

***Case No COMP/M.4048 -
SONAE INDUSTRIA /
TARKETT / JV***

Only the English text is available and authentic.

**REGULATION (EC) No 139/2004
MERGER PROCEDURE**

Article 6(1)(b) NON-OPPOSITION
Date: 12/06/2006

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 12.06.2006

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In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EC) No 139/2004 concerning non-disclosure of business secrets and other confidential information. The omissions are shown thus [...]. Where possible the information omitted has been replaced by ranges of figures or a general description.

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying parties

Dear Sir/Madam,

Subject: Case No COMP/M.4048 – SONAE INDUSTRIA / TARKETT / JV Notification of 02/05/2006 pursuant to Article 4 of Council Regulation No 139/2004¹

1. On 02.05.2006, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 (“the Merger Regulation”) by which the undertakings Sonae Indústria - SGPS, SA (“Sonae”) belonging to the Sonae group and Tarkett AG (“Tarkett”) acquire within the meaning of Article 3(1)(b) of the Merger Regulation joint control over two newly created companies constituting a single joint venture by way of purchase of shares.

I. THE PARTIES

2. Sonae’s main activities relate to manufacturing and selling wood-based panels, chemicals and other value-added products for the wood-based products industry at a world-wide level. Sonae Indústria is part of the Sonae group, which is engaged in several activities in Portugal.
3. Tarkett is a German company controlled by Tarkett SA producing and distributing various floor coverings, primary resilient flooring but also hardwood, textile flooring and laminate floorings.

¹ OJ L 24, 29.1.2004 p. 1.

II. THE OPERATION AND THE CONCENTRATION

4. The proposed concentration consists of the establishment by Sonae and Tarkett a newly-created joint venture, consisting of two legal entities, a production joint venture ("the German JV") and a distribution joint venture ("the Luxembourg JV") (together referred to as "the JVs"). The German JV will undertake to produce high density fibre boards ("HDF") and laminate flooring for the need of the Luxembourg JV, whereas the latter JV will be in charge of distribution, marketing and sale of laminate flooring produced by the German JV.
5. Both, Sonae and Tarkett will transfer the whole of their respective laminate flooring activities in the EU to the JVs with one exception. Sonae will continue to produce and sell laminate flooring independently in Iberia.² The parties claim that in the territory of Portugal and Spain Sonae will be competing with its JVs.
6. The German JV, being in charge of production, will be operational in [...]. In the meantime, the Luxembourg JV, being in charge of distribution, will source laminate flooring from [...].
7. The full-function joint venture composed of the German JV and the Luxembourg JV will sell its products on the market at its own risk and cost, although relying upon the parent companies' sales forces: the Luxembourg JV shall rely on Tarkett's sales force to sell the laminate flooring and the German JV shall rely on Sonae's sales force to sell any surplus of HDF [...]. The laminate flooring products of the German JV shall be marketed by the Luxembourg JV. The JVs will market laminate flooring and HDF under trade marks licensed by the parent companies.
8. Based on the information submitted by the parties, even if the two JVs are distinct legal entities, they serve mutually common economic purposes. The two JVs, which are set up in the same agreement, and function with an absolute identical set of corporate governance rules, shall be subject to joint control by the same parent-companies. Each parent-company shall have, in both JVs, the same percentage of share capital, voting rights and decision-making power. Moreover, in order to ensure a coherent and common line of action between the JVs, the members of the Board of Directors of each JV will be composed of the same individuals (4 appointed by Sonae and 4 appointed by Tarkett). The Chairman of both JV companies will be the same (to be named on an alternative basis by each party, the first Chairman being already defined in the JV Agreement)."
9. The parent companies transfer a significant portion of tangible and intangible assets, financial, personal and other resources necessary to the operation of the JVs. Therefore, the German JV and the Luxembourg JV will operate independently from the parents and taken together, perform all the functions of an autonomous economic entity. The fact that the two JVs make use of the distribution network and outlet of the parent companies does not disqualify them from constituting, taken together, a full function joint venture, as the parent companies are acting as sales agents of the JVs.³ Nor does the fact that the

² The JVs shall operate in the territory of EU, as well as in Switzerland, Norway, Andorra, Liechtenstein, Monaco, San Marino, Turkey and also in the continents of Africa, Asia and Oceania.

³ Commission Notice on the concept of full-function joint ventures under Council Regulation (EEC) No 4064/89 on the control of concentrations between undertakings, paragraph 13.

JVs will use certain parent companies' trademarks puts into question their independence from the parent companies. The JVs will be able to decide their own commercial, marketing and communication strategies independently from the parents, including pricing, rebates schemes and advertising campaigns.

10. Therefore on the basis of a functional approach, they should be considered together as one integrated player, hence – in accordance with previous decisions of the Commission⁴ – the transaction is to be considered as a single concentration.

COMMUNITY DIMENSION

11. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion⁵ (Sonae, EUR [...] million; Tarkett, EUR [...] million). Each of them has a Community-wide turnover in excess of EUR 250 million (Sonae, EUR [...] million; Tarkett, EUR [...] million) and only Sonae achieves more than two-thirds of its aggregate Community-wide turnover within one and the same Member State (Portugal, EUR 3.984 million).⁶ The notified operation therefore has a Community dimension.

III. COMPETITIVE ASSESSMENT

A. THE RELEVANT PRODUCT MARKETS

12. The principal product market concerned by the transaction is the manufacturing and selling of laminate flooring. Laminate flooring is a type of flooring material that consists of a multiple layer product combining a dense fibreboard core (generally HDF) with a melamine-impregnated paper pattern, a plastic-like wear layer and a melamine under layer.
13. In previous decisions dealing with neighbouring products the Commission left open the precise market definition, however, it identified the existence of four main flooring products – parquet, PVC, tiles and carpets – and suggested that floor coverings for private and commercial use might constitute separate product markets.⁷ Furthermore, in another decision the Commission referred to the possibility that laminate and wooden flooring could be considered as substitutable, as they meet the same needs, optical appearance and are supplied through the same channels.⁸ However, according to the

⁴ Case No COMP/M.2868, Linde/Sonatrach/JV; Case No COMP/M.3467, Dow Chemicals/Pic/White Sands JV.

⁵ 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.

⁶ All turnover figures are from 2004.

⁷ Case No COMP/M.1253, Paribas/JDC Sarl/GERFLOR, paragraph 7.

⁸ Case No COMP/M.2051, Nordic Capital/Hiag/Nybron/Bauwerk, paragraph 10.

parties, due to significant price differences, end-use applications and current consumption patterns, laminate flooring constitutes a separate product market.

14. The market investigation has largely confirmed the suggested product market definition.⁹ However, the question of the product market definition can be left open given that, as even on the basis of the narrowest market definition, the concentration does not give rise to competition concerns.
15. The upstream market concerned is that of the production and sale of HDF and medium density fibre boards (“MDF”). Although only HDF is used as raw material for laminate flooring, the parties claim that as the two types of fibreboards, HDF and MDF are produced on the same production line, they are interchangeable from a supply-side point of view. According to a previous decision of the Commission an alternative wider market-definition could comprise other wood-based boards, as they show partial substitutability.¹⁰
16. The market investigation has confirmed that HDF and MDF belong to the same product market, whereas other type of wood-based boards should be considered as separate markets.¹¹ Nonetheless, the exact product market definition can be left open given that, the concentration does not give rise to competition concerns under any alternative product market definition.

B. THE RELEVANT GEOGRAPHIC MARKETS

17. According to the parties the geographic market for laminate flooring is at least EEA-wide. Certain elements, in particular the significant cross-border trade flow and relatively low freight costs amounting to 5-18% of the costs support this approach.
18. The market investigation has largely underpinned the suggested geographic market definition. Most of the respondents suggested that the market for laminate flooring is European-wide, whereas some of them suggested that the market can be even world-wide.¹²
19. According to the parties the geographic market for HDF and MDF should be considered as European or at least cross-boarder regional (covering a distance of at least 1000 km) given the more significant transportation costs.

⁹ Around 90% all the answers received to the Article 11 letter to customers and competitors dated 5th May 2006 agreed to the suggested market definition.

¹⁰ Case No COMP/M.599, Noranda Forest/Glanz, paragraph 20-21.

¹¹ Around 85% of all the answers received to the Article 11 letter to customers and competitors dated 5th May 2006 agreed to the suggested market definition.

¹² Around 78% of all the answers received to the Article 11 letter to customers and competitors dated 5th May 2006 suggested that the market European-wide. A further 22% proposed to define the market, as world-wide.

20. Following the market investigation, it appears that suppliers unanimously see the market for HDF and MDF larger than national and at least regional.¹³
21. In any event, the exact definition of the relevant geographic markets can be left open since, irrespective of the market definition retained, the transaction is not expected to give rise to competition concerns.

C. COMPETITIVE ASSESSMENT

LAMINATE FLOORING – HORIZONTAL EFFECTS

22. With respect to laminate flooring, should the market be defined as European, as suggested by the majority of respondents during the market investigation, the combined market share of Sonae and Tarkett would be [0-10]% on a highly fragmented market. The new entity will have to face an important number of competitors some of them having relatively high market shares, such as Kronospan Group ([15-25]%), Unilin ([5-15]%), Swiss Krono Group ([0-10]%), Egger ([0-10]%) and Classen ([0-10]%).¹⁴
23. Even in case of the narrowest geographic market definition, the combination of Sonae and Tarkett would give rise to an addition of market shares mainly in the Iberian peninsula. Even if the parties claim that in the territory of Portugal and Spain Sonae, who keeps a limited output of laminate flooring production, will be competing with its JVs, their combined market shares shall be taken into account when assessing the merger. In Portugal, which is the country mostly affected by the concentration, Tarkett has a market share of [5-15]%, while other competitors are active on the market, such as Swiss Krono Group ([15-25]%), Finsa ([5-15]%), Alsapan EPI ([5-15]%).¹⁵ Indeed, Tarkett is only the [...] th player on the Portuguese market.¹⁶ Similarly, the other affected market, that of Spain, is highly fragmented, where the new entity will face competition from major players like Kronospan ([5-15]%), Unilin ([5-15]%) and Pergo ([5-15]%).¹⁷

¹³ 75% of all the answers received to the Article 11 letter to customers and competitors dated 5th May 2006 suggested that the market should be defined as regional, whereas the remaining 25% proposed to define even larger, European markets.

¹⁴ Combined market share figures from the competitors are based on data from 2004.

¹⁵ Market share figures are based on data from 2004.

¹⁶ Post merger IHH post merger will be 2418 with an IHH delta of 240. (Calculation is based on the 2004 market share figures.)

¹⁷ Market share figures are based on data from 2004.

Laminate flooring market shares in 2005 based on volumes¹⁸	Sonae	Tarkett	JV
EEA	[0-10]%	[0-10]%	[0-10]%
Iberia	[5-15]%	[5-15]%	[20-30]%
Portugal	[30-40]%	[5-15]%	[35-45]%
Spain	[5-15]%	[5-15]%	[15-25]%

HDF-MDF- VERTICAL EFFECTS

24. The transaction does not horizontally affect HDF and MDF market, as Tarkett does not manufacture and sell these products. As Sonae is engaged in HDF and MDF production, with relatively significant market shares, the issue of the risk of vertical foreclosure needs to be assessed.
25. In case the geographic market was to be considered cross-boarder regional, Sonae would have a notable position in the territory of Central Europe¹⁹, with a market share of around [20-30]% (for Sonae [15-25]%, for Hornitex [0-10]%).²⁰ Should the relevant geographic market be national, Sonae Indústria would have a significant market share in Portugal ([55-65]%), France ([30-40]%), Spain ([20-30]%) Denmark ([20-30]%), Latvia ([50-60]%) and Estonia ([30-40]%).²¹
26. According to the parties, the market for HDF and MDF seems to be characterized by significant excess capacity, as a consequence of which shortage of supply seems very unlikely. Even though the market investigation did not confirm the alleged excess capacity, even in the mostly affected markets, the transaction does not change the vertical effects compared to the pre-merger situation, given that Sonae is already a vertically integrated player in the market for laminate flooring. Moreover, there are other significant suppliers in the Central European market, such as Kronospan ([20-30]%), Egger ([5-15]%), Pfleider ([5-15]%), Swiss Krono ([5-15]%), and Unilin ([5-15]%).²² Finally, a

¹⁸ Source: additional information submitted by the parties on 11.05.2006.

¹⁹ The territory of Central Europe includes Germany, Austria, France, Switzerland and the Benelux countries.

²⁰ As Sonae notified to the European Commission a transaction (COMP/M.4196 Sonae Indústria/Hornitex), whereby it intends to acquire a company producing among others, HDF/MDF, their combined market shares will be taken into account for the purposes of this decision.

²¹ Source: additional information submitted by the parties on 05.06.2006 (from European Panel Federation), and CO Form COMP/M.4196 Sonae Indústria/Hornitex.

²² Market share figures are based on data from 2005. Source: additional information submitted by the parties on 05.06.2006 (from European Panel Federation).

strategy designed to reduce output in the upstream market for HDF with a view to expand sales in the downstream market for laminate flooring is destined to failure as the latter product has a wider geographic market and can travel longer distances than HDF.

CONGLOMERATE EFFECTS

27. Given that Tarkett is active in producing and distributing other floor coverings, such as resilient flooring (comprising vinyl or linoleum) with a market share of [35-45]%, parquet with a market share of [5-15]% and carpet with a market share of [5-15]%²³, the question of potential portfolio effects should be considered. According to the notifying parties, package sales consisting of different flooring materials are not a very widespread practice in the industry. This statement is widely confirmed by the market investigation, as 75% of the suppliers and all customers stated that they do not use package deals in their sales/purchases.²⁴ Moreover, it appears that even if 75% of competitors and around 30% of the customers agree that a bundling strategy would be rational for the new entity, they also suggest to a large extent that such a strategy might be replicated by other competitors.²⁵ Furthermore, as Tarkett has already been active in producing and distributing different floor covering products including laminate flooring before the transaction, the concentration will not change its negotiating position. Moreover, given the low EEA-wide market share of the parties in laminate flooring, any leverage strategy through bundling practices is unlikely to succeed. Finally, bundling can be duplicated by other players.

IV. CONCLUSION

28. For the above reasons, the Commission has decided not to oppose the notified operation and to declare it compatible with the common market and with the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of Council Regulation (EC) No 139/2004.

For the Commission
(Signed)
Joaquin ALMUNIA
Member of the Commission

²³ Market shares in Western-Europe in 2004.

²⁴ Article 11 letter to customers and competitors dated 5th May 2006.

²⁵ Only 12% of all the answers received to the Article 11 letter to competitors dated 5th May 2006 suggest that a bundling strategy might be viable and can not be replicated by competitors.