EUROPEAN COMMISSION
Competition DG

CASE AT.39563 – Retail Food Packaging

(Only the English and Italian texts are authentic)

CARTEL PROCEDURE

Council Regulation (EC) 1/2003

Article 7 Regulation (EC) 1/2003

Date: 17/12/2020

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EUROPEAN
COMMISSION

Brussels, 17.12.2020
C(2020) 8940 final

COMMISSION DECISION

of 17.12.2020

replacing the fines set by Decision C(2015) 4336 final of 24 June 2015 relating to a proceeding under Article 101 of the Treaty on the Functioning of the European Union to the extent that it concerns CCPL S.c., Coopbox Group S.p.A. and Coopbox Eastern s.r.o.

(AT.39563 – Retail Food Packaging)

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(AT.39563 – Retail Food Packaging)

(Only the English and Italian texts are authentic)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,[1]

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

Having regard to the Commission Decision of 21 September 2012 to initiate proceedings in this case,

Having regard to the Commission Decision C(2015) 4336 final of 24 June 2015 relating to a proceeding under Article 101 of the Treaty on the Functioning of the European Union and Article 53 of the EEA Agreement (AT.39563 – Retail Food Packaging),[3]

Having regard to the judgment of the General Court of the European Union of 11 July 2019 in Case T-522/15,[4]

Having given the undertakings concerned the opportunity to make known their views on the Commission's intention to adopt a decision amending Commission Decision C(2015) 4336 final to replace the part of the decision annulled by the judgment of the General Court of the European Union of 11 July 2019 in Case T-522/15, in the part that it concerns such undertakings,

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1 OJ C 115, 9.5.2008, p. 47.

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

3 OJ C 402, 4.12.2015, p. 8-14.

4 Judgment of 11 July 2019 in Case T-522/15 - *CCPL and Others v Commission*, EU:T:2019:500.

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

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

Whereas:

1. FACTUAL BACKGROUND

(1) By Commission Decision C(2015) 4336 final of 24 June 2015 relating to a proceeding under Article 101 TFEU and Article 53 of the EEA Agreement in the Case AT.39563 – Retail Food Packaging (hereafter "the 2015 Decision")[5] the Commission investigated five cartels concerning polystyrene plastic trays ("foam trays") and, in respect of one cartel, also polypropylene plastic trays ("rigid trays") used for retail packaging of fresh food such as meat, poultry and fish, establishing infringements of Articles 101 TFEU and 53 of the EEA Agreement and imposing fines on, amongst others, the addressees of the present decision.

(2) The above-referred proceedings encompassed five separate infringements of Articles 101 TFEU and 53 of the EEA Agreement each qualified as single and continuous and delineated by a geographic scope, namely: Italy; South-West Europe ("SWE"); North-West Europe ("NWE"); France; and Central-Eastern Europe ("CEE"). The 2015 Decision found that although there were certain similarities between the infringements in terms of product, type of anticompetitive conduct and partial chronological and personnel overlaps, these were not sufficiently strong to establish the existence of an overall collusive plan. Therefore, it was not possible to establish a single and continuous infringement covering all five geographical regions.[6]

(3) The 2015 Decision was addressed to ten undertakings (eight manufacturers and two distributors). With some differences between the cartels, the 2015 Decision found that, in the relevant periods, the participating undertakings fixed prices, allocated customers and markets, engaged in bid-rigging and exchanged commercially-sensitive information in each of the five above-mentioned geographic scopes, constituting distinct infringements of Articles 101 TFEU and 53 of the EEA Agreement. These anticompetitive practices lasted from 2 March 2000 until 13 February 2008, with different durations for periods ranging from just over a year to almost eight years between the five different infringements. The addressees of the 2015 Decision were imposed a total amount of fines of EUR 115 865 000 for their respective participation in the infringements.

(4) In the 2015 Decision, the Commission held five companies within the CCPL Group (namely the following legal entities: CCPL S.c., Coopbox Group S.p.A., Poliemme S.r.l., Coopbox Hispania S.l.u. and Coopbox Eastern s.r.o.) liable for their participation in three of the five separate cartels concerned by that decision. To the effect of applying Articles 101 TFEU to the three infringements in question, the Commission considered that the above-mentioned legal entities constituted one undertaking that took part to the three infringements in different periods and having different compositions. In particular, the concerned entities of the CCPL Group were

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5 The summary of the 2015 Decision was published in OJ C 402, 4.12.2015, p. 18.

6 See Section 1 of the 2015 Decision.

each held liable for the three separate geographic areas in the relevant periods, as follows:

(a) Relative to the Italy infringement in the period from 18 June 2002 to 17 December 2007 (see recitals (967) and (971) of the 2015 Decision): Poliemme S.r.l. was held liable for its participation in this infringement in the period from 18 June 2002 to 29 May 2006, and Coopbox Group S.p.A. and CCPL S.c. were held liable for their participation in the same infringement in the period from 18 June 2002 to 17 December 2007 (2015 Decision, Article 1, paragraph (1), letter (f)).

(b) Relative to the SWE infringement in the period from 2 March 2000 to 13 February 2008 (see recitals (978) and (980) of the 2015 Decision): Coopbox Hispania S.l.u. was held liable for its participation in this infringement in the period from 2 March 2000 to 13 February 2008, and CCPL S.c. was held liable for its participation in the same infringement in the period from 26 June 2002 to 13 February 2008 (2015 Decision, Article 1, paragraph (2), letter (c)).

(c) Relative to the CEE infringement in the period from 5 November 2004 to 24 September 2007 (see recital (994) of the 2015 Decision): Coopbox Eastern s.r.o. was held liable for its participation in this infringement in the period from 5 November 2004 to 24 September 2007, and CCPL S.c. was held liable for its participation in the same infringement in the period from 8 December 2004 to 24 September 2007 (2015 Decision, Article 1, paragraph (4), letter (c)).

(5) The following fines were accordingly imposed on the said legal entities of the CCPL Group:

(a) As per the Italy infringement: EUR 321 000 on Poliemme S.r.l. (solely liable), EUR 10 382 000 on Poliemme S.r.l., Coopbox Group S.p.A. and CCPL S.c. (jointly and severally liable), and EUR 11 434 000 on Coopbox Group S.p.A. and CCPL S.c. (jointly and severally liable) (2015 Decision, Article 2, paragraph (1), letters (f), (g) and (h)), representing a total fine of EUR 22 137 000;

(b) As per the SWE infringement: EUR 1 295 000 on Coopbox Hispania S.l.u. (solely liable), and EUR 9 660 000 on Coopbox Hispania S.l.u. and CCPL S.c. (jointly and severally liable) (2015 Decision, Article 2, paragraph (2), letters (d) and (e)), representing a total fine of EUR 10 955 000;

(c) As per the CEE infringement: EUR 11 000 on Coopbox Eastern s.r.o. (solely liable), and EUR 591 000 on Coopbox Eastern s.r.o. and CCPL S.c. (jointly and severally liable) (2015 Decision, Article 2, paragraph (4), letters (c) and (d)), representing a total fine of EUR 602 000.

(6) In total, the Commission imposed a total amount of fines of EUR 33 694 000 on the above-referred five legal entities of the CCPL Group. That total amount was determined, after granting to the above-mentioned entities of the CCPL Group a 25% reduction of the fines otherwise applicable on grounds of the group's reduced ability to pay the fines as established by the Commission following the assessment of the inability to pay ("ITP") request lodged by them in accordance with point 35 of the Commission's Guidelines on the method of setting fines imposed pursuant to Article

23(2)(a) of Regulation (EC) No 1/2003 (hereafter, "the Guidelines on Fines")[7]. In particular, in 2015, the CCPL Group had committed to a reorganisation plan entailing the sale of its non-core business assets to generate resources to reduce its financial debt. Following the assessment of the ITP request in 2015, the Commission considered that the CCPL Group could generate funds to pay an amount equivalent to 75% of the total fine which otherwise would have been imposed. The Commission provided its assessment of the CCPL Group's ability to pay the reduced fines in Annex IV to the 2015 Decision. In such circumstances, the Commission decided that a 25% reduction of the applicable fines on the ground of its ITP request was appropriate.

(7) On 10 September 2015, the above-referred five legal entities of the CCPL Group lodged an application (in Case T-522/15) against the 2015 Decision, seeking its partial annulment in as far as they were concerned and, at subsidiary level, the reduction of the amount of the fines imposed on them.

(8) On 29 September 2015, the same five companies of the CCPL Group lodged an application for interim measures pursuant to Articles 278 and 279 TFEU (in Case T-522/15 R) seeking that the General Court suspends their obligation to provide a bank guarantee or to pay provisionally the fines, as requested by the last paragraph of Article 2 of the 2015 Decision.

(9) By order of 15 December 2015, the President of the Court granted the requested suspension, while setting two conditions:

(a) first, that the companies provide periodic reports on the implementation of the restructuring plan and on the sale of assets under that plan, and

(b) second, that the companies pay an amount of EUR 5 000 000 to the Commission upon the sale of certain assets (foreseen in the restructuring plan) in addition to the entire proceeds of the sale of three shareholding participations in the companies Refincoop SpA, Erzelli Energia Srl et Smec Srl.

(10) To comply with that order, on 11 July 2017 and 15 August 2018, CCPL S.c. paid the amounts of respectively EUR 5 000 000 and EUR 942 084, as partial provisional coverage of the fines imposed on the companies of the CCPL Group.

(11) On 11 July 2019, the General Court rendered its judgment in Case T-522/15 ("the 2019 Judgment"),[8] by which it annulled the fines imposed on the addressed entities of the CCPL Group in their entirety upholding the plea of the applicants that the Commission had insufficiently motivated its inability to pay assessment, while rejecting all the other pleas of the applicants. The General Court accordingly

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[7] Commission's Guidelines on the method of setting fines imposed pursuant to Article 23(2)(a) of Regulation (EC) No 1/2003, OJ C 210, 1.9.2006, p. 2.

[8] Judgment of the General Court of 11 July 2019, EU:T:2019:500, as rectified by the order of the General Court of 6 September 2019, EU:T:2019:599

annulled the operative parts of the 2015 Decision imposing the said fines totalling EUR 33 694 000 on the addressees of the CCPL Group.[9]

(12) On 7 October 2019, to comply with the 2019 Judgment, the Commission reimbursed to CCPL S.c. the amount of EUR 5 942 084 that the entities of the CCPL Group had provisionally paid as partial coverage of the fines imposed under the 2015 Decision, in accordance with Article 260(1) TFEU.

(13) On 20 September 2019, CCPL S.c., Coopbox Group S.p.A. and Coopbox Eastern s.r.o. lodged an appeal before the European Court of Justice in which they seek the annulment of the 2019 Judgment (Case C-706/19 P) within the scope set in the appeal and the full annulment of the fines imposed on the appellants[10]. That appeal, currently pending, does not have suspensory effect and accordingly does not affect the present proceedings.

2. PROCEDURAL BACKGROUND

(14) By letter of 18 September 2019, the Commission informed CCPL S.c., as ultimate parent of the CCPL Group and acting on behalf of the legal entities of the group when it made the provisional payments and received reimbursement of these payments following the 2019 Judgment, of its intention to adopt a new decision imposing fines on the relevant entities of the CCPL Group, and inviting the concerned entities to submit their observations. By that letter, the Commission also informed CCPL S.c. of its intention to follow the same method of calculation of the adjusted basic amount as applied in the 2015 Decision. By its letter, the Commission also clarified that that method would entail applying the 10% total turnover limit of the CCPL Group in the last full business year before the adoption of the new decision on each total of the fine amounts applicable calculated per each of the three infringements committed. The letter finally informed CCPL S.c. that any possible request for fine reductions based on point 35 of the Guidelines on Fines, would be analysed on the basis of the CCPL Group's most current financial situation.

(15) On 4 October 2019, CCPL S.c., Coopbox Group S.p.A. and Coopbox Eastern s.r.o requested the Commission to consider their inability to pay under point 35 of the Guidelines on Fines, in the framework of the proceedings for adopting a new decision to impose fines on the relevant companies of the CCPL Group.

(16) By the same request, the above three entities of the CCPL Group informed the Commission that Coopbox Hispania S.l.u. had started judicial liquidation procedures in 2018 and Poliemme S.r.l. had been incorporated into Coopbox Group S.p.A. in 2017.[11] The proceedings for the re-imposition of fines for the infringements of the undertaking CCPL Group found in the 2015 Decision therefore concern CCPL S.c.,

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[9] See operative part of the judgment of 11 July 2019, as rectified by the order of 6 September 2019. The General Court annulled Article 2, paragraph (1), letters (f) (g) and (h), paragraph (2), letters (d) and (e), and paragraph 4, letters (c) and (d) of the 2015 Decision.

[10] OJ C 383 of 11.11.2019, p.55.

[11] They also informed the Commission that another operating company of the CCPL Group ONO Packaging S.A., had closed its only production plant and went into judicial administration in 2018. The French company ONO Packaging S.A. also operated in the retail food packaging sector and was indirectly controlled by CCPL S.c.

Coopbox Group S.p.A., and Coopbox Eastern s.r.o. (hereafter "the concerned entities of the CCPL Group" or "CCPL").

(17) By letter of 28 October 2019, CCPL submitted its observations in reply to the letter of 18 September 2019. In particular, CCPL drew the attention of the Commission to the CCPL Group's lower expected total turnover for 2019 compared to 2018. Among the reasons for that, CCPL pointed to the ceased operations because of liquidation of its Spanish subsidiary Coopbox Hispania S.l.u., and the closure of the only plant of its French subsidiary ONO Packaging S.A. CCPL requested that, in determining the fines applicable in a prospective new decision in 2020, the Commission takes into account the reduced turnover to the effect of applying the 10% turnover limit provided for in Article 23(2) of Regulation (EC) No 1/2003.

(18) Account taken of these observations, by letter of 15 May 2020, the Commission confirmed its intention to adopt a new decision to replace the relevant sections of the operative part of the 2015 Decision annulled by the 2019 Judgment by imposing the applicable fines on the concerned entities of the CCPL Group and hold them liable for the participation in the three separate cartels in the sector of the supply of foam trays for retail food packaging, covering the separate geographic areas of Italy, SWE and CEE, as referred to above. Concerning the calculation of the upward limit of the applicable fines, the Commission confirmed its intention to apply the 10% total turnover limit of the year preceding the one of adoption of the new decision on each total fines amount applicable per infringement. By that letter, the Commission confirmed that the planned decision would impose fines on three entities of CCPL Group, i.e. CCPL S.c., Coopbox Group S.p.A. and Coopbox Eastern s.r.o.. Concerning the remaining two addressees of the 2015 Decision of the CCPL Group - Poliemme S.r.l. and Coopbox Hispania S.l.u. -, the Commission stated that, because the first company had formally ceased to exist in 2017 when incorporated into Coopbox Group S.p.A. and the second company went into liquidation proceedings in 2018, these two entities would not be addressees of the planned decision.

(19) By letter of 15 June 2020, CCPL submitted further observations in reply to the letter of 15 May 2020, reiterating what it had stated in the letters dated 4 and 28 October 2019. Concerning the method of calculating the fine and in view of the assessment of the concerned entities of the CCPL Group's ability to pay the fines, CCPL drew again the attention of the Commission to the substantial smaller size of the CCPL Group and on ceasing operations in most of its prior businesses.

(20) CCPL submitted that the fine amounts to determine should be reasonable, equitable, and in line with the fines imposed to the other addressees of the 2015 Decision, in order to comply with the principles of proportionality and equal treatment.

3. ASSESSMENT

3.1. Reasons for a decision replacing the fines set in the 2015 Decision in as far as the relevant entities of the CCPL Group participated in the infringements in question

(21) The present decision seeks to remedy the reasons of invalidity determined by the 2019 Judgment that affected Article 2, paragraph 1, letters (f), (g) and (h), paragraph 2, letters (d) and (e), and paragraph 4, letters (c) and (d) of the 2015 Decision. Such reasons consisted in an insufficient statement of reasons regarding the level of reduction of the fines imposed on the entities of the CCPL Group in the context of their request for inability to pay the fine under Point 35 of the Guidelines on Fines.

(22) As background, it must be recalled that, where an EU Court rules that an act of the European Union is invalid, Article 266(1) TFEU requires the institution concerned to take the necessary measures to remedy that illegality. In order to fulfil that obligation in the framework of proceedings intended to replace the fines annulled by the 2019 Judgment, the Commission is required to have regard not only to the operative part of the judgment of annulment, but also to the grounds which led to the judgment and constitute its essential basis, in so far as they are necessary to determine the exact meaning of what is stated in the operative part. It is those grounds which, on the one hand, identify the precise provision held to be illegal and, on the other, indicate the specific reasons which underlie the finding of illegality contained in the operative part and which the institution concerned must take into account when replacing the act annulled or declared invalid.[12]

(23) The annulment of a Union act does not necessarily affect the preparatory acts thereof. Consequently, except where the irregularity found rendered the entire procedure null and void, the institution may, in order to adopt an act intended to replace a preceding act annulled, reopen the procedure at the stage at which that irregularity was committed.[13]

(24) Against this background, in the present proceedings, the Commission should not address any new objections to the relevant entities of the CCPL Group, nor should it seek to alter the substance of the objections as set out in the Statement of Objections of 21 September 2012.[14] In that respect, the Commission also notes that Article 1 of the 2015 Decision became definitive with respect to the relevant entities of the CCPL Group that are concerned with the present proceedings.

(25) The Commission therefore considers it appropriate to adopt a new decision replacing the parts of the 2015 Decision annulled by the 2019 Judgment imposing fines on the relevant entities of the CCPL Group because held responsible for their participation in the infringements as established by the 2015 Decision. The adoption of a decision replacing such annulled fines should avoid impunity of the relevant entities of the CCPL Group by ensuring a deterrent effect and a consistent and effective application of the competition rules.

(26) The present decision should accordingly be addressed to CCPL S.c., Coopbox Group S.p.A. and Coopbox Eastern s.r.o., as the relevant entities of the CCPL Group. Poliemme S.r.l. and Coopbox Hispania S.l.u., being the remaining two entities of the CCPL Group that were held liable for the participation in the infringements object of the 2015 Decision, should not be addressees of the present decision because Poliemme S.r.l. ceased to exist as legal entity and Coopbox Hispania is not going concern as it is in liquidation.[15]

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12 See judgment of 15 October 2002 in Case C-238/99 P - *Limburgse Vinyl Maatschappij (LVM) and Others v Commission* (EU:C:2002:582, paragraph 62).

13 Ibid, paragraph 73.

14 See recital (51) of the 2015 Decision.

15 See recital (17).

3.2. Determination of the applicable fines pursuant to Article 23(2) of Regulation (EC) No 1/2003 in the present case

3.2.1. Introduction

(27) Under Article 23(2) of Regulation (EC) No 1/2003, the Commission may by decision impose fines on undertakings and associations of undertakings where, either intentionally or negligently, they infringe Article 101 of the Treaty. For each undertaking participating in each of the infringements, the fine must not exceed 10 % of its total turnover in the preceding business year.

(28) Based on the facts described in Section 4 of the 2015 Decision, the Commission considers that the infringements were committed intentionally. This is demonstrated for all of the cartels addressed by the decision, by the intensity of contacts between the participating undertakings with a clear anticompetitive purpose as well as by the precaution taken to conceal their arrangements and to avoid their detection. With respect to all of these cartels, the parties cannot claim that they did not act deliberately.[16] In any event, the parties in all of the cartels covered by the 2015 Decision acted at least negligently.

(29) The Commission should impose fines on the relevant entities of the CCPL Group that reflect their involvement in the relevant infringements. Pursuant to Article 23(2) of Regulation (EC) No 1/2003 and Article 15(2) of Regulation No 17, the Commission must, in fixing the amount of the fine to be imposed, have regard to all relevant circumstances and particularly the gravity and duration of the infringement, which are the two criteria explicitly referred to in that regulation. In doing so, the Commission sets the fines at a level sufficient to ensure deterrence. Moreover, the role played by each undertaking party to an infringement is assessed on an individual basis. The fine imposed must reflect any aggravating and attenuating circumstances pertaining to each undertaking.

(30) To reflect the same methodology followed in its 2015 Decision, in setting the fines to be imposed in the present case, the Commission should refer to the principles laid down in its Guidelines on Fines.

(31) In accordance with the Guidelines on Fines, a basic amount is to be determined for each undertaking's fine, which results from the addition of a variable amount and an additional amount. The variable amount results from a percentage of up to 30% of the value of sales of goods or services to which the infringement relates in a given year (normally, the last full business year of the infringement) multiplied by the number of years of the undertaking's participation in the infringement. The additional amount ("entry fee") is calculated as a percentage between 15% and 25% of the value of sales, irrespective of the duration of the infringement. The resulting basic amount can then be increased or reduced for each company if either aggravating or mitigating circumstances are found to be applicable. The Commission may depart from the methodology set out in the Guidelines on Fines where this is justified by the particularities of a given case or the need to achieve deterrence in a particular case (point 37 of the Guidelines on Fines).

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[16] See, e.g., Case T-11/05 - *Wieland-Werke AG* v *Commission* (EU:T:2010:201, paragraph 140); Case T-143/89 - *Ferriere Nord* v *Commission* (EU:T:1995:64, paragraph 42); Case C-219/95 P - *Ferriere Nord* v *Commission* (EU:C:1997:375, paragraph 50).

(32) To determine the applicable fines in this case, the Commission notes that the 2019 Judgment does not affect the relevance of a number of parameters on the basis of which the fines of the 2015 Decision were determined, nor does it affect the relevance of the information provided by the parties during the administrative procedure leading to the adoption of the 2015 Decision, on the basis of which some of those parameters were determined.

(33) In that respect, the Commission makes reference more in particular to recitals (1008) to (1024) (value of sales), recitals (1025) to (1033) (gravity), recitals (1034) to (1035) (duration), recitals (1036) to (1038) (additional amount and calculation of the basic amount), recitals (1060) to (1094) (leniency) and recital (1095) (reduction of the fines due to lapse of time) of the 2015 Decision.

(34) The Commission should also apply, as appropriate, the provisions of the Commission Notice on immunity from fines and reduction of fines in cartel cases (hereafter, "the Leniency Notice")[17].

(35) Those parameters should therefore be taken into consideration for the purpose of determining the applicable fines in the present decision, as follows.[18]

3.2.2. Value of Sales

(36) The basic amount of the fines to be imposed on the undertakings concerned should be set by reference to the value of sales,[19] that is to say, the value of each undertakings' sales of goods or services to which the infringement directly or indirectly related in the relevant geographic area in the EEA.

(37) The Commission considers the same values of sales as in the 2015 Decision for the addressees of the present decision. Because Poliemme S.r.l. and Coopbox Hispania S.l.u. are not addressees of this decision (see recitals (18) and (26)), only the value of sales for infringement periods for which these two entities are jointly liable with any of the addressees of the present decision should be retained for the calculation of the fines to be imposed on the relevant addressees of the present decision.[20] For the above reasons, no fines should accordingly be imposed for the part of the infringements in Italy and SWE for which, respectively Poliemme S.r.l. and Coopbox Hispania S.l.u. would be solely liable.

(38) The relevant value of sales includes all the CCPL Group's sales of foam trays (including standard, absorbent and barrier trays) for retail food packaging[21] in the respective geographic areas covered by each of the cartels in which the undertaking participated. More specifically, various entities of the CCPL Group participated to

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17 OJ C 298, 8.12.2006, p. 17, as last amended (OJ C 256, 5.8.2015, p.1).

18 The relevant information is, for convenience reasons, repeated in this decision.

19 Point 12 of the Guidelines on Fines.

20 According to recital (863) of the 2015 Decision, the Commission held Poliemme S.r.l. (ex-Turris Pack) jointly and severally liable with one or both its parent companies CCPL S.c. and Coopbox Group S.p.A. for the periods from 28 October 2002 to 31 December 2003 and from 20 December 2004 and 29 May 2006 for the Italy infringement. According to recital (884) of the 2015 Decision, the Commission held Coopbox Hispania S.l.u. and CCPL S.c. jointly and severally liable for the period from 26 June 2002 to 13 February 2008 for the SWE infringement.

21 As defined in Section 2 of the 2015 Decision.

the following cartels: Italy, South-West Europe (SWE), and Central and Eastern Europe (CEE). All legal entities of the CCPL Group involved in the infringements are presented in Section 2.2.4 of the 2015 Decision.[22]

(39) The Commission normally takes the sales made by the undertakings during the last full business year of their participation in the infringement.[23] If the last year is not sufficiently representative, the Commission may take into account another year and/or other years for the determination of the value of sales. Based on the foregoing and on the information provided by the parties in the context of the 2015 Decision, the Commission considered CCPL Group's sales in the respective geographic areas covered by each of the cartels in which the undertaking participated as follows:

(a) Concerning the infringement in Italy, the Commission uses the parties' sales of foam trays in Italy in 2006.

(b) Concerning the infringement in SWE, the Commission uses the parties' sales of foam trays in South-West Europe (Spain and Portugal) in 2007. CCPL S.c. and Coopbox Hispania S.l.u. are held jointly liable for the fine for the period from 26 June 2002 until 13 February 2008. Because the latter company started liquidation proceedings in 2018, CCPL S.c. is now held solely liable for the fine for this period.

(c) Concerning the infringement in CEE, the Commission uses the parties' sales of foam trays in the Czech Republic, Hungary, Poland and Slovakia in 2006. Because Coopbox Eastern s.r.o. is held solely liable for the period from 5 November 2004 until 7 December 2004, the Commission uses its value of sales in 2004 to calculate the fines for which Coopbox Eastern s.r.o. is held solely liable.

(40) The values of sales for the concerned entities of the CCPL Group are those considered in Tables 2, 3 and 5 of the 2015 Decision. These values of sales are presented in Table 1 below:

Table 1: Value of Sales by infringement

Infringements	EUR
Italy	
Coopbox (2006)	[26 000 000 – 48 000 000]
SWE	
Coopbox (2007)	[13 000 000 – 24 000 000]
CEE	
Coopbox (2006)	[1 000 000 – 3 000 000]

[22] In the 2015 Decision, the legal entities within the CCPL Group which participated in or were held liable for the cartels are collectively referred to as "Coopbox", as explained in recital (17) thereof.

[23] Point 13 of the Guidelines on Fines.

Coopbox (2004) (Coopbox Eastern s.r.o. is solely liable)	[1 000 000 – 3 000 000]

3.2.3. Determination of the Basic Amount of the Fines

(41) As set out above, the basic amount consists of a variable amount of up to 30% of an undertaking's relevant sales in each of the cartel regions, depending on the degree of gravity of each cartel and multiplied by the number of years of the undertaking's participation in the infringement, and an additional amount of between 15% and 25% of the value of an undertaking's relevant sales, irrespective of the duration.[24]

3.2.3.1. Gravity

(42) The gravity of the infringement determines the percentage of the value of sales taken into account in setting the fine. In assessing the gravity of the infringement, the Commission has regard to a number of factors, such as the nature of the infringement, the combined market share of all the undertakings concerned, the geographic scope of the infringement and/or whether or not the infringement has been implemented.[25] Horizontal price-fixing, market-sharing and bid-rigging are by their very nature among the most harmful restrictions of competition. Therefore, the proportion of the value of sales taken into account for such infringements will generally be set at the higher end of the scale.[26]

(43) As outlined in Section 5.3.2 of the 2015 Decision, each of the three separate cartels consisted of many anti-competitive facets: price increases (CEE, Italy, and SWE), market sharing (CEE and SWE), customer allocation (CEE, Italy and SWE) and bid-rigging (CEE and Italy). According to point 23 of the Guidelines on Fines, those practices will, as a matter of policy, be heavily fined and the gravity percentage is generally set at the higher end of the scale. In this case, and given the multi-faceted character of each of the separate cartels, the Commission considers that those elements would justify a gravity percentage of 16% for each of the infringements.

(44) As set out in recital (40) of the 2015 Decision, the Commission was unable to credibly estimate the **combined market shares** within each of the separate cartels. Therefore, the Commission does not use this factor to increase the gravity percentages.

(45) As set out in recital (3) of the 2015 Decision, the three separate cartels were delineated on the basis of their **geographic scope** and none of them covered the entire or most of the EEA: CEE (covering the Czech Republic, Hungary, Poland and Slovakia), Italy, and SWE (covering Spain and Portugal). Therefore, the Commission does not use this factor to increase the gravity percentages.

(46) As set out in recital (804) of the 2015 Decision, the anticompetitive arrangements in relation to each of the five separate cartels were often implemented. The arrangements in place were, however, not of the nature and intensity that require an

[24] Points 19-26 of the Guidelines on Fines.

[25] Points 21 and 22 of the Guidelines on Fines.

[26] Point 23 of the Guidelines on Fines.

increase in the gravity percentages. Neither would the alleged lack of implementation of the cartel arrangements, effects or awareness/participation in certain conducts justify a reduction in the gravity percentages.

(47) In conclusion, as set out in recital (1033) of the 2015 Decision, the Commission considers that the proportion of the value of sales to be taken for each of the three separate cartels (Italy, SWE and CEE) and in respect to all their individual addressees is 16%.

3.2.3.2. Duration

(48) In calculating the fine to be imposed on each undertaking, the Commission also takes into consideration the duration of each undertaking's participation in the infringement as set out in Section 7 of the 2015 Decision. The Commission will take into account the actual duration of each undertaking's participation in the separate cartels as summarised in Section 7 of the 2015 Decision on a rounded down monthly and *pro rata* basis. Hence, if for example, the duration is 7 years and one month and 12 days, the calculation should take into account 7 years and one month without counting the number of days less than a month.

(49) The time periods taken into account for the purpose of the determination of the duration multipliers for the calculation of the basic amounts of the fines are set out in Table 7 of the 2015 Decision. The Commission will use the same duration multipliers for the concerned entities of the CCPL Group in this decision, as presented in Table 2 below:

Table 2: Duration multipliers by infringement

	Infringements		
	Italy	**SWE**	**CEE**
Coopbox	5.50 [27]	5.58 [28]	2.75 [29]
Coopbox (Coopbox Eastern s.r.o. solely liable)			0.08 [30]

3.2.3.3. Additional Amount

(50) The Commission includes in the basic amount a sum of between 15% and 25% of the value of sales in order to deter undertakings from even entering into horizontal price-

[27] Italy: duration multiplier of 5.50 corresponding to the period from 18 June 2002 to 17 December 2007 for which Coopbox Group S.p.A. and CCPL S.c. are held jointly liable.

[28] SWE: duration multiplier of 5.58 corresponding to the period from 26 June 2002 to 13 February 2008 for which CCPL S.c. is held solely liable due to the process of liquidation of Coopbox Hispania S.l.u.. In the 2015 Decision, both companies were held jointly liable for that period.

[29] CEE: duration multiplier of 2.75 corresponding to the period from 8 December 2004 to 24 September 2007 for which Coopbox Eastern s.r.o. and CCPL S.c. are held jointly liable.

[30] CEE: duration multiplier of 0.08 corresponding to the period from 5 November 2004 to 7 December 2004 for which Coopbox Eastern s.r.o. is held solely liable.

fixing and market-sharing agreements irrespective of the duration of the undertakings' participation in the infringement ("entry fee").[31] In deciding the specific percentage applied, the factors referred to in recitals (43)-(46) are considered. As a result, the percentage to be applied for the additional amounts in respect of all the cartels covered by this decision, is 16%.

(51) As already set out in Section 8.4.2.3 of the 2015 Decision, in cases where an addressee is held solely liable for parts of the infringement and, together with its parent company, jointly and severally liable for the remainder of the infringement, the Commission, to avoid imposing over-deterrent fines, applies the entry fee only in respect of part of the fine for which it establishes joint and several liability.[32]

3.2.3.4. Basic Amounts of the Fines

(52) Considering the value of sales (see Table 1 above), the percentages of gravity and entry fee (see Sections 3.2.3.1 and 3.2.3.3 above) and the duration multipliers (see Table 2 above), the basic amounts of the fines for the three infringements are the following:

Table 3: Basic amounts of the fines (EUR) by infringement

	Infringements		
	Italy	**SWE**	**CEE**
Coopbox	[27 000 000 – 50 000 000]	[14 000 000 – 26 000 000]	[800 000 – 1 600 000]
Coopbox (Coopbox Eastern s.r.o. solely liable)			[17 000 – 31 000]

3.2.4. Adjustment of the Basic Amount of the Fines: aggravating or mitigating circumstances

(53) The Commission may increase the basic amount of the fine in case of the existence of aggravating circumstances. These circumstances are listed in a non-exhaustive way in point 28 of the Guidelines on Fines. The Commission may also consider mitigating circumstances that result in a reduction of the basic amount. These circumstances are listed in a non-exhaustive way in point 29 of the Guidelines on Fines.

(54) The Commission does not apply any aggravating or mitigating circumstances to the fines set by this decision.

(55) The Commission pays particular attention to the need to ensure that fines have a sufficiently deterrent effect. To that end, it may increase the fines to be imposed on

[31] Point 25 of the Guidelines on Fines.

[32] As a result, no entry fee is added to the fine imposed on Coopbox Eastern s.r.o. for its sole liability for its direct participation in the CEE cartel in the period from 5 November 2004 to 7 December 2004.

undertakings that have a particularly large turnover beyond the sales of goods or services to which the infringement relates.[33]

(56) The Commission does not see the need to apply a multiplier for deterrence for the fines hereby imposed on the concerned entities of the CCPL Group.

3.2.5. Application of the 10% turnover limit

(57) Article 23(2) of Regulation (EC) No 1/2003 provides that the fine imposed on each undertaking in respect of a single infringement shall not exceed 10% of its total turnover relating to the business year preceding the date of the Commission decision.[34] The Court has confirmed that it is irrelevant, for the application of the upper limit of 10% of the undertaking's total turnover, whether fines are imposed for various infringements of the Union competition rules in a single set of proceedings or in separate proceedings at different points in time, as the maximum limit of 10% applies to each infringement of Article 101 of the Treaty.[35]

(58) CCPL observed[36] that the aim of the 10% turnover limit is to avoid excessive and disproportionate fines. This should prevail over the mechanical application of the 10% limit so that in case, for example, the application of such a limit would lead to solutions in conflict with the principle of proportionality, the latter should prevail.[37] CCPL observed[38] also that the new decision should take CCPL's current situation into account, namely its reduced turnover of 2019 (resulting from the group's restructuring and the liquidation of subsidiaries) and avoid the calculation of the fine following a formal and abstract exercise, the outcome of which would inevitably go against the requirements of reasonableness and fairness underlying any administrative procedure. CCPL referred to Advocate General Tizzano's Opinion in Case C-189/02 P Dansk Rørindustri and Others v Commission[39], who "already pointed out that the '*requirements of individualisation and progressiveness of the 'penalty' – two principles of cardinal importance in any punitive system, both in the criminal and the administrative spheres*' – call for the application of corrective mechanisms where the formal and abstract operation to calculate the fine leads to an amount which does not comply with the requirements of the reasonableness and fairness of penalties". CCPL claimed that the new "decision cannot disregard those

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33 Point 30 of the Guidelines on Fines.

34 Article 23(2) of Regulation (EC) No 1/2003.

35 Case T-68/04 - *SGL Carbon* v *Commission* (EU:T:2008:414, paragraph 132), and Case T-27/10 - *AC-Treuhand AG v Commission* (EU:T:2014:59, paragraph 232).

36 Pages 2-3 of CCPL's letter of 28 October 2019.

37 CCPL referred to the Court's Judgment of 12 September 2007 in Case T-30/05 *William Prym GmbH & Co. KG and Prym Consumer GmbH & Co. KG v Commission*, (EU:T:2007:267, paragraph 226), which reads « *[e]n effet, si le plafond de 10 % prévu à l'article 23, paragraphe 2, du règlement n° 1/2003 représente une limite supérieure absolue, une telle limite abstraite ne saurait fournir une réponse définitive à la question de savoir si l'amende est proportionnée dans un cas d'espèce. Il s'ensuit que le respect de ce règlement n'est pas susceptible de garantir automatiquement la proportionnalité de l'amende. En outre, le principe de proportionnalité fait partie des principes généraux du droit communautaire et jouit donc d'une valeur juridique supérieure à celle du règlement n° 1/2003* ».

38 Pages 2 and 4 of CCPL's letter of 15 June 2020.

39 CCPL referred to the Opinion in Case C-189/02 P - *Dansk Rørindustri and Others v Commission* (EU:C:2004:415, paragraphs 129, 130, 132 and 133).

considerations, in particular as concerns the announced application of separate fines for each of the alleged infringements, with separate application of the ceiling of 10 % of the total turnover of the undertaking pursuant to Article 23(2) of Regulation (EC) No 1/2003". CCPL made also reference to the fact that the fines imposed by the 2015 Decision on the other parties represent, at least for most of them, a limited proportion of their consolidated turnover, in any event well below the 10% threshold. CCPL claimed therefore that "the Commission had undertaken to ensure that '*the cumulation of fines imposed in each cartel on addressees belonging to the same undertaking at the time of this Decision, and for which these addressees may be solely or jointly and severally liable, does not, before leniency, exceed 10% of the undertaking's 2014 worldwide turnover'* (2015 Decision, recital (1059))." CCPL concluded that in the present case, the announced imposition of separate fines to each infringement, with separate application of the 10% turnover limit within the meaning of Article 23(2) of Regulation (EC) No 1/2003, could theoretically lead to the imposition of overall fines of more than 10% (or even 20%). Thus, "that result, deriving from a formal and abstract calculation mechanism, would go against the principles of individualisation and progressiveness of the fine and would lead to solutions which do not comply with the requirements of reasonableness and fairness. If one considers the relationship between fines and consolidated turnover, CCPL will in all likelihood reach a higher penalty than any other party to the proceedings. That would also clearly go against the principles of proportionality and equal treatment."

(59) In respect to the above observations made by CCPL on the application of the 10% turnover limit, the Commission reiterates that the 10% limit is applied by infringement as laid down by Article 23(2) of Regulation (EC) No 1/2003 and confirmed by the General Court.[40] Moreover, it is consistent with the 2015 Decision, where the 10% limit was applied by infringement. This follows clearly from recital (1054) of the 2015 Decision. The statement from recital (1059) of the 2015 Decision cited by CCPL, and repeated in recital (61) of this decision, does not allow a different conclusion. It confirms the principle that the 10% upper limit is determined per infringement and adds that if several addressees belong to the same undertaking, the fine for which the addressees are solely or jointly and severally liable must not exceed 10% of the total turnover of the undertaking.

(60) Further, according to settled case law[41], the upper limit (10% of the total turnover) seeks to prevent fines being imposed which it is foreseeable that the undertakings, owing to their size, as determined, albeit approximately and imperfectly, by their total turnover, will not be able to pay. Case law also makes clear that there is no infringement of the principles of proportionality or equal treatment when the fine for one undertaking is in proportion to its total turnover higher than the fine imposed on

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[40] Paragraph 231 of the General Court's judgment of 6 February 2014 in Case T-27/10 - *AC-Treuhand AG v Commission* (EU:T:2014:59) confirms that "*the Commission may find, in a single decision, two separate infringements and impose two fines the total amount of which exceeds the upper limit of 10% laid down in Article 23(2) of Regulation No 1/2003, provided that the amount of each fine does not exceed that upper limit*".

[41] ECJ judgment of 28 June 2005 in Joined Cases C-189/02 P, C-202/02 P, C 205/02 P to C 208/02 P and C 213/02 P - *Dansk Rørindustri A/S and others v Commission* (EU:C:2005:408 paragraph 280).

another undertaking.[42] The Commission is not required, when determining fines, to ensure, where fines are imposed on a number of undertakings involved in the same infringement, that the final amounts of the fines reflect any distinction between the undertakings concerned in terms of their overall turnover.[43]

(61) In respect of any periods for which an addressee of this decision is held solely liable, the Commission ensures that the fine imposed on that addressee in respect of its sole liability does not exceed 10% of its own individual total turnover relating to the business year preceding the date of the Commission's decision. In addition, the Commission ensures that the cumulation of fines imposed in each cartel on addressees belonging to the same undertaking at the time of this decision, and for which these addressees may be solely or jointly and severally liable, does not, before leniency, exceed 10% of the undertaking's 2019 worldwide turnover.

(62) The consolidated worldwide turnover achieved in 2019 by the CCPL Group was EUR [50 000 000 – 70 000 000] and the worldwide turnover achieved by Coopbox Eastern s.r.o. was EUR [15 000 000 – 25 000 000].[44] The Commission notes that the adjusted basic amounts of the fines imposed on the liable entities of the CCPL Group exceed the legal maximum of 10% of the total turnover of 2019 in respect to the infringements in Italy and SWE.

(63) The fines resulting from the application of the 10% legal maximum to the adjusted basic amounts are the following for each to the three infringements:

Table 4: Fines (EUR) after application of the 10% legal maximum

Infringements	Fines after 10% legal maximum
Italy	[5 000 000 – 7 000 000]
SWE	[5 000 000 – 7 000 000]
CEE	
Coopbox	[800 000 – 1 600 000]
Coopbox Eastern s.r.o. (solely liable)	[17 000 – 31 000]

3.2.6. Application of the Leniency Notice

(64) According to point 8(a) of the Leniency Notice, the Commission will grant immunity from any fine which would otherwise have been imposed on an undertaking disclosing its participation in an alleged cartel affecting the Union if that undertaking

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42 GC judgment of 17 December 2014 in Case T-72/09 - *Pilkington v Commission* (EU:T:2014:1094, paragraphs 396-399 and 438).

43 ECJ judgment of 28 June 2005 in Joined Cases C-189/02 P, C-202/02 P, C 205/02 P to C 208/02 P and C 213/02 P - *Dansk Rørindustri A/S and others v Commission* (EU:C:2005:408, paragraph 312). ECJ judgment of 7 September 2016 in Case C-101/15 P – *Pilkington v Commission* (EU:C:2016:631, paragraph 65).

44 See CCPL's replies of 31 July 2020 and 12 October 2020.

is the first to submit information and evidence which, in the Commission's view, will enable it to carry out a targeted inspection in connection with the alleged cartel.

(65) Under points 23 and 24 of the Leniency Notice, undertakings disclosing their participation in an alleged cartel affecting the Union that do not meet the conditions for immunity may be eligible to benefit from a reduction of any fines that would otherwise have been imposed on them if they provide the Commission with evidence of the alleged infringement which represents significant added value with respect to the evidence already in the Commission's possession and meet the cumulative conditions set out in points 12(a) to 12(c) of the Leniency Notice.

(66) As stated in recital (1077) of the 2015 Decision, on 5 August 2008 the CCPL Group submitted an application for immunity, or in the alternative, for a leniency reduction under the Leniency Notice.

(67) Within the framework of its cooperation, and in relation to all the cartels in which it was involved and for which it is held liable, the CCPL Group provided the Commission with a significant number of corporate statements which were supported by documentary evidence. In relation to the separate cartels in CEE and SWE, the CCPL Group was the second to provide significant added value in comparison to the evidence in the Commission's possession at that time. In relation to the separate cartel in Italy, the CCPL Group was the third leniency applicant to provide significant added value.[45] As a result, CCPL qualifies for reductions in the following leniency bands: (i) 20-30% leniency band – in relation to the separate cartels in CEE and SWE, and (ii) 0-20% leniency band – in relation to the cartel in Italy.

(68) In line with the 2015 Decision, CCPL is entitled to reductions of 20%, 30% and 30% respectively in respect to the fines that would otherwise have been imposed on it for the infringements in Italy (see recital (1080) of the 2015 Decision), SWE (see recital (1081) of the 2015 Decision) and CEE (see recital (1082) of the 2015 Decision).

3.3. Reduction of the fines due to lapse of time

(69) The general principle of Union law that decisions following administrative proceedings relating to competition policy must be adopted within a reasonable time must be respected. The reasonableness of the period, however, depends on the specific circumstances of each case. The Commission considers that, given the circumstances of this case, the investigation was carried out within a reasonable period. However, as stated in Section 8.7 of the 2015 Decision, the duration of the proceedings has been considerable which resulted in some of the anticompetitive conduct being prescribed under Article 25 of Regulation (EC) 1/2003 against some of the cartel participants, thus justifying an exceptional 5% reduction of the fine to be imposed on each of the addressees, including CCPL. This reduction is granted by the Commission in the exercise of its discretion when setting fines and does not affect the finding that the reasonable time principle is not infringed in this case.[46]

(70) The reduction should apply after the application of the 10% turnover limit in order to ensure that it has an impact on the fines imposed on all addressees. A further reduction for the time passed following the adoption of the 2015 Decision is not

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[45] See details in Section 8.6.4. of the 2015 Decision.

[46] See Case T-276/04 - *Compagnie Maritime Belge* (EU:T:2008:237, paragraph 46).

warranted. First, the proceedings before the General Court of 3 years and 10 months[47] in a case such as the present one remains within the boundaries of reasonable time. Second, in any event, the sanction for a breach, by a Court of the European Union, of its obligation to adjudicate on the cases before it within a reasonable time shall not consist in a reduction of the fine, but must be an action for damages brought before the General Court.[48] After the judgment of 11 July 2019, the Commission started the re-adoption procedure swiftly and adopted this decision without undue delay.

3.4. Ability to pay

3.4.1. Introduction

(71) According to point 35 of the Guidelines on Fines, *"In exceptional cases, the Commission may, upon request, take account of the undertaking's inability to pay in a specific social and economic context. It will not base any reduction granted for this reason in the fine on the mere finding of an adverse or loss-making financial situation. A reduction could be granted solely on the basis of objective evidence that the imposition of the fine as provided for in these Guidelines would irretrievably jeopardise the economic viability of the undertaking concerned and cause its assets to lose all their value."*

(72) In exercising its discretion under point 35 of the Guidelines on Fines, the Commission carries out an overall assessment of the undertaking's financial situation, with the primary focus on the undertaking's capacity to pay the fine in a specific social and economic context.

(73) On 4 October 2019, CCPL S.c., Coopbox Group S.p.A. and Coopbox Eastern s.r.o. confirmed their request for a reduction of the fines under point 35 of the Guidelines on Fines.

(74) The Commission has considered this request and assessed carefully the available financial data. The undertaking (CCPL) received requests pursuant to Article 18(1) and (2) of Regulation (EC) No 1/2003 asking it to submit information about its financial situation and the specific social and economic context it is in.

(75) In principle, insofar as the addressees argue that the estimated fine would have a negative impact on their financial situation, without adducing credible evidence demonstrating their inability to pay the expected fine, the Commission points to settled case law according to which the Commission is not required, when determining the amount of the fine to be imposed, to take into account the poor financial situation of an undertaking, since recognition of such an obligation would be tantamount to giving unjustified competitive advantages to undertakings least well adapted to the conditions of the market.[49]

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47 Whereas in Case T-522/15 - *CCPL and Others v Commission* (EU:T:2019:500), the action for annulment was lodged on 10 September 2015, the General Court issued its judgment on 11 July 2019.

48 Case C-58/12 P - *Groupe Gascogne v Commission* (EU:C:2013:770, paragraph 83).

49 See Joined Cases 96/82 to 102/82, 104/82, 105/82, 108/82 and 110/82 - *IAZ International Belgium and Others v Commission* (EU:C:1983:310, paragraphs 54 and 55), and Joined Cases C-189/02 P, C-202/02 P, C-205/02 P to C-208/02 P and C-213/02 P - *Dansk Rørindustri and Others v Commission* (EU:C:2005:408 paragraph 327), Case C-308/04 P - *SGL Carbon AG v Commission* (EU:C:2006:433, paragraph 105).

(76) The financial situation of the undertaking is assessed at the time the Decision is adopted and on the basis of the financial data and information submitted by the undertaking.

(77) In assessing the undertaking's financial situation, the Commission considers the annual financial statements (including the balance sheet, the income statement, the statement of changes in equity, the cash-flow statement and the notes) of the last (usually five) financial years, as well as their projections for the current year and next (usually) three years. The Commission takes into account and relies upon a number of financial ratios to measure the solidity (in this case, the proportion which the expected fine would represent of the undertakings' equity and assets), profitability, solvency and liquidity, all of which are commonly used when evaluating risks of bankruptcy. The analysis is both prospective and retrospective but with a focus on the present and immediate future of the concerned undertakings. The analysis is not purely static but rather dynamic, whilst taking into account consistency over time of the submitted projections. The analysis takes into account possible restructuring plans and their state of implementation. In addition, the Commission takes into account relations with outside financial partners such as banks, on the basis of copies of contracts concluded with those partners in order to assess the undertakings' access to finance and, in particular, the scope of any undrawn credit facilities they may have. The Commission also includes in its analysis the relations with shareholders in order to assess the ability of those shareholders to assist the undertakings concerned financially.[50]

(78) In its analysis, the Commission considers that the fact that an addressee may go into liquidation as a result of the imposition of a fine does not necessarily mean that there will always be a total loss of asset's value and, therefore, this may not, in itself, justify a reduction in the fine which would have otherwise been imposed.[51] This is because liquidations sometimes take place in an organised, voluntary manner, as part of a restructuring plan in which new owners or new management continue to develop the undertaking and its assets. Therefore, each applicant which has invoked an inability to pay needs to demonstrate that good and viable alternative solutions are not available. If there is no credible indication of alternative solutions being available within a reasonably short period of time, which would ensure maintaining the undertaking as a going concern, the Commission considers that there is a sufficiently high risk that the undertaking's assets would lose a significant part of their value if, as a result of the fine to be imposed, the addressees were to be forced into liquidation.

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[50] By analogy to the assessment of "serious and irreparable harm" in the context of interim measures, the Commission bases its assessment of the undertaking's ability to pay on the financial situation of the undertaking as a whole, including its shareholders, irrespective of the finding of liability (Case C-335/99 P (R) - *HFB v Commission*, (EU:C:1999:608); Case C-7/01 P(R) - *FEG v Commission*, (EU:C:2001:183), and Case T-410/09 R - *Almamet v Commission* (EU:T:2012:676, paragraphs 47 et seq.). See also judgment in Cases T-426/10 to T-429/10 and T-438/12 to T-441/12 - *Global Steel Wire and Others v Commission*, (EU:T:2016:335, paragraphs 521 to 527).

[51] See case law above as well as Joined Cases T-236/01, T-239/01, T-244/01 to T-246/01, T-251/01 and T-252/01 - *Tokai Carbon and Others v Commission* (EU:T:2004:118, paragraph 372) and Case T-64/02 - *Heubach v Commission* (EU:T:2005:431, paragraph 163).

(79) Consequently, where the conditions laid down in point 35 of the Guidelines on fines are met, the reduction of the final amount of the fine imposed on each of the addressees is established on the basis of the financial and qualitative analysis of the concerned undertakings as described in recitals (75) to (78) also taking into account their ability to pay the final amount of the fines imposed and the likely effect that such payments would have on the economic viability of the concerned undertaking.

3.4.2. Assessment of the inability to pay (ITP) application

(80) Account taken of the ITP application and of all information provided by CCPL in respect thereof, and following the assessment made, the Commission should, on the one hand, review the elements it has taken into account in assessing the ITP application and, on the other hand, identify the reasons for rejecting that application in this case, as follows.

(81) […]

(82) […]

(83) […]

(84) […]

(85) […]

(86) […]

(87) […]

(88) […]

(89) […]

(90) […]

(91) […]

(92) […]

(93) Following an attentive analysis of the above-referred factors and circumstances, the Commission concludes that CCPL did not provide objective and convincing evidence demonstrating that the imposition of the fines would irretrievably jeopardise the CCPL Group's viability. […] As one of the cumulative conditions of point 35 of the Guidelines on Fines is not fulfilled, the Commission should not accept the ITP application of CCPL Group in this case, without it being necessary to assess the other conditions of point 35 of the Guidelines on Fines.

3.5. Final amount of the fines

(94) The final amounts of the fines to be imposed on the relevant entities of the CCPL Group pursuant to Article 23(2) of Regulation (EC) No 1/2003 are summarised in the Table 5 below.

Table 5: Final amount of the fines (EUR) for CCPL by infringement

Italy	SWE	CEE	Total
4 627 000	4 010 000	804 000	9 441 000

4. CONCLUSION

(95) In view of the outcome of the 2019 Judgment which annulled the fines imposed by Article 2 of the 2015 Decision on the entities of the CCPL Group, the Commission considers necessary to replace the parts of the 2015 Decision annulled by the 2019 Judgment in order to impose fines on the relevant entities of the CCPL Group because liable for having participated in the infringements of Article 101 TFEU described in the 2015 Decision.

(96) The fines and the relevant joint and several, and sole liabilities of the addressees of the present decision should therefore be set as follows:

(a) As per the Italy infringement: EUR 4 627 000 on Coopbox Group S.p.A. and CCPL S.c., jointly and severally liable;

(b) As per the SWE infringement: EUR 4 010 000 on CCPL S.c., solely liable;

(c) As per the CEE infringement: EUR 15 000 on Coopbox Eastern s.r.o., solely liable, and EUR 789 000 on Coopbox Eastern s.r.o. and CCPL S.c., jointly and severally liable, representing a total fine of EUR 804 000.

(97) This decision does not raise any new objections against the relevant entities of the CCPL Group nor does it alter the substance of the objections as set out in the Statement of Objections adopted on 21 September 2012.

HAS ADOPTED THIS DECISION:

Article 1

(1) For the infringement referred to in Article 1.1 of Decision C(2015) 4336 final of 24 June 2015, the following fine is imposed: Coopbox Group S.p.A. and CCPL S.c., jointly and severally: EUR 4 627 000.

(2) For the infringement referred to in Article 1.2 of Decision C(2015) 4336 final of 24 June 2015, the following fine is imposed: CCPL S.c.: EUR 4 010 000.

(3) For the infringement referred to in Article 1.4 of Decision C(2015) 4336 final of 24 June 2015, the following fines are imposed:

(a) Coopbox Eastern s.r.o. and CCPL S.c., jointly and severally: EUR 789 000;

(b) Coopbox Eastern s.r.o.: EUR 15 000.

Article 2

The fines indicated in Article 1 shall be credited, in euros, within six months of the date of notification of this Decision, to the following bank account held in the name of the European Commission:

BANQUE ET CAISSE D'EPARGNE DE L'ETAT
1-2, Place de Metz
L-1930 Luxembourg

IBAN: LU02 0019 3155 9887 1000

BIC: BCEELULL
Ref.: EC/BUFI/AT.39563

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

Where an undertaking referred to in Article 1 lodges an appeal, that undertaking shall cover the fine by the due date, either by providing an acceptable financial guarantee or by making a provisional payment of the fine in accordance with Article 108 of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council[52].

Article 3

This Decision is addressed to

CCPL S.c., Via Gandhi 16, 42123 Reggio Emilia, Italy;

Coopbox Group S.p.A., Via Vittorio Veneto 1, 42021 Bibbiano, Italy;

Coopbox Eastern s.r.o., Trenčianska 17, SK-915 01 Nové Mesto nad Váhom, Slovakia.

This Decision shall be enforceable pursuant to Article 299 of the Treaty.

Done at Brussels, 17.12.2020

For the Commission
Margrethe VESTAGER
Executive Vice-President

[52] Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the European Union (OJ L 193, 30.7.2018, p. 80).