question 18 of "Questionnaire Q1 – Customers".



#### IV.1.1.4. Conclusion on whether various sub-segments of metal food cans constitute distinct product markets

- (29) On the basis of the above considerations, it is likely that there are separate product markets for (i) tinplate and aluminium cans, (ii) 3-piece and 2-piece cans, and (iii) 3-piece and DWI 2-piece cans as opposed to DRD 2-piece cans. However, for the purposes of this Decision, the question of whether or not these various sub-segments of metal food cans ultimately constitute separate product markets can be left open since the commitments proposed by the Parties would eliminate any serious doubts as regards the compatibility of the Transaction with the internal market under any plausible market definition.

#### IV.1.2. Stand-alone can ends

##### *The Notifying Party's view*

- (30) The Notifying Party submits that there are three types of food can ends: (i) standard ends (NEOs), for which a can opener is necessary, (ii) easy-open ends (EOEs), which incorporate a ring-pull allowing manual opening without a can opener, and (iii) peelable ends, where a small tab on the lid is pulled to open. The latter are typically used for wet pet food, certain small fish cans and salad cans. In addition, the Notifying Party states that most of the can ends are sold by the Parties together with the can body, as a single combined product.

##### *Previous Commission case-practice*

- (31) EOEs were mentioned in a previous decision of the Commission but no conclusion as to the relevant market was reached.<sup>39</sup>

##### *The Commission's market investigation*

- (32) The vast majority of customers consider that NEO, EOE and peelable ends are not comparable in terms of prices, product characteristics and final customer preferences.<sup>40</sup> From the competitors' point of view, EOEs, NEOs and peelable ends are not comparable in terms of product characteristics due to the different level of ease of opening and thus convenience and safety (no sharp edges) for the end-customer.<sup>41</sup> As one of the competitors noted, these are "*completely different product[s] for different use and application [and] with different price range*".<sup>42</sup> Others have also pointed to differences in prices between different can ends with peelable ends being the most expensive and NEOs the least expensive.
- (33) Customers for stand-alone can ends tend to be different from those for can ends sold together with the cans in that the former are generally competitors of the Parties, while the latter are food processors (customers of the Parties).

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<sup>39</sup> COMP/M.6128 *Blackstone/Mivisa*, *ibidem*, para. 12.

<sup>40</sup> Responses to question 19 of "Questionnaire Q1 – Customers".

<sup>41</sup> Responses to question 23 of "Questionnaire Q3 – Competitors".

<sup>42</sup> Response to question 23.1.1 of "Questionnaire Q3 – Competitors".

- (34) In fact, the vast majority of customers always buy can ends together with the metal can (i.e. as a package) from the same supplier, in order to ensure the safety of their product, track possible problems in their cans and avoid uncertainties as to the supplier's responsibility.<sup>43</sup> The vast majority of customers also consider that there are significant risks in buying can ends from a different supplier than the one who supplies the actual cans.<sup>44</sup> Moreover, the majority of customers would not switch to separate purchases of can ends even in case of a permanent 5-10% price increase<sup>45</sup>. Finally, the majority of customers would not purchase metal food cans from a can manufacturer if that manufacturer would not be able to provide them with can ends.<sup>46</sup>
- (35) Almost all competitors purchase some stand-alone can ends which they later resell to their customers together with the actual cans they produce. The competitors purchase at least 5% and, in the most extreme case, 70% of their total needs of can ends.<sup>47</sup>
- (36) The market investigation among competitors was inconclusive as to the compatibility of can ends purchased from one supplier with cans manufactured by another supplier. One of the competitors stated that compatibility depends also on quality (i.e. first quality can bodies would not be compatible with "acceptable" can ends).<sup>48</sup> However, one of those competitors who did not confirm full compatibility stated that differences are in fact minor due to the existence of industry standards.<sup>49</sup>

### *Conclusion*

- (37) Given the above, it appears that a separate market exists for stand-alone can ends as opposed to can ends sold jointly with can bodies as a package. However, for the purpose of this Decision, it can be left open whether stand-alone can ends should be sub-segmented further since no competition concerns arise even under the narrowest product market definitions distinguishing between stand-alone (i) standard ends (NEOs), (ii) easy-open ends (EOEs) and (iii) peelable ends.

#### *IV.1.3. Metal closures*

- (38) According to the Notifying Party, metal closures are used primarily for glass containers in the food and beverage industry. They consist of a metal piece, which seals glass jars and bottles through a twist-off mechanism. There are two types of metal closures: (i) ordinary twist-off, and (ii) press-on twist-off, with the latter being mainly used for baby food due to their superior resistance and better preservation of the product.

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43 Responses to question 20 of "Questionnaire Q1 – Customers".

44 Responses to question 21 of "Questionnaire Q1 – Customers".

45 Responses to question 22 of "Questionnaire Q1 – Customers".

46 Responses to question 23 of "Questionnaire Q1 – Customers".

47 Responses to question 26 of "Questionnaire Q3 – Competitors".

48 Response to question 27.1 of "Questionnaire Q3 – Competitors".

49 Response to question 27.1 of "Questionnaire Q3 – Competitors".

- (39) The Commission has previously only investigated beverage bottle closures but not metal closures for jars.<sup>50</sup>
- (40) In the present case, there is no need to determine if metal closures should be segmented further due to the limited overlap between the Parties.

## **IV.2. Relevant geographic markets**

### *IV.2.1. Metal food cans*

- (41) The activities of the Parties with respect to metal food cans overlap in the following EEA countries: Belgium, France, Germany, Hungary, the Netherlands, Portugal and Spain.

#### *The Notifying Party's view*

- (42) According to the Notifying Party, the market for food cans should be considered at least trans-border regional<sup>51</sup> and in any event wider than national, due to: (i) the fact that proximity to customers is no longer a limiting factor for establishing a can factory, (ii) increased cross-border trade, (iii) lack of regulatory barriers, and (iv) decreasing transport costs.

#### *Previous Commission case-practice*

- (43) In the most recent decision concerning metal food cans, while leaving the geographic market definition open, the Commission referred to the previous decisions,<sup>52</sup> in which the scope of the relevant geographic market was considered national and/or trans-border regional.<sup>53</sup>

#### *The Commission's market investigation*

- (44) On the basis of the market investigation the Commission observes that the maximum distances of actual purchases by customers in Spain, Portugal and Hungary are generally below 450 km. Customers in Germany, France and the Benelux appear to purchase from several countries, although the maximum distance of sourcing is approximately 400-600 km from their facilities.
- (45) In particular, customers in Spain appear to purchase metal food cans only from plants in Spain and from distances below 600 km.<sup>54</sup> Customers in Hungary also appear to purchase metal food cans domestically and from distances that generally

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<sup>50</sup> COMP IV/M.603 *Crown Cork & Seal/Carnaud/Metalbox*, *ibidem*, paras 32 and ff.

<sup>51</sup> The Notifying Party proposes to distinguish the following regions: (i) Spain/Portugal/southern France; (ii) France/Benelux/adjacent areas in Spain, Italy, Germany and southern England; (iii) Benelux/North France/adjacent areas of Germany; (iv) Germany and adjacent areas; and (v) Hungary and adjacent areas.

<sup>52</sup> Such as COMP IV/M.603 *Crown Cork & Seal/Carnaud/Metalbox*, *ibidem*, para. 46, where the following trans-border markets were identified: Spain and Portugal; the UK and Ireland; Belgium and Netherlands and Luxembourg.

<sup>53</sup> COMP/M.6128 *Blackstone/Mivisa*, *ibidem*, para. 13.

<sup>54</sup> Responses to question 24.1 of "Questionnaire Q1 – Customers".

do not exceed 400 km.<sup>55</sup> Customers in Portugal appear to purchase metal food cans only from Portugal and Spain and from distances below a 400 km radius.<sup>56</sup> On the other hand, customers in the Benelux appear to purchase metal food cans from France, Germany, the Netherlands, Spain and the UK. However, most of these customers source from distances that do not exceed 400 km.<sup>57</sup> Customers in France purchase from France, Italy, the Netherlands, Spain and the UK (depending on where in France the customer is located), although the distance of these purchases varies: most customers purchase from distances below 600 km.<sup>58</sup> Customers in Germany purchase metal food cans from Germany, the UK, the Netherlands, Italy and France (again, depending on where in Germany the customer is located). The maximum distance of these purchases is generally around 500-600 km.<sup>59</sup>

- (46) In general, the majority of customers state that they would consider sourcing from a different geographic area than they currently do if the price of their current purchases increased permanently by 5-10%.<sup>60</sup> However, customers in Portugal indicated that sourcing from another area could be difficult in practice. Moreover, some customers in Spain stated that they would consider sourcing from another area but still in Spain. The vast majority of customers have never actually purchased metal food cans from a different area than the one from which they currently purchase. This is particularly the case for customers in Hungary, Germany and France.<sup>61</sup>
- (47) Customers estimate that the maximum distance which would allow a supplier to make a competitive offer in Spain ranges between 200 and 600 km. In Portugal this distance is estimated by most customers at between 200 and 600 km, whereas in the Benelux and in Hungary it is estimated in the range of 200-500 km.<sup>62</sup> In France, the maximum distance which would allow a supplier to make a competitive offer is estimated in the range of 200-600 km, although for small sizes it could reach 1200 km or even 2000 km. In Germany, the majority of customers estimate that distance which would allow a supplier to make a competitive offer would not exceed 600 km.<sup>63</sup>
- (48) The majority of customers consider that there are no obstacles that preclude them from purchasing metal food cans from a plant which is not located in the same country as their filling plant. However, the majority of customers in Spain consider that it is difficult to purchase from plants located abroad.<sup>64</sup> On the other hand,

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55 Responses to question 24.5 of "Questionnaire Q1 – Customers".

56 Responses to question 24.2 of "Questionnaire Q1 – Customers".

57 Responses to questions 24.3 and 24.4 of "Questionnaire Q1 – Customers".

58 Responses to question 24.6 of "Questionnaire Q1 – Customers". There are two exceptions to this pattern among the respondents to the market investigation, who buy metal food cans from maximum distances of 1000 and 1500 km.

59 Responses to question 24.7 of "Questionnaire Q1 – Customers".

60 Responses to question 25 of "Questionnaire Q1 – Customers".

61 Responses to question 26 of "Questionnaire Q1 – Customers".

62 However, regarding small metal food cans customers in Hungary estimated that this distance could reach 1500 km.

63 Responses to question 32 of "Questionnaire Q1 – Customers".

64 Responses to question 27 of "Questionnaire Q1 – Customers".

competitors stated that in general they deliver their cans at an average distance in the range of 200-600 km.<sup>65</sup>

- (49) The vast majority of customers states that there are significant price differences between different countries or clusters of countries in the EEA. The main reasons would appear to be labour and energy costs, as well as transport costs. Prices appear to be generally cheaper in Eastern Europe.<sup>66</sup> The majority of competitors also note that prices generally differ between different regions in the EEA.<sup>67</sup>
- (50) This is not contradicted by the information provided by the Parties. In fact, the Parties' average prices and gross margin percentages tend to be significantly different between the different regions/countries, even taking into account the different can sizes. This is evidenced by the example of Crown's average price for 73x109 diameter can in 2012 presented in Figure 1 below.

**Figure 1: Crown's average prices and gross margin percentage of the 73x109 diameter cans in 2012 in Spain, Portugal, France, Germany and the Benelux**

[...]

- (51) The information submitted by the Parties is also in line with the abovementioned patterns. Mivisa's sales in Spain are mainly (more than [...]) concentrated in a radius of 400 km around its Spanish plants, with the exception of La Rioja from where Mivisa supplies southern France. Similarly, Mivisa's plants in Hungary and in the Netherlands supply almost [...] of their products within a 400 km radius. With respect to Crown, most of its sales (more than [...]) from the plants located in Iberia, France, the Benelux and Hungary are made within a radius of 400 km.<sup>68</sup>
- (52) The main reason why delivery is generally profitable within a radius of around 200-600 km appears to be the high transport costs due to the high volume occupied by empty cans. The transport cost depends on the size of the can, since it is higher the higher the volume that the can occupies. Essentially, transporting large volume empty metal food cans consists of transporting large amounts of air. Although estimations of transport costs by customers vary significantly according to the volume of the transported can, most customers estimate transport costs to fall in the range of 1.5-4% (of the price of the can) per 100 km. For some large sizes transport costs may represent more than 5% per 100 km.<sup>69</sup> Competitors estimate transport costs to be in the range of 1-3% per 100 km.<sup>70</sup> The data on transport costs submitted by the Parties confirms that transport costs depend on the size of the can. The Parties' estimations are around [...] of the price of a can per 100 km, although in [...] transport costs appear to be higher.

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<sup>65</sup> Responses to question 28 of "Questionnaire Q2 – Competitors".

<sup>66</sup> Responses to questions 29 and 29.2 of "Questionnaire Q1 – Customers".

<sup>67</sup> Responses to question 34 of "Questionnaire Q2 – Competitors".

<sup>68</sup> Form CO, Annexes 6.5.a and 6.5.b.

<sup>69</sup> Responses to question 30 of "Questionnaire Q1 – Customers".

<sup>70</sup> Responses to question 30 of "Questionnaire Q2 – Competitors".

- (53) Although the Parties claim that transport costs have decreased over the recent years, the majority of customers and competitors consider that transport costs have increased in the last five years.<sup>71</sup>
- (54) On-time delivery is an important factor in the metal food cans business. This is an element that also limits the distances that the empty cans generally travel. Customers place significance on the reliability of supply and the farther away the supplier's plant is located, the higher the probability of delays in the delivery of the cans. This in turn may cause problems to customers in managing effectively their production process. This is particularly the case for customers subject to seasonality in their production, since they need to fill the cans in the moment of the harvest/fishing, and they usually do not take deliveries of cans out of season to stock.<sup>72</sup>

#### IV.2.1.1. Conclusion

- (55) In view of the above, the geographic scope of the markets for metal food cans appears to be at least national or cross-border regional.
- (56) However, the precise definition of the relevant geographic markets regarding metal food cans can be left open, as serious doubts arise both at national and at cross-border regional level and as the commitments proposed by the Parties eliminate all the serious doubts identified by the Commission as regards the compatibility of the transaction with the internal market.

#### IV.2.2. *Stand-alone can ends*

##### *The Notifying Party's view*

- (57) The Notifying Party claims that the market for stand-alone can ends is wider than EEA, possibly even global.

##### *Previous Commission case-practice*

- (58) In its previous decisions the Commission has stated that the geographic scope of the market for bottle closures and can ends (for beverage cans) is EEA-wide.<sup>73</sup>

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<sup>71</sup> Responses to question 33 of "Questionnaire Q1 – Customers" and to question 33 of "Questionnaire Q2 – Competitors".

<sup>72</sup> Responses to question 54 of "Questionnaire Q1 – Customers".

<sup>73</sup> COMP IV/M.603 *Crown Cork & Seal/Carnaud/Metalbox*, *ibidem*, para. 50.

*The Commission's market investigation*

- (59) Approximately half of the food processors who also purchase stand-alone can ends source them from across the EEA or worldwide, while the vast majority of them purchases stand-alone can ends at a wider than national level (at least cross-border regional).<sup>74</sup> The vast majority of competitors sell stand-alone can ends at an EEA or even worldwide level.<sup>75</sup>

IV.2.2.1. Conclusion

- (60) In line with the Commission's findings in previous cases, the geographic scope of the markets for stand-alone can ends is at least EEA-wide.

IV.2.3. *Metal closures*

*The Notifying Party's view*

- (61) The Notifying Party claims that the market for metal closures is EEA-wide.

*Previous Commission case-practice*

- (62) In its previous decisions the Commission has stated that the geographic scope of the market for bottle closures and can ends (for beverage cans) is EEA-wide.<sup>76</sup>

*The Commission's market investigation*

- (63) Half of the competitors stated that they sell metal closures at a worldwide level.<sup>77</sup> Most customers purchase metal closures at an EEA or worldwide level, while the vast majority of customers purchase metal closures at a wider than national level (at least cross-border regional).<sup>78</sup>

IV.2.3.1. Conclusion

- (64) In line with the Commission's findings in previous cases, the geographic scope of the market for metal closures is at least EEA-wide.

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<sup>74</sup> Responses to question 36 of "Questionnaire Q1 – Customers".

<sup>75</sup> Responses to question 38 of "Questionnaire Q1 – Competitors".

<sup>76</sup> COMP IV/M.603 *Crown Cork & Seal/Carnaud/Metalbox*, *ibidem*, para. 50.

<sup>77</sup> Responses to question 37 of "Questionnaire Q1 – Competitors".

<sup>78</sup> Responses to question 35 of "Questionnaire Q1 – Customers".

### IV.3. Competitive assessment

#### IV.3.1. Metal food cans

##### *Introduction*

- (65) The Transaction gives rise to horizontally affected markets in the market for metal food cans and more particularly in the potential sub-segments of: (i) all metal 3-piece food cans, (ii) all metal 2-piece food cans, (iii) 2-piece DRD, (iv) tinplate food cans, (v) 3-piece tinplate food cans, (vi) 2-piece tinplate food cans, (vii) 2-piece DRD tinplate food cans and (viii) 3-piece food cans plus 2-piece DWI food cans. As regards the geographic dimension of the relevant market the Transaction gives rise to horizontally affected markets in: the Benelux, France, Germany, Hungary, Spain and Portugal. Affected markets also arise in the cross-border regional markets of: (i) Spain, Portugal and southern France; (ii) France, the Benelux, and adjacent areas in Spain, Italy, Germany and southern England; (iii) the Benelux, northern France and the adjacent areas of Germany; (iv) Germany and areas in certain Member States in proximity<sup>79</sup>; and (v) Hungary and areas in certain countries in proximity<sup>80</sup>.
- (66) Although the relevant markets in metal food cans are not EEA-wide, it is worth presenting an overall picture at the EEA-wide level to put the market position of the Parties in a wider context. It should be noted that even at an EEA-wide level, as shown in Table 1, the Merged Entity would become by far the largest player, with a combined share of supply of around [50-60]% for all metal food cans. The second largest player in the EEA, under most of the potential product segmentations,<sup>81</sup> would be Ardagh, a producer of glass and metal packaging solutions based in Luxembourg.
- (67) Under most of the potential product segmentations the combined shares of supply of the Parties exceed 50% at the EEA level. The exceptions concern only the potential narrower segments of all 2-piece cans and 2-piece DRD cans, where the overlap between the Parties is smaller (i.e. below [5-10]%) and where Ardagh would remain the supplier with the largest share of supply in the EEA. Under most of the potential product segmentations the Transaction would essentially reduce the competitors from three to two at the EEA-wide level, since the fourth player (after Ardagh)<sup>82</sup> in most cases<sup>83</sup> has a share of supply not exceeding [0-5].

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<sup>79</sup> Austria, the Benelux, Czech Republic, Denmark, northern France and western Poland.

<sup>80</sup> Austria, Bosnia, Bulgaria, Croatia, Czech Republic, Moldova, Poland, Serbia, Slovak Republic, Slovenia, Romania and Ukraine.

<sup>81</sup> With the exception of 2-piece DRD tinplate cans, where the second player would be French Massilly.

<sup>82</sup> Under most product segmentations this fourth player would be Massilly.

<sup>83</sup> With the exception of the potential narrower segments of 2-piece DRD cans, where G&M has a market share of [5-10]% and of 2-piece DRD tinplate cans, where Ardagh is the fourth player with a market share of [5-10].



**Table 1: Shares of supply in 2013 for metal food cans in the EEA**

	All metal food cans	3-piece	2-piece	2-piece DRD	All tinplate	2-piece tinplate	3-piece tinplate	2-piece DRD tinplate	3-piece + 2-piece DWI
<b>Crown</b>	[30-40]%	[30-40]%	[30-40]%	[20-30]%	[30-40]%	[40-50]%	[30-40]%	[30-40]%	[30-40]%
<b>Mivisa</b>	[10-20]%	[10-20]%	[0-5]%	[5-10]%	[10-20]%	[5-10]%	[10-20]%	[10-20]%	[10-20]%
<b>Combined</b>	<b>[40-50]%</b>	<b>[50-60]%</b>	<b>[30-40]%</b>	<b>[30-40]%</b>	<b>[50-60]%</b>	<b>[50-60]%</b>	<b>[50-60]%</b>	<b>[50-60]%</b>	<b>[50-60]%</b>
<b>Ardagh</b>	[20-30]%	[20-30]%	[40-50]%	[40-50]%	[20-30]%	[30-40]%	[20-30]%	[5-10]%	[20-30]%
<b>Massilly</b>	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[10-20]%	[0-5]%
<b>Auxiliar</b>	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
<b>G&amp;M</b>	[0-5]%	[0-5]%	[0-5]%	[5-10]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
<b>CanPack</b>	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
<b>Silgan</b>	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
<b>Sicom</b>	[0-5]%	[0-5]%	-	-	[0-5]%	-	[0-5]%	-	[0-5]%
<b>Others</b>	[5-10]%	[5-10]%	[0-5]%	[5-10]%	[5-10]%	[5-10]%	[5-10]%	[10-20]%	[5-10]%

Source: Notifying Party

- (68) Mivisa does not produce 2-piece DWI and aluminium cans. Therefore, in these potential sub-segments no overlap between Crown and Mivisa exists.
- (69) In paragraphs (70) to (105) below, the general arguments that apply to all the affected geographic markets will be presented and analysed. Thereafter in paragraphs (107) to (178) particularities of each of the geographic areas will be assessed.

*The Notifying Party's view*

- (70) The Notifying Party advanced a number of arguments why the Transaction would not create a significant impediment to effective competition in any of the affected markets, however defined.
- (71) First, the Notifying Party claims that the metal food can market is characterised by *significant spare capacity* and this would limit the Merged Entity's ability to raise prices after the merger. It further argues that in assessing the competitive situation in a given area, account must be taken of the competitive pressure coming from suppliers located in the adjacent areas,<sup>84</sup> all of which have spare capacity and can easily ship their

<sup>84</sup> Such as Ardagh's plants in Germany, the Netherlands, northern Italy and southern England, which allegedly exercise competitive constraints over suppliers in France or CanPack's plant in Poland,

production across the borders without major increments on the final price. Thus, in view of the Notifying Party, the competitors, even located across the borders will continue – as they do now – to constrain the Merged Entity.

- (72) While the Notifying Party admits that spare capacity might be lower in the peak demand period (i.e. between July and October), it states that competitors can prepare in advance and maintain high spare capacity by means of producing and stocking metal food cans in off-peak periods (i.e. first half of the year). According to the Notifying Party, such practice would be facilitated by the fact that warehousing costs are low. Alternatively, competitors could run additional shifts (for instance by increasing from the usual pattern of 5 working days per week to the pattern of 6 or 7 working days per week).
- (73) Second, the Notifying Party argues that it is common for customers to *multi-source and change suppliers*, because switching costs are minimal and contracts last for a maximum of one year. Thus, the Notifying Party concludes that the ability of customers to switch to competitors (who have spare capacity to meet the customers' demand) will act as a further competitive constraint on the Merged Entity.
- (74) Third, the Notifying Party notes that the existence of *self-manufacturing customers*, who threaten to expand their internal production (or indeed start internal production) also poses a strong constraint on metal food can producers. Such self-manufacturers could even begin to sell their production in the merchant market.
- (75) Finally, according to the Notifying Party, there are *no relevant barriers to entry* since (i) access to raw material, distribution services, printing and lacquering services is easy, (ii) there are no regulatory barriers in the field of metal food cans, (iii) brands and IP rights do not play a role in this industry, and (iv) economies of scale are not substantial and are achieved at the level of individual production line. The Notifying Party also argues that flexibility is a feature of the market, as evidenced for instance by the frequent moving of production lines across different locations in the EEA.

#### *The Commission's market investigation and assessment*

- (76) On the basis of the market investigation the above arguments of the Notifying Party cannot be confirmed. The Parties are viewed as close competitors, levels of spare capacity were over-estimated, competitors identified restrictions to their spare capacity, customers reported difficulties in switching, multi-sourcing appears to take place mostly among the two or three main players, self-manufacturing is of much lesser importance as a competitive constraint and only available to particularly large customers and finally the most successful recent entrant in many of the affected markets appears to be Mivisa.

#### Closeness of competition

- (77) The vast majority of competitors and customers consider that Mivisa and Crown have a specific advantage in the supply of metal food cans *vis-à-vis* other suppliers.<sup>85</sup>

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Sarten's plant in Bulgaria and Silgan's plants in Slovakia and Austria which allegedly exercise competitive constraints over suppliers in Hungary.

<sup>85</sup> Responses to question 41 of "Questionnaire Q1 – Customers" and to question 40 of "Questionnaire Q2 – Competitors".

In particular for Mivisa, customers mentioned the following advantages: proximity, being a low cost producer offering lower prices, quality and services.<sup>86</sup> For Crown, the advantages noted by customers include: wide geographic coverage, capacity to meet volume demands, reliability as well as having a large R&D centre.<sup>87</sup> Competitors note in addition that both Parties have an advantage on terms of better access to raw materials and services due to their strong purchasing power.<sup>88</sup>

- (78) Furthermore, the majority of competitors and customers consider that for Mivisa the closest competitor is Crown, with Ardagh, Massilly and Silgan variably occupying the 2<sup>nd</sup> and 3<sup>rd</sup> places in the replies.<sup>89</sup> On the other hand, most competitors and customers consider that for Crown the closest competitor is Ardagh, followed generally by Mivisa and then Silgan.<sup>90</sup>
- (79) In conclusion, Crown and Mivisa are in general considered by market participants as close competitors with specific advantages over their rivals.

#### Spare capacity

- (80) Regarding spare capacity, the Commission carried out a market reconstruction in order to more reliably establish the true levels of spare capacity in the relevant markets. On the basis of this market reconstruction, competitors' combined spare capacity in area comprising the Benelux, Spain, Portugal, Germany, Hungary, France and the respective surrounding countries<sup>91</sup> is lower than 50% of the total capacity. This is significantly below the estimation by the Notifying Party for the same area which corresponds to 63%.
- (81) Moreover, part of the demand for cans is subject to seasonality<sup>92</sup> which implies a reduction of spare capacity in the high season. Among the customers whose production is seasonal, the majority experience seasonality for 80-100% of their production and they do not take deliveries of cans out of season to stock them.<sup>93</sup> For competitors the percentage of production that is subject to seasonality varies from 10% to 75%, although most competitors appear to be in the 20-40% range.<sup>94</sup> The average percentage of spare capacity in the high season varies from 5% to 40%, although most competitors appear to be around 10%.<sup>95</sup>

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<sup>86</sup> Responses to question 41 of "Questionnaire Q1 – Customers".

<sup>87</sup> *Ibidem*.

<sup>88</sup> Responses to question 40 of "Questionnaire Q2 – Competitors".

<sup>89</sup> Responses to questions 41 and 42 of "Questionnaire Q2 – Competitors" and questions 45 and 46 of the "Questionnaire Q1-Customers".

<sup>90</sup> *Ibidem*.

<sup>91</sup> Namely in Austria, Belarus, Bulgaria, Czech Republic, Denmark, Poland, Slovakia and Slovenia.

<sup>92</sup> Seasonality is relevant to customers who fill cans with fruit, vegetables or fish. Seasonality is not so important for e.g. pet food producers.

<sup>93</sup> Responses to questions 53 and 54 of "Questionnaire Q1 – Customers".

<sup>94</sup> Responses to question 56 of "Questionnaire Q2 – Competitors".

<sup>95</sup> Responses to question 57 of "Questionnaire Q2 – Competitors".

- (82) This is confirmed by the data received from the Notifying Party. On this basis it is possible to observe that spare capacity in Crown's plants is in general well below the annual average between May and September in the affected regions.

**Figure 2: Average monthly spare capacity as a percentage of total capacity in Crown's plants located in the affected regions**

[...]

- (83) Taking into account these demand variations during the year, almost all competitors produce metal food cans also out of season and stock them ready for use when needed.<sup>96</sup> The slight majority of competitors state that they usually spread through the year their production in order to satisfy their customers' needs in the high season and estimate the cost of storage at 2-5% (of the total cost of the can).<sup>97</sup> Thus, although storage is possible, it increases the cost of production and thus decreases profitability of suppliers that do not have sufficient spare capacity to produce in the high season.<sup>98</sup> Therefore these producers are put at a disadvantage vis-à-vis suppliers with high spare capacity in the high season.
- (84) Additionally, the majority of competitors stated that they keep some spare capacity in the amount of 10-40% ('buffer capacity') to satisfy unexpected variations in the needs of their existing customers, in order to maintain a good commercial relation with them.<sup>99</sup> This is something the Parties themselves also do. Moreover, in order to meet unexpected increase in demand, competitors need to source additional raw material. According to competitors, tinsplate and aluminium need to be ordered 2-6 months in advance, which creates a bottleneck for increasing usage of capacity.<sup>100</sup>
- (85) As a result, with a few exceptions, no competitor appears to be able to start supplying a new customer with more than 100 million units of increased demand in any of the affected geographic areas.
- (86) There is also another potential restriction to rapid production expansion related to the production of can ends<sup>101</sup>. Since almost none of the competitors is entirely self-sufficient in respect of supplying its customers' needs for can ends and almost all competitors resort (regularly or exceptionally) to purchasing can ends from other market players, often from Crown or Mivisa, some lead time is necessary for these purchases.<sup>102</sup>
- (87) The Commission therefore concludes that the Notifying Party has over-estimated the level of competitors' spare capacity, and that the restrictions regarding seasonality

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<sup>96</sup> Responses to question 58 of "Questionnaire Q2 – Competitors".

<sup>97</sup> Responses to question 59 of "Questionnaire Q2 – Competitors".

<sup>98</sup> Minutes of conference call with a competitor of 20 January 2014.

<sup>99</sup> Responses to question 63 of "Questionnaire Q2 – Competitors", minutes of conference call with a competitor of 20 January 2014.

<sup>100</sup> Responses to question 60 of "Questionnaire Q2 – Competitors".

<sup>101</sup> Minutes of a conference call with a competitor of 20 January 2014.

<sup>102</sup> Responses to question 62 of "Questionnaire Q2 – Competitors".

and the need to keep some buffer capacity are significant. The analysis of spare capacity per country/region is carried in the respective sections IV.3.1.1 to IV.3.1.6 below.

#### Multi-sourcing and switching suppliers

- (88) On the basis of the market investigation the Commission notes that the majority of customers multi-source.<sup>103</sup> Among those customers some have multiple suppliers for different types or sizes of cans, while the majority multi-sources even for the same types or sizes of cans.<sup>104</sup> Among the reasons for multi-sourcing customers mention (i) quality problems experienced in the past and thus a need to have an alternative supplier, (ii) gains resulting from the possibility of playing off one supplier against another in the commercial negotiations, (iii) need to ensure flexibility and (iv) need to secure sufficient quantities. The need to multi-source may also result from customers' cost consciousness, since the cost of an empty can ranges between 10% and 40% of the cost of the final product.<sup>105</sup> Multi-sourcing customers have on average 2-3 suppliers. The minority of customers that single-source does this because of the proximity and the strong relationship with the supplier.<sup>106</sup>
- (89) Given that most customers report the need to multi-source, a given supplier may have high market power even in the presence of some alternative competitors. One of the customers clearly stated that they have additionally homologated<sup>107</sup> one of the main suppliers of metal food cans in order to ensure a better negotiation position and in fact this strategy turned out to be successful in that as a result, that customer obtained better price conditions from one of the Parties.<sup>108</sup> Competitors also confirm that the strategy of threatening to switch to other suppliers is widely used by customers.<sup>109</sup>
- (90) The need to rely on more than one supplier is also confirmed by the fact that the vast majority of customers consider Mivisa as a necessary or inevitable supplier of metal food cans,<sup>110</sup> due to the competitive pressure Mivisa exercises in the market and the absence of sufficient number of suppliers. Customers also consider Crown as a necessary or inevitable supplier, mainly because it is the largest can supplier in Europe and/or because it is able to supply all of the required can sizes and volumes.<sup>111</sup>

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<sup>103</sup> Responses to question 37 of "Questionnaire Q1 – Customers".

<sup>104</sup> Responses to question 37 of "Questionnaire Q1 – Customers".

<sup>105</sup> Responses to question 5 of "Questionnaire Q1 – Customers".

<sup>106</sup> Responses to question 37.1 of "Questionnaire Q1 – Customers".

<sup>107</sup> Homologation is a quality check carried by the customers before they accept a new supplier of metal food cans.

<sup>108</sup> Minutes of conference call with a customer of 20 January 2014.

<sup>109</sup> Responses to questions 48 and 49 of "Questionnaire Q2 – Competitors".

<sup>110</sup> Responses to question 42.1 to "Questionnaire Q1 – Customers".

<sup>111</sup> Responses to question 43 of "Questionnaire Q1- Customers".

- (91) It should be noted that the most important factor for customers when they choose a supplier of metal food cans is quality, followed by price and capacity to meet volume demands.<sup>112</sup> A customer subject to seasonality stated that since the period of harvests, when products are put into cans, is short any quality problems with the cans have significant consequences as part of the production may be lost.<sup>113</sup> The importance which the customers attach to quality is also reflected in the fact that customers homologate producers of metal food cans before they accept them as their suppliers.
- (92) The vast majority of customers state that they could not change their supplier of metal food cans quickly and without incurring significant costs.<sup>114</sup> The main obstacles to switching mentioned by customers relate to: (i) the length of their homologation (internal qualification processes), which can last at least 6 months and up to 2 years, (ii) the costs of adapting their seaming machines to a new supplier<sup>115</sup>, and (iii) the lack of alternative suppliers in the proximity. In fact, the majority of customers have not switched their supplier of metal food cans in the last 3 years.<sup>116</sup> Among those who consider that switching is possible quickly and without incurring significant costs some state that the switch is simple only between their existing suppliers, which they already homologated.
- (93) The vast majority of competitors state that they have won volumes from Crown's and Mivisa's customers in the past three years<sup>117</sup>, although only one company cites examples of significant volumes.<sup>118</sup> However, overall, the market shares have remained fairly stable between the 3 big players (Crown, Ardagh and Mivisa) suggesting that the majority of any switches have taken place between these three players. It also results from the information submitted by the Parties that most of their customer relationships have lasted for more than 10 years.<sup>119</sup>
- (94) As concerns possible alternative suppliers to the Parties, in Spain Auxiliar is often mentioned by customers, while in France, Hungary, Germany and the Benelux it is mainly Ardagh.<sup>120</sup>
- (95) In conclusion, switching to a new supplier is not as easy as the Notifying Party argues, and the need of customers to have more than one supplier may give a supplier significant market power even in the presence of some alternative competitors.

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112 Responses to question 40 of "Questionnaire Q1 – Customers".

113 Minutes of conference call with a customer of 17 January 2014.

114 Responses to question 38 of "Questionnaire Q1 – Customers".

115 The Parties noted that they themselves often pay for the adjustment of seaming machines, however it has not been shown that this is an industry-wide practice.

116 Responses to question 39 of "Questionnaire Q1-Customers".

117 Winning volumes does not equate winning new customers given that volumes may be shifted between existing suppliers.

118 Responses to question 43 of "Questionnaire Q2 – Competitors".

119 Annexes 8A.6.e and 8A.6.f to the Form CO.

120 Responses to question 44 of "Questionnaire Q1 – Customers".

### Self-manufacturing and buyer power

- (96) Only a few customers admit that they threatened their metal food can suppliers with self-manufacturing.<sup>121</sup> In fact, the vast majority states that they do not have the required resources to start in-house manufacturing,<sup>122</sup> namely they do not have the necessary know-how, technology and that investment in such technology would be too costly. Moreover, the majority of customers also state that it would take them more than a year to start producing, they might not have any bargaining power when purchasing raw materials and, in general, the volumes of cans they need do not justify such an investment.<sup>123</sup>
- (97) Moreover, even if a large customer would be able to threaten with the possibility of self-manufacturing, this would not necessarily benefit other customers. [...].<sup>124</sup> [...].
- (98) The possibility of self-manufacturing does not therefore seem to impose a significant competitive constraint on suppliers of metal food cans, being only potentially available to particularly large customers.

### Barriers to entry and expansion

- (99) All competitors state that they have had experience with moving production lines from one plant to another and that it is relatively easy and quick, taking from one to six months.<sup>125</sup> However, this only applies to moving lines between existing plants. Real new entry in the sense of establishing a new plant seems relatively rare. A small minority of customers could give an example of a new supplier starting to provide metal food cans in the territory where they have filling plants (and one of these customers in fact mentioned Mivisa as a recent entrant). An overwhelming majority of customers do not expect new entry in their territory.<sup>126</sup>
- (100) It appears that new entry would require (i) the investment and time (costs are estimated at EUR 1-10 million and time at 6 to 18 months)<sup>127</sup> (ii) the existence of economies of scale with respect to sourcing of raw materials for the production of metal food cans, confirmed by the vast majority of competitors<sup>128</sup> and (iii) customer volume commitments. The competitors in particular note that investment in a new plant or in additional production lines in a new location would only be undertaken once customer's commitments are secured.<sup>129</sup> Thus one of the biggest challenges for a new entrant would be to find the necessary medium/large customers ready to make volume commitments for a number of years. However, customers appear to be

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121 Responses to question 55.1 of "Questionnaire Q1-Customers".

122 Responses to question 56 of "Questionnaire Q1-Customers".

123 Responses to question 56 of "Questionnaire Q1-Customers".

124 "Food Iberia Commercial Budget 2013 & Rfc3 2012", slide 25.

125 Responses to question 50 of "Questionnaire Q2 – Competitors".

126 Responses to question 58 and 59 of "Questionnaire Q1 – Customers".

127 Responses to question 54 of "Questionnaire Q2 – Competitors".

128 Responses to question 52 of "Questionnaire Q2 – Competitors".

129 Responses to question 54 of "Questionnaire Q2 – Competitors".

reluctant to make these long-term commitments (normally contracts are negotiated on a yearly basis<sup>130</sup>). This is in particular the case when the potential new entrant looking for volume commitments is a can manufacturer that customers have not used previously and which they would have to homologate.

- (101) The Notifying Party stated that one of the routes to the market is via sponsored entry and that some of the Parties' competitors entered new territories this way. In fact, Mivisa's entry into Hungary and the Benelux was sponsored by customers. Mivisa was also about to establish a new production facility in France, [...].
- (102) However, most customers would not consider sponsoring entry by committing to certain volumes for a number of years to entice a supplier to set up a new plant in a territory where they have a filling plant.<sup>131</sup> Many also express doubts whether the volumes they could offer to a potential new supplier would be sufficiently attractive to act as an incentive to establish a new production facility in the new territory.<sup>132</sup>
- (103) It should be noted that the customers sponsoring Mivisa's entry had all used Mivisa previously. Moreover, Mivisa's entries were rather in exceptional circumstances: (i) in the Benelux it bought a plant from a customer [...]; (ii) in Hungary, a customer purchased a plant there and asked Mivisa [...];<sup>133</sup> (iii) the planned investment in France related to a project [...].
- (104) The difficulty of expansion into a neighbouring country without a sponsor customer is also evident from Mivisa's attempt to grow organically in Germany. Since Mivisa acquired the facility in the Benelux (in 2007), from where it is serving Germany, it has only managed to gain market share in Germany of [0-5]%.
- (105) On the basis of the above considerations it can be concluded that entry through the establishment of production facilities in a new country is relatively difficult and risky. This is further confirmed by the fact that the vast majority of competitors state that they do not have plans to enter or expand into the affected geographic markets in the next three to five years.<sup>134</sup> It also appears that Mivisa has been the most successful recent entrant in many of the affected markets.
- (106) In the following the competitive situation in each of the affected geographic areas will be assessed.

#### IV.3.1.1. Spain

- (107) As shown in Table 2 below and considering the broadest market including all metal food cans the Parties' combined market share in Spain amounts to [70-80]%<sup>135</sup>, with

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<sup>130</sup> Responses to question 48.1 of "Questionnaire Q1-Customers".

<sup>131</sup> Responses to question 60 of "Questionnaire Q1-Customers".

<sup>132</sup> *Ibidem*.

<sup>133</sup> A 'wall-to-wall' project refers to a plant of cans supplier build in very close proximity to the customer's premises.

<sup>134</sup> Responses to question 51 of "Questionnaire Q2 – Competitors".

<sup>135</sup> Market shares are provided by volume. The Notifying Party stated it is not able to estimate market shares by value but that in any case they should be very similar to those based on volume.



an overlap of [20-30]%. The second player is Auxiliar<sup>136</sup> with a market share of approximately [10-20]% while market shares of all the remaining players are below [10-20]%.

- (108) Taking into account the different potential market segmentations, the Parties' combined market share would range between [60-70]% (with an overlap of [20-30]%) and [70-80]% (with an overlap of [30-40]%). In all of these segmentations the Transaction would lead to a "three-to-two" merger, with the second player being Ardagh in 2-piece cans and Auxiliar in 3-piece cans.

**Table 2: Market shares in 2013 for metal food cans in Spain**

	All metal food cans	3-piece	2-piece	2-piece DRD	All tinfoil	2-piece tinfoil	3-piece tinfoil	2-piece DRD tinfoil	3-piece + 2-piece DWI
<b>Crown</b>	[20-30]%	[10-20]%	[30-40]%	[30-40]%	[20-30]%	[40-50]%	[10-20]%	[40-50]%	[10-20]%
<b>Mivisa</b>	[40-50]%	[50-60]%	[20-30]%	[20-30]%	[50-60]%	[30-40]%	[50-60]%	[30-40]%	[50-60]%
<b>Combined</b>	<b>[70-80]%</b>	<b>[70-80]%</b>	<b>[60-70]%</b>	<b>[60-70]%</b>	<b>[70-80]%</b>	<b>[70-80]%</b>	<b>[70-80]%</b>	<b>[70-80]%</b>	<b>[70-80]%</b>
<b>Ardagh</b>	[5-10]%	[0-5]%	[20-30]%	[20-30]%	[0-5]%	[5-10]%	[0-5]%	[5-10]%	[0-5]%
<b>Massilly</b>	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
<b>Auxiliar</b>	[10-20]%	[10-20]%	[0-5]%	[0-5]%	[10-20]%	[5-10]%	[10-20]%	[5-10]%	[10-20]%
<b>G&amp;M</b>	[0-5]%	-	[5-10]%	[5-10]%	-	-	-	-	-
<b>Others</b>	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[5-10]%	[0-5]%	[5-10]%	[0-5]%

Source: Notifying Party

- (109) As shown in Table 3, the Parties have in fact have gained some market share in metal food cans<sup>137</sup> in Spain during the period 2010-2013, while their competitors' market shares have decreased slightly.

**Table 3 Market shares in the period 2010-2013 for metal food cans in Spain**

	2010	2011	2012	2013
<b>Crown</b>	[20-30]%	[20-30]%	[20-30]%	[20-30]%
<b>Mivisa</b>	[40-50]%	[40-50]%	[40-50]%	[40-50]%
<b>Combined</b>	<b>[60-70]%</b>	<b>[60-70]%</b>	<b>[70-80]%</b>	<b>[70-80]%</b>
<b>Others</b>	[30-40]%	[30-40]%	[20-30]%	[20-30]%

Source: Notifying Party

<sup>136</sup> With the exception of the potential segments of 2-piece cans, 2-piece DRD cans, 2-piece tinfoil cans and 2-piece DRD tinfoil cans, where it would be Ardagh.

<sup>137</sup> The evolution of market shares in the various potential sub-segments of the market for metal food cans in Spain has followed a similar pattern during the period 2010-2013.

### *The Notifying Party's view*

- (110) According to the Notifying Party, there are several players supplying the market in Spain, namely Ardagh, Auxiliar, Massilly and G&M<sup>138</sup>, all of them having high levels of spare capacity. The Notifying Party argues that this would limit the Merged Entity's ability to raise prices. The Notifying Party further argues that even in high season there is still spare capacity and that it is always possible to increase supply during high season by producing in the low season and inventorying this production or by increasing the number of shifts.
- (111) The Notifying Party also considers that the threat of self-manufacturing in Spain poses a strong competitive constraint on suppliers. It does not however provide examples of customers who produce metal food cans in-house.
- (112) The Notifying Party further submits that the cost of switching to alternative suppliers is low and that customers multi-source. In particular, it claims that prices in Spain are often negotiated for each individual order for a year, which facilitates switching. Moreover, the Notifying Party argues that entry and expansion is easy since there are no relevant entry barriers and moving lines between different regions is common practice.

### *The Commission's market investigation and assessment*

- (113) On the basis of the market reconstruction carried out by the Commission it can be concluded that in 3-piece, Crown and Mivisa are the players with the highest spare capacity levels in Spain, and in particular Mivisa whose spare capacity is similar to the total market demand of 3-piece cans in Spain. The spare capacity of the alternative players with production plants in Spain, namely Ardagh, Auxiliar and Massilly, is well below these of the Parties and in total below the combined sales of the Parties in Spain (and these combined sales are more than [1-1.5] times higher than the combined spare capacity of the Parties' rivals).
- (114) With respect to 2-piece metal food cans, Mivisa is clearly the player with the highest spare capacity. The remaining three alternatives to the Parties have substantially lower spare capacity levels, although their combined spare capacity amounts to a similar value to the Parties' combined sales. However, taking seasonality into account, the remaining spare capacity in the high season for 2-piece cans would not be enough to cover the Parties' combined sales in this period.
- (115) After the Transaction, Crown would internalize the spare capacity of Mivisa, reducing the pressure on prices. Moreover, the potential gains resulting from a strategy to increase prices would be capitalised not only on Crown's sales volumes but also on Mivisa's sales. Hence, the ability and the incentives for price increase are clearly higher after the Transaction. This is confirmed by customers who expressed the view, in the course of market investigation, that the elimination of Mivisa would lead to higher prices in Spain.<sup>139</sup>

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<sup>138</sup> G&M supplies Spain from its plants in Denmark and Sweden.

<sup>139</sup> Responses to question 61 of "Questionnaire Q1-Customers".

- (116) Based on information provided by the Notifying Party, in 3-piece cans [70-80]% of Crown's sales and [80-90]% of Mivisa's sales in Spain correspond to customers that multi-source. Moreover, around [50-60]% of Crown's sales are to customers that also source from Mivisa and [40-50]% of Mivisa's sales are to customers of Crown.<sup>140</sup> This is not only evidence that customers in Spain generally need at least two suppliers, but also that the majority of customers of each of the Parties who multi-source buy from the other Party. Following the implementation of the Transaction this possibility would be eliminated. According to the majority of customers, the only alternative left would be Auxiliar.<sup>141</sup> One of the Spanish respondents to the market investigation claimed that it would no longer have any alternative suppliers, because other players in the Spanish market are too small and not able to offer the volume levels required.<sup>142</sup> It should also be noted that customers report that distance and transport costs play a major role in identifying alternative suppliers of metal food cans, due to the fact that moving empty cans over large distances is expensive and influences the reliability of supply.<sup>143</sup>
- (117) Moreover, Spain is Mivisa's home market, where it is viewed by customers as a particularly efficient company, an aggressive competitor (in terms of price) and one which is able to supply high volumes of high quality metal food cans in various sizes.<sup>144</sup> This is confirmed by the internal documents of Crown where it is stated that [...].<sup>145</sup>
- (118) Taking into account the arguments of the Notifying Party as to the competitive constraints originating from the areas neighbouring Spain, the competitive landscape on a wider cross-border regional market was also analysed. In an area consisting of Spain, Portugal and southern France, the combined market share of the Parties would still amount to [60-70]% in the market for all metal food cans. In the various segments, the combined market shares would be at least [50-60]% (in 2-piece cans with an increment of [10-20]% and only one sizeable competitor remaining, i.e. Ardagh with a significantly lower market share of [30-40]%) and at most [70-80]% (in 2-piece tins cans, with an increment of [20-30]% and the next player Massilly holding a market share of only [5-10]%).

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<sup>140</sup> Form CO, par. 389 and 404.

<sup>141</sup> Responses to question 44 of "Questionnaire Q1-Customers".

<sup>142</sup> Responses of a customer to questions 44, 63 of "Questionnaire Q1-Customers", minutes of conference call of 16 January 2014.

<sup>143</sup> Minutes of conference call with a customer of 16 January 2014.

<sup>144</sup> Responses to question 48 of "Questionnaire Q1-Customers", response of a customer to question 66 of "Questionnaire Q1-Customers".

<sup>145</sup> "Commercial BP-14", page 3.

**Table 4: Market shares in 2013 for metal food cans in the region consisting of Spain, Portugal, and southern France<sup>146</sup>**

	All metal food cans	3-piece	2-piece	2-piece DRD	All tinplate	2-piece tinplate	3-piece tinplate	2-piece DRD tinplate	3-piece + 2-piece DWI
<b>Crown</b>	[20-30]%	[20-30]%	[30-40]%	[30-40]%	[20-30]%	[40-50]%	[20-30]%	[40-50]%	[20-30]%
<b>Mivisa</b>	[40-50]%	[40-50]%	[10-20]%	[10-20]%	[40-50]%	[20-30]%	[40-50]%	[20-30]%	[40-50]%
<b>Combined</b>	<b>[60-70]%</b>	<b>[70-80]%</b>	<b>[50-60]%</b>	<b>[50-60]%</b>	<b>[70-80]%</b>	<b>[70-80]%</b>	<b>[70-80]%</b>	<b>[70-80]%</b>	<b>[70-80]%</b>
<b>Ardagh</b>	[10-20]%	[5-10]%	[30-40]%	[30-40]	[5-10]%	[5-10]%	[5-10]%	[5-10]%	[5-10]%
<b>Massilly</b>	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[5-10]%	[0-5]%	[5-10]%	[0-5]%
<b>Auxiliar</b>	[10-20]%	[10-20]%	[0-5]%	[0-5]%	[10-20]%	[5-10]%	[10-20]%	[5-10]%	[10-20]%
<b>G&amp;M</b>	[0-5]%	-	[0-5]%	[0-5]%	-	-	-	-	-
<b>Others</b>	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[5-10]%	[0-5]%	[5-10]%	[0-5]%

Source: Notifying Party

- (119) It can therefore be concluded that the market structure is similar whether considered on a national or cross-border regional level.
- (120) The remaining arguments of the Notifying Party regarding the general competitive constraints have been discussed in paragraphs (76) to (105) above.

#### IV.3.1.2. Portugal

- (121) In Portugal the combined market share of the Parties for all metal food cans would amount to [60-70]% in the market for all metal food cans. In the other segmentations the combined market shares would vary between at least [50-60]%, for 2-piece cans, and at most [80-90]%, for 3-piece cans.
- (122) While in 2-piece cans Ardagh appears to have a sizeable position with a market share of at least [30-40]%, in the remaining segments the Parties appear not to face any significant competition in Portugal.

<sup>146</sup> In the years 2010-2013 the evolution of market shares for metal food cans and its various potential sub-segments in the region consisting of Spain, Portugal, and southern France followed a similar pattern as in Spain.

**Table 5: Market shares in 2013 for metal food cans in Portugal**

	All metal food cans	3-piece	2-piece	2-piece DRD	All tinfoil	2-piece tinfoil	3-piece tinfoil	2-piece DRD tinfoil	3-piece + 2-piece DWI
<b>Crown</b>	[50-60]%	[50-60]%	[50-60]%	[50-60]%	[50-60]%	[40-50]%	[50-60]%	[40-50]%	[50-60]%
<b>Mivisa</b>	[10-20]%	[30-40]%	[5-10]%	[5-10]%	[30-40]%	[20-30]%	[30-40]%	[20-30]%	[30-40]%
<b>Combined</b>	<b>[60-70]%</b>	<b>[80-90]%</b>	<b>[50-60]%</b>	<b>[50-60]%</b>	<b>[80-90]%</b>	<b>[70-80]%</b>	<b>[80-90]%</b>	<b>[70-80]%</b>	<b>[80-90]%</b>
<b>Ardagh</b>	[20-30]%	[0-5]%	[30-40]%	[30-40]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
<b>Others</b>	[5-10]%	[5-10]%	[0-5]%	[0-5]%	[10-20]%	[10-20]%	[5-10]%	[10-20]%	[5-10]%

Source: Notifying Party

(123) As shown in Table 6, during the period 2010-2013, the Parties' combined position has been constantly very high as regards 3-piece cans,<sup>147</sup> with no alternative supplier ever reaching a market share of more than [10-20]%. The only significant fluctuations in market shares have taken place between Crown and Mivisa.

**Table 6: Market shares in the period 2010-2013 for 3-piece metal food cans in Portugal**

	2010	2011	2012	2013
<b>Crown</b>	[60-70]%	[40-50]%	[50-60]%	[50-60]%
<b>Mivisa</b>	[20-30]%	[40-50]%	[30-40]%	[30-40]%
<b>Combined</b>	<b>[90-100]%</b>	<b>[90-100]%</b>	<b>[90-100]%</b>	<b>[80-90]%</b>
<b>Others</b>	[5-10]%	[0-5]%	[5-10]%	[10-20]%

Source: Notifying Party

*The Notifying Party's view*

(124) The Notifying Party argues, as far as Portugal is concerned, that (i) there are high levels of spare capacity (originating from Ardagh's, Auxiliar's and Massilly's Spanish plants located near the Portuguese border and Colep's plant in Portugal), which would limit the Merged Entity's ability to raise prices, (ii) the costs of switching to alternative suppliers are low and customers multi-source, (iii) entry is easy since there are no relevant entry barriers and moving lines between different regions is a common practice, and (iv) self-manufacturing poses a strong competitive constraint on suppliers.

(125) Moreover, the Notifying Party submitted a memorandum on the competitive constraints in Portugal post-merger where it argues that competitors would find it profitable selling into Portugal from their plants in Spain.<sup>148</sup> The potential average

<sup>147</sup> For 2-piece cans the combined market share of the Parties has been slightly increasing over the period 2010-2013, in particular due to Mivisa's growth between 2012 and 2013.

<sup>148</sup> 'Analysis of the competitive constraints in Portugal post-merger', submitted on 12 February 2014.

margins of a competitor as efficient as Crown's Vigo plant would be around [...] % for a supplier located in Vigo. Even if the supplier were not able to obtain raw materials at prices comparable to those at which Crown procures them, the margins, according to the calculations of the Notifying Party, would still remain at a minimum of [...] % (if raw materials were [...] % more expensive). Thus, Crown concludes that competitors located in Spain would pose a constraint on the Merged Entity's incentives to raise prices in Portugal.

*The Commission's market investigation and assessment*

- (126) In Portugal the Transaction would create a quasi-monopolist for 3-piece metal food cans since the remaining player with plants in Portugal, Colep, has very limited spare capacity and is not viewed as a viable competitor by some of the Portuguese customers.<sup>149</sup>
- (127) Most competitors and customers believe that Crown and Mivisa are each other's closest competitors in Portugal.<sup>150</sup> Although there are alternative players in Spain located in the radius of 400 km that may be able to supply the Portuguese market with 3-piece cans, namely Auxiliari, Ardagh and Massilly, they have low spare capacity levels (combined sales of the Parties would be [1-1.5] times higher than total spare capacity), and are mostly concentrated on small sizes, while Portuguese customers, in particular those in the vegetable industry mostly buy large size cans.
- (128) For instance, one of the competitors located in Spain mentions that it could not serve Portugal from its Spanish plant since the Portuguese customers' demand is directed to large-size cans the transport of which would be too expensive.<sup>151</sup>
- (129) In total the spare capacity of alternative players in the radius of 400 km is still lower than the Parties' combined sales in Portugal. Mivisa, on the other hand, is the player with [...] spare capacity to supply Portugal, from its plants located within the 400 km radius. In fact Mivisa's spare capacity is [...] in the Portuguese market for 3-piece cans.
- (130) Similar to Spain, after the Transaction, Crown would internalize Mivisa's spare capacity thus reducing the pressure on price and the potential gains of a price increase strategy would be capitalised not only on its own sales volumes but also on Mivisa's sales volumes. Hence, the ability and the incentives for price increase would be higher after the Transaction.
- (131) Moreover, given the current structure of the Portuguese market (with only two sizeable players) and the customers' clear preference for multi-sourcing (also in order to have a quality back-up),<sup>152</sup> after the Transaction customers would not have any alternative in case of quality problems with the products of the Merged Entity.

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<sup>149</sup> Response to question 42 of "Questionnaire Q1-Customers".

<sup>150</sup> Responses to question 45 of "Questionnaire Q1-Customers".

<sup>151</sup> Minutes of conference call with a customer of 21 January 2014.

<sup>152</sup> Response to question 61.1 of "Questionnaire Q1-Customers".

(132) With respect to 2-piece cans, the overlap is smaller and there is an alternative supplier, Ardagh, with a significant market share ([30-40]%). Moreover, spare capacity of rivals, namely of Ardagh, Auxiliar and Massilly is well above the market demand, and thus sufficient to supply the equivalent to the combined sales of the Parties even in the high season.

#### IV.3.1.3. Benelux

(133) In the Benelux the Parties' combined market share in all metal food cans is [40-50]%, with the second player Ardagh having [40-50]%. For the various possible segmentations, the combined market shares would vary between [40-50]% and [70-80]%,<sup>153</sup> with the next player in the market after Ardagh, i.e. CanPack, having market shares not exceeding [5-10]%.

**Table 7: Market shares in 2013 for metal food cans in the Benelux**

	All metal food cans	3-piece	2-piece	2-piece DRD	All tinfoil	2-piece tinfoil	3-piece tinfoil	2-piece DRD tinfoil	3-piece + 2-piece DWI
<b>Crown</b>	[30-40]%	[30-40]%	[60-70]%	[0-5]%	[30-40]%	[70-80]%	[30-40]%	[5-10]%	[30-40]%
<b>Mivisa</b>	[10-20]%	[10-20]%	[0-5]%	[0-5]%	[10-20]%	[0-5]%	[10-20]%	[0-5]%	[10-20]%
<b>Combined</b>	<b>[40-50]%</b>	<b>[40-50]%</b>	<b>[60-70]%</b>	<b>[0-5]%</b>	<b>[40-50]%</b>	<b>[70-80]%</b>	<b>[40-50]%</b>	<b>[10-20]%</b>	<b>[40-50]%</b>
<b>Ardagh</b>	[40-50]%	[40-50]%	[30-40]%	[90-100]%	[30-40]%	[20-30]%	[40-50]%	[80-90]%	[30-40]%
<b>CanPack</b>	[5-10]%	[5-10]%	-	-	[5-10]%	-	[5-10]%	-	[5-10]%
<b>G&amp;M</b>	[0-5]%	[5-10]%	-	[0-5]%	[0-5]%	[0-5]%	[5-10]%	[0-5]%	[0-5]%

Source: Notifying Party

(134) As shown in Table 8, during the period 2010-2013 the Parties' combined market share for 3-piece cans<sup>154</sup> remained relatively stable.

<sup>153</sup> With the exception of the potential segments of 2-piece DRD cans, where it would amount to [0-5]% or [10-20]% restricting to 2-piece DRD tinfoil, with Ardagh as the only remaining player holding [90-100]% and [80-90]% of the market, respectively.

<sup>154</sup> For 2-piece cans the overlap between the Parties was below [0-5]% in the years 2010-2013, with the exceptional year of 2012, where Mivisa's market share amounted to [5-10]%.

**Table 8: Market shares in the period 2010-2013 for 3-piece metal food cans in the Benelux**

	2010	2011	2012	2013
<b>Crown</b>	[30-40]%	[20-30]%	[30-40]%	[30-40]%
<b>Mivisa</b>	[10-20]%	[20-30]%	[10-20]%	[10-20]%
<b>Combined</b>	<b>[40-50]%</b>	<b>[40-50]%</b>	<b>[40-50]%</b>	<b>[40-50]%</b>
<b>Impress/Ardagh</b>	[40-50]%	[40-50]%	[30-40]%	[40-50]%
<b>G&amp;M</b>	[5-10]%	[5-10]%	[5-10]%	[5-10]%
<b>CanPack</b>	-	-	[5-10]%	[5-10]%
<b>V&amp;N</b>	[0-5]%	[0-5]%	[0-5]%	-
<b>Kleeman</b>	[0-5]%	[0-5]%	-	-

Source: Notifying Party

*The Notifying Party's view*

- (135) The Notifying Party presented a memorandum on the competitive constraints existing in the area of the Benelux.<sup>155</sup> Crown argues that in 2-piece cans the presence of Mivisa is marginal and while Mivisa sells 2-piece DRD only, Crown is focused on 2-piece DWI cans. In 3-piece cans, Crown states that the vast majority of Mivisa's sales in the region (i.e. [...]%) are made to one single client, [...].
- (136) Additionally, the Notifying Party argues that there are high levels of spare capacity from players located outside the Benelux but supplying this area (namely, CanPack in Poland, G&M in Denmark, Ardagh in Germany, Kleeman in Germany and Silgan in Austria and Germany). The Notifying Party also refers to the fact that Massilly, although currently not supplying the Benelux, has plants located in France with spare capacity and from which it could serve this region. According to the Notifying Party, given that transport costs have decreased and cross-border trade is more common, it is now possible for these players to make competitive offers in the Benelux region.
- (137) The Notifying Party adds that customers in the Benelux multi-source and the costs of switching to alternative suppliers are low. The Notifying Party also argues that self-manufacturing is more common in this area (naming [...] as self-manufacturing customers of the Parties) and entry/expansion is easy. It also states that demand in the Benelux is highly concentrated which gives food can customers significant countervailing buyer power.
- (138) Finally the Notifying Party argues that Crown and Mivisa are not close competitors since Mivisa has focused its activity mostly on one customer and the prices of the two firms have diverged in recent years.

*The Commission's market investigation and assessment*

- (139) In the Benelux, the overlap between the Parties in 2-piece cans is minimal ([0-5]% in the overall market for 2-piece cans and maximum [0-5]% in the potential segment of

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<sup>155</sup> 'Note on the competitive constraints existing in the area of Benelux, North France', submitted on 3 February 2014.



2-piece DRD tinplate cans). Therefore the Transaction would not lead to a material change to the current duopoly between Crown and Ardagh in 2-piece cans. Furthermore Crown's sales relate mostly to DWI 2-piece cans, Mivisa's relate solely to DRD 2-piece cans.

- (140) In 3-piece cans, although the Merged Entity would have a market share below 50% ([40-50]%), the only large competitor left would be Ardagh ([40-50]%). The two fringe competitors jointly hold [10-20]% of the market but are located farther than 400 km away from the Benelux i.e. in Denmark (G&M) and Poland (CanPack). Moreover in the past four years G&M has not been able to increase its market share in the Benelux and CanPack supplies only one customer in the Benelux.
- (141) As regards the spare capacity levels of alternative players for 3-piece cans in the Benelux region (within the 400 km radius), it is all in the hands of Ardagh. The only exception is Kleeman, a small operator in Germany whose level of spare capacity is very limited.
- (142) All the other players are located beyond the 400 km radius. In particular for the players located farther away (Denmark and Poland), it cannot be assumed that they are ready to dedicate all their spare capacity only to the Benelux. In fact, since Crown has a wide geographic coverage, hypothetically if competitors dedicated their entire spare capacity to the Benelux, Crown could profitably raise prices in the other areas, while these competitors would not be able to respond in these other regions with increased sales.
- (143) Ardagh's spare capacity is large enough to supply the sum of Crown and Mivisa's sales in the Benelux. Thus any attempt to increase prices by the Merged Entity could theoretically be constrained by Ardagh since Ardagh would have the ability to supply all of the Merged Entity's customers in the Benelux. However, in a duopolistic market it is highly questionable whether Ardagh would have any incentive to undercut a price rise initiated by the Merged Entity (in particular as there is no evidence that Ardagh has to date tried to aggressively undercut the Parties<sup>156</sup>). It is more likely that Ardagh would have the incentive to follow the Merged Entity's price rise given that most customers need two suppliers and there are no other alternatives within the radius of 400 km.
- (144) In fact, in the Benelux, according to the Notifying Party, [...] % of Crown's sales correspond to customers that multi-source, half of those using Mivisa as the alternative supplier.<sup>157</sup> The Transaction would eliminate this possibility, and only Ardagh would remain as an alternative to the Merged Entity.<sup>158</sup> This is confirmed by customers who refer that their only alternative in case they would no longer be able to purchase from the Parties would be Ardagh.<sup>159</sup> For Mivisa the number of multi-sourcing customers is substantially lower ([...] %) as a result of the exclusivity

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<sup>156</sup> Response to question 63 of "Questionnaire Q1-Customers" of a customer from Benelux who claims Ardagh is not very competitive for some of the can sizes.

<sup>157</sup> Form CO, footnote 76 and Annex 8A.6.g.

<sup>158</sup> For Mivisa this value is substantially lower ([...] %) as a result of the exclusivity agreement with their main client [...] in force in the period between 2007-2011. Currently [...] seems to continue to single source from Mivisa.

<sup>159</sup> Responses to question 44 of the "Questionnaire Q1-Customers".

agreement with its main customer [...] (this exclusivity was in force during the period between 2007-2011).<sup>160</sup> Currently [...] continues to single source from Mivisa.<sup>161</sup>

- (145) Furthermore, Mivisa is viewed by customers as a particularly aggressive player in the Benelux<sup>162</sup> and customers have used a threat to switch to Mivisa in their negotiations to put pricing pressure on Crown. In fact, one may argue that Mivisa's market share in the Benelux is not representative of the competitive pressure it poses given that it is a relatively recent entrant (it started supplying from its plant in the Netherlands in 2007) and still fighting for a higher market share. The fact that Mivisa has one strong customer ([...]), does not imply that Mivisa has not been able to gain other customers. To the contrary, Mivisa is, on the back of this one major customer, able to operate aggressively in the Benelux market. Moreover, the guaranteed volumes from [...] enabled it to justify its investment in the Benelux, something other potential entrants have not yet achieved.
- (146) The majority of customers consider that Mivisa and Crown are each other's closest competitors in the Benelux area.<sup>163</sup> The evolution of market shares (see Table 8) for 3-piece cans between Mivisa and Crown in the Benelux confirms closeness of competition: when one of the Parties loses market share the other one gains it. The tipping client was [...], which switched from Crown to Mivisa, then back to Crown (this is reflected in the market share fluctuations). CanPack has won a client from Ardagh (in 3-piece cans) and G&M market shares have been decreasing over the last four years.
- (147) As regards the arguments of the Notifying Party concerning self-manufacturing and easy of entry/expansion refer to paragraphs (96) to (105) above. It should be also added that Crown notes in its internal documents<sup>164</sup> [...]. The Notifying Party also admitted, when providing clarifications to this internal documents, that it still views self-manufacturing clients as potential opportunities. This implies that even those (few) customers who produce food cans in-house are still viewed as potential customers and thus the constraint posed by self-manufacturing is not sufficient to remove competition concerns.
- (148) The above analysis is also valid for the wider the region around the Benelux, including Benelux, northern France and the adjacent areas of Germany. In this area the combined market share of the Parties would still be [40-50]% in the market for all metal food cans (with an overlap of [5-10]%) and [60-70]% in the market for 3-piece metal food cans. The only significant alternative would be Ardagh. In 2-piece cans the overlap between the Parties is minimal ([0-5]% in the overall 2-piece market and maximum [0-5]% in the potential segment of 2-piece DRD tinplate).

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<sup>160</sup> Form CO, par. 299.

<sup>161</sup> Responses to question 37 of the "Questionnaire Q1-Customers".

<sup>162</sup> Responses to question 47 of the "Questionnaire Q1-Customers".

<sup>163</sup> Responses to questions 45 and 46 of "Questionnaire Q1-Customers".

<sup>164</sup> "2011 Europe RF 3 2011 BP 0 2012 - Part 1", slide 4.

**Table 9: Market shares in 2013 for metal food cans in the Benelux, northern France and adjacent areas of Germany<sup>165</sup>**

	All metal food cans	3-piece	2-piece	2-piece DRD	All tinplate	2-piece tinplate	3-piece tinplate	2-piece DRD tinplate	3-piece + 2-piece DWI
<b>Crown</b>	[30-40]%	[40-50]%	[10-20]%	[5-10]%	[40-50]%	[30-40]%	[40-50]%	[50-60]%	[40-50]%
<b>Mivisa</b>	[5-10]%	[10-20]%	[0-5]%	[0-5]%	[5-10]%	[0-5]%	[10-20]%	[0-5]%	[10-20]%
<b>Combined</b>	<b>[40-50]%</b>	<b>[60-70]%</b>	<b>[10-20]%</b>	<b>[5-10]%</b>	<b>[50-60]%</b>	<b>[30-40]%</b>	<b>[60-70]%</b>	<b>[60-70]%</b>	<b>[50-60]%</b>
<b>Ardagh</b>	[40-50]%	[30-40]%	[70-80]%	[80-90]%	[30-40]%	[60-70]%	[30-40]%	[20-30]%	[30-40]%
<b>Massilly</b>	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[10-20]%	[0-5]%
<b>G&amp;M</b>	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
<b>CanPack</b>	[0-5]%	[0-5]%	-	-	[0-5]%	-	[0-5]%	-	[0-5]%
<b>Silgan</b>	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	-	[0-5]%	-	[0-5]%
<b>Kleman</b>	[0-5]%	[0-5]%	-	-	[0-5]%	-	[0-5]%	-	[0-5]%
<b>Others</b>	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%

Source: Notifying Party

#### IV.3.1.4. *France*

- (149) Mivisa does not have any production plant in France, but has been supplying from its plant in La Rioja (Spain) customers in southern France and northern France. Mivisa's customers in northern France are also supplied from its plant in the Benelux.
- (150) The Parties' combined market share in France would be [40-50]% in the market including all metal food cans, with Ardagh being the second player with [40-50]%. In the various possible market segments, the combined market share varies between [40-50]% and [60-70]%.<sup>166</sup> The two other significant competitors would be Ardagh and Massilly.

<sup>165</sup> In the years 2010-2013 the evolution of market shares for 3-piece metal food cans in the region consisting of the Benelux, northern France and adjacent areas of Germany has been following a similar pattern as in the Benelux.

<sup>166</sup> With the exception of the potential segment of 2-piece DRD cans, where it would amount to [10-20]%, with Ardagh as the second player holding [70-80]% of the market and in the segment of 2-piece cans, where it would amount to [20-30]% with Ardagh holding [60-70]%.

**Table 10: Market shares in 2013 for metal food cans in France**

	All metal food cans	3-piece	2-piece	2-piece DRD	All tinplate	2-piece tinplate	3-piece tinplate	2-piece DRD tinplate	3-piece + 2-piece DWI
<b>Crown</b>	[30-40]%	[40-50]%	[10-20]%	[10-20]%	[40-50]%	[40-50]%	[40-50]%	[40-50]%	[40-50]%
<b>Mivisa</b>	[10-20]%	[20-30]%	[0-5]%	[0-5]%	[10-20]%	[0-5]%	[20-30]%	[5-10]%	[20-30]%
<b>Combined</b>	<b>[40-50]%</b>	<b>[60-70]%</b>	<b>[20-30]%</b>	<b>[10-20]%</b>	<b>[60-70]%</b>	<b>[40-50]%</b>	<b>[60-70]%</b>	<b>[50-60]%</b>	<b>[60-70]%</b>
<b>Ardagh</b>	[40-50]%	[20-30]%	[60-70]%	[70-80]%	[20-30]%	[30-40]%	[20-30]%	[10-20]%	[20-30]%
<b>Massilly</b>	[5-10]%	[5-10]%	[5-10]%	[10-20]%	[10-20]%	[10-20]%	[5-10]%	[30-40]%	[5-10]%
<b>Others</b>	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	-	[0-5]%

Source: Notifying Party

(151) As shown in Table 11, during the period 2010-2013, the Parties' combined market share in 3-piece cans<sup>167</sup> has been relatively stable.

**Table 11: Market shares in the period 2010-2013 for 3-piece metal food cans in France**

	2010	2011	2012	2013
<b>Crown</b>	[40-50]%	[30-40]%	[40-50]%	[40-50]%
<b>Mivisa</b>	[20-30]%	[20-30]%	[20-30]%	[20-30]%
<b>Combined</b>	<b>[60-70]%</b>	<b>[60-70]%</b>	<b>[60-70]%</b>	<b>[60-70]%</b>
<b>Ardagh</b>	[20-30]%	[20-30]%	[20-30]%	[20-30]%
<b>Massilly</b>	[5-10]%	[5-10]%	[5-10]%	[5-10]%
<b>Others</b>	[0-5]%	[0-5]%	[0-5]%	[0-5]%

Source: Notifying Party

*The Notifying Party's view*

(152) According to the Notifying Party there are high levels of spare capacity to supply the French market. In southern France there are at least three alternative players to the Parties, namely Ardagh, Massilly and Auxiliar that can supply from their plants in France and Spain (La Rioja). In northern France there are at least three additional players, namely Ardagh, Massilly and Kleeman that can supply from their plants in France and Germany.

(153) The Notifying Party also raises the following arguments (i) the costs of switching to alternative suppliers are low and customers multi-source, (ii) entry is easy since there are no relevant entry barriers and moving lines between different regions is a common practice, and (iii) self-manufacturing poses a strong competitive constraint on suppliers.

<sup>167</sup> In the overall market for 2-piece cans Mivisa's market share remained minimal during the period 2010-2013 and reached at most [0-5]%.

*The Commission's market investigation and assessment*

- (154) In France, the Transaction would essentially lead to a duopoly on the overall market for metal food cans between the Merged Entity (with market shares around [40-50]%) and Ardagh (with market share around [40-50]%). The other remaining competitor, Massilly, has only a limited market share (around [5-10]%). As regards potential further segmentations, the overlap is significant for 3-piece cans ([20-30]%) and rather minimal for 2-piece cans ([0-5]%).
- (155) According to the market investigation, the Transaction would raise (i) competition concerns in southern France similar to those raised in Spain, and (ii) competition concerns in northern France similar to those raised in the Benelux.
- (156) In fact, for 3-piece cans, most of the spare capacity to serve the market in France is in the hands of Mivisa, namely in its plants in the Benelux and in Spain (La Rioja). In France, the only alternative players with spare capacity are Ardagh and Massilly. However, their total spare capacity located in France is substantially lower than the combined sales of the Parties (the combined sales of the Parties is more than 1.8 higher than the combined spare capacity of rivals).
- (157) If the regions around France are taken into account, then spare capacity for 3-piece cans increases (namely as a result of including the plants of Massilly and Auxiliar in La Rioja and Ardagh in Germany). If all these players dedicate their spare capacity to serve the French market the Merged Entity may not have the ability to implement a successful strategy of price increases in France. However, it cannot be assumed that all these players are ready to dedicate all their spare capacity only to France. Moreover, all these plants are spread in a large region surrounding France not being able to supply with the same profitability all the regions in France.
- (158) Additionally for customers that multi-source, there are fewer alternatives since most of the spare capacity is again in the hands of Ardagh. Similar to the Benelux, the incentives of Ardagh to compete against a price rise implemented by the Merged Entity are questionable. It is more likely that Ardagh would have the incentive to follow the Merged Entity's price rise given that most customers need two suppliers and there are very few other alternatives in the radius of 400 km.
- (159) In fact, [...] % of Crown's sales in France are to clients that multi-source. [...] % of these clients are common customers with Mivisa and thus they would lose their alternative supplier after the Transaction. As regards Mivisa, all of its customers multi-source and more than [...] % of Mivisa's sales are to customers that also source from Crown.<sup>168</sup> Regarding other suppliers, most customers only use Ardagh as an alternative to the Parties, although Massilly is also referred to as a possible alternative.<sup>169</sup>
- (160) The analysis of market share evolution, presented in Table 11, shows that Crown lost market share to Mivisa in 2011 in 3-piece cans. However, in 2013 Mivisa lost market share, mainly to Ardagh. In 2012 Crown gained market share in 3-piece cans

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<sup>168</sup> Form CO, par. 577 and Annex 8A.6.g.

<sup>169</sup> Responses to question 44 of the "Questionnaire Q1-Customers".

from Ardagh, and then it lost market share to Ardagh in 2013. Thus it seems that the main competition has occurred between Crown, Mivisa and Ardagh.

- (161) In the area around France, including France, Benelux and the adjacent areas in Spain, Italy, Germany and southern England, the combined market share of the Parties would still amount to [50-60]% in the market for all metal food cans. In the various market segments the combined market shares would be at least [40-50%]<sup>170</sup> and at most [60-70]%, while the market shares of Ardagh range between [10-20]% and [50-60]% and the market shares of Massilly range between [0-5]% and [30-40]% (the latter only relating to 2-piece DRD tinplate).

**Table 12: Market shares in 2013 for metal food cans in France, Benelux and adjacent areas in Spain, Italy, Germany and southern England<sup>171</sup>**

	All metal food cans	3-piece	2-piece	2-piece DRD	All tinplate	2-piece tinplate	3-piece tinplate	2-piece DRD tinplate	3-piece + 2-piece DWI
<b>Crown</b>	[30-40]%	[40-50]%	[20-30]%	[10-20]%	[40-50]%	[30-40]%	[40-50]%	[40-50]%	[40-50]%
<b>Mivisa</b>	[10-20]%	[10-20]%	[0-5]%	[0-5]%	[10-20]%	[0-5]%	[10-20]%	[5-10]%	[10-20]%
<b>Combined</b>	<b>[50-60]%</b>	<b>[60-70]%</b>	<b>[20-30]%</b>	<b>[20-30]%</b>	<b>[50-60]%</b>	<b>[40-50]%</b>	<b>[60-70]%</b>	<b>[50-60]%</b>	<b>[50-60]%</b>
<b>Ardagh</b>	[40-50]%	[20-30]%	[60-70]%	[60-70]%	[30-40]%	[50-60]%	[20-30]%	[10-20]%	[30-40]%
<b>Massilly</b>	[0-5]%	[0-5]%	[5-10]%	[5-10]%	[0-5]%	[5-10]%	[0-5]%	[30-40]%	[0-5]%
<b>Auxiliar</b>	[0-5]%	[0-5]%	-	-	[0-5]%	-	[0-5]%	-	[0-5]%
<b>G&amp;M</b>	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
<b>CanPack</b>	[0-5]%	[0-5]%	-	-	[0-5]%	-	[0-5]%	-	[0-5]%
<b>Kleeman</b>	[0-5]%	[0-5]%	-	-	[0-5]%	-	[0-5]%	-	[0-5]%
<b>Silgan</b>	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	-	[0-5]%	-	[0-5]%
<b>National</b>	-	-	-	-	-	-	-	-	-
<b>Sicom</b>	[0-5]%	[0-5]%	-	-	[0-5]%	-	[0-5]%	-	[0-5]%
<b>Others</b>	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%		[0-5]%	[0-5]%	[0-5]%

Source: Notifying Party

<sup>170</sup> With two exceptions; (i) in 2-piece cans, the combined market share would amount to [20-30]% (with a minimal increment) with the second being Ardagh with [60-70]% and (ii) in 2-piece DRD cans the combined market share would amount to [20-30]% (with a minimal increment) with Ardagh holding [60-70]%.

<sup>171</sup> In the years 2010-2013 the evolution of market shares for 3-piece metal food cans in the region consisting of France, Benelux and adjacent areas in Spain, Italy, Germany and southern England has been following a similar pattern as in France.

IV.3.1.5. *Hungary*

(162) In Hungary, according to the Notifying Party, only 3-piece tinplate cans are sold. The combined market share of the Parties would amount to [60-70]% with Ardagh in second position with a market share of [10-20]% and PikoPack third with a market share of [10-20]%.

**Table 13: Market shares in 2013 for 3-piece tinplate cans in Hungary**

	<b>3-piece tinplate cans</b>
<b>Crown</b>	[40-50]%
<b>Mivisa</b>	[10-20]%
<b>Combined</b>	<b>[60-70]%</b>
<b>Ardagh</b>	[10-20]%
<b>CanPack</b>	[0-5]%
<b>PikoPack</b>	[10-20]%
<b>Sarten</b>	[0-5]%
<b>Silgan</b>	[0-5]%

Source: Notifying Party

(163) As shown in Table 14, during the period 2010-2013 the Parties' market shares remained constant except in 2012 when Crown seems to have lost one client to Mivisa, which it then regained in 2013. The combined market share of the Parties decreased by [0-5] percentage points during this period (in favour of Ardagh, PikoPack and Silgan).

**Table 14: Market shares in the period 2010-2013 for 3-piece metal food cans in Hungary**

	<b>2010</b>	<b>2011</b>	<b>2012</b>	<b>2013</b>
<b>Crown</b>	[40-50]%	[40-50]%	[30-40]%	[40-50]%
<b>Mivisa</b>	[20-30]%	[20-30]%	[20-30]%	[10-20]%
<b>Combined</b>	<b>[60-70]%</b>	<b>60-70%</b>	<b>[60-70]%</b>	<b>[60-70]%</b>
<b>Ardagh</b>	[10-20]%	[10-20]%	[10-20]%	[10-20]%
<b>CanPack</b>	-	-	[0-5]%	[0-5]%
<b>PikoPack</b>	[10-20]%	[10-20]%	[10-20]%	[10-20]%
<b>Sarten</b>	-	-	[0-5]%	[0-5]%
<b>Silgan</b>	[0-5]%	[0-5]%	[0-5]%	[0-5]%

Source: Notifying Party

*The Notifying Party's view*

- (164) The Notifying Party submitted a memorandum<sup>172</sup> on the competitive pressures present in Hungary, in which it argues that several competitors would remain active after the Transaction, namely PikoPack and Ardagh with plants in Hungary and CanPack, Silgan and Sarten with plants outside Hungary but still within the radius of 400 km. According to the Notifying Party, these players have high levels of spare capacity and are able to produce all sizes of cans sold in Hungary.
- (165) Moreover, the Notifying Party claims that there are high flows of cross-border trade in Hungary and that margins are sufficient to be profitable for a supplier outside Hungary to start supplying customers in Hungary. According to Crown the potential margins of a supplier located outside Hungary would be at least [...]%, (for Silgan in Austria, assuming transport costs of [...]% and on the basis of the highest labour cost), and for the remaining suppliers above [...]%.

*The Commission's market investigation and assessment*

- (166) Although the Merged Entity would have a market share above [60-70]% in Hungary and customers currently purchase metal food cans mainly domestically, there seems to be significant potential for imports by several important players from neighbouring countries. In particular, the plants of Silgan (Slovakia and Austria), Ardagh (Hungary and the Czech Republic), PikoPack (Hungary) and CanPack (southern Poland) are all located within a 400 km radius from the centre of Hungary.<sup>173</sup> In fact, most of the customers mention alternative suppliers in neighbouring countries. As such, in contrast to Spain, the Benelux and France, the Transaction would not reduce the number of key players to two.
- (167) When analysing multi-sourcing in Hungary, [...] Mivisa's customer's multi-source and [...]% of Crown's sales are to customers who multi-source, most of them not only from Crown/Mivisa but also from Ardagh, PikoPack and Silgan.<sup>174</sup> In fact, the majority of customers in Hungary refer not only to Ardagh as an alternative to the Parties but also to Silgan in case they would no longer be able to purchase from the Parties.<sup>175</sup> Also, according to the Notifying Party, one of its large customers in Hungary will launch in-house can production in the first half of 2014.<sup>176</sup> This was confirmed by the customer in question in the course of market investigation.

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<sup>172</sup> 'Note on the competitive pressures existing in the area of Hungary and adjacent territories', submitted on 13 February 2014.

<sup>173</sup> According to the Notifying Party also Crown until 2012 was supplying Hungarian customers from its plant in the Slovak Republic.

<sup>174</sup> Form CO, par. 775 and 776.

<sup>175</sup> Responses to question 44 of "Questionnaire Q1-Customers".

<sup>176</sup> Form CO, par. 116.



- (168) The total spare capacity of alternative players within the radius of 400 km around Hungary is about [1-1.5] times higher than the combined sales of the parties in Hungary, and almost equivalent to the total demand of the Hungarian market. In a 600 km radius, there are also the plants of Sarten (Bulgaria) and Silgan (Slovenia) with significant spare capacities.
- (169) Taking into account seasonality, rivals' spare capacity in the high season (April to September) in the radius of 400 km, (assuming a pattern of 6 working days per week), is still enough to cover the combined sales of the Parties in Hungary and even in the radius of 400 km around Hungary.
- (170) It is therefore likely that rivals would have the ability to increase supply to customers located in Hungary to such an extent that they could defeat attempts by the Merged Entity to increase prices. Moreover, given that there remain a number of alternatives on the market after the Transaction for multi-sourcing customers, including relatively new entrants to the Hungarian market such as Silgan, Sarten and CanPack, it is more likely than not that these competitors would have the incentive to compete rather than simply follow any price rise attempts.
- (171) Mivisa was also not seen as a very aggressive competitor in Hungary<sup>177</sup> as opposed to other regions.<sup>178</sup> It has just three main customers which include the two firms that sponsored its entry into Hungary in 2007 and a third one that started being supplied after the move to the new location in Hungary in 2012,<sup>179</sup> and since then it has not expanded much. These facts are confirmed by the market share evolution (see Table 14).
- (172) In a potential wider market including Hungary and adjacent areas the situation would be somewhat different, since the combined market shares of the Parties would be substantially lower. In the broader market including all metal food cans the combined market shares would be [30-40]%, with an overlap of [5-10]%. In the other potential segmentations the combined market share would be of similar magnitude, with three other players with market shares above [10-20]%, although the Merged Entity would still be the largest player in the market on the basis of almost all market segmentations. This seems to confirm that the effects of the Transaction in Hungary would not be significant.

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<sup>177</sup> Minutes of conference call with a customer of 17 January 2014.

<sup>178</sup> Responses to question 47 of the "Questionnaire Q1-Customers".

<sup>179</sup> There is a 4th customer to whom the sales volume are very small.

**Table 15: Market shares in 2013 for metal food cans in Hungary and adjacent areas in Austria, Bosnia, Bulgaria, Croatia, Czech Republic, Moldova, Poland, Serbia, Slovak Republic, Slovenia, Romania and Ukraine<sup>180</sup>**

	All metal food cans	3-piece	All tinplate	3-piece tinplate	3-piece + 2-piece DWI
<b>Crown</b>	[30-40]%	[30-40]%	[30-40]%	[30-40]%	[30-40]%
<b>Mivisa</b>	[5-10]%	[5-10]%	[5-10]%	[5-10]%	[5-10]%
<b>Combined</b>	<b>[30-40]%</b>	<b>[30-40]%</b>	<b>[30-40]%</b>	<b>[30-40]%</b>	<b>[30-40]%</b>
<b>Ardagh</b>	[10-20]%	[10-20]%	[10-20]%	[10-20]%	[10-20]%
<b>G&amp;M</b>	[0-5]%	-	[0-5]%-	-	-
<b>CanPack</b>	[10-20]%	[10-20]%	[10-20]%	[10-20]%	[10-20]%
<b>PikoPack</b>	[0-5]%	[5-10]%	[5-10]%	[5-10]%	[5-10]%
<b>FMP</b>	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
<b>Sarten</b>	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
<b>Silgan</b>	[10-20]%	[20-30]%	[20-30]%	[20-30]%	[20-30]%
<b>MGK</b>	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
<b>Argo</b>	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%

Source: Notifying Party

- (173) These values are not significantly different from the Merger Entity's share of total capacity for 3-piece metal food cans in a radius of 400 km around Hungary. The Parties would jointly control under [40-50]% of the capacity available and three competitors (Ardagh, CanPack and Silgan) would each still hold more than [10-20]% of the capacity in the region<sup>181</sup>

#### IV.3.1.6. *Germany*

- (174) In Germany, the market structure is to a certain extent different than in the other geographic areas described in this Decision. The Parties' combined market share would amount to almost [30-40]% in the market for all metal food cans. Although, in some of the segmentations the combined market share would amount at most to [60-70]% (in the segment of 3-piece tinplate cans), the overlap between the Parties would be at most [0-5]%.<sup>182</sup>

<sup>180</sup> When assessing the evolution of market shares in the years 2010-2013 for 3-piece metal food cans in this region, it can be noted that the market shares of each of the Parties has slightly decreased, while the market share of Ardagh has significantly increased (from [10-20]% to [10-20]%) and those of other players have remained relatively stable.

<sup>181</sup> Commission's analysis of the data collected from the market reconstruction and from the Form CO.

<sup>182</sup> In the period between 2010 and 2013 the overlap remained minimal.

**Table 16: Market shares in 2013 for metal food cans in Germany**

	All metal food cans	3-piece	2-piece	2-piece DRD	All tinplate	2-piece tinplate	3-piece tinplate	3-piece + 2-piece DWI
<b>Crown</b>	[30-40]%	[50-60]%	[0-5]%	[5-10]%	[40-50]%	[0-5]%	[50-60]%	[40-50]%
<b>Mivisa</b>	[0-5]%	[0-5]%	-	-	[0-5]%	-	[0-5]%	[0-5]%
<b>Combined</b>	<b>[30-40]%</b>	<b>[60-70]%</b>	<b>[0-5]%</b>	<b>[5-10]%</b>	<b>[40-50]%</b>	<b>[0-5]%</b>	<b>[60-70]%</b>	<b>[40-50]%</b>
<b>Ardagh</b>	[50-60]%	[20-30]%	[80-90]%	[60-70]%	[40-50]%	[90-100]%	[20-30]%	[40-50]%
<b>Silgan</b>	[10-20]%	[10-20]%	[10-20]%	[20-30]%	[5-10]%	-	[10-20]%	[5-10]%
<b>Others</b>	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	-	[0-5]%	[0-5]%

Source: Notifying Party

*The Notifying Party's view*

(175) According to the Notifying Party there are high levels of spare capacity to supply Germany, most of them located in the German territory. Moreover, self-manufacturing by one of Crown's most important customers poses a strong competitive constraint.

*The Commission's market investigation and assessment*

(176) In 2-piece cans there is no overlap between the Parties. As concerns 3-piece cans, the overlap in the market for all metal 3-piece food cans in Germany is very small, i.e. [0-5]%.<sup>183</sup> In the German market two significant players, Ardagh and Silgan, would still remain as alternatives. Moreover there are no common customers between Mivisa and Crown in Germany.

(177) Moreover, there is enough spare capacity in Germany to cover the sales of Mivisa, and if one considers the spare capacity of the plants serving Germany (including Ardagh's plant in the Netherlands), the total spare capacity in 3-piece is almost equivalent to the German market demand.

(178) Even if the scope of the potential geographic market is widened beyond Germany to include areas in adjacent countries, the combined market share of the Parties would be [30-40]% in the market for all metal food cans, with an overlap of [5-10]%. As concerns the possible segmentations, the combined market shares would be in the range between [20-30]%<sup>184</sup> and [50-60]% but the maximum increment would be [10-20]%.

<sup>183</sup> In any case this overlap will be removed as a result of the Commitments.

<sup>184</sup> With the exception of 2-piece DRD cans, where it would amount to [5-10]% and 2-piece cans, where it would amount to [10-20]%.

**Table 17: Market shares in 2013 for metal food cans in Germany and adjacent areas in Austria, the Benelux, Czech Republic, Denmark, northern France and western Poland.**

	All metal food cans	3-piece	2-piece	2-piece DRD	All tinline	2-piece tinline	3-piece tinline	2-piece DRD tinline	3-piece + 2-piece DWI
<b>Crown</b>	[30-40]%	[40-50]%	[10-20]%	[5-10]%	[30-40]%	[20-30]%	[40-50]%	[20-30]%	[30-40]%
<b>Mivisa</b>	[5-10]%	[10-20]%	[0-5]%	[0-5]%	[5-10]%	[0-5]%	[10-20]%	[0-5]%	[5-10]%
<b>Combined</b>	<b>[30-40]%</b>	<b>[50-60]%</b>	<b>[10-20]%</b>	<b>[5-10]%</b>	<b>[40-50]%</b>	<b>[20-30]%</b>	<b>[50-60]%</b>	<b>[20-30]%</b>	<b>[40-50]%</b>
<b>Ardagh</b>	[40-50]%	[20-30]%	[60-70]%	[60-70]%	[30-40]%	[50-60]%	[20-30]%	[10-20]%	[30-40]%
<b>Massilly</b>	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
<b>G&amp;M</b>	[5-10]%	[0-5]%	[5-10]%	[10-20]%	[5-10]%	[10-20]%	[0-5]%	[50-60]%	[0-5]%
<b>CanPack</b>	[0-5]%	[5-10]%	[0-5]%	[0-5]%	[5-10]%	[0-5]%	[5-10]%	[0-5]%	[5-10]%
<b>Kleman</b>	[0-5]%-	[0-5]%-	-	-	[0-5]%	-	[0-5]%-	-	[0-5]%-
<b>Silgan</b>	[5-10]%	[5-10]%	[0-5]%	[5-10]%	[5-10]%	[0-5]%	[5-10]%	[0-5]%	[5-10]%
<b>Others</b>	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%-	[0-5]%	[0-5]%	[0-5]%

Source: Notifying Party

#### IV.3.2. Stand-alone can ends

- (179) Crown and Mivisa sell only EOE and NEOs on a stand-alone basis. The Parties do not offer peelable can ends on a stand-alone basis.
- (180) In the potential markets for stand-alone can ends the combined market shares of the Parties would at most reach [30-40] for EOE, with an overlap of at most [5-10] and [20-30] for NEOs with an overlap of [5-10].

**Table 18: Market shares in 2012 for stand-alone can end cans in the EEA**

	EOE	NEO	All ends
<b>Crown</b>	[20-30]%	[5-10]%	[20-30]%
<b>Mivisa</b>	[5-10]%	[10-20]%	[5-10]%
<b>Combined</b>	<b>[30-40]%</b>	<b>[20-30]%</b>	<b>[10-20]%</b>
<b>Ardagh</b>	[50-60]%	[70-80]%	[60-70]%
<b>Sonoco</b>	[0-5]%	-	[0-5]%
<b>Others</b>	[0-5]%	[0-5]%	[0-5]%

Source: Notifying Party

- (181) The majority of the Parties' competitors, which are the potential customers of stand-alone can ends, believes that the Transaction would have no impact on stand-alone can ends, since the market is at least EEA-wide (if not global) with many

alternative sources of supply.<sup>185</sup> Some of the competitors claimed that since stand-alone can ends can travel farther, they can be sourced even from outside the EEA.<sup>186</sup>

#### IV.3.3. Metal closures

(182) In the potential market for metal closures the combined market share of the Parties would amount to approximately [30-40]%, with an overlap of [0-5]%.

**Table 19: Market shares in 2012 for metal closures in EEA**

<b>Crown</b>	[20-30]%
<b>Mivisa</b>	[0-5]%
<b>Combined</b>	<b>[30-40]%</b>
<b>Silgan</b>	[30-40]%
<b>Tecnocap</b>	[5-10]%
<b>Massilly</b>	[5-10]%
<b>V&amp;N</b>	[0-5]%
<b>Pano</b>	[0-5]%
<b>TOKK</b>	[0-5]%
<b>Bemasa</b>	[0-5]%
<b>Others</b>	[5-10]%

Source: Notifying Party

(183) All competitors and the majority of customers consider that the Transaction would have no impact in the market for metal closures, since the market is at least EEA-wide (if not global) with many alternative sources of supply.<sup>187</sup> Examples of possible alternative suppliers are Silgan (the market leader with a market share of [30-40]%), Tecnocap (with [5-10]%) and Massilly (with [5-10]%).

#### IV.4. Conclusion

(184) The Commission has found that the Transaction results in very high market shares for the Merged Entity in Spain ([70-80]% for all metal food cans) and Portugal ([80-90]% for 3-piece cans). After the Transaction an important and aggressive competitor, Mivisa, would be eliminated. In Portugal there is no other credible supplier to the Merged Entity, while in Spain only Auxiliar would remain as a sizeable player. Spare capacity in both Portugal and Spain would mostly be in the hands of the Merged Entity. Therefore other players would have limited ability to supply customers with required volumes and product ranges. As a result, after the Transaction, the Merged Entity's market power would be increased and it would have the ability and incentive to engage in a strategy to increase prices in Portugal and Spain (and potential wider cross-border regional markets).

<sup>185</sup> Responses to question 67 of "Questionnaire Q2 – Competitors".

<sup>186</sup> Responses to question 67 of "Questionnaire Q2 – Competitors".

<sup>187</sup> Responses to question 68 of "Questionnaire Q2 – Competitors" and to question 65 of "Questionnaire Q1-Customers".

- (185) The Commission has also found that the Transaction results in high market shares for the Merged Entity in the Benelux ([40-50]% in 3-piece cans) and France ([60-70]% in 3-piece cans). The Transaction would remove Mivisa as a relatively recent and aggressive entrant from the Benelux and the French markets. In both the Benelux and France only one sizeable competing supplier would remain (namely Ardagh). Most of the remaining spare capacity would also be held by this same one competitor. In this duopolistic market Ardagh would have incentives to follow Merged Entity's strategy to increase prices.
- (186) Taking into account the results of market investigation, the Commission concludes that Crown and Mivisa are viewed by the majority of both their rivals and customers as close competitors. The Parties' rivals have identified various restrictions to their spare capacity (related to seasonality and the need to keep buffer capacity). Moreover customers submitted that quality is the most important factor when selecting a new metal food cans supplier and therefore they carry homologation procedures before making their decision. The length of these procedures implies that there may be difficulties in switching to a new supplier. While multi-sourcing appears to be a common strategy of the customers, it takes place mostly among the two or three main players and therefore these market players may have more market power than what results only from their market shares. Additionally self-manufacturing is of much lesser importance as a competitive constraint and only available to particularly large customers. It can also be concluded that entry through the establishment of production facilities in a new country is relatively difficult and requires finding large volume customer commitments.
- (187) On this basis the Commission has serious doubts that the Transaction is likely to significantly impede effective competition in the internal market through non-coordinated effects, in particular as a result of creation of a dominant position in Spain and Portugal (and potential wider cross-border regional markets) and by eliminating important competitive constraints in the Benelux and France (and potential wider cross-border regional markets).
- (188) On the other hand the Commission does not consider serious doubts to arise in respect of Hungary (and potential wider cross-border regional markets), mainly because of the presence of significant alternative suppliers in addition to Ardagh (such as: Silgan, CanPack and PikoPack) with sufficient capacity to counteract potential attempts by the Merged Entity to increase prices.
- (189) Likewise the Commission does not consider serious doubts to arise in respect of Germany, mainly because of the small overlap between the Parties and the presence of significant alternative suppliers in addition to Ardagh (such as Silgan, G&M and CanPack) with sufficient capacity to counteract potential attempts by the Merged Entity to increase prices.
- (190) For the reasons summarised above the Commission concludes that the Transaction raises serious doubts as to its compatibility with the internal market and the EEA Agreement regarding the markets for metal food cans and its potential segmentations in:
- a) Spain,

- b) Portugal,<sup>188</sup>
- c) the Benelux,<sup>189</sup> and in
- d) France.<sup>190</sup>

(191) Equally, under a wider definition of the relevant geographic market(s), i.e. cross-border regional, the Transaction gives also rise to serious doubts as to its compatibility with the internal market and the EEA Agreement regarding the markets for metal food cans and its potential segmentations in the following areas:

- a) Spain, Portugal and southern France;
- b) France, the Benelux and adjacent areas in Spain, Italy, Germany and southern England;<sup>191</sup>
- c) the Benelux, northern France and the adjacent areas of Germany.<sup>192</sup>

## V. REMEDIES

### V.1. Description of the proposed commitments

(192) In order to render the concentration compatible with the internal market, the Notifying Party modified the notified concentration by proposing commitments on 21 February 2014. Following the market test of these proposed commitments, the final and improved version of the commitments (the 'Commitments') as described below, was submitted on 11 March 2014. The Commitments are annexed to this Decision and form an integral part thereof.

(193) The Commitments include the following two divestment businesses:

- 1) The divestment of Crown's metal cans business in Spain, which consists of five plants located in: La Rioja, Murcia, Coruxo-Vigo, Ugao-Miravalles and Montmeló (the "Spanish Divestment Business"). The divestment will include personnel (including sales and marketing personnel), existing contracts with customers and suppliers, machinery and in general all assets associated with the operation of the plants. In addition Crown is also prepared to provide the purchaser with: (i) any can ends that it cannot produce internally; (ii) any cutting, lacquering and/or printing plate services; and (iii) support for sourcing raw materials (tinplate, aluminium, lacquers, coatings, compounds) for a

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<sup>188</sup> With the exception of potential segment of: 2-piece cans, 2-piece DRD, 2-piece tinplate, 2-piece DRD tinplate.

<sup>189</sup> With the exception of potential segment of: 2-piece cans, 2-piece DRD, 2-piece tinplate, 2-piece DRD tinplate.

<sup>190</sup> With the exception of potential segment of: 2-piece cans, 2-piece DRD, 2-piece tinplate, 2-piece DRD tinplate.

<sup>191</sup> With the exception of potential segment of: 2-piece cans, 2-piece DRD, 2-piece tinplate, 2-piece DRD tinplate.

<sup>192</sup> With the exception of potential segment of: 2-piece cans, 2-piece DRD, 2-piece tinplate, 2-piece DRD tinplate.

transitional period of up [...]. The purchaser may also opt to acquire all of these materials and services from third party suppliers present in the market. Moreover in order to better address competition concerns in the area of Portugal, the Spanish Divestment Business also includes:

- a) The installation of an additional production line at the Vigo plant in order to enable it to manufacture 3-piece food cans of 99mm diameter (the one type of diameter that the Vigo plant cannot currently produce and which is currently sold to Portuguese customers by Crown's Portuguese plant and by Mivisa's plant in Extremadura) with the capacity to produce [...] per year.<sup>193</sup> This line will be transferred from another non-Spanish plant of Crown.
  - b) The assignment to the purchaser of Crown's metal food can business in Spain of either (i) contracts with Mivisa's 3-piece can Portuguese customers; or (ii) contracts with Crown's 3-piece can Portuguese customers representing a market share equivalent to that of Mivisa's customers under (i). After the transfer these customers would be served by the purchaser from the Vigo plant.
- 2) The divestment of Mivisa's metal food can business in the Netherlands, which consists of one plant located in Horst (the "Dutch Divestment Business"). The divestment would include the plant's assets, contracts and customers. To the extent that the purchaser does not have cutting, lacquering and/or printing capacity, Crown would be available, at the purchaser's request, to supply these services for a transitional period of up to [...] until the purchaser is able to provide them independently or to source them from the market.
- (194) Finally, the Commitments foresee that the purchaser must be independent and unconnected to the Parties and have the financial resources, proven expertise (in particular it should have experience in the manufacture of metal food cans) and incentive to maintain and develop the Divestment Businesses as a viable and competitive force in competition with the Parties and other competitors.
- (195) It is noted that the Notifying Party [...]. However, for the reasons set out in section V.3.2 of the present Decision, the Commission concluded that the Commitments were sufficient to remove its serious doubts.

## **V.2. The Notifying Party's view on the Commitments**

- (196) Crown considers that the proposed divestment addresses any competition concerns in the Benelux, France, Portugal and Spain by significantly reducing the overlap between Crown and Mivisa.
- (197) With particular regard to southern France, Crown argues that the purchaser of the Spanish Divestment Business could exert a similar competitive pressure as Mivisa is currently exerting from its plant in La Rioja. According to the memorandum presented by the Notifying Party on the suitability of the La Rioja plant to address

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<sup>193</sup> Considering three shifts per day and five days per week.



competition concerns in southern France,<sup>194</sup> Crown's plant in La Rioja has enough spare capacity to cover Mivisa's sales in southern France and nearly [90-100]% of the combined sales of the Parties in this region. Even taking into account seasonality, there would still be enough spare capacity to cover Mivisa's sales.

- (198) Moreover, Crown estimates the potential margins that the purchaser of the Spanish Divested Business could obtain from serving southern France from La Rioja to be approximately [...]. This is only slightly below the value that Crown is earning by serving this same region from its plant in France ([...]). Considering alternative scenarios with higher transport costs or higher costs of raw material for the purchaser, Crown estimates that margins would still be above [...], and thus enough to make it profitable for the purchaser to supply this market and exert competitive pressure over Crown after the Transaction.
- (199) Regarding Portugal Crown submits that after the installation of the 99mm diameter production line the plant in Vigo the Spanish Divestment Business would be able to supply all can specifications currently sold in Portugal and would then have spare capacity to serve all the needs of the Portuguese customers in 3-piece cans. Crown also estimates that the purchaser of the Spanish Divestment Business could obtain an average margin of [...] by serving Portugal, comparable with the margin of [...] obtained by Crown when serving these customers from Alcochete in Portugal. It therefore concludes that the purchaser of the Spanish Divestment Business would still find it profitable to supply Portugal thus exerting competitive pressure over Crown after the Transaction.

### **V.3. The Commission's assessment of the Commitments**

#### *V.3.1. Framework for the Commission's assessment of the Commitments*

- (200) Where a concentration raises serious doubts as to its compatibility with the internal market, the parties may undertake to modify the operation so as to remove the grounds for the serious doubts identified by the Commission with a view to having the transaction approved in phase I of the merger review procedure.
- (201) As set out in the Commission Notice on Remedies<sup>195</sup> the commitments have to eliminate the competition concerns entirely, they have to be comprehensive and effective from all points of view and they must be capable of being implemented effectively within a short period of time, as the conditions of competition on the market will not be maintained until the commitments have been fulfilled.<sup>196</sup>
- (202) In assessing whether or not the remedies will restore effective competition, the Commission considers the type, scale and scope of the remedies by reference to the

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<sup>194</sup> 'Suitability of La Rioja divestment to address competition concerns in South France', dated 25 November 2013.

<sup>195</sup> Commission Notice on remedies acceptable under Council Regulation (EC) No 139/2004 and under Commission Regulation (EC) No 802/2004 (2008/C 267/01), hereinafter the "Commission Notice on Remedies".

<sup>196</sup> Commission Notice on Remedies, paragraph 9.

structure and the particular characteristics of the market in which the competition concerns arise.<sup>197</sup>

- (203) Divestiture commitments are the best way to eliminate competition concerns resulting from horizontal overlaps.<sup>198</sup> Other commitments (such as licensing) may be suitable to resolve competitive concerns if those remedies are equivalent to divestitures in their effects. The divested activities must consist of a viable business that, if operated by a suitable purchaser, can compete effectively with the Merged Entity on a lasting basis and that is divested as a going concern.<sup>199</sup>
- (204) The business must include all the assets which contribute to its current operation or which are necessary to ensure its viability and competitiveness and all personnel which are currently employed or which are necessary to ensure the business' viability and competitiveness. Personnel and assets which are currently shared between the business to be divested and other businesses of the parties, but which contribute to the operation of the business or which are necessary to ensure its viability and competitiveness, must also be included. Otherwise, the viability and competitiveness of the business to be divested would be endangered. Therefore, the divested business must contain the personnel providing essential functions for the business, at least in a sufficient proportion to meet the on-going needs of the divested business.<sup>200</sup>
- (205) Furthermore, the intended effect of the divestiture will only be achieved if and once the business is transferred to a suitable purchaser with proven relevant expertise and ability to maintain and develop the divested business as a viable and active competitive undertaking.

### V.3.2. *The Commission's market test and assessment of the Commitments*

- (206) The Commission launched a market test of the commitments on 24 February 2014. In general, no substantiated concerns were expressed as to the appropriateness of the commitments as a whole,<sup>201</sup> although the market test identified specific elements of the commitments that were subsequently improved by the final version submitted on 11 March 2014.<sup>202</sup>

#### V.3.2.1. *The Spanish Divestment Business*

- (207) The Commission concludes that the Commitments remove almost entirely<sup>203</sup> the overlap in Spain, both in 2-piece and 3-piece cans. In fact, the purchaser would become the market leader in Spain in respect of 2-piece cans. Since the transfer of

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<sup>197</sup> Commission Notice on Remedies, paragraph 12.

<sup>198</sup> Commission Notice on Remedies, paragraph 17.

<sup>199</sup> Commission Notice on Remedies, paragraph 23.

<sup>200</sup> Commission Notice on Remedies, paragraphs 25 and 26.

<sup>201</sup> Responses to question 1 of "Questionnaire Q3 – Competitors –Market test" and question 1 of "Questionnaire Q4 – Customers – Market test".

<sup>202</sup> The Parties implemented these specific improvements in the second and final version of the proposed commitments, which was submitted on 11 March 2014.

<sup>203</sup> Less than [...] % of Crown's sales in Spain constitute metal food cans produced in other countries (i.e. France, Italy and Portugal).

the Spanish Divestment Business is structured as a sale of shares, there will be a direct substitution of Crown by the purchaser, which could continue exerting the same competitive pressure as Crown is exerting currently in that region.

- (208) The proposed commitments also remove the serious doubts identified in Portugal. Taking into account the positive gross margins presented by the Notifying Party the purchaser of the Spanish Divestment Business could profitably serve Portuguese customers from the plant in Vigo. Even if the assumptions of these margin analyses are modified to include further incremental costs (for instance resulting from the need for warehousing or for additional shifts), which the purchaser might have to incur, it appears that the gross margins would still remain significantly positive. Additionally, the assignment of Crown's and/or Mivisa's contracts with Portuguese customers to the purchaser of the Spanish Divestment Business will further increase the latter's incentives to supply Portugal from Spain, and Vigo in particular.
- (209) Finally, the purchaser could exert similar competitive pressure in southern France from La Rioja as Mivisa is currently exerting from its plant also in La Rioja.<sup>204</sup> The analyses presented by the Notifying Party show that the gross margins from supplying cans from La Rioja to southern France are positive, approximately [...]%. This would allow even a less efficient supplier than Crown to make profitable sales and thus be incentivised to serve customers in southern France from La Rioja.
- (210) With regard to the analysis of the commitments from a customer's viewpoint customers did not specifically identify any additional assets nor propose any modifications to the divestment assets, which could increase the viability of the Spanish Divestment Business.<sup>205</sup> Nor did customers or competitors identify any elements of the commitments that could create uncertainties or delays to the purchaser of the Spanish Divestment Business in establishing itself as a competitive force in the market.<sup>206</sup>
- (211) Customers submitted that whether the purchaser of this business would be able to compete effectively and on a lasting basis with the Merged Entity would depend on the identity of the purchaser, its business plan and its willingness to invest in upgrading and developing the divestment plants in Spain.<sup>207</sup>
- (212) Furthermore, one competitor noted that customers approve and then establish commercial, technical and operational relationships with particular plants.<sup>208</sup> However, since the sale of the Spanish Divestment Businesses will be structured as a transfer of shares (as opposed to a transfer of assets), the Commission considers that the transfer of the respective customers would not entail significant risks, since customers will continue to be served by the same plants and even the same legal entity (only with a new shareholder), and thus no new homologation procedures should be required.

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204 Mivisa is currently serving southern France from La Rioja.

205 Responses to question 2.2 of "Questionnaire Q4 – Customers – Market test".

206 Responses to question 6 of "Questionnaire Q4 – Customers – Market test" and of "Questionnaire Q3 – Competitors – Market test".

207 Responses to questions 2.1 and 2.2 of "Questionnaire Q4 – Customers – Market test".

208 Responses to question 3 of "Questionnaire Q3 – Competitors – Market test".

- (213) The vast majority of both customers and competitors considered that the purchaser should be already active in metal food cans so as to gain critical size and to possess already the necessary know-how.<sup>209</sup> Some customers noted that being active in non-food metal cans (for instance beverage cans) could also be helpful, but others considered them to be two different markets,<sup>210</sup> and more particularly one competitor stated that a beverage can manufacturer would not be familiar with the tinplate specifications.<sup>211</sup> Some customers also stated that it would not be sufficient for the viability of the Spanish Divestment Business if the purchaser is only active in the packaging business in general.<sup>212</sup> Moreover, only a minority of customers considered that a financial investor would be a suitable purchaser for the Spanish Divestment Business, while several customers stated that a financial investor would not be a suitable purchaser.<sup>213</sup> In response to these concerns, the Parties clarified in the purchaser criteria of the Commitments that the purchaser of the Spanish Divestment Business should have experience in manufacture of metal food cans.
- (214) As to the transitional agreements, competitors stated that can ends as well as services such as cutting, lacquering and printing can be obtained from many independent sources in the market and that that these types of agreements are standard in the industry.<sup>214</sup>
- (215) Overall, only a minority of both customers and competitors considered that the Spanish Divestment Business in not sufficiently interesting to attract suitable purchasers.<sup>215</sup> Furthermore, certain competitors expressed their interest in purchasing the Spanish Divestment Business.<sup>216</sup>
- (216) In any event, the Parties have included an ‘upfront buyer’ clause in the Commitments, which would safeguard against any such risk and to allow the Commission to conclude with the requisite degree of certainty that the business would be effectively divested to a suitable purchaser.
- (217) With particular regard to Portugal, five out of the six Portuguese customers who responded to the market investigation stated that they would consider buying metal food cans from the plant in Vigo after its divestment.<sup>217</sup> Four out of these six Portuguese customers would also be ready to switch to the purchaser of the Spanish Divestment Business (offering cans from Vigo) even in the course of their current contracts with Mivisa or Crown, if they were allowed to exit them before their

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209 Responses to question 7.1 of "Questionnaire Q4 – Customers –Market test" and question 8.1 of "Questionnaire Q3 – Competitors –Market test".

210 Responses to question 7.2 of "Questionnaire Q4 – Customers – Market test".

211 Responses to question 8.2 of "Questionnaire Q3 – Competitors – Market test".

212 Responses to question 7.3 of "Questionnaire Q4 – Customers – Market test" and question 8.3 of "Questionnaire Q3 – Competitors – Market test".

213 Responses to question 8 of "Questionnaire Q4 – Customers – Market test".

214 Responses to question 5 of "Questionnaire Q3 – Competitors – Market test".

215 Responses to question 9 of "Questionnaire Q4 – Customers – Market test" and question 10 of "Questionnaire Q3 – Competitors – Market test".

216 Responses to question 11 of "Questionnaire Q3 – Competitors – Market test".

217 Responses to question 11 of "Questionnaire Q4 – Customers – Market test".

expiry. The two remaining Portuguese customer noted that they would first need to test the new player and ensure they can obtain similar conditions compared to the ones they currently have from Crown from the Alcochete plant.<sup>218</sup>

- (218) In view of the above, the Commission considers that the Commitments are suitable and sufficient to eliminate the serious doubts raised by the Transaction as to its compatibility with the internal market and the EEA agreement regarding the markets for metal food cans in Spain and Portugal as well as in the cross-border regions identified in para. (191) point a) of this Decision.

#### V.3.2.2. The Dutch Divestment Business

- (219) The Commission concludes that the Commitments would remove the overlap between the Parties in the Benelux as the purchaser of Mivisa's plant would assume its position and become a new alternative supplier in this region. Since the transfer of the Dutch Divestment Business is structured as a sale of shares, there will be a direct substitution of Mivisa's Dutch business by the purchaser, which could continue exerting the same competitive pressure as Mivisa is exerting currently in that region.
- (220) Furthermore regarding northern France, since Mivisa is currently supplying this area mostly from its plant in the Netherlands, the purchaser of the Dutch Divestment Business will also take Mivisa's position.
- (221) In the course of the market test several customers and competitors expressed concerns regarding the viability of the Dutch Divestment Business on the basis that it is merely an assembly plant.<sup>219</sup> However, only a minority of competitors and customers considered that the purchaser of the Spanish and the Dutch Divestment Businesses should necessarily be the same.<sup>220</sup>
- (222) The vast majority of both customers and competitors considered that the purchaser of the Dutch Divestment Business should be active in metal food cans, *inter alia* in order to gain critical size and to have the required know-how and expertise.<sup>221</sup> Some of the customers noted that being active in non-food metal cans (for instance beverage cans) could also be helpful, but others considered these are two different markets,<sup>222</sup> while one competitor stated that a beverage cans manufacturer would not be familiar with the tinplate specifications.<sup>223</sup> Some customers also stated that it would not be sufficient for the viability of the Dutch Divestment Business if the purchaser is only active in the packaging business in general.<sup>224</sup> Almost 40% of the

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<sup>218</sup> Responses to question 12 of "Questionnaire Q4 – Customers – Market test".

<sup>219</sup> Responses to question 13 of "Questionnaire Q4 – Customers –Market test" and question 12 of "Questionnaire Q3 – Competitors – Market test".

<sup>220</sup> Responses to question 14 of "Questionnaire Q4 – Customers – Market test" and to question 13 of "Questionnaire Q3 – Competitors – Market test".

<sup>221</sup> Responses to question 19.1 of "Questionnaire Q4 – Customers –Market test" and of "Questionnaire Q3 – Competitors – Market test".

<sup>222</sup> Responses to question 19.2 of "Questionnaire Q4 – Customers – Market test".

<sup>223</sup> Responses to question 19.2 of "Questionnaire Q3 – Competitors – Market test".

<sup>224</sup> Responses to question 19.3 of "Questionnaire Q4 – Customers – Market test" and of "Questionnaire Q3 – Competitors – Market test".

competitors and more than 40% of the customers considered that a financial investor would not be a suitable purchaser for the Dutch Divestment Business, because it is merely an assembly plant.<sup>225</sup>

- (223) In response to the concerns expressed during the market test on the Dutch Divestment Business being merely an assembly plant, the Parties clarified in the purchaser criteria of the Commitments that the purchaser of the Dutch Divestment Business should have metal food cans manufacturing activity in the EEA, either prior to the acquisition of the Dutch Divestment Business or as a result of the acquisition of the Spanish Divestment Business. Therefore, the purchaser of the Dutch Divestment Business will incorporate that assembly plant into its EEA business in the same way that this plant is currently incorporated in Mivisa's business. In view of that clarification of the purchaser criteria of the Commitments, the competitiveness and independence of the Dutch Divestment Business is safeguarded.
- (224) As to the transitional agreements, customers mentioned that quality issues could threaten the independence and competitiveness of the Dutch Divestment Business, because the supplier of can ends would be different than the supplier of cans, while Crown as a competitor of the purchaser of the Dutch Divestment Business may not be interested in resolving these issues or providing the information potentially necessary to resolve them to the purchaser. Moreover, customers and competitors mentioned the high level of dependence on Crown since the Dutch Divestment Business is only an assembly plant.<sup>226</sup> A competitor, however, noted that, if firewalls are in place, such transitional agreements appear reasonable in the industry.<sup>227</sup> While the transitional agreement for the supply of can ends in the initial version of the commitments was to last for up to [...], in the modified version, submitted on 11 March 2014, the Notifying Party shortened this period to [...] after the date of transfer of the Dutch Divestment Business to the purchaser, with a possible extension of further [...]. In view of shortening this period and as a result of including in the purchaser criteria a condition that the purchaser of the Dutch Divestment Business should have metal food cans manufacturing activities in the EEA, it can be concluded that the competitiveness and independence of the Dutch Divestment Business will be safeguarded.
- (225) Furthermore, competitors in the EEA and customers in the Benelux generally considered that the transfer of customer contracts to the purchaser of the Dutch Divestment Business would be feasible.<sup>228</sup> Moreover, since the sale of the Dutch Divestment Businesses will be structured as a transfer of shares (as opposed to a transfer of assets), the transfer of the respective customers would not entail significant risks, since customers will continue to be served by the same plants and even the same legal entity (only with a new shareholder), and thus no new homologation procedures should be required.

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225 Responses to question 20 of "Questionnaire Q4 – Customers – Market test" and of "Questionnaire Q3 – Competitors – Market test".

226 Responses to question 17 of "Questionnaire Q4 – Customers – Market test".

227 Responses to question 16 of "Questionnaire Q3 – Competitors – Market test".

228 Responses to question 15 of "Questionnaire Q4 – Customers – Market test" and to question 14 of "Questionnaire Q3 – Competitors – Market test".

- (226) Overall, half of the competitors considered the Dutch Divestment Business to be sufficiently interesting to attract suitable purchasers and two of them expressed their interest in purchasing it.<sup>229</sup> In any event, the Parties have included an ‘upfront buyer’ clause in the Commitments, which would safeguard against any such risk and allows the Commission to conclude with the requisite degree of certainty that the business would be effectively divested to a suitable purchaser.
- (227) Finally, none of the competitors identified any elements of the proposed commitments that could raise uncertainties and/or delays to the buyer of the Dutch Divestment Business establishing itself as a competitive force in the market.<sup>230</sup> Although a few customers mentioned the fact that the Dutch Divestment Business is only an assembly plant as a possible threat to its competitiveness and independence,<sup>231</sup> this concern has been remedied following the clarification of the purchaser criteria of the Commitments mentioned in paragraph (222) of the present Decision.

#### **V.4. Conclusion on the Commitments**

- (228) In view of the above, the Commission concludes that the Commitments are suitable and sufficient to eliminate the serious doubts raised by the Transaction in the markets for the supply of metal food cans in the areas of the Benelux, France, Spain and Portugal, irrespective of whether these areas are considered national markets or cross-border regional markets.<sup>232</sup>

## **VI. CONDITIONS AND OBLIGATIONS**

- (229) Under the first sentence of the second subparagraph of Article 6(2) of the Merger Regulation, the Commission may attach to its decision conditions and obligations intended to ensure that the undertakings concerned comply with the commitments they have entered into *vis-à-vis* the Commission with a view to rendering the concentration compatible with the internal market.
- (230) The achievement of the measure that gives rise to the structural change of the market is a condition, whereas the implementing steps which are necessary to achieve this result are generally obligations on the parties. Where a condition is not fulfilled, the Commission’s decision declaring the concentration compatible with the internal market and the EEA Agreement no longer stands. Where the undertakings concerned commit a breach of an obligation, the Commission may revoke the clearance decision in accordance with Article 8(6)(b) of the Merger Regulation. The undertakings concerned may also be subject to fines and periodic penalty payments under Articles 14(2) and 15(1) of the Merger Regulation.

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<sup>229</sup> Responses to questions 21 and 22 of "Questionnaire Q3 – Competitors – Market test".

<sup>230</sup> Responses to question 18 of "Questionnaire Q3 – Competitors – Market test".

<sup>231</sup> Responses to question 18.1 of "Questionnaire Q4 – Customers – Market test".

<sup>232</sup> See paragraphs (190) and (191) of the present Decision.

- (231) In accordance with the basic distinction between conditions and obligations, the decision in this case is conditional on full compliance with the requirements set out in Section B of the final Commitments, which constitute conditions. The remaining requirements set out in the other Sections of the said Commitments are considered to constitute obligations.
- (232) The full text of the final Commitments is annexed to this Decision as Annex I and forms an integral part thereof.

## **VII. CONCLUSION**

- (233) For the above reasons, the Commission has decided not to oppose the notified operation as modified by the Commitments and to declare it compatible with the internal market and with the functioning of the EEA Agreement, subject to full compliance with the conditions in Section B of the Commitments annexed to the present Decision and with the obligations contained in the other sections of the said Commitments. This Decision is adopted in application of Article 6(1)(b) in conjunction with Article 6(2) of the Merger Regulation.

*For the Commission*  
*(signed)*  
*Joaquín ALMUNIA*  
*Vice-President*



Annex I

European Commission  
DG COMP  
Place Madou, Madouplein 1  
1210 Saint-Josse-ten-Noode /Sint-Joost-ten-Node  
Belgium

## Case No M.7104 – Crown Holdings/Mivisa

### COMMITMENTS TO THE EUROPEAN COMMISSION

Pursuant to Article 6(2) of Council Regulation (EC) No 139/2004 (the “*Merger Regulation*”), Crown Holdings, Inc. (“*Crown*”, or the “*Notifying Party*”) hereby enters into the following Commitments (the “*Commitments*”) vis-à-vis the European Commission (the “*Commission*”) with a view to rendering the proposed acquisition by Crown of sole control over Mivisa Envases, S.A.U. (the “*Concentration*”) compatible with the internal market and the functioning of the EEA Agreement.

This text shall be interpreted in light of the Commission’s decision pursuant to Article 6(1)(b) of the Merger Regulation to declare the Concentration compatible with the internal market and the functioning of the EEA Agreement (the “*Decision*”), in the general framework of European Union law, in particular in light of the Merger Regulation, and by reference to the Commission Notice on remedies acceptable under Council Regulation (EC) No 139/2004 and under Commission Regulation (EC) No 802/2004 (the “*Remedies Notice*”).

#### Section A. Definitions

1. For the purpose of the Commitments, the following terms shall have the following meaning:

**Affiliated Undertakings:** undertakings controlled by the Parties and/or by the ultimate parents of the Parties, whereby the notion of control shall be interpreted pursuant to Article 3 of the Merger Regulation and in light of the Commission Consolidated Jurisdictional Notice under Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings (the “*Consolidated Jurisdictional Notice*”).

**Assets:** the assets that contribute to the current operation or are necessary to ensure the viability and competitiveness of the Divestment Businesses as indicated in Section B, paragraph 6 (a), (b) and (c) and described more in detail in the Schedule.

**Closing:** the transfer of the legal title to the Divestment Businesses to the Purchaser.

**Closing Period:** the period of [...] months from the approval of the Purchaser and the terms of sale by the Commission.

**Confidential Information:** any business secrets, know-how, commercial information, or any other information of a proprietary nature that is not in the public domain.

**Conflict of Interest:** any conflict of interest that impairs the Trustee's objectivity and independence in discharging its duties under the Commitments.

**Crown:** Crown Holdings, Inc. is a Pennsylvania corporation, whose principal executive offices are at One Crown Way, Philadelphia, Pennsylvania 19154-4599, United States of America.

**Crown Embalajes:** Crown Embalajes España, S.L.U, a company incorporated in Spain, with legal address in Agoncillo (La Rioja), Pol. Ind. El Sequero, Avda. del Ebro 9, Spain. Crown Embalajes is currently the owner of Crown's Spanish Business.

**Divestment Businesses:** the businesses as defined in Section B and in the Schedules which the Notifying Party commits to divest.

**Divestiture Trustee:** one or more natural or legal person(s) who is/are approved by the Commission and appointed by Crown and who has/have received from Crown the exclusive Trustee Mandate to sell the Divestment Businesses to a Purchaser at no minimum price

**Effective Date:** the date of adoption of the Decision.

**First Divestiture Period:** the period of [...] months from the Effective Date.

**Hold Separate Manager:** the person appointed by Crown for the Divestment Businesses to manage the day-to-day business under the supervision of the Monitoring Trustee.

**Key Personnel:** all personnel necessary to maintain the viability and competitiveness of the Divestment Businesses, as listed in the Schedules, including the Hold Separate Manager.

**Mivisa:** Mivisa Envases S.A.U. is a company incorporated in Spain, with legal address in Las Torres de Cotillas (Murcia), Pol. Ind. Los Pinos, Carretera de Mula s/n, 30565, Spain.

**Monitoring Trustee:** one or more natural or legal person(s) who is/are approved by the Commission and appointed by Crown, and who has/have the duty to monitor Crown's compliance with the conditions and obligations attached to the Decision.

**Parties:** the Notifying Party and the undertaking that is the target of the concentration.

**Personnel:** all staff currently employed by the Divestment Businesses, including staff seconded to the Divestment Businesses, shared personnel, except for the employees expressly excluded.

**Purchaser:** the entity approved by the Commission as acquirer of the Divestment Businesses in accordance with the criteria set out in Section D.

**Purchaser Criteria:** the criteria laid down in paragraph 19 of these Commitments that the Purchaser must fulfil in order to be approved by the Commission.

**Schedule:** the schedule to these Commitments describing more in detail the Divestment Businesses.

**Trustee(s):** the Monitoring Trustee and/or the Divestiture Trustee as the case may be.

**Trustee Divestiture Period:** the period of [...] months from the end of the First Divestiture Period.

## **Section B. The commitment to divest and the Divestment Businesses**

### Commitment to divest

2. In order to maintain effective competition, Crown commits to divest, or procure the divestiture of the Divestment Businesses by the end of the Trustee Divestiture Period as a going concern to a purchaser and on terms of sale approved by the Commission in accordance with the procedure described in paragraph 20 of these Commitments. To carry out the divestiture, Crown commits to find a purchaser and to enter into a final binding sale and purchase agreement for the sale of the Divestment Businesses within the First Divestiture Period. If Crown has not entered into such an agreement at the end of the First Divestiture Period, Crown shall grant the Divestiture Trustee an exclusive mandate to sell the Divestment Businesses in accordance with the procedure described in paragraph 32 in the Trustee Divestiture Period.
3. The proposed concentration shall not be implemented before Crown or the Divestiture Trustee has entered into a final binding sale and purchase agreement for the sale of the Divestment Business and the Commission has approved the purchaser and the terms of sale in accordance with paragraph 20.
4. Crown shall be deemed to have complied with this commitment if:
  - (a) by the end of the Trustee Divestiture Period, Crown or the Divestiture Trustee has entered into a final binding sale and purchase agreement and the Commission approves the proposed purchaser and the terms of sale as being consistent with the Commitments in accordance with the procedure described in paragraph 20; and
  - (b) the Closing of the sale of the Divestment Businesses to the Purchaser takes place within the Closing Period.
5. In order to maintain the structural effect of the Commitments, the Notifying Party shall, for a period of [...] after Closing, not acquire, whether directly or indirectly, the possibility of exercising influence (as defined in paragraph 43 of the Remedies Notice, footnote 3) over the whole or part of the Divestment Businesses, unless, following the submission of a reasoned request from the Notifying Party showing good cause and accompanied by a report from the Monitoring Trustee (as provided in paragraph 46 of these Commitments), the Commission finds that the structure of the market has changed to such an extent that the absence of influence over

the Divestment Businesses is no longer necessary to render the proposed concentration compatible with the internal market.

#### Structure and definition of the Divestment Businesses

6. The Divestment Businesses consist of
- (i) Crown's Food and Speciality Packaging business in Spain ("**Crown's Spanish Business**"). As part of Crown's Spanish Business, Crown commits to include the following: (A) the installation of an additional production line at the Vigo plant to manufacture three-piece food cans of 99mm diameter with the capacity to produce [...] <sup>1</sup>. This line will be transferred from another non-Spanish Crown plant; and (B) the assignment to Crown's Spanish Business, so that they can be served from Vigo, of either (a) Mivisa's three-piece can Portuguese customers ("**Mivisa's Customers**") ; or (b) Crown's three-piece can Portuguese customers representing a market share equivalent to that of Mivisa's customers under (a) ("**Crown's Customers**"); and
  - (ii) Mivisa's plant located in Horst, The Netherlands (the "**Horst Plant**").

The legal and functional structure of the Divestment Businesses as operated to date is described in the Schedules. The Divestment Businesses, described in more detail in the Schedules, include all assets and staff that contribute to the current operation or are necessary to ensure the viability and competitiveness of the Divestment Businesses, in particular:

- (a) all tangible assets;
  - (b) all licences, permits and authorisations issued by any governmental organisation for the benefit of the Divestment Businesses;
  - (c) all contracts, leases, commitments and customer orders of the Divestment Businesses; all customer, credit and other records of the Divestment Businesses; and
  - (d) the Personnel.
7. In addition, the Divestment Businesses include, at the option of the Purchaser, the benefit, for a transitional period after Closing (as detailed in the Schedule), of certain supply and transitional services agreements on a reasonable cost-plus basis to be agreed with the Purchaser and with the consent of the Monitoring Trustee in order to ensure the viability of the Divestment Business. Strict firewall procedures will be adopted, in particular in relation to any transitional agreements for the supply of raw materials or can ends, so as to ensure that any competitively sensitive information related to, or arising from such supply arrangements (for example, product roadmaps) will not be shared with, or passed on to, anyone outside the units providing the service.
8. For the avoidance of doubts, the following shall not be included in the Divestment Businesses:
- (a) Any manufacturing facilities of the Parties different than the plants indicated above, and in particular the metal closure business of Crown in Spain (including the metal closures plant located in Seville);

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<sup>1</sup> Considering three-shifts per day and five days per week.

- (b) The ownership of, or right to use, any IP rights currently used by the Divestment Businesses, not necessary for either the operation or the viability of the Divestment Businesses<sup>2</sup>;
- (c) Any brands or logos currently held, as owner or licensee, by Crown or Mivisa or any rights to sell the products manufactured in the plants included in the Divestment Businesses with the Crown or Mivisa names;
- (d) Any rights to the [www.crowncork.com](http://www.crowncork.com), [www.mivisa.es](http://www.mivisa.es), [www.mivisa.com](http://www.mivisa.com) websites or domain names;
- (e) Books and records required to be retained pursuant to any statute, rule, regulation or ordinance, provided that the Purchaser(s) shall obtain a copy of the same and shall be permitted access to the original of such books and records upon reasonable request during normal business hours;
- (f) General books of account and books of original entry that comprise Crown's or Mivisa's or an Affiliated Undertaking's permanent accounting or tax records;
- (g) Any customers not specifically listed in Schedules A and B below<sup>3</sup>;
- (h) Certain employees currently employed by Crown Embalajes who are not essential for the viability of Crown's Spanish Business as indicated in Schedule A; and
- (i) Certain shareholdings that Crown Embalajes currently has in certain companies located outside of Spain or which are not related to Crown's Food and Speciality Packaging business in Spain.

### **Section C. Related commitments**

#### Preservation of viability, marketability and competitiveness

9. From the Effective Date until Closing, the Notifying Party shall preserve or procure the preservation of the economic viability, marketability and competitiveness of the Divestment Businesses, in accordance with good business practice, and shall minimise as far as possible any risk of loss of competitive potential of the Divestment Businesses. In particular Crown undertakes:
- (a) not to carry out any action that might have a significant adverse impact on the value, management or competitiveness of the Divestment Businesses or that might alter the nature and scope of activity, or the industrial or commercial strategy or the investment policy of the Divestment Businesses;

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<sup>2</sup> This exception refers exclusively to a design right for a bead which is currently being developed by Crown for two customers of the Murcia plant. This right is still being under qualification process and therefore has not yet generated any sales. However, if requested by the Purchaser, Crown is ready to discuss the terms of a license for the use of the right.

<sup>3</sup> The only excluded sales are

- (i) Certain supplies to [...] which are currently made from Crown's La Rioja plant. [...] is a customer of Crown France and not of Crown's Spanish Business. However, in 2013, some of the cans served to this customer were manufactured and delivered from Crown's La Rioja plant.
- (ii) Mivisa's sales from its Extremadura plant to [...].

- (b) to make available, or procure to make available, sufficient resources for the development of the Divestment Businesses, on the basis and continuation of the existing business plans;
- (c) to take all reasonable steps, or procure that all reasonable steps are being taken, including appropriate incentive schemes (based on industry practice), to encourage all Key Personnel to remain with the Divestment Businesses, and not to solicit or move any Personnel to Crown's remaining business. Where, nevertheless, individual members of the Key Personnel exceptionally leave the Divestment Businesses, Crown shall provide a reasoned proposal to replace the person or persons concerned to the Commission and the Monitoring Trustee. Crown must be able to demonstrate to the Commission that the replacement is well suited to carry out the functions exercised by those individual members of the Key Personnel. The replacement shall take place under the supervision of the Monitoring Trustee, who shall report to the Commission.

#### Hold-separate obligations

10. The Notifying Party commits, from the Effective Date until Closing, to procure that the Divestment Business is kept separate from the business(es) that the Notifying Party will be retaining and, after closing of the notified transaction, to keep as agreed with the Monitoring Trustee the Divestment Businesses separate from the businesses it is retaining and to ensure that unless explicitly permitted under these Commitments: (i) management and staff of the businesses retained by Crown have no involvement in the Divestment Businesses; (ii) the Key Personnel and Personnel of the Divestment Businesses have no involvement in any business retained by Crown and do not report to any individual outside the Divestment Businesses.
11. Until Closing, Crown shall assist the Monitoring Trustee in ensuring that the Divestment Businesses are managed as a distinct and saleable entity separate from the businesses which Crown is retaining. Immediately after the adoption of the Decision, Crown shall appoint a Hold Separate Manager. The Hold Separate Manager, who shall be part of the Key Personnel, shall manage the Divestment Businesses independently and in the best interest of the businesses with a view to ensuring its continued economic viability, marketability and competitiveness and its independence from the businesses retained by Crown. The Hold Separate Manager shall closely cooperate with and report to the Monitoring Trustee and, if applicable, the Divestiture Trustee. Any replacement of the Hold Separate Manager shall be subject to the procedure laid down in paragraph 9(c) of these Commitments. The Commission may, after having heard Crown, require Crown to replace the Hold Separate Manager.
12. To ensure that the Divestment Businesses are held and managed as a separate entity the Monitoring Trustee shall exercise Crown's rights as shareholder in the legal entity or entities that constitute the Divestment Businesses (except for its rights in respect of dividends that are due before Closing), with the aim of acting in the best interest of the businesses, which shall be determined on a stand-alone basis, as an independent financial investor, and with a view to fulfilling Crown's obligations under the Commitments. Furthermore, the Monitoring Trustee shall have the power to replace members of the supervisory board or non-executive directors of the board of directors, who have been appointed on behalf of Crown. Upon request of the Monitoring Trustee, Crown shall resign as a member of the boards or shall cause such members of the boards to resign.

### Ring-fencing

13. Crown shall implement, or procure to implement, all necessary measures to ensure that it does not, after the Effective Date, obtain any Confidential Information relating to the Divestment Businesses and that any such Confidential Information obtained by Crown before the Effective Date will be eliminated and not be used by Crown. This includes measures vis-à-vis Crown's appointees on the supervisory board and/or board of directors of the Divestment Businesses. In particular, the participation of the Divestment Businesses in any central information technology network shall be severed to the extent possible, without compromising the viability of the Divestment Businesses. Crown may obtain or keep information relating to the Divestment Businesses which is reasonably necessary for the divestiture of the Divestment Businesses or the disclosure of which to Crown is required by law.

### Non-solicitation clause

14. The Parties undertake, subject to customary limitations, not to solicit, and to procure that Affiliated Undertakings do not solicit, the Key Personnel transferred with the Divestment Businesses for a period of [...] after Closing.

### Due diligence

15. In order to enable potential purchasers to carry out a reasonable due diligence of the Divestment Businesses, Crown shall, subject to customary confidentiality assurances and dependent on the stage of the divestiture process:
  - (a) provide to potential purchasers sufficient information as regards the Divestment Businesses;
  - (b) provide to potential purchasers sufficient information relating to the Personnel and allow them reasonable access to the Personnel.

### Procedure for the selection of customers to be assigned to Crown's Spanish Business

16. The assignment to Crown's Spanish Business, so that they can be served from Vigo, of either (a) Mivisa's Customers; or (b) Crown's Customers representing a market share equivalent to that of Mivisa's customers under (a), shall be completed within [...] from the date on which the Purchaser is approved by the Commission in accordance with para. 20 below, which can be extended by [...], with the consent of the Monitoring Trustee, if the date on which the Purchaser is approved by the Commission takes place within [...]. Crown shall, in close cooperation with the Monitoring Trustee, undertake its best effort to make the necessary adjustments to the lines in Vigo to ensure the assignment of the customers. The procedure according to which the assignment will be carried out will be agreed with the Monitoring Trustee not only to ensure the effective assignment of customers but also to limit the exchange of any sensitive information between Crown, Mivisa and the Purchaser.

### Reporting

17. Crown shall submit written reports in English on potential purchasers of the Divestment Businesses and developments in the negotiations with such potential purchasers to the

Commission and the Monitoring Trustee no later than 10 days after the end of every month following the Effective Date (or otherwise at the Commission's request). Crown shall submit a list of all potential purchasers having expressed interest in acquiring the Divestment Businesses to the Commission at each and every stage of the divestiture process, as well as a copy of all the offers made by potential purchasers within five days of their receipt.

18. Crown shall inform the Commission and the Monitoring Trustee on the preparation of the data room documentation and the due diligence procedure and shall submit a copy of any information memorandum to the Commission and the Monitoring Trustee before sending the memorandum out to potential purchasers.

#### **Section D. The Purchaser**

19. In order to be approved by the Commission, the Purchaser must fulfil the following criteria:

- (a) The Purchaser shall be independent of and unconnected to the Notifying Party and its Affiliated Undertakings (this being assessed having regard to the situation following the divestiture).

- (b) The Purchaser shall have the financial resources, proven expertise and incentive to maintain and develop the Divestment Businesses as a viable and active competitive force in competition with the Parties and other competitors and, in particular, it shall have experience in the manufacture of metal food cans<sup>4</sup>;

- (c) The acquisition of the Divestment Businesses by the Purchaser must neither be likely to create, in light of the information available to the Commission, *prima facie* competition concerns nor give rise to a risk that the implementation of the Commitments will be delayed. In particular, the Purchaser must reasonably be expected to obtain all necessary approvals from the relevant regulatory authorities for the acquisition of the Divestment Businesses.

20. The final binding sale and purchase agreement (as well as ancillary agreements) relating to the divestment of the Divestment Businesses shall be conditional on the Commission's approval. When Crown has reached an agreement with a purchaser, it shall submit a fully documented and reasoned proposal, including a copy of the final agreement(s), within one week to the Commission and the Monitoring Trustee. Crown must be able to demonstrate to the Commission that the purchaser fulfils the Purchaser Criteria and that the Divestment Businesses are being sold in a manner consistent with the Commission's Decision and the Commitments. For the approval, the Commission shall verify that the purchaser fulfils the Purchaser Criteria and that the Divestment Businesses are being sold in a manner consistent with the Commitments including their objective to bring about a lasting structural change in the market. The Commission may approve the sale of the Divestment Businesses without one or more Assets or parts of the Personnel, or by substituting one or more Assets or parts of the Personnel with one or more different assets or different

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<sup>4</sup> In relation to the Horst Plant, the Purchaser must have metal food cans manufacturing activity in the EEA, either prior to the acquisition of the Horst Plant or as a result of the acquisition of Crown's Spanish Business.



personnel, if this does not affect the viability and competitiveness of the Divestment Businesses after the sale, taking account of the proposed purchaser.

## **Section E. Trustee**

### **I. Appointment procedure**

21. Crown shall appoint a Monitoring Trustee to carry out the functions specified in these Commitments for a Monitoring Trustee. The Notifying Party commits not to close the Concentration before the appointment of a Monitoring Trustee.
22. If Crown has not entered into a binding sale and purchase agreement regarding the Divestment Businesses one month before the end of the First Divestiture Period or if the Commission has rejected a purchaser proposed by Crown at that time or thereafter, Crown shall appoint a Divestiture Trustee. The appointment of the Divestiture Trustee shall take effect upon the commencement of the Trustee Divestiture Period.
23. The Trustee shall:
  - (i) at the time of appointment, be independent of the Notifying Party and its Affiliated Undertakings;
  - (ii) possess the necessary qualifications to carry out its mandate, for example have sufficient relevant experience as an investment banker or consultant or auditor; and
  - (iii) neither have nor become exposed to a Conflict of Interest.
24. The Trustee shall be remunerated by the Notifying Party in a way that does not impede the independent and effective fulfilment of its mandate. In particular, where the remuneration package of a Divestiture Trustee includes a success premium linked to the final sale value of the Divestment Businesses, such success premium may only be earned if the divestiture takes place within the Trustee Divestiture Period.

### *Proposal by Crown*

25. No later than two weeks after the Effective Date, Crown shall submit the name or names of one or more natural or legal persons whom Crown proposes to appoint as the Monitoring Trustee to the Commission for approval. No later than one month before the end of the First Divestiture Period or on request by the Commission, Crown shall submit a list of one or more persons whom Crown proposes to appoint as Divestiture Trustee to the Commission for approval. The proposal shall contain sufficient information for the Commission to verify that the person or persons proposed as Trustee fulfil the requirements set out in paragraph 23 and shall include:
  - (a) the full terms of the proposed mandate, which shall include all provisions necessary to enable the Trustee to fulfil its duties under these Commitments;
  - (b) the outline of a work plan which describes how the Trustee intends to carry out its assigned tasks;

- (c) an indication whether the proposed Trustee is to act as both Monitoring Trustee and Divestiture Trustee or whether different trustees are proposed for the two functions.

*Approval or rejection by the Commission*

26. The Commission shall have the discretion to approve or reject the proposed Trustee(s) and to approve the proposed mandate subject to any modifications it deems necessary for the Trustee to fulfil its obligations. If only one name is approved, Crown shall appoint or cause to be appointed the person or persons concerned as Trustee, in accordance with the mandate approved by the Commission. If more than one name is approved, Crown shall be free to choose the Trustee to be appointed from among the names approved. The Trustee shall be appointed within one week of the Commission's approval, in accordance with the mandate approved by the Commission.

*New proposal by Crown*

27. If all the proposed Trustees are rejected, Crown shall submit the names of at least two more natural or legal persons within one week of being informed of the rejection, in accordance with paragraphs 21 and 26 of these Commitments.

*Trustee nominated by the Commission*

28. If all further proposed Trustees are rejected by the Commission, the Commission shall nominate a Trustee, whom Crown shall appoint, or cause to be appointed, in accordance with a trustee mandate approved by the Commission.

II. Functions of the Trustee

29. The Trustee shall assume its specified duties and obligations in order to ensure compliance with the Commitments. The Commission may, on its own initiative or at the request of the Trustee or Crown, give any orders or instructions to the Trustee in order to ensure compliance with the conditions and obligations attached to the Decision.

*Duties and obligations of the Monitoring Trustee*

30. The Monitoring Trustee shall:

- (i) propose in its first report to the Commission a detailed work plan describing how it intends to monitor compliance with the obligations and conditions attached to the Decision.
- (ii) oversee, in close co-operation with the Hold Separate Manager, the on-going management of the Divestment Businesses with a view to ensuring their continued economic viability, marketability and competitiveness and monitor compliance by Crown with the conditions and obligations attached to the Decision. To that end the Monitoring Trustee shall:
  - (a) monitor the preservation of the economic viability, marketability and competitiveness of the Divestment Businesses, and the keeping separate of the

Divestment Businesses from the business retained by the Parties, in accordance with paragraphs 9 and 10 of these Commitments;

(b) supervise the management of the Divestment Businesses as a distinct and saleable entity, in accordance with paragraph 11 of these Commitments;

(c) with respect to Confidential Information:

- determine all necessary measures to ensure that Crown does not after the Effective Date obtain any Confidential Information relating to the Divestment Businesses,
- in particular strive for the severing of the Divestment Businesses' participation in a central information technology network to the extent possible, without compromising the viability of the Divestment Businesses,
- make sure that any Confidential Information relating to the Divestment Businesses obtained by Crown before the Effective Date is eliminated and will not be used by Crown and
- decide whether such information may be disclosed to or kept by Crown as the disclosure is reasonably necessary to allow Crown to carry out the divestiture or as the disclosure is required by law;

(d) monitor the splitting of assets and the allocation of Personnel between the Divestment Businesses and Crown or Affiliated Undertakings;

(iii) propose to Crown such measures as the Monitoring Trustee considers necessary to ensure Crown's compliance with the conditions and obligations attached to the Decision, in particular the maintenance of the full economic viability, marketability or competitiveness of the Divestment Businesses, the holding separate of the Divestment Businesses and the non-disclosure of competitively sensitive information;

(iv) review and assess potential purchasers as well as the progress of the divestiture process and verify that, dependent on the stage of the divestiture process:

(a) potential purchasers receive sufficient and correct information relating to the Divestment Businesses and the Personnel in particular by reviewing, if available, the data room documentation, the information memorandum and the due diligence process, and

(b) potential purchasers are granted reasonable access to the Personnel;

(v) act as a contact point for any requests by third parties, in particular potential purchasers, in relation to the Commitments;

(vi) provide to the Commission, sending Crown a non-confidential copy at the same time, a written report within 15 days after the end of every month that shall cover the operation and management of the Divestment Businesses as well as the splitting of assets and the allocation of Personnel so that the Commission can assess whether the businesses are held

in a manner consistent with the Commitments and the progress of the divestiture process as well as potential purchasers;

- (vii) promptly report in writing to the Commission, sending Crown a non-confidential copy at the same time, if it concludes on reasonable grounds that Crown is failing to comply with these Commitments;
- (viii) within one week after receipt of the documented proposal referred to in paragraph 20 of these Commitments, submit to the Commission, sending Crown a non-confidential copy at the same time, a reasoned opinion as to the suitability and independence of the proposed purchaser and the viability of the Divestment Businesses after the Sale and as to whether the Divestment Businesses are sold in a manner consistent with the conditions and obligations attached to the Decision, in particular, if relevant, whether the Sale of the Divestment Businesses without one or more Assets or not all of the Personnel affects the viability of the Divestment Businesses after the sale, taking account of the proposed purchaser;
- (ix) assume the other functions assigned to the Monitoring Trustee under the conditions and obligations attached to the Decision.

31. If the Monitoring and Divestiture Trustee are not the same legal or natural persons, the Monitoring Trustee and the Divestiture Trustee shall cooperate closely with each other during and for the purpose of the preparation of the Trustee Divestiture Period in order to facilitate each other's tasks.

#### *Duties and obligations of the Divestiture Trustee*

32. Within the Trustee Divestiture Period, the Divestiture Trustee shall sell at no minimum price the Divestment Businesses to a purchaser, provided that the Commission has approved both the purchaser and the final binding sale and purchase agreement (and ancillary agreements) as in line with the Commission's Decision and the Commitments in accordance with paragraphs 18 and 20 of these Commitments. The Divestiture Trustee shall include in the sale and purchase agreement (as well as in any ancillary agreements) such terms and conditions as it considers appropriate for an expedient sale in the Trustee Divestiture Period. In particular, the Divestiture Trustee may include in the sale and purchase agreement such customary representations and warranties and indemnities as are reasonably required to effect the sale. The Divestiture Trustee shall protect the legitimate financial interests of Crown, subject to the Notifying Party's unconditional obligation to divest at no minimum price in the Trustee Divestiture Period.
33. In the Trustee Divestiture Period (or otherwise at the Commission's request), the Divestiture Trustee shall provide the Commission with a comprehensive monthly report written in English on the progress of the divestiture process. Such reports shall be submitted within 15 days after the end of every month with a simultaneous copy to the Monitoring Trustee and a non-confidential copy to the Notifying Party.

#### III. Duties and obligations of the Parties

34. Crown shall provide and shall cause its advisors to provide the Trustee with all such co-operation, assistance and information as the Trustee may reasonably require to perform its tasks. The Trustee

shall have full and complete access to any of Crown's or the Divestment Businesses' books, records, documents, management or other personnel, facilities, sites and technical information necessary for fulfilling its duties under the Commitments and Crown and the Divestment Businesses shall provide the Trustee upon request with copies of any document. Crown and the Divestment Businesses shall make available to the Trustee one or more offices on their premises and shall be available for meetings in order to provide the Trustee with all information necessary for the performance of its tasks.

35. Crown shall provide the Monitoring Trustee with all managerial and administrative support that it may reasonably request on behalf of the management of the Divestment Businesses. This shall include all administrative support functions relating to the Divestment Businesses which are currently carried out at headquarters level. Crown shall provide and shall cause its advisors to provide the Monitoring Trustee, on request, with the information submitted to potential purchasers, in particular give the Monitoring Trustee access to the data room documentation and all other information granted to potential purchasers in the due diligence procedure. Crown shall inform the Monitoring Trustee on possible purchasers, submit lists of potential purchasers at each stage of the selection process, including the offers made by potential purchasers at those stages, and keep the Monitoring Trustee informed of all developments in the divestiture process.
36. Crown shall grant or procure Affiliated Undertakings to grant comprehensive powers of attorney, duly executed, to the Divestiture Trustee to effect the sale (including ancillary agreements), the Closing and all actions and declarations which the Divestiture Trustee considers necessary or appropriate to achieve the sale and the Closing, including the appointment of advisors to assist with the sale process. Upon request of the Divestiture Trustee, Crown shall cause the documents required for effecting the sale and the Closing to be duly executed.
37. Crown shall indemnify the Trustee and its employees and agents (each an "***Indemnified Party***") and hold each Indemnified Party harmless against, and hereby agrees that an Indemnified Party shall have no liability to Crown for, any liabilities arising out of the performance of the Trustee's duties under the Commitments, except to the extent that such liabilities result from the wilful default, recklessness, gross negligence or bad faith of the Trustee, its employees, agents or advisors.
38. At the expense of Crown, the Trustee may appoint advisors (in particular for corporate finance or legal advice), subject to Crown's approval (this approval not to be unreasonably withheld or delayed) if the Trustee considers the appointment of such advisors necessary or appropriate for the performance of its duties and obligations under the Mandate, provided that any fees and other expenses incurred by the Trustee are reasonable. Should Crown refuse to approve the advisors proposed by the Trustee the Commission may approve the appointment of such advisors instead, after having heard Crown. Only the Trustee shall be entitled to issue instructions to the advisors. Paragraph 37 of these Commitments shall apply *mutatis mutandis*. In the Trustee Divestiture Period, the Divestiture Trustee may use advisors who served Crown during the Divestiture Period if the Divestiture Trustee considers this in the best interest of an expedient sale.
39. Crown agrees that the Commission may share Confidential Information proprietary to Crown with the Trustee. The Trustee shall not disclose such information and the principles contained in Article 17 (1) and (2) of the Merger Regulation apply *mutatis mutandis*.

40. The Notifying Party agrees that the contact details of the Monitoring Trustee are published on the website of the Commission's Directorate-General for Competition and they shall inform interested third parties, in particular any potential purchasers, of the identity and the tasks of the Monitoring Trustee.
41. For a period of 10 years from the Effective Date the Commission may request all information from the Parties that is reasonably necessary to monitor the effective implementation of these Commitments.

#### IV. Replacement, discharge and reappointment of the Trustee

42. If the Trustee ceases to perform its functions under the Commitments or for any other good cause, including the exposure of the Trustee to a Conflict of Interest:
  - (a) the Commission may, after hearing the Trustee and Crown, require Crown to replace the Trustee; or
  - (b) Crown may, with the prior approval of the Commission, replace the Trustee.
43. If the Trustee is removed according to paragraph 42 of these Commitments, the Trustee may be required to continue in its function until a new Trustee is in place to whom the Trustee has effected a full hand over of all relevant information. The new Trustee shall be appointed in accordance with the procedure referred to in paragraphs 21-28 of these Commitments.
44. Unless removed according to paragraph 42 of these Commitments, the Trustee shall cease to act as Trustee only after the Commission has discharged it from its duties after all the Commitments with which the Trustee has been entrusted have been implemented. However, the Commission may at any time require the reappointment of the Monitoring Trustee if it subsequently appears that the relevant remedies might not have been fully and properly implemented.

#### **Section F. The review clause**

45. The Commission may extend the time periods foreseen in the Commitments in response to a request from Crown or, in appropriate cases, on its own initiative. Where Crown requests an extension of a time period, it shall submit a reasoned request to the Commission no later than one month before the expiry of that period, showing good cause. This request shall be accompanied by a report from the Monitoring Trustee, who shall, at the same time send a non-confidential copy of the report to the Notifying Party. Only in exceptional circumstances shall Crown be entitled to request an extension within the last month of any period.
46. The Commission may further, in response to a reasoned request from the Notifying Party showing good cause waive, modify or substitute, in exceptional circumstances, one or more of the undertakings in these Commitments. This request shall be accompanied by a report from the Monitoring Trustee, who shall, at the same time send a non-confidential copy of the report to the Notifying Party. The request shall not have the effect of suspending the application of the undertaking and, in particular, of suspending the expiry of any time period in which the undertaking has to be complied with.

**Section G.      Entry into force**

47. The Commitments shall take effect upon the date of adoption of the Decision.

Brussels, 11 March 2014

duly authorised for and on behalf of  
Crown Holdings, Inc.

**SCHEDULE A - CROWN'S SPANISH BUSINESS (AND PORTUGUESE THREE-PIECE CAN CUSTOMERS)**

1. The Divestment Business consists of Crown's Food and Speciality Packaging business in Spain. This business includes the following:
  - Plant in Agoncillo, La Rioja, manufacturing three-piece food cans and can ends;
  - Plant in Molina de Segura, Murcia, manufacturing three-piece food cans;
  - Plant in Coruxo-Vigo, Galicia, manufacturing three-piece food cans, two-piece food cans and can ends. This plant will be supplemented with an additional line to manufacture three-piece food cans of 99mm diameter with the capacity to produce [...] per year<sup>5</sup>. This line will be transferred from another non-Spanish Crown plant;
  - Plant in Ugao-Miravalles, Basque Country, producing general line and speciality cans;
  - Plant in Montmeló, Catalonia, producing speciality cans; and
  - the assignment to Crown's Spanish Business, so that they can be served from Vigo, of either (a) Mivisa's three-piece can Portuguese customers; or (b) Crown's three-piece can Portuguese customers representing a market share equivalent to that of Mivisa's customers under (a).
  
2. In accordance with paragraph 6 of these Commitments, Crown's Spanish Business includes, but is not limited to:
  - (a) The main tangible assets listed in Annex 1.a (including the know-how for the operation of the production lines);
  - (b) All contracts, commitments and customer orders relating to the customers of Crown's Spanish Business in each of the plants listed in Annex 2a;
  - (c) All contracts, commitments and customer orders relating to the customers of Mivisa of three-piece cans in Portugal listed in Annex 2a.bis<sup>6</sup>, or alternatively, Crown's customers of three-piece cans in Portugal representing a market share in the three-piece can segment in Portugal equivalent to that of Mivisa. Crown is ready to identify these customers at the request of the Commission;
  - (d) All customers lists, sales, marketing and promotional information (in particular the customer base of Crown's Spanish Business in Spain and abroad and of the customers of Mivisa of three-piece cans in Portugal listed in Annex 2a.bis, i.e. details of all customers in Spain and abroad and of all Mivisa's three-piece can customers located in Portugal that have purchased any products manufactured at the Spanish Plants or at the Mivisa plants, as applicable, during the 12 month period prior to the Effective Date);

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<sup>5</sup> Considering three-shifts per day and five days per week.

<sup>6</sup> In the case of the assignment of Mivisa's three-piece Portuguese customers, with the exception of [...].



- (e) All raw materials, stocks, work in progress and semi-finished and finished goods held at the date of closing;
- (f) The main licences, permits and authorisations;
- (g) All Personnel (as further described in Annex 3.a);
- (h) The goodwill relating to Crown's Spanish Business at the time of the divestment together with the exclusive right for the Purchaser to represent itself as carrying on Crown's Spanish Business in succession to Crown.

3. Crown's Spanish Business shall not include, inter alia:

- (a) Any manufacturing facilities of the Parties different than the plants indicated above, and in particular the metal closure business of Crown in Spain (including the metal closures plant located in Seville);
- (b) The ownership of any IP rights currently used by Crown's Spanish Business<sup>7</sup>;
- (c) Any brands or logos currently held, as owner or licensee, by Crown or Mivisa or any rights to sell the products manufactured in the plants included in Crown's Spanish Business with the Crown or Mivisa names;
- (d) Any rights to the [www.crowncork.com](http://www.crowncork.com), [www.mivisa.es](http://www.mivisa.es), [www.mivisa.com](http://www.mivisa.com) websites or domain names;
- (e) Books and records required to be retained pursuant to any statute, rule, regulation, or ordinance, provided that the Purchaser shall obtain a copy of the same and shall be permitted access to the original of such books and records upon reasonable request during normal business hours;
- (f) General books of account and books of original entry that comprise the Crown's or Mivisa's or any Affiliated Undertaking's permanent accounting or tax records;
- (g) Any customers not specifically listed in Annex 2.a or Annex 2.bis<sup>8</sup>;
- (h) Certain employees currently employed by Crown Embalajes and are not essential for the viability of Crown's Spanish Business as indicated in Annex 3.a.
- (i) Certain shareholdings that Crown Embalajes currently has in certain companies located outside Spain or which are not related to Crown's Food and Speciality Packaging Business in Spain.

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<sup>7</sup> This exception refers exclusively to a design right for a bead which is currently being developed by Crown for two customers of the Murcia plant. This right is still being under qualification process and therefore has not yet generated any sales. However, if requested by the Purchaser, Crown is ready to discuss the terms of a license for the use of the right.

<sup>8</sup> The only excluded sales are certain supplies to [...] which are currently made from Crown's La Rioja plant. [...] is a customer of Crown France and not of Crown's Spanish Business. However, in 2013, some of the cans served to this customer were manufactured and delivered from Crown's La Rioja plant.

Also, as indicated above, Mivisa's sales from its Extremadura plant to [...]. (listed in Annex 2a.bis) will be excluded from the Divestment Business.

4. If there is any asset or personnel which is not be covered by paragraph 2 of this Schedule but which is both used (exclusively or not) in Crown's Spanish Business and indispensable for the continued viability and competitiveness of Crown's Spanish Business, that asset or adequate substitute will be offered to potential purchasers.
5. Crown proposes to offer the Purchaser of Crown's Spanish Business, at the option of the Purchaser and on a reasonable cost plus basis as agreed with the Purchaser and with the consent of the Monitoring Trustee in order to ensure the viability of Crown's Spanish Business, transitional services to replicate the essential functions currently in place in order to ensure the viability of Crown's Spanish Business.
6. In particular, where required by the Purchaser, Crown shall provide reasonable technical assistance to the Purchaser to facilitate the procurement of raw materials necessary for the manufacture of the products manufactured at the plants of Crown's Spanish Business. If the Purchaser is not able to source such raw materials, Crown commits to enter, at the option of the Purchaser, into supply agreements with certain raw material suppliers and to make such raw materials available to the Purchaser on a reasonable cost plus basis as agreed with the Purchaser and with the consent of the Monitoring Trustee in order to ensure the viability of Crown's Spanish Business, for such period as is required by the Purchaser to establish Crown's Spanish Business as a viable and independent business, but not exceeding [...] from the date of Closing, which can be extended by [...] if such extension is necessary to ensure the viability of the business. Strict firewall procedures will be adopted in relation to this agreement, so as to ensure that any competitively sensitive information related thereto (in particular, information concerning prices and volumes) will not be shared with, or passed on to, anyone outside the Crown units providing the supply service.
7. Where required by the Purchaser, Crown shall also enter into agreements for the supply of the can ends (NEO, EOE and peelable as required by the Purchaser) that Crown's Spanish Business cannot produce by itself to make such ends available to the Purchaser on a reasonable cost plus basis as agreed with the Purchaser and with the consent of the Monitoring Trustee in order to ensure the viability of Crown's Spanish Business, for such period as is required by the Purchaser to establish Crown's Spanish Business as a viable and independent business, but not exceeding [...] from the date of Closing, which can be extended by [...] if such extension is necessary to ensure the viability of the business. Strict firewall procedures will be adopted in relation to this agreement, so as to ensure that any competitively sensitive information related thereto (in particular, information concerning prices and volumes) will not be shared with, or passed on to, anyone outside the Crown units providing the supply service.
8. Where required by the Purchaser, Crown shall enter into transitional arrangements on a reasonable cost plus basis to be agreed with the Purchaser and with the consent of the Monitoring Trustee for the continuation of current IT/systems support for a period determined by the Purchaser but limited to a maximum period of [...] from the date of Closing.
9. Where required by the Purchaser, Crown shall enter into transitional arrangements on a reasonable cost plus basis to be agreed with the Purchaser and with the consent of the

Monitoring Trustee for the continuation of current logistics and distribution services for a period determined by the Purchaser but limited to a maximum period of [...] from the date of Closing.

10. The scope and terms of the transitional agreements and of the technical assistance referred to at the above paragraphs will have to be negotiated with the Purchaser, as this will largely depend on the requirements of the Purchaser. These agreements shall include the appropriate provisions to ensure that Crown provides the services to the Purchaser expeditiously. Crown shall carry out these services in accordance with good industry practice including as regards the timing and responsiveness with which this assistance is provided through the different stages of the transfer.

## Annex 1.a

### Tangible assets of Crown's Spanish Business

The following tables show the production lines to be transferred with the Crown's Spanish Business, as well as information about the property regime of the plants.

#### Production lines

<i>La Rioja plant</i>			
Line	Type of product	Diameter/Type	Owned/Leased
Line 1	Three-piece cans	[...]	Owned
Line 2	Three-piece cans	[...]	Owned
Line 3	Three-piece cans	[...]	Owned
Line 4	Three-piece cans	[...]	Owned
Line 5	Three-piece cans	[...]	Owned
Line 6	Three-piece cans	[...]	Owned
Line 7	Three-piece cans	[...]	Owned
Line 8	Three-piece cans	[...]	Owned
725PD11	NEO/ Standard End	[...]	Owned
725PD21	NEO/ Standard End	[...]	Owned
725PD31	NEO/ Standard End	[...]	Owned
725PD41	NEO/ Standard End	[...]	Owned
725PD50	NEO/ Standard End	[...]	Owned
<i>Murcia plant</i>			
Line 2	Three-piece cans	[...]	Owned
Line 4	Three-piece cans	[...]	Owned
Line 6	Three-piece cans	[...]	Owned
Line 7	Three-piece cans	[...]	Owned
<i>Vigo plant</i>			
Line 1	Metal Preparation	Coil Cutting Line	Owned
Line 1	Metal Preparation	Lacquer/ Coating Line	Owned
Line 3	Metal Preparation	Lacquer/ Coating Line	Owned
Line 6	Metal Preparation	Lacquer/ Coating Line	Owned
Line 7	Metal Preparation	Lacquer/ Coating Line [Recto Verso]	Owned
Line 2	Metal Preparation	2-Colour Litho Line [FOV]	Owned
Line 4	Metal Preparation	2-Colour Litho Line [FOV]	Owned

Line 5	Metal Preparation	2-Colour Litho Line [FOV]	Owned
Line 1	Two-piece cans	[...]	Owned
Line 2	Two-piece cans	[...]	Owned
Line 3	Two-piece cans	[...]	Owned
Line 4	Two-piece cans	[...]	Owned
Line 5	Two-piece cans	[...]	Owned
Line 6	Two-piece cans	[...]	Owned
Line 7	Two-piece cans	[...]	Owned
Line 8	Two-piece cans	[...]	Owned
Line 9	Two-piece cans	[...]	Owned
Line 10	Two-piece cans	[...]	Owned
Line 1	Three-piece cans	[...]	Owned
Line 2	Three-piece cans	[...]	Owned
Line 3	Three-piece cans	[...]	Owned
Line 4	Three-piece cans	[...]	Owned
Line 1	EOE	[...]	Owned
Line 2	EOE	[...]	Owned
Line 3	EOE	[...]	Owned
Line 4	EOE	[...]	Owned
Line 1	NEO/ Regular	[...]	Owned
Line 2	NEO/ Regular	[...]	Owned
Line 3	NEO/ Regular	[...]	Owned
Line 4	NEO/ Regular	[...]	Owned
Line 6	NEO/ Regular	[...]	Owned
Line 1	Peelable	[...]	Owned
Line 2	Peelable	[...]	
Line 2	Peelable	[...]	Owned
<b><i>Miravalles plant</i></b>			
Line 1	Metal Preparation	Coil Cutting Line	Owned
Line 21	Metal Preparation	Lacquer/ Coating Line	Owned
Line 23	Metal Preparation	Lacquer/ Coating Line	Owned
Line 25	Metal Preparation	Lacquer/ Coating Line	Owned
Line 24	Metal Preparation	2-Colour Litho Line [FOV]	Owned
Line 22	Metal Preparation	1-Colour Litho Line	Owned
Line 26	Metal Preparation	1-Colour Litho Line	Owned
Line 27	Metal Preparation	1-Colour Litho Line	Owned
Line 1	General Line Cans	[...]	Owned
Line 5	General Line Cans	[...]	Owned

Line 7	General Line Cans	[...]	Owned
Line 8	General Line Cans	[...]	Owned
Line 4	General Line Ends	[...]	Owned
Line 5	General Line Ends	[...]	Owned
Line 6	General Line Ends	[...]	Owned
Line 7	General Line Ends	[...]	Owned
Line 9	General Line Ends	[...]	Owned
Line 10	General Line Ends	[...]	Owned
Line 11	General Line Ends	[...]	Owned
Line 12	General Line Ends	[...]	Owned
Line 13	General Line Ends	[...]	Owned
Line 14	General Line Ends	[...]	Owned
Line 15	General Line Ends	[...]	Owned
Line 16	General Line Ends	[...]	Owned
Line 17	General Line Ends	[...]	Owned
Line 19	General Line Ends	[...]	Owned
Line 20	General Line Ends	[...]	Owned
Line 21	General Line Ends	[...]	Owned
<b>Montmeló plant</b>			
Line 1	General Line Cans	[...]	Owned
Line 2	General Line Cans	[...]	Owned
Line 5	General Line Cans	[...]	Owned
Line 7	General Line Cans	[...]	Owned
Line 8	General Line Cans	[...]	Owned
Line 1	General Line Ends	[...]	Owned
Line 3	General Line Ends	[...]	Owned
Line 4	General Line Ends	[...]	Owned
Line 5	General Line Ends	[...]	Owned
Line 6	General Line Ends	[...]	Owned
Line 7	General Line Ends	[...]	Owned
Line 8	General Line Ends	[...]	Owned
Line 10	General Line Ends	[...]	Owned
Line 11	General Line Ends	[...]	Owned
Line 12	General Line Ends	[...]	Owned
Line 13	General Line Ends	[...]	Owned
Line 14	General Line Ends	[...]	Owned
Line 15	General Line Ends	[...]	Owned
Line 17	General Line Ends	[...]	Owned
Line 18	General Line Ends	[...]	Owned
Line 20	General Line Ends	[...]	Owned

Line 22	General Line Ends	[...]	Owned
Line 23	General Line Ends	[...]	Owned
Line 24	General Line Ends	[...]	Owned
Line 25	General Line Ends	[...]	Owned

Crown will also install an additional production line at the Vigo plant to manufacture three-piece food cans of 99mm diameter with the capacity to produce [...] cans per year)<sup>9</sup>. This line will be transferred from another non-Spanish Crown plant.

### Land/Building

<b>Land/Building</b>	<b>Owned/Leased</b>
<i>La Rioja plant</i>	
Land & Buildings	Leased
<i>Murcia plant</i>	
Land & Buildings	Owned
<i>Vigo plant</i>	
Land & Buildings	Owned
<i>Miravalles plant</i>	
Land & Buildings	Owned
<i>Montmeló plant</i>	
Land & Buildings	Owned

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<sup>9</sup> Considering three-shifts per day and five days per week.

**Annex 2.a**  
**Customers of Crown's Spanish Business**

*A. Logroño Plant*

<b>Crown Reference</b>	<b>Customer</b>	<b>2013 Net (€ million)</b>	<b>Percentage of the total turnover</b>
1	[...]	[...]	[...]
2	[...]	[...]	[...]
3	[...]	[...]	[...]
4	[...]	[...]	[...]
5	[...]	[...]	[...]
6	[...]	[...]	[...]
7	[...]	[...]	[...]
8	[...]	[...]	[...]
9	[...]	[...]	[...]
10	[...]	[...]	[...]
11	[...]	[...]	[...]
12	[...]	[...]	[...]
13	[...]	[...]	[...]
14	[...]	[...]	[...]
15	[...]	[...]	[...]
16	[...]	[...]	[...]
17	[...]	[...]	[...]
18	[...]	[...]	[...]
19	[...]	[...]	[...]
20	[...]	[...]	[...]
21	[...]	[...]	[...]
22	[...]	[...]	[...]
23	[...]	[...]	[...]
24	[...]	[...]	[...]
25	[...]	[...]	[...]
26	[...]	[...]	[...]
27	[...]	[...]	[...]
28	[...]	[...]	[...]
29	[...]	[...]	[...]
30	[...]	[...]	[...]
31	[...]	[...]	[...]
32	[...]	[...]	[...]
33	[...]	[...]	[...]
34	[...]	[...]	[...]
35	[...]	[...]	[...]
36	[...]	[...]	[...]
44	[...]	[...]	[...]

*B. Murcia Plant*

<b>Crown Reference</b>	<b>Customer</b>	<b>2013 Net (€ million)</b>	<b>Percentage of the total turnover</b>
1	[...]	[...]	[...]
2	[...]	[...]	[...]
3	[...]	[...]	[...]
4	[...]	[...]	[...]



5	[...]	[...]	[...]
6	[...]	[...]	[...]
7	[...]	[...]	[...]
8	[...]	[...]	[...]
9	[...]	[...]	[...]
10	[...]	[...]	[...]
11	[...]	[...]	[...]
12	[...]	[...]	[...]
13	[...]	[...]	[...]
14	[...]	[...]	[...]
15	[...]	[...]	[...]
16	[...]	[...]	[...]
17	[...]	[...]	[...]
18	[...]	[...]	[...]
19	[...]	[...]	[...]
20	[...]	[...]	[...]
21	[...]	[...]	[...]
22	[...]	[...]	[...]
23	[...]	[...]	[...]
24	[...]	[...]	[...]
25	[...]	[...]	[...]
26	[...]	[...]	[...]
27	[...]	[...]	[...]
28	[...]	[...]	[...]

*C. Vigo Plant*

<b>Crown Reference</b>	<b>Customer</b>	<b>2013 Net (€ million)</b>	<b>Percentage of the total turnover</b>
1	[...]	[...]	[...]
2	[...]	[...]	[...]
3	[...]	[...]	[...]
4	[...]	[...]	[...]
5	[...]	[...]	[...]
6	[...]	[...]	[...]
7	[...]	[...]	[...]
8	[...]	[...]	[...]
9	[...]	[...]	[...]
10	[...]	[...]	[...]
11	[...]	[...]	[...]
12	[...]	[...]	[...]
13	[...]	[...]	[...]
14	[...]	[...]	[...]
15	[...]	[...]	[...]
16	[...]	[...]	[...]
17	[...]	[...]	[...]
18	[...]	[...]	[...]
19	[...]	[...]	[...]
20	[...]	[...]	[...]
21	[...]	[...]	[...]
22	[...]	[...]	[...]
23	[...]	[...]	[...]
24	[...]	[...]	[...]
25	[...]	[...]	[...]
26	[...]	[...]	[...]
27	[...]	[...]	[...]
28	[...]	[...]	[...]
29	[...]	[...]	[...]
30	[...]	[...]	[...]

D. *Ugao-Miravalles and Montmeló*

Crown Reference	Customer	2013 Net (€ thousands)	Percentage of the total turnover
1	[...]	[...]	[...]
2	[...]	[...]	[...]
3	[...]	[...]	[...]
4	[...]	[...]	[...]
5	[...]	[...]	[...]
6	[...]	[...]	[...]
7	[...]	[...]	[...]
8	[...]	[...]	[...]
9	[...]	[...]	[...]
10	[...]	[...]	[...]
11	[...]	[...]	[...]
12	[...]	[...]	[...]
13	[...]	[...]	[...]
14	[...]	[...]	[...]
15	[...]	[...]	[...]
16	[...]	[...]	[...]
17	[...]	[...]	[...]
18	[...]	[...]	[...]
19	[...]	[...]	[...]
20	[...]	[...]	[...]
21	[...]	[...]	[...]
22	[...]	[...]	[...]
23	[...]	[...]	[...]
24	[...]	[...]	[...]
25	[...]	[...]	[...]
26	[...]	[...]	[...]
27	[...]	[...]	[...]
28	[...]	[...]	[...]
29	[...]	[...]	[...]
30	[...]	[...]	[...]
31	[...]	[...]	[...]
32	[...]	[...]	[...]
33	[...]	[...]	[...]
34	[...]	[...]	[...]
35	[...]	[...]	[...]
36	[...]	[...]	[...]
37	[...]	[...]	[...]
38	[...]	[...]	[...]
39	[...]	[...]	[...]
40	[...]	[...]	[...]
41	[...]	[...]	[...]
42	[...]	[...]	[...]
43	[...]	[...]	[...]
44	[...]	[...]	[...]
45	[...]	[...]	[...]
46	[...]	[...]	[...]
47	[...]	[...]	[...]
48	[...]	[...]	[...]
49	[...]	[...]	[...]
50	[...]	[...]	[...]
51	[...]	[...]	[...]
52	[...]	[...]	[...]
53	[...]	[...]	[...]

54	[...]	[...]	[...]
55	[...]	[...]	[...]
56	[...]	[...]	[...]
57	[...]	[...]	[...]
58	[...]	[...]	[...]
59	[...]	[...]	[...]
60	[...]	[...]	[...]
61	[...]	[...]	[...]
62	[...]	[...]	[...]
63	[...]	[...]	[...]
64	[...]	[...]	[...]
65	[...]	[...]	[...]
66	[...]	[...]	[...]
67	[...]	[...]	[...]
68	[...]	[...]	[...]
69	[...]	[...]	[...]
70	[...]	[...]	[...]
71	[...]	[...]	[...]
72	[...]	[...]	[...]
73	[...]	[...]	[...]
74	[...]	[...]	[...]
75	[...]	[...]	[...]
76	[...]	[...]	[...]
77	[...]	[...]	[...]
78	[...]	[...]	[...]
79	[...]	[...]	[...]
80	[...]	[...]	[...]
81	[...]	[...]	[...]
82	[...]	[...]	[...]
83	[...]	[...]	[...]
84	[...]	[...]	[...]
85	[...]	[...]	[...]
86	[...]	[...]	[...]
87	[...]	[...]	[...]
88	[...]	[...]	[...]
89	[...]	[...]	[...]
90	[...]	[...]	[...]
91	[...]	[...]	[...]
92	[...]	[...]	[...]
93	[...]	[...]	[...]
94	[...]	[...]	[...]
95	[...]	[...]	[...]
96	[...]	[...]	[...]
97	[...]	[...]	[...]
98	[...]	[...]	[...]
99	[...]	[...]	[...]
100	[...]	[...]	[...]
101	[...]	[...]	[...]
102	[...]	[...]	[...]
103	[...]	[...]	[...]
104	[...]	[...]	[...]
105	[...]	[...]	[...]
106	[...]	[...]	[...]
107	[...]	[...]	[...]
108	[...]	[...]	[...]
109	[...]	[...]	[...]
110	[...]	[...]	[...]
111	[...]	[...]	[...]
112	[...]	[...]	[...]
113	[...]	[...]	[...]

114	[...]	[...]	[...]
115	[...]	[...]	[...]
116	[...]	[...]	[...]
117	[...]	[...]	[...]
118	[...]	[...]	[...]
119	[...]	[...]	[...]
220	[...]	[...]	[...]
221	[...]	[...]	[...]
222	[...]	[...]	[...]
223	[...]	[...]	[...]
224	[...]	[...]	[...]

**Annex 2a.bis**

**Customers of Mivisa or Crown of three-piece cans located in Portugal**

Mivisa's customers of three-piece cans located in Portugal ("Mivisa's Customers")

<b>Mivisa Reference</b>	<b>Customer</b>	<b>2013 units</b>	<b>2013 Net (€)</b>
1.002	[...]	[...]	[...]
1.015	[...]	[...]	[...]
1.659	[...]	[...]	[...]
1.893	[...]	[...]	[...]
3.119	[...]	[...]	[...]
4.368	[...]	[...]	[...]
4.807	[...]	[...]	[...]
5.526	[...]	[...]	[...]
6.181	[...]	[...]	[...]
6.522	[...]	[...]	[...]
6.604	[...]	[...]	[...]
6.952	[...]	[...]	[...]
7.669	[...]	[...]	[...]
7.814	[...]	[...]	[...]
8.458	[...]	[...]	[...]
8.796	[...]	[...]	[...]
8.797	[...]	[...]	[...]
8.971	[...]	[...]	[...]
9.011	[...]	[...]	[...]
9.101	[...]	[...]	[...]
9.233	[...]	[...]	[...]
9.398	[...]	[...]	[...]
		[...]	[...]

\*Not included in the Divestment Business

Crown's customers of three-piece cans located in Portugal ("Crown's Customers")

<b>Crown Reference</b>	<b>Customer</b>	<b>2013 units</b>
S.16360	[...]	[...]
S.42637	[...]	[...]
S.49630	[...]	[...]
S.36813	[...]	[...]
S.16352	[...]	[...]
S.36826	[...]	[...]
S.43395	[...]	[...]
S.35255	[...]	[...]
S.42706	[...]	[...]
		[...]

### Annex 3.a

#### Personnel organizational chart of Crown's Spanish Business

Crown will transfer all Personnel to the Purchaser of the Spanish Business.

The current management of the Divestment Business is composed of the following individuals, all of them to be considered Key Personnel:

- Financial Director: [...];
- Commercial Director: [...]; and
- Operations Director: [...].

The tables below show the current number of employees, per category and plant and the Key Personnel of each of the plants.

#### A. *La Rioja*

Type	Employees
Permanents	[...]
Temps & Agency	[...]
<b>Average Employees 2012</b>	<b>[...]</b>
Direct (S1-S2)	[...]
Indirect (S3)	[...]
Sales (S4)	[...]
<b>Permanent Headcount December 2012</b>	<b>[...]</b>
Key Personnel	
Function	Name
Plant Manager	[...]
Human Resources	[...]
Control	[...]
Supply Chain	[...]
Maintenance	[...]
Engineering	[...]

B. Murcia

Type	Employees
Permanents	[...]
Temps & Agency	[...]
<b>Average Employees 2012</b>	<b>[...]</b>
Direct (S1-S2)	[...]
Indirect (S3)	[...]
Sales (S4)	[...]
<b>Permanent Headcount December 2012</b>	<b>[...]</b>
Key Personnel	
Function	Name
Plant Manager	[...]
Human Resources / EHS	[...]
Control	[...]
Supply Chain	[...]
Engineering	[...]

C. Vigo

Type	Employees
Permanents	[...]
Temps	[...]
<b>Average Employees 2012</b>	<b>[...]</b>
Direct (S1-S2)	[...]
Indirect (S3)	[...]
Sales (S4)	[...]
<b>Permanent Headcount December 2012</b>	<b>[...]</b>
Key Personnel	
Function	Name
Plant Manager	[...]
Human Resources Manager	[...]
Control	[...]
Supply Chain	[...]
Production / Maintenance	[...]

D. *Ugao-Miravalles and Montmeló*

<b>Ugao-Miravalles</b>	
<b>Type</b>	<b>Employees</b>
Permanents	[...]
Temps	[...]
<b>Average Employees 2012</b>	<b>[...]</b>
Direct (S1-S2)	[...]
Indirect (S3)	[...]
Sales (S4)	[...]
<b>Permanent Headcount December 2012</b>	<b>[...]</b>
<b>Montmeló</b>	
<b>Type</b>	<b>Employees</b>
Permanents	[...]
Temps	[...]
<b>Average Employees 2012</b>	<b>[...]</b>
Direct (S1-S2)	[...]
Indirect (S3)	[...]
Sales & GA (S4 & S5)	[...]
<b>Permanent Headcount December 2012</b>	<b>[...]</b>
<b>Key Personnel</b>	
<b>Function</b>	<b>Name</b>
Plant Manager	[...]
Logistics Manager	[...]
Production / Maintenance Supervisor (Montmeló)	[...]
Controller	[...]

Excluded personnel

The only employee that will be excluded from Crown's Spanish Business is one expatriate employee based in Spain in the finance department but who is employed by another Crown entity.

The Purchaser will be able to propose the exclusion of any other employees that it considers unnecessary for the operation of the Divestment Business.



## **SCHEDULE B - HORST PLANT**

1. The Divestment Business consists of Mivisa's plant located in Horst, the Netherlands, an assembly plant currently owned by Mivisa Envases, S.A.U. and which manufactures three-piece cans.
2. In accordance with paragraph 6 of these Commitments, the Horst Plant includes, but is not limited to:
  - (a) The main tangible assets listed in Annex 1.b (including the know-how for the operation of the production lines);
  - (b) All contracts, commitments and customer orders relating to the customers of the Horst Plant listed in Annex 2.b;
  - (d) All customers lists, sales, marketing and promotional information (in particular the customer base of the Horst Plant in the Netherlands and abroad, i.e. details of all customers in the Netherlands and abroad that have purchased any products manufactured at the Horst Plant during the 12 month period prior to the Effective Date);
  - (e) All raw materials, stocks, work in progress and semi-finished and finished goods held at the date of closing;
  - (f) The main licences, permits and authorisations;
  - (g) All Personnel (as further described in Annex 3.b);
  - (h) The goodwill relating to the Horst Plant at the time of the divestment together with the exclusive right for the Purchaser to represent itself as carrying on the Horst Plant in succession to Crown.
3. The Horst Plant shall not include, inter alia:
  - (a) Any brands or logos currently held, as owner or licensee, by Crown or Mivisa or any rights to sell the products manufactured in the Horst Plant with the Mivisa name;
  - (b) Any rights to the [www.mivisa.es](http://www.mivisa.es) and [www.mivisa.com](http://www.mivisa.com) websites or domain names;
  - (c) Books and records required to be retained pursuant to any statute, rule, regulation or ordinance, provided that the Purchaser(s) shall obtain a copy of the same and shall be permitted access to the original of such books and records upon reasonable request during normal business hours;
  - (d) General books of account and books of original entry that comprise Mivisa's or an Affiliated Undertaking's permanent accounting or tax records;
4. If there is any asset or personnel which is not be covered by paragraph 2 of this Schedule but which is both used (exclusively or not) in the Horst Plant and indispensable for the

continued viability and competitiveness of the Horst Plant, that asset or adequate substitute will be offered to potential purchasers.

5. Crown proposes to offer the Purchaser of the Horst Plant, at the option of the Purchaser and on a reasonable cost plus basis to be agreed with the Purchaser and with the consent of the Monitoring Trustee in order to ensure the viability of the Horst Plant, transitional services to replicate the essential functions currently in place in order to ensure the viability of the Horst Plant.
6. In particular, where required by the Purchaser, Crown shall provide reasonable technical assistance to the Purchaser to facilitate the procurement of raw materials necessary for the manufacture of the products manufactured at the Horst Plant. If the Purchaser is not able to source such raw materials, Crown commits to enter, at the option of the Purchaser, into supply agreements with certain raw material suppliers and to make such raw materials available to the Purchaser on a reasonable cost plus basis as agreed with the Purchaser and with the consent of the Monitoring Trustee in order to ensure the viability of the Horst Plant, for such period as is required by the Purchaser to establish the Horst Plant as a viable and independent business, but not exceeding [...] from the date of Closing, which can be extended by [...] if such extension is necessary to ensure the viability of the business. Strict firewall procedures will be adopted in relation to this agreement, so as to ensure that any competitively sensitive information related thereto (in particular, information concerning prices and volumes) will not be shared with, or passed on to, anyone outside the Crown units providing the supply service.
7. Crown will enter into an agreement with the Purchaser of the Horst Plant for the supply of can ends (EOE, NEO or peelable as required by the Purchaser) to the Horst Plant to make such ends available to the Purchaser on a reasonable cost plus basis as agreed with the Purchaser and with the consent of the Monitoring Trustee in order to ensure the viability of the Horst Plant, for such period as is required by the Purchaser to establish the Horst Plant as a viable and independent business, but not exceeding [...] from the date of Closing, which can be extended by [...] if such extension is necessary to ensure the viability of the business. Strict firewall procedures will be adopted in relation to this agreement, so as to ensure that any competitively sensitive information related thereto (in particular, information concerning prices and volumes) will not be shared with, or passed on to, anyone outside the Crown units providing the supply service.
8. Crown will also enter into agreements for the supply of plate cutting, lacquering or printing services on a reasonable cost plus basis to be agreed with the Purchaser and with the consent of the Monitoring Trustee, for such period to facilitate the establishment of the Horst Plant as a viable and independent business, but not exceeding [...] from the date of Closing.
9. Where required by the Purchaser, Crown shall enter into transitional arrangements on a reasonable cost plus basis to be agreed with the Purchaser and with the consent of the Monitoring Trustee for the continuation of current IT/systems support for a period determined by the Purchaser but limited to a maximum period of [...] from the date of Closing.

10. Where required by the Purchaser, Crown shall enter into transitional arrangements on a reasonable cost plus basis to be agreed with the Purchaser and with the consent of the Monitoring Trustee for the continuation of current logistics and distribution services for a period determined by the Purchaser but limited to a maximum period of [...] from the date of Closing.
  
11. The scope and terms of the transitional agreements and of the technical assistance referred to at the above paragraphs will have to be negotiated with the Purchaser, as this will largely depend on the requirements of the Purchaser. These agreements shall include the appropriate provisions to ensure that Crown provides the services to the Purchaser expeditiously. Crown shall carry out these services in accordance with good industry practice including as regards the timing and responsiveness with which this assistance is provided through the different stages of the transfer.

## Annex 1.b

### Tangible Assets part of the Horst Plant

The following table shows the production lines to be transferred with the Horst Plant, as well as information about the property regime of the Horst Plant.

#### Production lines

<i>Horst plant</i>			
<b>Line</b>	<b>Type of product</b>	<b>Diameter/Type</b>	<b>Owned/Leased</b>
Line 1	Three-piece cans	[...]	Owned
Line 2	Three-piece cans	[...]	Owned
Line 3	Three-piece cans	[...]	Owned
Line 4	Three-piece cans	[...]	Owned
Line 5	Three-piece cans	[...]	Owned

#### Land/Building

<b>Land/Building</b>	<b>Owned/Leased</b>
Land – [...]	Owned
Buildings – [...]	Owned

## Annex 2.b

### Customers in Horst Plant

Mivisa Reference	Customer	2013 Net Sales (€ million)	Percentage of the total turnover
5985	[...]	[...]	[...]
3144	[...]	[...]	[...]
4141	[...]	[...]	[...]
8648	[...]	[...]	[...]
8186	[...]	[...]	[...]
4392	[...]	[...]	[...]
3502	[...]	[...]	[...]
6471	[...]	[...]	[...]
6138	[...]	[...]	[...]
3196	[...]	[...]	[...]
3072	[...]	[...]	[...]
5700	[...]	[...]	[...]
3418	[...]	[...]	[...]
9888	[...]	[...]	[...]
8899	[...]	[...]	[...]
3097	[...]	[...]	[...]
7074	[...]	[...]	[...]
6832	[...]	[...]	[...]
5073	[...]	[...]	[...]
3392	[...]	[...]	[...]
7116	[...]	[...]	[...]
3099	[...]	[...]	[...]
1994	[...]	[...]	[...]
6873	[...]	[...]	[...]
3223	[...]	[...]	[...]
3867	[...]	[...]	[...]
3335	[...]	[...]	[...]
5746	[...]	[...]	[...]
2988	[...]	[...]	[...]
3908	[...]	[...]	[...]
3811	[...]	[...]	[...]
3154	[...]	[...]	[...]
6109	[...]	[...]	[...]
3054	[...]	[...]	[...]
3859	[...]	[...]	[...]

3904	[...]	[...]	[...]
8638	[...]	[...]	[...]
4242	[...]	[...]	[...]
3534	[...]	[...]	[...]
6118	[...]	[...]	[...]
4667	[...]	[...]	[...]
336	[...]	[...]	[...]
8778	[...]	[...]	[...]
6776	[...]	[...]	[...]
6488	[...]	[...]	[...]
3946	[...]	[...]	[...]
209	[...]	[...]	[...]
9999	[...]	[...]	[...]
Total		[...]	[...]

### Annex 3.b

#### Personnel organisational chart of the Horst Plant

All Personnel will be transferred to the Purchaser of the Horst Plant.

The following tables show the structure of the management of the Divestment Business as well as current number of employees, per category and plant.

Position	Name
<b>Key Personnel</b>	
Director of the plant	[...]
Chief Mechanic	[...]
Quality control Director	[...]
Chief of Personnel	[...]
Commercial Department	[...]
Chief of Administration	[...]

Type	Employees
Manager	[...]
Commercial, Administration and Reception Department	[...]
Production and Quality Management	[...]
Electricians, technicians and other qualified personnel	[...]
Operators, quality control, and other non-qualified operators	[...]
<b>Total</b>	<b>[...]</b>