

***Case No IV/M.1442 -  
MMP / AFP***

Only the English text is available and authentic.

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

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Article 6(1)(b) NON-OPPOSITION  
Date: 03/03/1999

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## COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 03.03.1999

In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EEC) No 4064/89 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 Where possible the information omitted has been replaced by ranges of figures or a general description.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  
ARTICLE 6(1)(b) DECISION

To the notifying party

Dear Sirs,

**Subject: Case No IV/M. 1442 – MMP /AFP Corrugated**

Notification of 02.02.1999 pursuant to Article 4 of Council Regulation No 4064/89

1. On 02.02.1999 the Commission received the notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89<sup>1</sup> through which Mondi Minorco Paper S.A (“MMP”) acquires the corrugated board and corrugated cases business of AFP (Europe) Limited.
2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of Council regulation No 4064/89 and does not raise serious doubts as to its compatibility with the common market and the functioning of the EEA agreement.

### **I. THE PARTIES AND THE OPERATION**

3. MMP is controlled by the Anglo American Corporation of South Africa Limited (“AAC Group”) and owns the non-South African pulp and paper interests of the AAC Group.
4. AFP (Europe) Limited is a holding company controlled by Amcor Limited (Australia) and sells its corrugated board and corrugated cases business (“AFP Corrugated”) to MMP. MMP will acquire the entire share capital of Amcor Packaging (UK) Limited, Amcor Emballages S.A. (F) and Wallbray Limited (UK) as well as a 49% shareholding in Willander Holdings Limited (UK), the remaining 51% being held by Wallbray Limited.

### **II. CONCENTRATION**

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<sup>1</sup> 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).

5. The transaction involving MMP's acquisition of sole control of AFP Corrugated by way of an acquisition of shares is a concentration within the meaning of article 3(1) (b) of the Merger Regulation.

### III. COMMUNITY DIMENSION

6. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion<sup>2</sup>. Each of MMP and AFP Corrugated have a Community-wide turnover in excess of EUR 250 million, but they do not achieve more than two-thirds of their aggregate Community-wide turnover within one and the same Member State. The notified operation therefore has a Community dimension.

### V. COMPETITIVE ASSESSMENT

7. AFP Corrugated produces corrugated board and corrugated cases in the UK and in France. It also exports some corrugated board from the UK to Ireland.
8. MMP does not produce corrugated board or cases in the EEA. It imports small quantities of corrugated board and cases from Poland into Germany. [...]. MMP produces and imports corrugated case materials (CCM) which are the input for making corrugated board.
9. The present operation does not give rise to affected markets.
10. In previous decisions<sup>3</sup> the Commission has considered the markets for corrugated board and cases but the Commission has not reached a definitive view neither on the definition of the relevant product market nor on the definition of the relevant geographic market. With regard to corrugated board it was suggested in the KNP/BT/VRG decision that the geographic market is regional and crosses national borders (e.g. with the Benelux countries, northern France and central Germany forming a separate geographic market from southern Germany, eastern France, Austria and Switzerland). With regard to corrugated cases it was stated that corrugated cases are characterised by low density and relatively high transport costs which results in largely regional markets (radius of 200 to 300 km between the corrugator plant and its customers) crossing national borders. These regional markets do not operate in isolation as a number of multinational customers seek to have their packaging problems solved by a single supplier.
11. As there is no geographic overlap with regard to corrugated board and cases, the only MMP activities relevant for the examination of this case are MMP's sales of CCM.
12. In these previous cases the Commission has identified a product market for CCM but the Commission left open the question of whether the market could be subdivided into virgin based fibre products and waste-based products, but noted that a certain degree of

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<sup>2</sup> Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Notice on the calculation of turnover (OJ C66, 2.3.1998, p25). To the extent that figures include turnover for the period before 1.1.1999, they are calculated on the basis of average ECU exchange rates and translated into EUR on a one-for-one basis.

<sup>3</sup> Cases Nos IV/M.291 – KNP/BT/VRG, IV/M. 499 – Jefferson Smurfit/St. Gobain, IV/M.549 – SCA/PWA, IV/M. 613 – Jefferson Smurfit/Munskjo and IV/M. 1208 - Jefferson Smurfit/Stone Container.

cross-substitutability existed and that prices for both types followed similar patterns. For the purpose of the present case it is not necessary to decide whether the market could be subdivided as the operation will not create or strengthen a dominant position.

13. In these previous decisions the Commission has held the CCM market to be at least EEA wide because of the high cross-border trade in raw materials and end product. This cross border trade results from the high density and thus easy transportability of CCM.
14. The requirements of AFP Corrugated for CCM represent <2% of total demand in the EEA and MMP's supplies represent <2% of total supplies in the EEA. Moreover, MMP produces mainly virgin fibre based CCM, while the requirements of AFP Corrugated are predominantly for waste-based CCM. The production of CCM can be expanded as the capacity utilisation in the industry is in the region of 88% in Western Europe. It is therefore unlikely that board producers will find their CCM suppliers foreclosed and that CCM suppliers will suffer foreclosure of customer access by greater integration between AFP Corrugated and MMP.
15. It can thus be concluded that the operation will not create or strengthen a dominant position.

## **VI. ANCILLARY RESTRAINTS**

16. The parties have identified the following ancillary restraints :
  - Clause 4.4 : gives MMP access to all records underlying the net asset statement in connection with the valuation of AFP Corrugated;
  - Clause 4.6 and Schedule 7 part 2 : give AFP (Europe) Limited the right to receive notice of and to have a representative attend (but not to vote) at any board meeting of each company comprising AFP Corrugated in order to save its financial interest during the earn-out period and oblige MMP to operate AFP Corrugated in the ordinary course of business;
  - Pre-closing obligations as described in Clause 5 and Schedule 7 part 1;
  - Clause 11 provides for non-compete and non-solicitation restrictions upon Amcor Limited and its subsidiaries for a period of three years. The scope is limited to the products currently produces by AFP Corrugated and to the geographic area in which AFP Corrugated operates;
  - three non-exclusive royalty-free licence agreements in order to allow Amcor Limited and MMP the use of certain patents and know-how in their respective businesses.
17. The restrictions of clause 11, the provisions of clauses 4.4, 4.6, 5 and Schedule 7 part 1 and 2 and the three licence agreements to the extent that these provisions and agreements could be considered as restrictions of competition, can be considered as being directly related and necessary to the concentration since they protect the value of the business being acquired.

## **VI. CONCLUSION**

18. 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 EEA Agreement. This decision is adopted in application of Article 6(1)(b) of Council Regulation (EEC) No 4064/89.

For the Commission,