

*Case No IV/M.1556 -  
MO OCH DOMSJÖ /  
SCA*

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: 23/07/1999

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## COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 23.07.1999

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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 parties

Dear Sirs,

**Subject: Case No IV/M.1556 – Mo och Domsjö/SCA**

Notification of 21.06.1999 pursuant to Article 4 of Council Regulation No 4064/89

1. On 21.06.1999, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89 (“the Merger Regulation”) by which the Swedish undertakings Mo och Domsjö AB (publ) (“MoDo”) and Svenska Cellulosa Aktiebolaget SCA (publ) (“SCA”) acquire within the meaning of Article 3(1)(b) of the Council Regulation joint control of a newly created company constituting a joint venture (“NewCo”).
2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of Council Regulation (EEC) No 4064/89 and does not raise serious doubts as to its compatibility with the common market and with the EEA Agreement.

**I. THE PARTIES AND THE OPERATION**

3. SCA is a Swedish forest industry company specialising in the production and sale of absorbent hygiene products, corrugated board packaging and graphic paper. SCA also has forest holdings and operates sawmills.
4. MoDo is a Swedish forest industry company that specialises in the production and sale of paper board and graphic paper. MoDo also has forest holdings and operates sawmills.
5. SCA and MoDo will contribute their respective fine paper and merchant operations to NewCo. SCA will transfer a number of production facilities located in Sweden, Germany and Austria while MoDo will transfer a number of production facilities in Sweden and France. In addition, NewCo will take over the parties’ respective merchant operations of fine paper.

## II. CONCENTRATION

### A. Joint control

6. SCA and MoDo will each own 50% of the shares in NewCo. The Board of Directors (“Board”) shall consist of members elected by the general shareholders’ meeting. SCA and MoDo will each appoint three Board members and jointly appoint an independent chairman of the Board. A quorum shall exist within the Board if more than half of the members are present provided that at least two of the members appointed by each of SCA and MoDo, respectively, are present. The parties shall agree upon the appointment of the managing director, large investments, strategic decisions and budget. Accordingly, NewCo will be jointly controlled by SCA and MoDo.

### B. Full function on a lasting basis

7. NewCo will take over all the present activities of SCA and MoDo relating to fine paper and merchant operations. SCA will transfer the production facilities in *Stockstadt* (Germany), *Hallein* (Austria) and *Wifsta* (Sweden) while MoDo will transfer the production facilities in *Husum* and *Silverdalen* (Sweden) as well as *Alizay* and *Point Sainte Maxence* (France). In addition, the parties will transfer their respective merchant operations of fine paper (SCA Paper Trade and MoDo Merchants). Given that all the operating assets will be transferred to NewCo, it will have all necessary resources, including finance, staff and assets to conduct its fine paper business.
8. Almost all of NewCo’s pulp production will be used internally. In addition, SCA’s pulp mill *Östrand* undertakes to offer to deliver pulp and steam to NewCo’s *Wifsta* mill, which is physically connected to *Östrand*. SCA’s supplies will constitute around [...] % of NewCo’s total consumption and it is expected that NewCo will replace [...] *Östrand*’s pulp with pulp from [...]. Furthermore, MoDo undertakes to offer to deliver wood to NewCo’s *Husum* mill until NewCo has set up its own wood supply organisation. A similar arrangement will be made between SCA (Holz) and NewCo’s *Stockstadt* and *Hallein* mills. Finally, it is foreseen that NewCo will initially purchase certain support services, such as administrative services and [...], currently connected to the fine paper operations from SCA and/or MoDo. All these arrangements will be carried out on a non-exclusive and an arm’s length basis and NewCo will at all times be free to purchase its requirements from third parties<sup>1</sup>. In conclusion, neither of the arrangements call the full-function character of NewCo into question.
9. The Framework Agreement is valid as long as SCA and MoDo are shareholders of NewCo but no longer than until [more than 10 years]. However, the parties intend to have NewCo listed on the Stockholm Stock Exchange within two years from completion, in which case the Agreement ceases automatically. Moreover, in the event that the Agreement would still be in force until [more than 10 years], the Agreement is automatically prolonged with [...] at the time, unless the Agreement is terminated at least [...] in advance. Taking into account the duration of the Framework Agreement as well as the automatic continuation (unless terminated in advance) together with the fact

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<sup>1</sup> The agreement will be valid from completion and for a period of [...] years.

that the parties will commit to NewCo the resources described above, the Commission considers that NewCo is intended to operate on a lasting basis<sup>2</sup>.

### **C. Conclusion**

10. Based on the above, the joint venture will perform on a lasting basis all the functions of an autonomous entity. Thus, the notified operation constitutes a concentration within the meaning of Article 3(2) of the Merger Regulation.

### **III. COMMUNITY DIMENSION**

11. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion (SCA: EUR 6.672 billion; MoDo: EUR 2.543 billion)<sup>3</sup>. Each of the undertakings concerned have a Community-wide turnover in excess of EUR 250 million (SCA: EUR 5.831 billion; MoDo: EUR 2.186 billion) and 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 and do not constitute a co-operation case under the EEA Agreement.

### **IV. COMPETITIVE ASSESSMENT**

#### **A. Relevant product markets**

12. The activities of the joint venture concern pulp, WFC and WFU fine papers and the paper merchant business. The joint venture will (purchase and) produce pulp which is the basic raw material for the production of fine paper. However, nearly all the pulp produced by NewCo will be used internally in its own fine paper production. Given that only very limited amounts will be sold on the open market (NewCo's share of sales of market pulp is estimated to be less than [5%] of total EEA sales), this market will not be discussed further.

(i) Fine paper

13. Fine paper is made from chemical pulp. There are two basic types of fine paper: wood-free uncoated (WFU) which is primarily used for office applications and commercial print, and wood-free coated (WFC) which is primarily used in commercial print, e.g. brochures and advertising materials. The parties have submitted that, although the end use of coated and uncoated differs to some extent, the relevant product market comprises both WFC and WFU. The reasons are that there is considerable demand substitution between coated and uncoated, particularly in commercial print but also, for example, in publication of books. Also, fine paper producers can easily and quickly switch production from coated to uncoated fine paper.

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<sup>2</sup> See the Commission Notice on the concept of full-function joint ventures, para. 15.

<sup>3</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.

14. The Commission has to date left open the question, as to whether these types of fine paper represent distinct markets<sup>4</sup>. The precise delineation can also be left open in the present decision because, in all alternative market definitions considered, effective competition would not be significantly impeded in the EEA or any substantial part of that area.

(ii) Paper Merchant business

15. Paper merchants act as middlemen and sell paper products to a large customer base which mainly consists of printers, publishers, resellers (primarily office supply stores) and larger end consumers. In a previous decision the Commission considered that the sale and distribution of graphic paper<sup>5</sup> through paper merchants may be a separate market from that for the sale and distribution of graphic paper directly to customers by paper manufacturers<sup>6</sup>. This is due mainly to the fact that merchants attract customers who need quick deliveries of small quantities and want a choice between a wide range of products while paper producers are better positioned to serve customers who need bulk delivery at lower prices. Where paper is sold via merchants, it is transported to the customers either directly from the mill (so-called indent sales) or via the merchants' warehouses (so-called stock sales).

16. In the present case the parties doubt whether the merchant business constitutes a separate market. The parties submit that around 20% of the fine paper production is sold directly from the paper mills and other distribution channels while the remaining volume is sold via merchants and the merchant business cannot be assessed in isolation from sales directly from the paper mills. It appears from the Commission's investigation that a large number of competitors and customers consider that the merchant business is to a large extent different from that of the direct business, in terms of, for example, market structure, logistics and pricing. However, it has also been indicated that being a customer of one does not necessarily exclude the other and, moreover, there are frequent switches by the customers in their buying behaviour between the two different channels. In any event, this question does not have to be decided in the present case since in both market definitions considered, the assessment that effective competition would not be significantly impeded in the EEA or any substantial part of that area would not be affected.

**B. Relevant geographic markets**

(i) Fine paper

17. The parties have submitted that the geographic market for fine paper is larger than the EEA, i.e. global. Reference is made to significant fine paper trade flows between EEA and other areas, especially Eastern Europe, America and, more recently, the Far East. For example, imports to the EEA of uncoated paper are increasing and the imported

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<sup>4</sup> Case No. IV/M.166 - Torras/Sarrio; Case No. IV/M. 499 - Jefferson Smurfit/Saint-Gobain; Case No. IV/M. 549 - SCA/PWA; Case No IV/M.1006 – UPM-Kymmene/APRIL and Case No IV/M.1356 – Metsä-Serla/UK Paper.

<sup>5</sup> Graphic paper is the common name for different kinds of coated and uncoated general printing and writing paper and includes fine paper.

<sup>6</sup> See in particular Case No IVM.291 – KNP/BT/VRG.

share of total supply was as high as 11% in 1998. Also, with respect to coated paper it is submitted that EEA is a net exporter and significant volumes of coated fine paper are exported (around 20% of total deliveries in 1998) primarily to North America, thus indicating the global nature of fine paper sales.

18. In previous decisions the Commission has defined the market for the production and direct sale of fine paper as at least EEA wide since the products can be efficiently and cheaply transported<sup>7</sup>. In the present case it is not necessary to finally decide on the exact scope of the geographic market since, even on an EEA-level, the present operation would not create or strengthen a dominant position in the Community.

(ii) Paper Merchant Business

19. The relevant geographic market for the paper merchant business has traditionally been considered as national<sup>8</sup>. This is based mainly on the need for prompt delivery to customers who want to avoid maintenance and to the fact that trade practices and product presentation vary from one country to another within the EU. However, at the same time it has not been excluded that the market may possibly be wider.
20. The Commission's investigation has largely confirmed this view. Although the bulk of the merchant market is today based largely on individual countries, there is an increasing trend towards pan-European purchasing by, for example, large stationery groups, large end-users and publishers, and certain printing groups. Also, pan-European merchant groups seem to be emerging. However, for the purpose of the present decision it is not necessary to further delineate the relevant geographic market because, in all alternative geographic market definitions considered, the assessment that effective competition would not be significantly impeded in the EEA or any substantial part of that area would not be affected.

**C. Assessment**

(i) Fine paper

21. According to the parties, the wood-free fine paper activities which SCA and MoDo transfer to the joint venture constitute around [10-15%] (SCA [5-10%] and MoDo [5-10%]) in volume in the EEA. Within WFC the parties' combined share is around [5-10%] (SCA [less than 5%] and MoDo [less than 5%]) whereas the parties are relatively stronger within WFU which a combined share of around [10-15%] (SCA [less than 5%] and MoDo [5-10%]) in volume. Thus, the notified operation will not lead to affected markets within the meaning of Form CO even if the fine paper market would be narrowed down to WFC and WFU, respectively. In any event, there are financially strong competitors supplying the EEA market, such as StoraEnso, UPM-Kymmene, SAPPI and Metsä-Serla.

(ii) Paper Merchant Business

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<sup>7</sup> See for example Case No. IV/M.166 - Torras/Sarrio; Case No IV/M.1006 – UPM-Kymmene/APRIL and Case No IV/M.1356 – Metsä-Serla/UK Paper.

<sup>8</sup> See for example Case No IV/M.166 – Torras/Sarrio; Case No IV/M.884 – KNP BT/Bunzl/Wilhelm Seiler and Case No IV/M.1356 – Metsä-Serla/UK Paper.

22. On the narrowest market definition, that is the sale and distribution of fine paper through paper merchants in the individual Member States, the parties' overlapping activities would, according to figures provided by the parties, exceed 15% in the following national markets: [20-25%] in Belgium (SCA [15-20%] and MoDo [less than 5%]); [20-25%] in the Netherlands (SCA [10-15%] and MoDo [5-10%]), [50-55%] in Sweden (SCA [less than 5%] and MoDo [50-55%]) and [15-20%] in the United Kingdom (SCA [10-15%] and [5-10%]). The parties base their estimates on the following market volumes for distribution of fine paper through merchants: [approximately 350,000] tonnes in Belgium; [approximately 510,000] tonnes in the Netherlands; [approximately 230,000] tonnes in Sweden; and [approximately 1,900,000] tonnes in the United Kingdom.
23. In these markets there are significant other competitors, including large paper manufacturers as well as large independent merchants. Based on information provided by the parties, the paper merchant markets in these countries are still fragmented although there has been a trend towards consolidation in recent years. In Belgium, Arjo Wiggins Appelton (Haseldonckx) and IGEPA (Grepapier/Blancard) will have similar market positions followed by StoraEnso (PB Papier) with 15-20% and Epacar with 5-10%. In the Netherlands, the Buhrmann Group will be the clear market leader with a market position almost twice as strong as the parties while Scaldia Papier accounts for 10-15% and StoraEnso 5-10%. In Sweden, StoraEnso (Pappersgruppen) has a market share of 40-50% while Metsä-Serla has 5-10%. It should be noted that, although the parties may achieve a large overall market share in Sweden, the overlap is insignificant given that SCA at present only accounts for [less than 5%] of the Swedish paper merchant market. It is thus considered that the operation will not result in a material change of the competitive situation in Sweden in this respect. In the United Kingdom, Buhrmann (Robert Horne) and Arjo Wiggins Appelton (Wiggins Teape Limited) will have similar market positions as the parties, followed by Bunzl Fine Paper and Metsä-Serla each accounting for 10-15% of the market.
24. As indicated above, many of the competitors are present in several Member States and they also have a strong overall market position in the EEA. For example, the Buhrmann Group and the Arjo Wiggins Group are considered market leaders in the EEA with market shares between 10-15%, followed by a large number of other merchants such as NewCo, Igepa, Schneiderzonen, StoraEnso and Inapa with market shares between 5-10%.
25. Furthermore, recent entries into the traditional paper merchant market include Finpappersspecialisten and NP Grossisten in Sweden and Schneidersöhne in Netherlands. The parties have submitted that a range of non-traditional paper merchants have also entered the market or gained importance. For example, original equipment manufacturers and office supply chains are becoming important fine paper distributors as well as for example mail order companies. According to the parties as well as indicated by some respondents in the Commission's investigation, entry into the paper merchant market is not hindered by any significant barriers and the most important factors influencing entry are funding and knowledge of the market.
26. As noted above, around 20% of fine paper production are sold directly by the paper mills while around 80% is distributed by paper merchants. The vertical link between paper manufacturing and paper distribution within NewCo will not enable it to exercise market power in a dominant position since paper production, as shown above, is characterised by a number of large producers which operate internationally and can

supply merchant competitors. In the Commission's investigation it has been indicated that there would be sufficient alternative suppliers of fine paper to whom the independent merchant competitors, i.e. merchants not belonging to a paper manufacturing group, could switch their orders if prices were to increase.

27. On the basis of the above, the notified operation does not create or strengthen a dominant position as a result of which effective competition would be significantly impeded in the EEA or any substantial part of that area.

## V. ANCILLARY RESTRICTIONS

28. The parties have requested the following provisions be considered ancillary to the notified concentration.
29. SCA and MoDo undertake, as long as the Framework Agreement/Shareholders' Agreement is valid and for a period of [...] thereafter, not to engage in fine paper activities otherwise than through their ownership of shares in NewCo. However, SCA and MoDo are entitled to hold [...] interests in [...]. The Commission does not consider the restriction on SCA and MoDo not to compete with NewCo as long as the Framework Agreement/Shareholders' Agreement is valid and for a period of [...] thereafter to be necessary and directly related to the concentration. However, to the extent that the non-compete obligations would be limited to the situation where SCA and MoDo enjoy a controlling stake in NewCo, the non-compete clauses would aim at expressing the reality of the lasting withdrawal of the parents from the market assigned to the joint venture. Therefore, this decision only covers the non-compete clause for so long as SCA and MoDo hold a controlling stake in NewCo.
30. As described above, SCA's pulp mill *Östrand* undertakes to offer to deliver pulp and steam to NewCo's *Wifsta* mill, which is physically connected to *Östrand*. Also, MoDo undertakes to offer to deliver a certain amount of wood to NewCo's *Husum* mill and a similar arrangement will be made between SCA (Holz) and NewCo's *Stockstadt* and *Hallein* mills. All these arrangements will be on a non-exclusive and arm's length basis and valid from completion and for a period of [...] years. Given that the arrangements are non-exclusive and on an arm's length basis and that there are no requirements with respect to the quantity of supplies, the Commission considers that they do not restrict competition.
31. Finally, it is envisaged that NewCo will initially purchase on an arm's length and non-exclusive basis certain services that are currently connected to the fine paper operations from SCA and/or MoDo, for example administrative services and [...]. Given that these arrangements have not yet been concluded, they are not covered by the present decision.



## **VI. CONCLUSION**

32. 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,