

***Case No COMP/M.2286 -
BUHRMANN / SAMAS
OFFICE SUPPLIES***

Only the English text is available and authentic.

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

Article 6(2) NON-OPPOSITION
Date: 11/04/2001

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 11.04.2001
SG(2001) D/287751

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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) and 6(2) DECISION

To the notifying party

Dear Sirs,

**Subject: Case No COMP/M.2286 - Buhrmann/Samas Office Supplies
Notification of 28.02.01 pursuant to Article 4 of Council Regulation
No 4064/89¹**

1. On 10.01.01, 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 Buhrmann N.V. ("Buhrmann") notified a transaction leading to the acquisition of the two holding companies that regroup Samas' office supplies activities: Universal Office Supplies Ltd. and Samas Universal Office Supplies B.V. (hereinafter referred to as "Samas"). On 02.02.2001, the notification was declared incomplete. On 28.02.2001, the parties having provided additional information, the notification was declared complete.
2. During the course of the proceedings, Buhrmann submitted an undertaking designed to eliminate competition concerns identified by the Commission. Subject to full compliance with this undertaking, 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.

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).

I. THE PARTIES

3. Buhrmann is a publicly held Dutch company active as a distributor of office products and of paper (paper merchandising). It is mainly active in the EU, the US, Canada, Australia and New Zealand. In the markets for the distribution of office supplies, Buhrmann trades under the name "Corporate Express". As a paper merchant in the Netherlands, Buhrmann trades through a variety of subsidiaries.
4. Samas is a publicly held Dutch company active in the manufacturing and distribution of office furniture and the distribution of office supplies. As the operation relates only to the office supplies division of Samas, the latter will remain active as a manufacturer and distributor of office furniture. Samas Office Supplies sells mainly in the Netherlands, the United Kingdom and Germany. In the Netherlands, Samas trades through its subsidiaries Aspa, Aarts and Co., Dawidenko, and Intercambio.

II. THE OPERATION

5. The proposed concentration concerns the acquisition of sole control of Samas Office Supplies by Buhrmann. The acquisition relates only to the office supplies division of Samas. Pursuant to the purchase agreement, Buhrmann will acquire 100% of the shares of Universal Office Supplies Ltd. and Samas Universal Office Supplies B.V., the two holding companies of the office supplies activities of Samas. As such, the acquisition agreement includes all assets and liabilities in the ordinary course of business relating to the office supplies division, including trademarks, but excluding the trademark "Aspa" for the use of which Buhrmann will get a royalty free license for 12 months², and the employees pertaining to the office supplies division. The purchase price for the office supplies division amounts to [...] in cash [...].

III. CONCENTRATION

6. As a result of the acquisition, Buhrmann will acquire sole control of Samas Office Supplies, giving rise to a concentration within the meaning of Article 3(1)(b) of the Merger Regulation. Upon completion of the acquisition, Universal Office Supplies Ltd. and Samas Universal Office Supplies B.V. will be wholly owned subsidiaries of Buhrmann.

IV. COMMUNITY DIMENSION

7. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion³ [Buhrmann had a worldwide turnover of [...] in 1999; Samas had a worldwide turnover of Eur [...] in 1999]. Each of Buhrmann and Samas 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. COMPATIBILITY WITH THE COMMON MARKET

² Samas will continue to use this tradename for its office furniture business.

³ 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.

8. The operation will have its main impact in the distribution of offices supplies (including cut office paper) in the Netherlands.

1. RELEVANT MARKETS

1.1 Office supplies

1.1.1 The relevant product market

The products

9. The term "office products" is used to describe a wide range of products, including:
- office supplies
 - office furniture (seating, desks, storage and computer furniture, etc.);
 - office equipment (computers, printers, copying and fax machines, etc.);
10. The parties contend that there is some overlap between the distribution of office supplies, on the one hand, and office furniture and office equipment on the other. In their view, the distribution of office supplies also involves some basic office furniture (also referred to as "catalogue furniture") and small business machines (desk top printers, fax machines, calculators, beamers, overhead projectors, etc.). However, the distribution of complete ranges of office furniture and the distribution of the larger business machines and the services associated therewith clearly are separate activities.
11. Office supplies consist of a large variety of products which have in common that they are used in offices. Office supplies include:
- commercial envelopes;
 - office books and pads, such as memo and refill pads, hard backed manuscript books as well as analysis and duplicate books;
 - cut office paper;
 - writing and graphic supplies, such as pencils, fountain pens, ballpoints, roller-balls, highlighters, markers, fibre/plastic tips, erasers and correction aids;
 - storage and filing products, such as manila and plastic filing, levers arch files, ring binders and archival filing;
 - electronic office supplies, such as laser and inkjet printer cartridges, desktop appliances, data storage media, fax rolls, transparencies, labels and computer accessories;
 - office desk accessories, such as clear adhesive tapes, repositionable notes, staplers and punches;

The customers

12. The demand for office supplies comes from offices, schools, universities and private persons. The parties estimate that private persons on average account for approximately 13% of the demand for office products and that schools and universities account for approximately 7% of the demand. The remaining 80% of the demand comes from offices. This includes large, medium-sized and small/home offices (the latter type of customers also being referred to in the industry as SOHO). These various categories of customers can be distinguished in different ways. The classification used by MPA Ltd. in its surveys of the West European office products market⁴, for example, distinguishes offices with 0-20 office workers (SOHO), offices with 20-100 office workers (medium-sized) and offices with more than 100 office workers (large).

The distributors

13. Office supplies distributors buy supplies from manufacturers or wholesalers and sell to end-users. The following are the main types of office supplies distributors:
 - Contract stationers, i.e., office supplies dealers supplying their customers on the basis of contracts under which the customer may order supplies whenever the need arises. Although such contracts can also be applied by smaller dealers, the term "contract stationer" is usually used to describe the large office supplies dealers. Such large office supplies dealers mostly source their products directly from manufacturers and sell to large and medium sized businesses and the public sector. The parties are primarily active as contract stationers.
 - Smaller office supplies dealers and dealer groups, who buy from manufacturers and wholesalers and resell mainly to medium sized and small companies. Some of these dealers operate their own retail premises. Dealer groups have been formed to secure greater purchasing leverage. Such dealer groups operate their own warehouses, and generally have their own catalogues and ranges of private label products.
 - Mail order companies, who tend to service the smaller offices. They offer a broad range of products which can match that of the contract stationers and dealer groups. Mail order companies source their products from manufacturers and wholesalers.
 - Office superstores, which are large (3,000+ m²) retail stores devoted principally to the sale of office products, and whose prime customer base consists of smaller offices.
 - Electronic office supplies wholesalers selling directly to larger end-user offices.
 - Other resellers such as electronic office supplies dealers, e-tailers (resellers only selling via the internet and outsourcing stock keeping and delivery to others), hardware dealers and high street retailers.
14. Some office supplies manufacturers sell directly to end-users. This includes sales of electronic office supplies such as laser and inkjet printer cartridges, cut office paper and transparencies, which are sold directly to end-users by the manufacturers of business

⁴ MPA Ltd., Cambridge, UK, The West European Office Products Market, Volume I: Benelux, June 2000.

machines using such consumables, like Hewlett-Packard, Canon and Rank Xerox, and some direct sales of cut office paper by paper merchants.

15. Office supplies wholesalers buy supplies directly from manufacturers. They do not, or at least not primarily, sell directly to end-users and concentrate on servicing dealer groups, smaller independent dealers and retailers. They offer a wide range of services to the dealers, including logistical systems whereby orders are fulfilled directly from the wholesaler's stocks and despatched directly to the end-user. There are also more specialised wholesalers, such as wholesalers specialising in electronic office supplies and paper merchants. Two of Samas' subsidiaries, Dawidenko and Intercambio, are active as wholesalers of office supplies, the former being primarily active as a wholesaler of computer supplies.

The parties' view

16. The parties have submitted that the relevant product market ought to be defined as the business-to-business (b2b) distribution of office supplies, that is the distribution of office supplies to professional end-users (principally offices and educational establishments)⁵. The term office supplies would, according to the parties, include catalogue furniture and small business machines (see above), but would exclude office furniture and office equipment, which can be considered separate markets. According to the parties, there is no need to further distinguish between the categories of products supplied, as the bulk of these products is offered by general distributors carrying a whole array of office supplies.
17. The parties further argue that it would not be appropriate to break b2b office supplies distribution into distinct markets according to each distribution channel, as there is a significant overlap between the customers supplied through the various distribution channels: contract stationers (large distributors, often selling on the basis of a framework contract), superstores, traditional dealers, mail order companies, direct selling by manufacturers. According to the parties, customers buy through various channels and are increasingly turning to e-commerce solutions provided by e-tailers and manufacturers, thereby bypassing the traditional channels. Nor do the parties consider that there are distinct office supplies distribution markets according to customer type/size (e.g. customers with more than 20 or more than 100 office workers, large/small accounts, etc..).

The Commission's assessment

18. Following its market investigation, however, the Commission has concluded that it is necessary to sub-divide b2b office supplies distribution into narrower markets. In particular, this investigation indicates that the parties are active in what may be termed the "nationwide contract stationing" market, for the distribution of office supplies to larger end-users in the Netherlands. Depending on the source, this category of customers is sometimes characterised as the medium-sized and large customers. As will be explained in more detail below, it corresponds at least to customers with 200 office workers or more, and may also extend to customers with 100 office workers or more.

⁵ The parties' proposed market definition is consistent with that adopted by the Dutch Competition Authority on 7 December 2000 (2176/Ahrend-Samas), when it cleared the (subsequently aborted) merger between Samas and Ahrend (respectively the largest and second largest office supplies distributors in the Netherlands); in a previous decision (M.1653 Buhrmann/Corporate Express) involving office supplies distribution, the European Commission left open the possibility of defining narrower markets.

19. The characteristics of such a "nationwide contract stationer" are that it is a distributor which provides a full range of products, that it is a "one stop shop" catering for all the customer's needs, and that it can service larger customers (possibly having multiple offices nationwide). Contract stationers typically conclude contracts (or "framework contracts"), with customers. These contracts are generally written agreements, sometimes of several years' duration, governing prices and other sales conditions, and under which the customer may order supplies whenever the need arises.

Demand-side considerations

20. From the demand side, larger customers increasingly prefer to have a one-stop-shop system whereby they satisfy the bulk of their office supplies demands from a preferred supplier. For this purpose, these customers increasingly tend to centralise their internal demands and conclude contracts with large contract stationers for the needs of all of their offices throughout the Netherlands. Independent market data⁶ indicates a sharp increase in the "channel share"⁷ of such large contract stationers, at the expense of the smaller, traditional dealers, some of whom are sometimes characterised as "contract stationers", but which are not operating on a nationwide basis.
21. While multiple sourcing is still the norm for some customers, the growing tendency is for a customer (and particularly the larger ones) to source primarily from a single source, and only to supplement its core requirements from other (sometimes local or regional) sources. This supplementary sourcing is often done on a decentralised basis, i.e. a customer's individual offices may have responsibility for such sourcing. Moreover, the purchase of office supplies to supplement the core requirements is often not made on the basis of a "framework" contract of the kind usually concluded with contract stationers.
22. Security of supply and reliability of service are particularly important for larger customers. Such customers may be unwilling to take the risk of being dependent on a small dealer for some or most of their office supplies requirements. For that reason, they will be inclined to source primarily from the large contract stationers.
23. Apart from requiring a very wide range of products, larger customers also often require products which are customised for their own use. These products may consist, for example, in the printing of the customer's name on the products, or it may consist in the provision of more sophisticated IT-related products and services.
24. For larger customers, mail order firms and office superstores are therefore not appropriate sources of supply. These channels of distribution sell standard products at a fixed price, either in a retail outlet or from a catalogue. As a result, these channels of distribution cater primarily for small customers (small/home offices and private persons). Indeed, such distributors have indicated to the Commission during the course of its market investigation that they only target such small customers. Neither are most small dealers/contract stationers able to satisfy the requirements of larger (and indeed some medium-sized) customers in this respect. Small dealers do not generally have the ability to supply

⁶ Heliview: "Office Monitor" (2000)

⁷ The proportion of the overall sales of office supplies to end users being distributed through a particular distribution channel.

customised products, in particular products/services requiring investment in sophisticated IT systems.

25. It is also worth mentioning that there is a growing trend toward the conclusion of international contracts, especially where large, multi-national customers are concerned. These customers may conclude Europe-wide or even worldwide contracts for the satisfaction of their office supplies requirements; such contracts would have to be concluded with contract stationers operating multi-nationally, such as Buhrmann, Guilbert or Lyreco.

Supply-side considerations

26. From the supply side, achieving volumes is important in several respects. First, large volumes allow a distributor to obtain direct access to manufacturers and to obtain cheaper input prices. Distributors with European or worldwide operations enjoy a particular advantage in that they can source a large part of their supplies from manufacturers on a Europe-wide or worldwide basis.
27. As a result, small dealers purchasing from wholesalers are placed at a price disadvantage vis a vis the larger contract stationers, who source directly from manufacturers, and often on a Europe-wide or worldwide basis. This purchasing price disadvantage can be as high as 15%-20% for some products. Despite the fact that smaller dealers purchasing from wholesalers are spared some of the logistical costs incurred by the large contract stationers, the purchase price disadvantage nonetheless translates into an office supplies sales price disadvantage which has been variously quantified as between 3% and 5%. It is also true that small dealers tend increasingly to become members of buying/dealer groups in order to combine their buying power and purchase directly from manufacturers. However, a buying and selling group, comprised of small dealers selling together under a common tradename, has nonetheless confirmed the existence of a price disadvantage of this magnitude.
28. This price disadvantage for the smaller dealers is particularly critical in the servicing of the larger accounts. The Commission's market investigation has found that the margins for these accounts are, generally speaking, considerably lower than for the small and medium-sized accounts.
29. Large volumes are also important in terms of logistics. Servicing larger customers requires significant investments in automated warehouses, physical transport infrastructure (fleet of trucks etc..) and, increasingly, investment in sophisticated electronic ordering and billing systems. Several contract stationers estimate, for example, that a turnover in office supplies of Euro 90 or 100 million would be required in order to justify investment in an automated warehouse capable of servicing medium-sized and large customers; building a major distribution centre of this kind would cost some Euro 20 million. As for investment in the sophisticated IT systems that are now necessary in order to service larger customers, this is beyond the means of most small dealers.
30. While some buying/dealer groups also act as selling groups, or are in the process of transforming themselves into selling entities, these groups do not have the centralised, unified IT and logistics systems, or the sales teams, necessary to compete effectively and on a nationwide basis with the large contract stationers for contracts with the larger customers. During the course of the Commission's investigation, for example, a small dealer selling group has indicated that it concentrates on small and medium-sized customers, and is not primarily interested in the larger customers being targeted by the nationwide contract stationers. This is corroborated by the failure of such groups to participate in tenders for contracts with the medium-sized and large customers (see below). Moreover, according to

one of the largest buyer/dealer groups in the Netherlands, outsourcing of logistics, while theoretically possible, is not yet done by such groups.

31. In view of the relative decline in the importance (in terms of office supplies sales) of small dealers vis a vis the larger contract stationers, it appears that the purported transformation of buying/dealer groups into selling groups should be seen - as is contended by a number of market participants surveyed by the Commission during the course of its market investigation - more as a defensive strategy aimed at slowing or arresting that relative decline than as an offensive strategy providing a real competitive alternative to the larger contract stationers.
32. Small dealers will often be reluctant to take on large accounts, in view of the risk of over-dependence on (a small number of) larger customers. Loss of such a large account would have a disproportionately heavy impact on a small dealer and, as a result, such dealers tend to be reluctant to make the investments necessary to service such accounts.
33. Small dealers cannot match the large contract stationers in terms of ability to supply a full range of products (such a range can include some 8000 product types) from their own stock, and deliver them in time to meet a larger customer's immediate requirements. Nor, as described above, are small dealers able to match the big contract stationers in terms of ability to supply customised or "own label" products; this would require significant investment, and would be beyond the means of most small dealers.
34. In order to compete for contracts with many medium-sized and large accounts, and in particular those relating to customers having offices located in various locations throughout the Netherlands, it is an obvious advantage for an office supplies distributor to have a nationwide presence. While small dealers tend to only have a local or regional presence, the large contract stationers are present across the Netherlands. A nationwide presence means not only having warehouse and other logistical facilities capable of servicing accounts anywhere in the country, but it also means having a nationwide sales staff.
35. Contract stationers operating nationwide must, therefore, field a nationally-mobile sales team, which is capable of acquiring and maintaining business throughout the Netherlands. The Commission's market investigation has revealed that, in order to be fully effective, sales staff of this kind need to be appropriately qualified and experienced. Such staff are apparently an expensive resource, and one which is in short supply. As a result, small dealers cannot generally justify investing in the recruitment and retention of sales staff of this kind.
36. The importance of sales staff for success in contract stationing in the medium-large customer segment has been emphasised by many of the market participants surveyed by the Commission during the course of its market investigation. Salesmen will typically be negotiating long-term contracts (perhaps of 2-4 years' duration), and it may take several months to build up a relationship before the distributor and customer will be in a position to conclude a contract, or even before the distributor will be in a position to make an offer.
37. Other channels of distribution, and notably mail order companies and office superstores, do not compete for contracts with medium-sized and large customers. Mail order firms and office superstores do not negotiate individual contracts with customers, wherein the prices (and other terms of supply) of the various products may be differentiated depending on the volumes supplied, the duration of the contract, or other aspects of the specific commercial relationship. Rather, as mentioned above, they sell standard products at a fixed price, from a catalogue or retail premises.

38. It has been pointed out by the parties that some of the other distribution channels, such as mail order firms or office superstores, could relatively easily enter the large/nationwide contract stationing market; Viking/Office Depot, for example, has declared its intention to enter the market. While this would certainly seem to be a possibility, two things should be pointed out. Firstly, entry into the large/nationwide contract stationing market would involve considerable investment, particularly in sales staff, by a mail order firm or superstore, even one with a nationwide - indeed worldwide - presence (such as Office Depot). Secondly, these companies are only potential entrants to the market: they are not currently competing with the established contract stationers. The ability of such firms to do so has yet to be demonstrated, and some existing contract stationers have expressed scepticism about their chances of success.
39. Electronic office supplies dealers and cut office paper merchants do sell some supplies under contract to medium-sized and large customers. However, these channels of distribution do not exhibit most of the characteristics associated with the servicing of larger customers described above (in particular one-stop-shopping). The same also applies to office supplies e-tailers.

Market parameters - the customers and the distributors

40. Defining the precise parameters of the nationwide contract stationing market for larger customers in the Netherlands is not straightforward: the available independent market data suggest segmentation according to varying criteria (distributor size/type, customer type/size, contract/account size/type, etc.). There is, moreover, a certain overlap between the distribution channels used to service medium-sized and even large customers and that, even in relation to larger customers, the big contract stationers can occasionally face a degree of competition from smaller regional dealers. However, even the parties themselves indicate that "Clearly there are differences in the conditions of competition in these segments [different customer categories]. Smaller dealers, mail order companies and office superstores will not normally compete directly with large dealers like Aspa or Corporate Express for central contracts of the largest customers"⁸. Similarly, most smaller dealers/contract stationers surveyed by the Commission during the course of its investigation have confirmed this view. Some suppliers have also confirmed that contract stationers do not compete with smaller, traditional dealers, as the two types of distributor focus on different market segments and offer different products/services.
41. As regards customer size categories, the Commission's market investigation has concluded that the customer category being targeted (for contract sales) more or less exclusively by the large contract stationers is at least comprised of customers with 200 office workers or more, and that it may be comprised of customers with 100 office workers or more. During the course of the Commission's market investigation, a large number of the market participants surveyed (distributors, suppliers and customers) indicated that contract stationers target customers with a number of office workers exceeding 100-200. A small dealer selling group, for example, in indicating that it concentrates on small and medium-sized customers (see para. 30 above), put the upper limit of its target customer category as customers with 200 office workers.
42. As regards distributor type/size, the Commission's market investigation has concluded that there are no more than five contract stationers operating on a nationwide basis: Aspa

⁸ Memorandum submitted by Buhrmann to the Commission, 14.03.01, at p. 14

(Samas), Ahrend, Corporate Express (Buhrmann), Guilbert and Lyreco. All of these companies, with the exception of Ahrend, are multi-national companies. Ahrend, Guilbert and Lyreco all agree that they - together with Samas and Buhrmann - are the only operators competing on a nationwide basis for contracts with the larger customers in the Netherlands.

43. An analysis of the tenders for contracts organised by large customers throughout the Netherlands over the past year or two shows a very high recurrence of these same five names. During the period April 1999-December 2000, for example, Aspa (Samas) participated in [...] tenders for contracts with an annualised sales value of NLG 100,000⁹ or more, and won [...] of them. Of the [...] contracts (with an annualised sales value of NLG 100,000 or more) for which Aspa submitted a bid but lost during the same time period,, [...] were won by one of the other four contract stationers, [...] were won by regional dealers, and the remaining [...] winners were unknown. Of the [...] contracts for annualised sales of NLG 100,000 and more, for which Corporate Express (Buhrmann) submitted a bid but lost during 2000, [...] were won by one of the other four contract stationers, [...] was won by a regional dealer, and the winners of the remaining [...] are unknown to Buhrmann.
44. The analysis of the tenders for large contracts also suggests that, while small dealers do conclude a certain number of office supplies contracts with medium-sized and large customers, these tend to be contracts between dealers having a strong regional presence and customers based substantially in that region. These regional dealers are not generally in a position to compete for nationwide accounts.
45. It is not necessary to decide whether contract stationing also includes, in line with the parties' contention, the supply of catalogue furniture and small business machines, as defining the market to include/exclude such products would have no material impact on the assessment in this case. It is worth noting that Heliview and MPA do not include these products in the bundle of products for which they calculate the sales of contract stationers in the Netherlands.
46. In view of the somewhat similar conditions of competition, it could also be argued that sales to retailers, primarily by office supplies wholesalers, should also be included in the relevant product market, not just sales to end-users¹⁰. This possibility can be dismissed, however, given that most wholesalers are specialised in certain product types (e.g. computer supplies) or only supply a limited range of general office products. Retailers must consequently source their requirements from a number of different wholesalers.

1.1.2 The relevant geographic market

47. The European b2b office supplies products businesses of the parties are overlapping in the Netherlands, the United Kingdom, Ireland, Germany and Belgium/Luxembourg. The parties state that the market for the b2b distribution of office supplies is still predominantly national in scope. Generally speaking, distribution is organised on a national basis and demand is strongly influenced by national demand characteristics. Accordingly, catalogues are produced specifically for national markets and the product offering varies considerably from one country to another.

⁹ On the basis of a conservative estimate of the annual consumption of office supplies of NLG 800-1,000 per office worker, this corresponds to customers with 100-125 office workers or more.

¹⁰ cf. M.1653 Buhrmann/Corporate Express

48. During the Commission's market investigation, most customers (end-users) confirmed that sourcing office supplies from outside of the Netherlands was not a viable option. It was *inter alia* pointed out that a significant proportion of the products offered by office supplies distributors in the Netherlands are specific to the Dutch market. While some contracts with large multi-national customers located in the Netherlands may be concluded on a Europe-wide or even worldwide basis, distribution is still national in scope: such contracts are not concluded unless the distributor is established in the Netherlands.
49. It can therefore be concluded that the geographic scope of the distribution of office supplies in the Netherlands is national. For the other countries in which the parties' office supplies businesses overlap, it is not necessary to decide on the exact geographic scope of these markets, be they national or otherwise, as the proposed operation would not give rise to competition concerns on the basis of any of the possible market definitions.

1.2 Paper

1.2.1 The relevant product market

50. As regards the wholesale supply of graphic paper, which is the common name for different kinds of coated and uncoated general printing and writing paper, Buhrmann is active as both a wholesaler and distributor (paper merchant). Although contested by the parties, a recent Commission decision¹¹ suggests that the paper merchanting market should, due to market structure, logistics and pricing, be considered as distinct from direct sales of graphic paper by producers.
51. Cut office paper (A4, A3, etc.) is one of the main office supplies products. Buhrmann, through its various paper merchanting subsidiaries, is active both as a supplier of paper to office supplies distributors (wholesale) and as an office supplies distributor to end-users (offices and printers). Corporate Express (Buhrmann) and Samas also sell cut office paper as an integral part of their office supplies contract stationing businesses.
52. It is difficult to segment the market for the distribution of cut office paper according to customer size, as the conditions of competition do not vary as much as in relation to the distribution of office supplies for the various customer categories. "One-stop-shopping" is less a feature of customer purchasing behaviour for cut office paper: multiple sourcing appears to be more common than for office supplies generally. Moreover, cut office paper is a more or less homogeneous product, not usually requiring customisation. Nor does distributing cut office paper to larger customers require the same degree of investment by distributors in logistics and IT systems as are required for the distribution of office supplies generally to such customers.
53. If one were to segment the market for the distribution of cut office paper to end users along similar lines to the segmentation of the office supplies distribution market in the Netherlands, the market share of the new entity in the distribution of cut office paper to larger customers would be somewhat higher than the same market share for office supplies generally. However, it is not necessary to exactly define the relevant product market, since the undertaking offered by the parties during the course of the proceedings in order to resolve the Commission's concerns regarding the nationwide contract stationing market for

¹¹ M.2020 Metsä-Serla/Modo.

larger customers (see below) would remove any serious doubts on the basis of every possible market definition.

1.2.2 The relevant geographic market

54. The parties are both active in the supply of cut office paper to end-users in the Netherlands, the United Kingdom, Ireland, Germany and Belgium/Luxembourg. In previous Commission decisions¹², the overall graphic paper merchandising markets have been treated as national in geographic scope. There seems to be no reason to depart from the analysis in those cases, not even for cut office paper specifically. As with office supplies generally, the distribution of cut office paper to end-users also tends to be organised on a national basis. Transport costs and the importance of quick delivery are important factors explaining the national scope of such distribution. However, it is not necessary to exactly define the relevant geographic market, since the undertaking offered by the parties during the course of the proceedings in order to resolve the Commission's concerns regarding the nationwide contract stationing market for larger customers (see below) would remove any serious doubts on the basis of every possible market definition.

1.3 Conclusion

55. On the basis of the above, the Commission has reached the conclusion that, as regards the horizontal relationship between Buhrmann and Samas in office supplies, the relevant market is the market for "nationwide contract stationing" for the distribution of office supplies to larger end-users in the Netherlands. As regards cut office paper, the precise market definitions can be left open.

2. COMPETITIVE ASSESSMENT

1. Market shares

56. As indicated in the section on product market definition, the market for nationwide contract stationing to larger customers is a market the precise parameters of which are not easily identifiable. As a consequence, establishing the precise market share that the new entity would obtain in this market has proved rather complex. In addition, the various sources available are equivocal in their estimates concerning, for example, the total market size. Nevertheless, the most precise market data available appear to indicate that the market share of the new entity would be around [40-50]%, a figure which is broadly confirmed by respondents in the marketplace. The data collected indicates that the new entity would be more than [...] times larger than the second largest competitor (Ahrend), [...] times larger than the number 3 player (Guilbert) and [...] times larger than the number 4 player (Lyreco).

Overall office supplies market size

57. Due to a lack of market data which exactly describe the nationwide contract stationing market to larger customers identified by the Commission, the parties have relied upon various approximative techniques and on various sources to describe the parties' market share of the market under investigation. The parties have attempted to quantify their position in this market by segmenting the overall business-to-business distribution market of office supplies (i) by distribution channel and (ii) by customer size.

¹² M.2020 Metsä-Serla/Modo.

58. For establishing the size of the overall business-to-business distribution market of office supplies, the parties have based themselves on two industry reports, "The West European office products markets, Volume 1: Benelux" from MPA (United Kingdom) and "Office Monitor" from Heliview (Netherlands). The methodology used in the two reports is quite different. MPA has conducted a study of government statistics, trade figures and company reports pertaining to the office products industry. Data verification is done through in-depth interviews with manufacturers and distributors in the industry. Heliview carries out a regular survey of the use of office supplies on the basis of telephone interviews among about 1,000 company locations with 1 to 500 employees in the Netherlands. On the basis of this sample, an average consumption of office supplies per office worker is calculated, a figure which is then used to calculate the aggregate consumption of office supplies in the Netherlands.
59. The market size estimates in Form CO for the overall office supplies market in 1999 are, primarily, based on the MPA report¹³. However, to the product categories included by MPA in its estimate, Buhrmann has added catalogue furniture and small business machines. Furthermore, instead of the MPA estimate for the sales of cut office paper, Buhrmann has relied on the estimate of the sales of cut office paper by Heliview, since Buhrmann is of the opinion that Heliview's figures are more reliable on this point. These adjustments have resulted in the estimated market size in Form CO of EUR 1779 million¹⁴. Basing oneself only on the MPA report, the total size of the office supplies market would be EUR 1390 million. In subsequent submissions, the parties have indicated that it would be more appropriate to rely on the most recent figures of Heliview for the year 2000, not only for cut office paper but also for the other product categories. The Heliview estimate of the aggregate consumption of office supplies products by company locations with 1 to 500 employees is EUR 2330 million¹⁵. Extrapolating the figures to include all company locations in the Netherlands (including those with over 500 employees) would bring the market total to EUR 2720 million¹⁶.

¹³ Of the figures published by MPA, 87% is estimated to represent the value of office supplies sold to offices, schools and universities. MPA only publishes figures with respect to the Benelux as a whole and not with respect to the individual countries. Of the total sales value for the Benelux, 68% has been allocated to the Netherlands and 32% to Belgium. This split is based on the number of office workers in service industries in the Netherlands and Belgium. In 1998, 2.430 million office workers were employed in service industries in Belgium, compared to 5.238 million in the Netherlands.

¹⁴ MPA has a much lower estimate for the total sales value of cut office paper (EUR 191 mln) than Heliview (EUR 331 mln). There is also a difference for commercial envelopes (EUR 128 mln vs. EUR 140 mln).

¹⁵ Heliview in its report has made a separate analysis of the following product categories: (i) office supplies products ("kantoorverbruiksartikelen"), with total estimated sales of EUR 1059 million, (ii) cut office paper, the total sales of which are estimated by Heliview at EUR 413 million (in Form CO Buhrmann relied on the estimate by Heliview of the sales of cut office paper in 1999, which amount to EUR 331 million) and (iii) computer supplies, with total estimated sales of EUR 858 million.

¹⁶ At Buhrmann's request, Heliview has clarified how many company locations ("vestigingen") have not been included in its survey. In total this concerns 805 "vestigingen" of companies and approximately 55 "vestigingen" of government entities. In order to make a (rough) estimate of the office supplies sales to these "vestigingen" some additional assumptions have to be made. Assuming that the average number of office workers at these 860 "vestigingen" is 1,000 per "vestiging", and that the average consumption of office supplies per office worker is NLG 1,000 (EUR 400), total sales to these "vestigingen" would amount to EUR 390 million. Heliview assumes the following consumption per "administratieve werkplek": NLG

60. The Heliview market figure is larger than the market size calculated on the basis of the MPA report, which has been used in Form CO. According to the parties, the Heliview report gives a more reliable indication of the size of the market in the Netherlands (and the different segments thereof) than the MPA report. Whereas it is true that the Heliview report is more detailed, since it attempts to construct the market size from data obtained at the micro level, this does not by itself mean that its methodology leads to more accurate results at an aggregated level than a report which uses a top-down approach, such as the MPA report. It has come to attention of the Commission that the overall market size which results from the Heliview report is perceived to be rather high. In this respect, it can be mentioned that a third source, the ING Barings Dutch Sector Report "Office Goods Market" of 1998, estimated the size of the 1997 Netherlands office supplies market to be EUR 1363 mln, which, with an annual growth rate of about 4%, would amount to EUR 1533 million in the year 2000. This figure lies much closer to the MPA figure than to the Heliview figure. Finally, the Commission's own survey, conducted among the 300 largest employers in the Netherlands, has cast doubt on the Heliview figure, in the sense that the latter seems to overstate the overall size of the office supplies market. Nonetheless, the analysis in the remainder of the section will refer to both the MPA and Heliview reports whenever appropriate, as well as to the figures provided in Form CO, which are based on MPA (for office supplies products and computer supplies) and on Heliview (for paper).

The parties' sales

61. In establishing the relevant sales figures of the parties, the following factors have been taken into account. When calculating the market share of Samas Office Supplies, the sales of Samas' wholesale subsidiary Intercambio are not taken into account because Intercambio does not sell to end-users¹⁷. An issue considered by the Commission has been whether, for the purpose of characterising the parties' market share by distribution channel, the sales of Samas' subsidiary Dawidenko, a specialist dealer of computer supplies, should be taken into account (insofar as Dawidenko sells to end-users and not to retailers) and whether the sales of Buhrmann's paper merchanting divisions should be taken into account. Excluding those sales, the parties' sales of office supplies amount to EUR [...] for Samas and EUR [...] for Buhrmann. Including the sales would bring the parties' sales of office supplies to EUR [...] for Samas (Dawidenko: EUR [...]) and EUR [...] for Buhrmann (Buhrmann paper merchanting: EUR [...]).
62. Buhrmann is of the opinion that, in a segmentation of the market by distribution channel (contract stationing), neither the direct sales of Dawidenko to end-users nor the position of Buhrmann paper merchanting should be included in the analysis of the position of the merged entity, as Dawidenko and Buhrmann paper merchanting are not operating as contract stationers. The Commission would agree that, for the purpose of characterising the market shares of the parties in the respective sales channels in which they are active, the

733 office supplies excluding cut office paper and computer supplies, NLG 301 cut office paper and NLG 626 computersupplies = NLG 1,660 per "administratieve werkplek".

¹⁷ Furthermore, sales of furniture and other product groups are not taken into account to the extent these are not included in the total market (Heliview does not include (catalogue) furniture and part of the small business machines in its market size). Aspa and Dawidenko do not sell any furniture, but Aarts & Co had sales of EUR 3.5 million furniture in 1999/2000. In fact, another correction could be made for the sale of small business machines, which are only partly included in the Heliview market size. However, because it is not known exactly which small business machines should be excluded, the parties have not made this correction. In any event, the analysis of the market shares would not materially change.

primary point of reference is obtained by not including the sales of Dawidenko and Buhrmann paper merchanting. On the other hand, in order to assess the competitive strength of the new entity in the respective sales channels, one cannot ignore the competitive weight which is represented by the direct sales of Dawidenko or of Buhrmann paper merchanting, as will be further elaborated upon in the section on the impact of the operation¹⁸. For the purpose of clarity, the characterisation made below of the market shares by distribution channel will represent both the figures including the sales by Dawidenko and Buhrmann paper merchanting and excluding them.

63. For the characterisation of the market shares by customer size, the Commission considers that it is not appropriate to exclude the sales by Dawidenko and Buhrmann paper merchanting, since the focus is on a segmentation by customer size, rather than on the precise sales channels through which the office supplies products are purchased. As has been explained in the section on product market definition, the link between contract stationing as a sales medium and the customer segment of larger customers is particularly close.

Segmentation by distribution channel

64. MPA has estimated the channel shares of the various distribution channels in the Benelux. It distinguishes the following channels: office supplies dealers, consumables master distributors, direct sales from manufacturers, mills & OEMs, hardware dealers, high street retailers, office superstores, mail order, paper merchants & brokers, computer mail order, printers and a category others. It would appear that the distribution channel "office supplies dealers" comes closest to the notion of contract stationers as described in the section on product market definition. This does not exactly match this notion, however, since it also includes the smaller office supplies dealers, which tend to focus on the smaller customers. Nonetheless, the analysis of the parties' shares in this wider market (without taking into account the sales of Dawidenko and Buhrmann paper merchanting) is informative of the lower bound of the parties' market share in the relevant product market. MPA estimates that 39% of the overall consumption of office supplies goes through the channel of office supplies dealers. The corresponding channel sales are EUR 693 million (according to Form CO) and EUR 542 [million] (taking the MPA figures as the basis). Accordingly, the share of the combined entity in the total of "office supplies distributors" as defined by MPA would range from [20-30]% (S [10-20]% + B [0-10]%) to [30-40]% (S [20-30]% + B [0-10]%) or, alternatively, from [30-40]% (S [10-20]% + B [10-20]%) to [30-40]% (S [20-30]% + B [10-20]%), if the sales of Dawidenko and Buhrmann paper merchanting are taken into account.
65. Heliview in its report distinguishes slightly different distribution channels: office supplies dealers operating nationally and selling a complete assortment ("landelijke totaalleverancier"), office supplies dealers ("kantoorvakhandel"), bookshops selling office supplies, office superstores, specialised dealers, mail order companies, high street retailers, online suppliers and a category "others". It would appear that the distribution channel "landelijke totaalleverancier" comes closest to the notion of nationwide contract stationers

¹⁸ By way of example, it would be fairly straightforward for salesmen of the new entity to offer the services and products of Dawidenko or Buhrmann paper merchanting alongside the services and products of the contract stationing businesses *strictu sensu* of the new entity. Secondly, the new entity also derives extra purchasing power related to the sales volume which is represented by Dawidenko and Buhrmann's paper merchanting business.

as described in the section on product market definition. Again, it does not exactly match this notion, since it also includes the sales to smaller customers. According to Heliview, the "landelijke totaalleverancier" has a channel share of 27% of the office supplies market excluding computer supplies and cut office paper; including computer supplies, this figure would be about 25%, according to the parties' calculations¹⁹. The corresponding channel sales are EUR 480 million (according to Form CO) and EUR 660 (taking the Heliview figures as the basis). Accordingly, the share of the combined entity in the total of "totaalleveranciers" as defined by Heliview would range from [20-30]% (S [10-20]% + B [0-10]%) to [30-40]% (S [20-30]% + B [10-20]%) or, alternatively, from [30-40]% (S [20-30]% + B [10-20]%) to [40-50]% (S [20-30]% + B [10-20]%), if the sales of Dawidenko and Buhrmann paper merchanting are taken into account.

Segmentation by customer size

66. The parties have also explored an alternative way of characterising the market position of the parties, namely by looking at their position in the respective customer segments. MPA has, however, not made an analysis of the size of customer segments of the office supplies market. Heliview has segmented the market by number of employees per company location²⁰. This segmentation has been adjusted by Buhrmann to reflect the total market, including "vestigingen"²¹ with more than 500 employees²². On this basis, 32% of the employees would be working in companies with more than 100 employees. Alternatively, use can also be made of statistics published by CBS (Centraal Bureau voor de Statistiek) on the number of employees working in companies. According to CBS, 20% of employees is working in companies with 100-500 employees and 38% is working in companies with more than 500 employees.
67. It follows from the above discrepancies that there are no conclusive data on the total size of these customer segments. As regards segmenting the sales of the parties according to customer size, the parties have had to resort to methods which are also rather imprecise. The budgets of Corporate Express, Aspa, Aarts & Co and Dawidenko (insofar as Dawidenko sells to end-users) contain breakdowns of sales by customer segment on the basis of sales value. These breakdowns have been translated into a segmentation on the basis of the number of employees per customer by assuming an average annual expenditure per employee of NLG 1,000 (EUR 400). However, this tends to understate the parties' sales to the large customers, because the customers in the lower segments may include customers with more than 100 employees (or more than 500 employees) who are only purchasing a

¹⁹ This adjustment has been made by taking the channel shares of the office supplies market excluding computer supplies, applying these to the total sales of computer supplies of NLG 858 million to calculate the sales per channel, adding the result to the sales per channel of office supplies excluding computer supplies and recalculating the channel shares on this basis.

²⁰ It has made separate estimates for the three main product categories (office supplies products, cut office paper and computer supplies). For purposes of the analysis, Buhrmann proposes to use the segmentation for office supplies products.

²¹ Work locations.

²² It has been assumed that the proportion of the sales of these product categories to the sales of the other supplies is the same for "vestigingen" above 500 employees as for "vestigingen" below 500 employees. Furthermore, it can be noted that whereas Heliview includes office locations of public bodies, it is based on the company locations rather than on companies or public bodies as such.

part of their office supplies from the parties. Furthermore, the figure of NLG 1000 per employee would seem to be a rather high estimate, which equally leads to an understatement of the parties' sales to large customers. A number of respondents in the market investigation, as well as the Commission's own market survey (see below), point to consumption figures per employee which are about half the figure indicated by the parties.

68. As a result of the above deficiencies and discrepancies, the Commission cannot put much weight on the shares of sales that the parties claim to have in the respective customer categories. These range from [10-20]% (based on the market size according to Heliview, using the customer segmentation of CBS) to [30-40]% (based on the market size according to MPA, using the customer segmentation of Heliview).
69. In order to obtain more reliable figures, the parties have also calculated how much they sell to the largest 300 employers in the Netherlands. To this end they have compiled a list of the largest 1,000 employers in the Netherlands, including both companies and government entities. They have taken the first 300 employers on this list and have compared this with their own sales. Together the list covers all entities in the Netherlands with more than 1,100 employees. These lists show that Aspa sells to [50-100] of the 300 employers, Corporate Express sells to [50-100], Buhrmann paper merchanting sells to [50-100] and Dawidenko sells to [0-50] of these 300 entities. Together, therefore, these companies sell to [200-250] of these entities. Taken together, and correcting for overlaps, the new entity would sell to [150-200] of the 300 entities.
70. The parties have attempted to identify the market share of the new entity among this group of 300 entities. The employees of these entities include both office workers and other employees so an estimate on the basis of the number of employees must be adjusted. According to Heliview, the total working population in the Netherlands amounts to 7 million, of which 3 million or 42% are office workers. Heliview estimates that the consumption of office supplies per "werkplek" amounts to EUR 750. The total number of employees working at these 300 entities amounts to 1,511,827. Assuming that 42% of these are office workers and that the average consumption of office supplies per office worker amounts to EUR 750, the parties estimate that the total purchase value of office supplies of these 300 entities amounts to EUR 450 million. The total sales of Aspa, Corporate Express, Buhrmann paper merchanting and Dawidenko to these 300 entities amount to EUR [...], which would mean that the new entity's total share of the sales to these 300 entities would amount to [20-30]%.
71. Since the above calculations were based on a number of assumptions which were put into question by respondents in the marketplace (mainly competitors) and in view of the overall difficulty in obtaining reliable data for the office supplies distribution market under investigation, the Commission decided to address each of the above mentioned 300 entities in order to ask them for data concerning, among other things, the number of people employed, the number of office workers employed, the total consumption of office supplies products and a breakdown of these purchases according to supplier(s). The response rate of the companies has been satisfactory, in view of the very short timespan in which this survey had to be conducted²³. From this survey, it results that the parties' market share among the

²³ The Commission has also asked the 300 companies to provide the specific purchase figures as regards the product category cut office paper. The response rate to this specific question and, in a number of cases, the quality of the responses has proved insufficient to allow for statistically meaningful inferences to be drawn as regards the consumption of office paper specifically.

300 largest employers in the Netherlands is in the range of [40-50]% (S [30-40]% + B [10-20]%).

72. Through a direct analysis of the sales figures of each of the main competitors of the new entity in the sample of the 300 largest employers in the Netherlands, it results that the new entity would be approximately [...] times larger than the second largest competitor (Ahrend), [...] times larger than the number 3 player (Guilbert) and [...] times larger than the number 4 player (Lyreco).
73. It also emerges from this survey that the average annual consumption of office supplies products per office worker is about EUR 400, considerably lower than the figure put forward by the parties, and in line with comments from the market place. These elements put into the doubt the validity of the market shares according to customer size indicated by the parties, since they all relied on the assumptions made in this regard. With the average consumption figure obtained in the Commission's survey, the parties' market shares indicated would clearly have to be revised upward.

Conclusion on market shares

74. It emerges from the above described approximative techniques for the characterisation of the parties' market shares of the nationwide contract stationing market to larger customers, that the market share of the new entity in this market is likely to be in the region of [40-50]%. In this respect, the Commission is of the opinion that the segmentation by customer size provides for a particularly good approximative technique for the quantification of the new entity's position in the market under consideration, since, as indicated in the section on product market definition, contract stationing is the sales medium which is particularly favoured by the larger customers in the market. Even if one were to accept that a not insignificant number of large customers source office paper separately (cf. section 1.2.1), this would not materially change the characterisation of the parties' market share in the market under investigation, since the parties' combined position as regards office paper is substantially similar to the position as regards office supplies generally. The resulting market share finds further support in the approximations by type of distribution channel, which, since they also relate to sales to smaller customers, are rather to be seen as lower bounds for the parties' market shares in the relevant product market under consideration. The market share figure of [40-50]% is widely confirmed by respondents in the marketplace.

2. Impact of the concentration

75. The high combined market share of the parties in the nationwide contract stationing market for larger customers, about [40-50]%, is indicative of the very strong market position that the new entity will hold following the merger. This is especially so, given the large differences in size with the nearest competitors: Ahrend has a market share of about [10-20]% (more than [...] times smaller than the new entity), Guilbert has a market share of about [0-10]% (about [...] times smaller) and Lyreco has a market share of about [0-10]% (almost [...] times smaller). In an industry in which size matters, these elements are such as to put into question the ability of these competitors to effectively compete with the new entity.
76. In the first place, the new entity could leverage its formidable purchasing position vis-a-vis suppliers to obtain the very best purchase conditions. As a result, the new entity would obtain a pricing flexibility which would be unmatched in the Netherlands. Whereas it is true that Guilbert and Lyreco are players on a European scale, they would be clearly smaller than the new entity, which will be one of the world's largest office supplies companies (also through its recent US acquisitions). Furthermore, a not insignificant part (possibly one-third) of the consumption of office supplies in the Netherlands appears to be accounted for by products which are perceived to be typical national products, mainly in view of the brand names of the products involved²⁴. Since Guilbert's and Lyreco's presence on the Dutch market is relatively weak, the purchase conditions they would obtain regarding these products are correspondingly less favourable than the conditions that would be obtained by the new entity. Ahrend, on the other hand, has activities in the domain of office supplies which are largely confined to the Netherlands and therefore lacks the European-level buying power needed in order to obtain favourable purchase conditions from producers operating at an international level. As a result of the new entity's formidable purchasing position, it is likely to be able to further expand its market share. This, in turn, may bring about a "snowball effect", with the new entity taking ever greater advantage of its steadily increasing purchasing position.
77. Similarly, the new entity's pre-eminent purchasing position appears to put it in a position to prevent its closest competitors from obtaining the volumes which would allow them to justify large investments in logistics and IT systems. One competitor, which is not yet in possession of a modern, fully automated warehouse in the Netherlands, has indicated that with its current turnover levels, the logistics are still manageable, but that with much higher turnover levels, this would no longer be the case. To manage higher turnover levels, this competitor would need a modern, fully automated warehouse in the Netherlands. However, this would require a turnover two to three times as large as its current turnover in order to justify such investments: "volumes must come first, then warehouses". The situation is similar for another competitor. Since the new entity's low purchase costs would grant it very considerable pricing flexibility, it could, either selectively or on a more widespread basis, target certain key customers which could be vital to these competing companies in order to obtain the minimum volumes required. Faced with such a perspective, there would be little incentive for competing companies to invest in logistics and IT systems which would match the level of the new entity.

²⁴ At this stage, it can be noted that the new entity also derives a degree of purchasing power related to the sales volume which is represented by Dawidenko and Buhrmann's paper merchanting business.

78. As a result of the above described lack of incentives to invest in modern logistics and IT systems on the part of new entity's competitors, long-term competition would be impeded, and prices would ultimately risk to be higher than would otherwise be the case. In view of the large and persistent dissimilarities in purchasing positions, it is very likely that the new entity would emerge as a price leader, with the other companies only being able to "price follow". Since the new entity's low purchase costs grant it very considerable pricing flexibility, the new entity would appear to be in a position to discipline its competitors whenever they are competing "too much" for contracts. The net effect would be a reduction in price competition, with the new entity determining the reference level. A significant number of customers has expressed to the Commission that they are of the opinion that the proposed concentration is likely to lead to higher prices for office supplies products generally.
79. Potential competition from other entities in the market, such as the buying groups, appears to be limited. As indicated in the section on product market definition, the organisation of these buying groups does not allow for effective competition as regards the larger customers. The ability of these buying groups to mutate into buying/selling groups is questionable, since competing for larger customers often requires swift and focused action, something which would not appear to be easy for such groups, as the decision-making power is spread among the members. The same applies to decisions concerning investments in integrated IT systems and logistics systems. Furthermore, as indicated in the section on product market definition, such buying groups do not target customers with more than 200 office workers, not only because the purchase conditions for the members of these groups are less favourable than for the nationwide contract stationers, but also make because it is too expensive, and therefore too risky, to invest in catering for the specific requirements of the larger customers.
80. Rather than indicating that they can be a source of potential competition, many smaller dealers, even if they are members of buying groups, indicate that they expect to face more difficulties in maintaining their current position as regards medium-sized customers. With the new entity obtaining better and better purchasing conditions, they fear that their long-standing relationships with their current clients could come under pressure, especially were the new entity to embark upon a policy of "purchasing" some of their main contracts. According to some respondents, this has already been done on a number of occasions in the past, leaving the smaller dealers in question in a more vulnerable position.
81. As regards potential entry from other entities, the parties point to the most recent steps taken by Office Depot, an American office supplies distributor, to enter the contract stationing business in the Netherlands. In the Netherlands, it is currently active as a direct mail company under the name Viking. Whereas the Commission recognises that Office Depot has taken such steps, it cannot rely on the possible ability of this firm to expand into nationwide contract stationing, since the precise impact on the market is quite uncertain. One may refer, in this respect, to the French company Lyreco, which - while being a successful company in France and elsewhere - has been significantly less successful in the Netherlands. Similarly, Guilbert faces difficulties taking off, despite its acquisition of a Dutch company in the mid 1990s. The fact remains that one needs large volumes in the nationwide contract stationing market in order to justify the investments required. Any new entrant, therefore, will face the same types of difficulties as the ones which apply to the market players presently active in nationwide contract stationing. New entry is further complicated by the scarcity of experienced salesmen with extensive contact networks.

82. As regards customer buying power, the Commission is of the opinion that this element is of little significance in constraining the market power of the new entity. Even the largest customers in the Netherlands only represent a small part of the total turnover of the new entity (below 5%). Furthermore, it would appear that even the largest customers would not have many alternatives. This is a function of the sheer complexity which goes with supplying "mega customers", in terms of logistics and customised products. The investments necessary to be able to service such customers in a satisfactory yet profitable way are so large that only the new entity would be in a position to easily target such customers. In this respect, it is telling that one of the largest corporate customers in the Netherlands is of the opinion that, following a merger between the parties, there would be no realistic alternative to the new entity. Similarly, dual sourcing on the part of customers poses less and less of a threat, in view of the general trend towards centralised purchasing and one-stop shopping described in the section on product market definition.
83. For the above reasons, the proposed concentration raises serious doubts as to its compatibility with the common market, as regards the market for nationwide contract stationing for larger customers in the Netherlands.

Cut office paper

84. Finally, Buhrmann is active as both a wholesaler and business-to-business distributor of graphic paper, which is the common name for different kinds of printing and office paper. In the overall graphic paper market Buhrmann has a [50-60]% share, but the new entity's share in the wholesale distribution of cut office paper to office supplies distributors amounts to no more than [20-30]%. The market investigation has indicated that there are sufficiently many sources of supply of cut office paper for the office supplies distributors.
85. As for the distribution of cut office paper to end users (offices and printers), insofar as this constitutes a market distinct from the distribution of office supplies, the new entity's share will be approximately [20-30]% (Buhrmann [20-30]% + Samas [0-10]%). As indicated in the section on product market definition, it has proved difficult to segment this possible market according to customer size, as the conditions of competition do not seem to vary as much as in relation to the distribution of office supplies in the Netherlands (where one-stop-shopping and customised products play a central role). If one were to segment it along similar lines, the market share of the new entity in the distribution of cut office paper to larger customers would be somewhat higher than the same market share for office supplies generally. However, it is not necessary to further assess this issue, since the undertaking offered by the parties during the course of the proceedings in order to resolve the Commission's concerns regarding the nationwide contract stationing market for larger customers (see below) would remove any serious doubts on the basis of every possible market definition.

VI. UNDERTAKING SUBMITTED BY BUHRMANN

86. In order to remove the serious doubts as regards the market for nationwide contract stationing for larger customers in the Netherlands, Buhrmann has committed to modify the proposed concentration. For this purpose, Buhrmann submitted on 21.03.2001 an undertaking which was subsequently improved. Having regard to the nature of the business concerned and to the competition concerns addressed by both the original and the improved undertaking, the Commission deems the latter to be a limited modification of the earlier commitment designed to ensure that it is workable and effective. The undertaking consists in an offer to divest Corporate Express's office supplies business in the Netherlands within a

limited period of time. The full text of the commitment is provided in the Annex, which forms an integral part of this decision.

87. Corporate Express constitutes Buhrmann's entire contract stationing business. While it is true that Buhrmann is also active as a paper merchant, and in that capacity supplying cut office paper to end-users, the Commission is of the opinion that the addition of this activity no longer poses a threat to competition, since the main overlap – that in contract stationing of general office supplies – has been eliminated. Furthermore, the undertaking not only refers to Corporate Express' sales in the market of concern (which are estimated to amount to some EUR [...]), but to all of Corporate Express's office supplies business (with sales of some EUR [...]). This was considered necessary, since a partial transfer of Corporate Express's office supplies business would not constitute a viable business. In particular, it was pointed out to the Commission that, with only half of its current turnover, running the distribution centre and the sales organisation of Corporate Express would not be profitable. In addition, it would not allow the purchaser of the business to obtain purchase conditions as favourable as those that Corporate Express currently enjoys. The market test conducted by the Commission among the parties' principal competitors confirms the Commission's assessment of the effectiveness of the proposed improved commitment.
88. In order to protect the goodwill and know-how embodied in the divested business, the divestiture will be accompanied by a non-compete obligation on Buhrmann of [...] duration following the closing date of the divestiture with respect to the larger customers of Corporate Express, except with regard to those customers to which Corporate Express only made incidental sales during the calendar year 2000. As for the smaller customers, Buhrmann will abstain from sales of office supplies products for a [...] period following the closing date of the divestiture. This shorter period is acceptable to the Commission in view of the generally shorter duration of contracts with such smaller customers, and of the shorter time needed to build a commercial relationship with them.
89. The divestiture will also be accompanied by a non-hire and non-solicitation obligation of [...] duration following the closing date of the divestiture, in order to protect the goodwill and know-how embodied in the personnel of the divested business. Furthermore, the purchaser of the divested business will be entitled to source products from Buhrmann at terms and conditions that are equivalent to the terms and conditions that are made available at present to the divested business, to the extent that the continued sourcing of such products is necessary in order to service contracts existing at the time of divestiture. Finally, the divested business will be entitled to refer to itself as the former business of Corporate Express in the Netherlands, for a period of up to [...] following the closing date of the divestiture.
90. To the extent that there exists a specific market for cut office paper, the commitment offered also solves the competitive concerns in this regard, since the addition of Samas' sales of cut office paper to Buhrmann's sales of cut office paper (EUR [...]) is almost entirely neutralized by the divestiture of Corporate Express (EUR [...]).
91. In the light of the above, the Commission concludes that the undertaking given by Buhrmann is sufficient to remove the competition concerns identified by the Commission during its investigation of the proposed operation on condition that Buhrmann complies with the following commitments which are subject to change by the Commission pursuant to paragraph 20 of the Annex:
 - (a) the divestment commitment set out in paragraph 1 of the Annex;

- (b) the commitment to maintain the viability of the divestment business set out in paragraph 2 of the Annex;
- (c) the mechanism for the facilitation of the transfer of the existing personnel set out in the first two sentences of paragraph 4 of the Annex;
- (d) the necessary assistance set out in paragraph 5 of the Annex;
- (e) the completion of the divestment procedure as set out in paragraphs 9-11 of the Annex;
- (f) the purchase of the divested business by a purchaser fulfilling the criteria set out in paragraph 7 of the Annex, and
- (g) compliance with any measure imposed by the trustee to make the parties comply with their commitment as indicated in paragraph 14 (i) (b) of the Annex.

92. The above aspects of the undertaking constitute conditions, as only by fulfilling them (subject to any change pursuant to paragraph 20 of the Annex), can the structural change on the relevant market be achieved.

93. The remaining aspects of the undertaking constitute obligations (subject to any change pursuant to paragraph 20 of the Annex), as they concern the implementing steps which are necessary to achieve the structural change that is sought. In particular, this relates to :

- (a) the non-compete obligations contained in paragraph 3 of the Annex;
- (b) the commitments relating to the personnel other than those of the first two sentences of paragraph 4 of the Annex;
- (c) the reference to the name of the previous business as indicated in paragraph 6 of the Annex;
- (d) the divestment procedure described in paragraph 8 of the Annex;
- (e) the provisions relating to the trustee with the exception of part referred to in paragraph 91 (g) above.

VII. CONCLUSION

94. The Commission concludes that the undertaking submitted by the parties during the course of the proceedings is sufficient to address the competition concerns raised by this concentration. Accordingly, subject to full compliance with this undertaking, 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 Articles 6(1)(b) and 6(2) of Council Regulation (EEC) No 4064/89.

For the Commission,

Mario MONTI
Member of the Commission

Annex (undertaking as described in paragraphs 86-93)

Pursuant to Article 6(2) of the Merger Regulation, Buhrmann N.V. hereby gives the following undertaking in order to enable the Commission to declare the acquisition of Universal Office Supplies Ltd. and Samas Universal Office Supplies B.V. compatible with the common market and the EEA Agreement pursuant to Article 6(1)(b) of the Merger Regulation:

The divested Business

1. Subject to the following conditions, Buhrmann agrees to divest to a third party (“the Purchaser”) its existing office supplies business in the Netherlands, by divesting all of its shares in Corporate Express Nederland B.V., Jonkers International B.V., Corporate Express Beverwijk B.V. and Dingler Kantoor Centrum B.V.

The divestment will not include:

- (i) the right to use the trade name and trade mark "Corporate Express". As quickly as possible after the date of the Commission's decision clearing the proposed acquisition, Corporate Express Nederland B.V. will be renamed.
- (ii) the activities of Corporate Express Nederland B.V. relating to the sale of office furniture, which will be transferred to another Buhrmann entity as quickly as possible after the date of the Commission's decision clearing the proposed acquisition;

Corporate Express Nederland B.V. excluding these assets and activities will hereinafter be referred to as "the divested Business".

The divested Business will be divested as a going concern. The divestment shall include the transfer of the personnel currently employed by the divested Business, in accordance with the rules for the transfer of undertakings under the Acquired Rights Directive.

Related commitments

2. Buhrmann undertakes to preserve the full economic viability, marketability and competitiveness of the divested Business pending divestiture, in accordance with good commercial practice, as will be monitored by the Trustee in accordance with paragraph 12 *et seq.* In this regard Buhrmann undertakes to reduce to the minimum any possible risk of loss of competitive potential of the divested Business resulting from the uncertainties inherent to the transfer of a business. Pending divestiture, Buhrmann will manage the divested Business in the best interest of the business. In particular, Buhrmann undertakes not to carry out any act upon its own authority which may have a significant negative impact on the economic value, the management or the competitiveness of the divested Business until the date of divestiture. Buhrmann also undertakes not to carry out upon its own authority any act

which may be of such a nature as to alter the nature of or the scope of activity of the divested Business, or the industrial or commercial strategy or the investment policy of the divested Business. Sufficient resources shall be made available for the business to develop until the divestiture, based on the approved strategic and (annual) business plans.

3. Buhrmann, with the exception of its paper merchanting subsidiaries in their capacity as distributors of cut office paper, commits to abstain absolutely, pending divestiture and for a period of [...] after the date a binding agreement is entered into for the sale of the divested Business (the "Closing Date"), from selling office supplies to any customer of the divested Business, subject only to the exceptions set out below. For this purpose, a customer of the divested Business shall be defined as a customer who purchased office supplies from the divested Business during the calendar year 2000.
 - (i) With respect to Large Customers not primarily serviced by the divested Business (and to whom Samas did not sell office supplies during the calendar year 2000), Buhrmann, with the exception of its paper merchanting subsidiaries in their capacity as distributors of cut office paper, commits to abstain absolutely from selling office supplies, pending divestiture and for a period of [...] after the Closing Date. For this purpose, Large Customers not primarily serviced by the divested Business shall be defined as customers with [...] employees in the Netherlands, and to whom the sales of the divested Business during the calendar year 2000 did not exceed NLG [...].
 - (ii) With respect to Very Large Customers not primarily serviced by the divested Business (and to whom Samas did not sell office supplies during the calendar year 2000), Buhrmann, with the exception of its paper merchanting subsidiaries in their capacity as distributors of cut office paper, commits to abstain absolutely from selling office supplies, pending divestiture and for a period of [...] after the Closing Date. For this purpose, Very Large Customers not primarily serviced by the divested Business shall be defined as customers with more than [...] employees in the Netherlands, and to whom the sales of the divested Business during the calendar year 2000 did not exceed NLG [...].
 - (iii) With respect to Small Customers, which for this purpose shall be defined as those customers with up to [...] employees in the Netherlands, Buhrmann, with the exception of its paper merchanting subsidiaries in their capacity as distributors of cut office paper, commits to abstain absolutely, pending divestiture and for a period of [...] after the Closing Date, from selling office supplies to any such customers.
 - (iv) With respect to Shared Customers, which for this purpose shall be defined as customers to which both Samas and Buhrmann, with the exception of the latter's paper merchanting subsidiaries in their capacity as distributors of cut office paper, had sales of office supplies during the calendar year 2000, Buhrmann shall not be in breach of this commitment where the sales of the divested Business to a Shared Customer during the calendar year 2000 did not exceed [...] of the sales of Samas to the same customer during the same year. However, where the sales of the divested Business to this customer

during the calendar year 2000 exceed [the share mentioned in the preceding sentence] of the sales of Samas to a Shared Customer during the same year, Buhrmann shall observe a "stand still" with respect to that customer pending divestiture and for a period of two years from the Closing Date. For this purpose, a "stand still" shall be defined as a commitment not to increase the value of office supplies sales by more than [...]% with respect to sales during the preceding calendar year. The "stand still" shall, however, not apply to customers with [...] employees in the Netherlands, and to whom the sales of the divested Business to this customer during the calendar year 2000 did not exceed NLG [...]. Nor shall it apply to customers with more than [...] employees in the Netherlands, and to whom the sales of the divested Business during the calendar year 2000 did not exceed NLG [...].

4. [...]
5. Buhrmann commits, unless otherwise agreed with the Purchaser, to procure that, with respect to all contracts of the divested Business existing at the Closing Date, the divested Business shall be entitled to source products from Buhrmann at terms and conditions that are equivalent to the terms and conditions that are made available at present to the divested Business, to the extent that the continued sourcing of such products from Buhrmann is necessary in order to service these contracts.
6. For a period of up to [...] after the Closing Date, the divested Business may refer to the divested Business as the former business of Corporate Express in the Netherlands, but this right may not be interpreted as a trade name or trade mark licence.

The Purchaser

7. The Purchaser shall be a viable existing or prospective competitor independent of and unconnected to Buhrmann. The Purchaser must reasonably be expected to obtain all necessary approvals from the relevant competition and other regulatory authorities for the acquisition of the divested Business.
8. When Buhrmann has or is about to reach an agreement with the Purchaser referred to in the paragraph above, it will submit a fully documented and reasoned proposal enabling the Commission to verify that the criteria above with regard to the identity of the Purchaser are fulfilled and that the divestment package is sold in a manner consistent with the commitment. For the avoidance of doubt, the verification that the divestiture package is sold in a manner consistent with the commitment includes an approval of the final binding agreement.

Divestment Periods

9. Buhrmann shall use its best efforts to find a Purchaser for the divested Business within [...] months from the date of the Commission's decision clearing the proposed acquisition ("the First Divestment Period").

10. If Buhrmann is not able to enter into a binding agreement for the sale of the divested Business in accordance with paragraph 9 above, the time limit for the divestment of the Business shall be extended to [...] from the date of the Commission's decision clearing the proposed acquisition ("the Extended Divestment Period").
11. Buhrmann shall be deemed to have complied with this undertaking if, within a period not exceeding [...] from the date of the Commission's decision clearing the proposed acquisition, it has entered into a binding agreement for the sale of the divested Business in accordance with paragraphs 7 and 8 above, provided that the closing of the sale takes place within [...].

The Trustee

12. Buhrmann shall appoint an independent trustee or trustees (the "Trustee"), such as an investment bank or consultant or auditor, subject to approval by the Commission. The Trustee shall be independent of Buhrmann, possess the necessary qualifications to carry out the task and shall not be, or become, exposed to a conflict of interest. Buhrmann shall propose a trustee or list of proposed trustees and the terms of the mandate for approval to the Commission with adequate information for the Commission to verify that the Trustee fulfils these requirements. This proposal shall be made at the latest two weeks after the date of the Commission Decision. The Trustee will be remunerated in such a way as not to impede its independence and effectiveness in fulfilling the mandate. The mandate must include all provisions necessary to enable the Trustee to fulfil its duties under the commitments accepted by the Commission.
13. The Trustee shall assume its specified duties in order to ensure compliance in good faith with the commitments on behalf of the Commission and taking into account the legitimate interest of Buhrmann.
14. The Trustee shall, following its appointment:
 - (i) oversee the on-going management of the divested Business with a view to ensuring its continued viability and marketability and monitor the compliance by Buhrmann with the conditions and obligations under these commitments. Therefore the Trustee shall:
 - (a) monitor that Buhrmann maintains the viability and marketability of the assets and/or businesses to be divested in accordance with this undertaking, and the management and operation of the assets or businesses in the normal course of business, in accordance with past practice, until divestiture;
 - (b) propose to Buhrmann such measures as the Trustee considers necessary to ensure compliance with the conditions and obligations under these commitments, in particular the maintenance of the viability or marketability of the divested Business and the non-disclosure of competitively sensitive information by Buhrmann, and the Trustee shall be entitled to impose such measures (with the

approval of the Commission) in the event that Buhrmann does not comply with the Trustee's proposals within the timeframe set by the Trustee;

- (ii) provide to the Commission, with a simultaneous non-confidential copy to Buhrmann, a written report within 10 days after the end of every month concerning the monitoring of the operation and management of the divested Business in order to assess whether the business is held in a manner consistent with these commitments. In addition to these reports, the Trustee shall promptly report in writing to the Commission if the Trustee concludes on reasonable grounds that Buhrmann is failing to comply with any of the conditions or obligations under these commitments. Buhrmann shall receive a simultaneous non-confidential copy of any such additional reports;
 - (iii) assess the suitability of the proposed purchaser and the viability of the divested Business after the sale to the purchaser and give its opinion to the Commission on whether the proposed divestment complies with the conditions and obligations under these commitments;
 - (iv) cease to act as Trustee only after the Commission has discharged it from its duties, following a request from the Trustee made after all the commitments with which it has been entrusted have all been implemented. However, the Commission may at any time require the reappointment of the Trustee if it subsequently appears that the relevant remedies might not have been fully and properly implemented.
15. Buhrmann shall provide the Trustee with all such assistance and information, including copies of all relevant documents, as the Trustee may reasonably require to monitor compliance with the conditions and obligations under these commitments. Buhrmann shall make available to the Trustee one or several offices on their premises. Buhrmann shall be available for regular meetings with the Trustee, according to a timetable agreed between them, in order to provide the Trustee, either orally or in document form, with all information necessary for the completion of his task. At the request of the Trustee, Buhrmann shall provide the Trustee with access to sites which are being divested. Buhrmann shall provide all managerial and administrative support which may reasonably be requested by the Trustee on behalf of the management of the divested Business. This shall include all administrative support functions relating to the divested Business which are currently carried out at headquarters level.

Hold separate

16. Prior to the completion of the sale of the divested Business, Buhrmann shall assist the Trustee in ensuring that the divested Business is managed as a distinct and saleable entity separate from the business of Buhrmann. The Trustee shall in particular ensure that the divested Business shall have its own management which shall be under instructions to manage the divested Business on an independent basis and to ensure

its continued viability, marketability and independence from the business of Buhrmann.

17. To ensure that the divested Business is managed as a separate entity, its participation in central purchasing arrangements, international marketing efforts, the central internet ordering system and other central operational functions will be terminated as quickly as possible, while preserving the full economic viability, marketability and competitiveness of the divested Business.
18. For the duration of the Divestment Period, Buhrmann will retain the use of the distribution centre of the divested Business in Zwolle for its office furniture and Belgian business, while preserving the full economic viability, marketability and competitiveness of the divested Business. This shall include all the services relating to the office furniture and Belgian business which are currently being provided by the distribution centre.

Ring-fencing

19. Buhrmann shall implement all necessary measures to ensure that it shall not, after the date of the Commission's decision clearing the proposed acquisition, obtain from the management of the divested Business any business secrets, know-how, commercial information, or any other information of a confidential or proprietary nature relating to the divested Business. The implementation of such measures shall be monitored by the Trustee in accordance with paragraphs 12 *et seq* above.

The review clause

20. The Commission may, upon request from Buhrmann showing good cause and after hearing the Trustee, and where relevant allow for:
 - (i) an extension of the Divestment Period, or
 - (ii) the sale of the divested Business to a purchaser proposed to the Commission without one or more assets, facilities, contracts or other rights or obligations that are part of the divested Business, or
 - (iii) waive one or more of the conditions and obligations in these commitments.

Buhrmann shall address any request for an extension of time periods no later than one month prior to the expiring of such time period, showing good cause. Only in exceptional circumstances will Buhrmann be entitled to request an extension within the last month of any period.

On behalf of Buhrmann N.V.