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Case No IV/M.1656 - HUHTAMÄKI OYJ / PACKAGING INDUSTRIES VAN LEER

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REGULATION (EEC) No 4064/89
MERGER PROCEDURE

Article 6(1)(b) NON-OPPOSITION
Date: 23/09/1999

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 23.09.1999

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PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying parties

Dear Sirs,

Subject: **Case No IV/M. 1656 – HUHTAMÄKI OYJ/PACKAGING INDUSTRIES VAN LEER**
Notification of 20.8.1999 pursuant to Article 4 of Council Regulation No 4064/89

1. On 20.8.1999 the Commission received a notification whereby Huhtamäki Oyj ("Huhtamäki") and Royal Packaging Industries Van Leer NV ("Van Leer") notified an operation whereby Huhtamäki intends to acquire sole control of Van Leer by way of a public bid. The public bid was announced on 26.8.1999 and the offer period closes on 27.9.1999. The notified operation concerns the packaging industry.

I. THE PARTIES AND THE OPERATION

2. Huhtamäki is a publicly owned Finnish company active in consumer packaging, notably in food and food service packaging. It is a major converter of plastics and paperboard into rigid thin-walled food and beverage cups and containers in Europe, Asia and Australasia. Huhtamäki has activities in some 30 countries world-wide.

3. Van Leer is a publicly owned Dutch holding company active in industrial and consumer packaging. Van Leer has activities in 47 countries world-wide.

4. Huhtamäki intends to acquire sole control over Van Leer by way of a public bid within the meaning of Article 3(1)(b) of the Merger Regulation. After the concentration will have been completed, Huhtamäki will be renamed Huhtamäki Van Leer Oyj.

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5. The transaction is a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

II. COMMUNITY DIMENSION

6. The parties do not meet the thresholds set out in Article 1(2) of the Merger Regulation. However, the thresholds set out in Article 1(3) are met. Huhtamäki and Van Leer have a combined aggregate world-wide turnover in excess of 2,500 million (Huhtamäki 800 million , Van Leer 2,823 million). Huhtamäki's Community-wide turnover is 456 million € and that of Van Leer 949 million €. The turnovers of both Huhtamäki and Van Leer exceed 25 million € in France, Germany, the United Kingdom and Italy. In these four Member States the parties' combined turnover also exceeds 100 million €. Huhtamäki and Van Leer do not each achieve more than two-thirds of its Community-wide turnover within one and the same Member State. The notified operation therefore has a Community dimension.

III. THE RELEVANT MARKETS

A. Relevant product markets

7. The Commission has found in a number of previous decisions[1] that the European packaging industry is divided into several markets based on a combination of the packaging material and the use made of the packaging product. In the present case, the parties' packaging activities are mainly complementary and the only areas of material overlaps are in thin-walled plastic containers (thermoformed and injection-moulded) and paper food packaging.

8. Thin-walled plastic containers can be used for food, health care and do-it-yourself (DIY) end uses. In the food industry, thin-walled plastic containers are used to package margarine, ice cream, biscuits, ready meals, dairy products etc. The health care industry uses plastic containers for e.g. medicines, drugs and cosmetic products. The DIY sector includes containers for DIY products, paints containers etc.

9. Thin-walled plastic containers can be made of polypropylene (PP) or non-expanded polystyrene (PS). Two manufacturing processes can be used: thermoforming, which involves forming and shaping flat sheets of plastic and injection-moulding, which involves melting of the plastic and then injecting it inside a mould. According to the parties PP is the most common raw material used in both manufacturing processes, although polyvinylchloride (PVC), PS and polyethylene tetrachlorine can also be used in thermoforming to obtain special product characteristics.

10. The parties argue that, although there are slight differences in quality of the product, thermoformed and injection-moulded products are substitutable. The parties contend that within the food segment, users of packaging materials could easily switch form thermoformed to injection-moulded thin-walled containers and vice versa. The parties submit that there are some differences between food and non-food end uses within thin-walled plastic containers and explain that for food packaging issues such as the appearance

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[1] Case No.IV/M.603-Crown Cork & Seal/Carnaud Metal Box; Case No.IV/M.081-Viag/Continental Can; Case No.IV/M.1109-Owens Illinois/BTR Packaging; Case No.IV/M.1400-Rexam/PLM

and quality of the product, hygiene and the printing quality of the package are important. The parties argue nevertheless that producers of injection moulded products can easily switch from the food to non-food packaging segment. Therefore, the parties contend that is likely that food and non-food applications form one relevant market.

11. The Commission found in a recent decision *IV.M.1400-Rexam/PLM* concerning thin-walled plastic containers that the substitutability between thin-walled plastic containers made from PP and PS depends upon the rigidity and the temperature requirements of the end product. In particular, the investigation showed that containers made of PP are freezable and can be used for micro-wavable products whereas containers where PS has been used are generally brittle and do dot have the freezable characteristics of containers made from PP.

12. The Commission further found in that case that the thermoforming process is cheaper that the injection-moulding process. Moreover, switching from one raw material to another is possible in thermoforming applications, but requires additional investments. The Commission finally found that switching the production form thermoforming to injection-moulding and vice-versa requires large capital investment.

13. The results of the market investigation in this case are in line with the findings above. Third parties have indicated that, depending on the end application, the substitutability between PP and PS is somewhat limited. In addition to better freezable characteristics, PP is required to package certain heat treated products because PP is more heat resistant than PS. PP also provides better protection against ultra violet light, which is detrimental to the shelf-life of products, and stands mechanical strains in packaging and warehousing better than PS.

14. The investigation shows that, in technical terms, it is possible to switch form thermoformed plastic containers to injection-moulded containers and vice versa. The substitutability depends in some cases on the form of the package. Customers have nevertheless indicated that thermoformed packages are cheaper and that substitutability is currently limited in economic terms.

15. The investigation further shows that switching is possible from containers destined for food usage to containers meant for non-food usage but that the reverse does not apply for food hygiene reasons. Non-food containers regularly contain recycled raw materials which cannot be used in food packaging.

16. Regarding the supply side substitution. the investigation in the present case largely confirms the findings in *IV.M.1400-Rexam/PLM*. Thermo-forming is cheaper than injection-moulding and switching form thermoforming to injection-moulding and vice-versa requires large capital investment. With regard to the possibility to switch production between PP and PS, the investigation found that the materials have different characteristics when being extruded and in forming. There are in particular differences in shrinkage during the cooling phase, which may lead to some dimensional variations of the final product. Therefore, manufacturers have indicated that the moulds would have to be different depending on which material was used.

17. For the purpose of the present case it is not, however, necessary to define exactly the relevant product market, because the operation does not lead to a dominant position being created in any of the alternative markets considered.

18. The parties' activities in paper food packaging overlap only in ice cream packaging. The materials used by the parties are PE-coated carton board and aluminium coated board, the former being used for "Calippo"-type of ice cream packaging and the latter for "Cornetto"-type sleeves and cones. The parties argue that, from a marketing and technical point of view, these two products are similar. The production process is relatively simple and can easily be executed by any packaging material producer.

19. The investigation shows that, in general terms, switching from manufacturing one type of paper packaging to another may require different equipment depending on the package type, material and shape. The investigation also suggests that substitutability between different types of paper food packaging from the demand side could depend on the end use, product requirements, technical properties and marketing aspects.

20. The exact definition of the relevant product market in this case, however, can be left open because the operation does not lead to a dominant position being created in any of the alternative markets considered.

B. Relevant geographic markets

21. With regard to the geographic scope of the markets, the parties submit that the markets are currently largely national or, at most, regional. The parties argue, however, that there is a trend towards the development of a European wide market.

22. The investigation has confirmed that the markets are presently largely national or regional. Customers often source locally or on a national basis. They have emphasised the importance of local presence, which is often considered to mean quick and flexible service, logistical advantages and supply reliability. However, several third parties have also indicated that the trend is increasingly towards pan-European sourcing. Factors such as the growth of large multinational customers, the introduction of Euro, the improvements in the supply chain management techniques enabling packaging materials to be moved efficiently across broader geographic boundaries and the increasing need to achieve benefits of scale are all contributing to the widening of the geographic market.

23. The exact definition of the relevant geographic market in this case can be left open given that even on the narrowest market definition possible the operation does not lead to the creation or a strengthening of a dominant position.

IV. COMPETITIVE ASSESSMENT

24. The parties have submitted that there are no affected markets within the meaning of the Merger Regulation in this case. The parties have nevertheless submitted market share data for six Member States where the two companies have overlapping activities. In these Member States, the combined average market share of the parties would be between [<5%] and [10-20%] for thin-walled plastic containers and less than [<5%] for paper food packaging.

25. The parties have further submitted alternative market share data according to more specific end applications, that is, for foodstuffs packaged in thin-wall plastic containers and paper

food packaging for ice cream. The parties have estimated that, for thin-wall plastic containers for food applications, their combined market share in six Member States would be on average below [10-20%]. In Finland, the parties combined market share would be [20-30%]. However, the increment would be less than [<5%] resulting from Van Leer's *de minimis* activities in Finland. There are also a number of competitors, the largest yielding [20-30%] in market share. In paper food packaging for ice cream, the parties have overlapping activities only in two Member States, where the combined market share of the parties would be [10-20%] and [10-20%] respectively.

26. The above given market shares are not indicative of a dominant position being created by the operation. Third parties have confirmed that competitive market conditions prevail in those markets the parties have overlapping activities in and they have not expressed serious concerns with regard to the impact of the operation.

27. On the basis of the foregoing, the Commission considers that the proposed operation is unlikely to give rise to the creation or a strengthening of 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. CONCLUSION

28. 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,