

***Case No IV/M.1296 -
NORSKE SKOG /
ABITIBI / HANSOL***

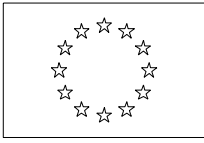
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**REGULATION (EEC) No 4064/89
MERGER PROCEDURE**

Article 6(1)(b) NON-OPPOSITION

Date: 14/09/1998

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 14.09.1998

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying parties

Dear Sirs,

Subject: Case No IV/M.1296 – NORSKE SKOG/ABITIBI/HANSOL

1. On 13/08/1998, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89¹ by which the undertakings Norske Skogindustrier ASA (Norway), Abitibi Consolidated Inc. (Canada) and Hansol Paper Co., Ltd (South Korea) acquire within the meaning of Article 3(1)(b) of the Council Regulation joint control of a newly created company constituting a joint venture.

I. THE PARTIES

2. Norske Skogindustrier core businesses are printing paper, building materials, and bleached sulphate pulp.
3. Abitibi Consolidated is active in newsprint, value-added groundwood paper, kraft pulp and lumber.
4. Hansol Paper is active in newsprint, printing and writing paper, duplex board, specialty paper and regular paper.

¹ OJ L 395, 30.12.1989 p. 1; corrigendum OJ L 257 of 21.9.1990, p. 13; Regulation as last amended by Regulation (EC) No 1310/97 (OJ L 180, 9. 7. 1997, p. 1, corrigendum OJ L 40, 13.2.1998, p. 17).

II. THE OPERATION AND THE CONCENTRATION

5. The parties will place four paper mills in Asia, currently owned by two of the notifying parties (Hansol Paper and Norske Skogindustrier), under the control of a newly created joint company equally owned by the three notifying parties. The joint venture will only be active in the Asian market and not in the EEA.

Joint control

6. According to the Shareholders Agreement the Board shall consist of seven members of whom two shall be nominated by each of the parties and one shall be the CEO of the company. Each of the shareholders shall appoint a non-executive chairman of the Board for a two year rotating basis and each of the other shareholders may appoint a non-executive Vice-Chairman of the same Board for the same two year term.
7. Actions which may not be taken unless authorised by a resolution of the Board passed by an affirmative vote of 80% or more of the directors include:
 - Selling assets with a book value of more than USD [...]² millions
 - Purchasing a new line of business
 - Varying the business purpose
 - Appointing and terminating the CEO
8. Furthermore, the shareholders agreement stipulates the visions and the goals of the company as well as the policy to be followed in distribution, sales and marketing. These policy guidelines covers in particular areas such as the marketing mix, organisation of sales and branding, and will to a large extent fix the commercial policy of the joint venture.
9. On the basis of the above it is concluded that the joint venture will be jointly controlled by the parties.

Full-function character

10. The joint venture will perform on a lasting basis all the function of an autonomous economic entity including production, distribution and sales. It will have all the resources to operate independently on the market. The Commission has therefore concluded that the operation is a concentrative joint venture within the meaning of Article 3 of the Merger Regulation.

III. COMMUNITY DIMENSION

11. The undertakings concerned have a combined aggregate world-wide turnover of more than MECU 5000 (Abitibi Consolidated MECU 2645, Norske Skog MECU 1660 and Hansol Paper MECU 1792). Abitibi Consolidated (MECU 979), and Norske Skog (MECU 453) each have a Community-wide turnover in excess of MECU 250 and they do not achieve more than two-thirds of their aggregate Community-wide turnover within one and the same Member State. The notified

² Deleted business secret: 10-100

operation therefore has a Community dimension according to Article 1(2) of the Merger Regulation. It does not constitute a co-operation case under the EEA Agreement.

IV. COMPATIBILITY WITH THE COMMON MARKET

The relevant product market

12. The proposed concentration concerns the markets for newsprint and publication paper (magazine paper). However, it is not necessary to finally decide the exact market definition, since the operation will not lead to the creation or strengthening of a dominant position as a result of which competition would be significantly impeded in the common market or a substantial part of it.

The relevant geographic market

13. In previous cases the Commission has found that the relevant geographic markets for newsprint and magazine paper were at least the EEA³. The parties have argued that the scope of the relevant geographic market is regional in the sense that the EEA, North America and Asia are separate relevant geographic markets for the purpose of the present case. The Commission has noted that intra-regional trade flows are much higher than inter-regional trade flows. Imports to the EEA were thus only 13% in 1996. Tariffs of 3.5% for newsprint and 6.5% for magazine paper are foreseen to be phased out over the coming years, but currently still exist. Furthermore, there are indications that transport costs are higher in inter-continental trade than in intra-continental trade. Transport costs between North America and central Europe are, for example, on average double the transport costs between Scandinavia and Central Europe. In addition, prices levels also differ significantly. Consequently, there are strong indications that the relevant geographic market for newsprint and magazine paper for the purpose of the present case is the EEA. However, it is not necessary to finally decide on the relevant geographic market, since the present operation will not lead to the creation or strengthening of a dominant position as a result of which competition would be significantly impeded in the common market or a substantial part of it.

Assessment

14. The joint venture will only be active in Asia. Consequently, the operation will lead to no market share additions in neither newsprint or magazine paper in the EEA. In any case, even if the geographic market was wider than the EEA, the operation would not lead to the creation or strengthening of a dominant position as a result of which competition would be significantly impeded in the common market or a substantial part of it.

Ancillary restraints

15. The Shareholders Agreement stipulates that a shareholder shall not engage in the business of manufacturing, marketing, distribution, or selling relevant products in the

³ See for example IV/M.646 - Repola/Kymmene and IV/M.871 – UPM-Kymmene/Finnpap.

market area of the joint venture. Furthermore a shareholder shall not participate in or provide financial support to any company or business engaged in manufacturing, marketing, distribution or selling relevant products in the market area of the joint venture.

16. This non-competition clause only expresses the reality of the lasting withdrawal of the parents from the Asian market for newsprint and magazine paper. It can, therefore, be considered ancillary and is covered by the present decision as long as the parent companies jointly control the joint venture.

VI. CONCLUSION

17. For the above reasons, the Commission has decided not to oppose the notified operation and to declare it compatible with the common market and with the functioning of the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of Council Regulation (EEC) No. 4064/89, as amended by Regulation 1310/97, and Article 57 of the EEA Agreement.

For the Commission,