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***Case No COMP/M.4215  
– Glatfelter/ Crompton  
Assets***

Only the English text is authentic.

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

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Article 8 (1)  
Date: 20/12/2006



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 20-12-2006

C(2006)6764 final

**PUBLIC VERSION**

**COMMISSION DECISION**

**of 20-12-2006**

**declaring a concentration to be compatible with the common market  
and the functioning of the EEA Agreement**

(Case No COMP/M.4215 – Glatfelter/ Crompton Assets)

**COMMISSION DECISION**

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**(Case No COMP/M.4215 – Glatfelter/ Crompton Assets)**

(Only the English text is authentic)

(Text with EEA relevance)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to the Agreement on the European Economic Area, and in particular Article 57 thereof,

Having regard to Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings<sup>1</sup>, and in particular Article 8(1) thereof,

Having regard to the Commission's decision of 20 September 2006 to initiate proceedings in this case,

After consulting the Advisory Committee on Concentrations,

Having regard to the final report of the Hearing Officer in this case,

WHEREAS:

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<sup>1</sup> OJ L 24, 29.1.2004, p. 1.

## I. INTRODUCTION

- (1.) On 16 August 2006, the Commission received a notification pursuant to Article 4 of Regulation (EC) No 139/2004 (“the Merger Regulation”) of a concentration whereby P.H. Glatfelter Company (“Glatfelter”, USA) acquires sole control of the majority of assets of a production facility at Lydney, Gloucestershire, United Kingdom of J.R. Crompton Ltd in Administration (“Lydney Business”, United Kingdom) by way of purchase of assets.
- (2.) On 20 September 2006, having examined the notification, the Commission concluded that the notified transaction fell within the scope of the Merger Regulation and that it raised serious doubts as to its compatibility with the common market and with the EEA Agreement. The Commission therefore initiated proceedings in accordance with Article 6(1) (c) of the Merger Regulation.
- (3.) The Commission has carried out an in-depth market investigation pursuant to Article 6(1)(c) of the Merger Regulation. The Commission sent questionnaires to suppliers and customers of wet laid fibre materials, comprising customers who use wet laid fibre materials for beverage filtration applications and customers of wet laid fibre material for battery applications. The Commission received replies from 4 suppliers, 16 beverage filtration customers and 4 battery producers. The respondents to the questionnaire represent a mix of smaller and larger customers. The vast majority of large customers replied to the questionnaire. The Commission also contacted other third parties involved in the production of wet laid fibre materials including suppliers of the raw materials (polypropylene, wood pulp and abaca), a manufacturer of the producing machines and an independent certificatory body for products which come into contact with food and beverage. The notifying party, P.H. Glatfelter Company (“Glatfelter”, USA) submitted additional information on several occasions, partly at the request of the Commission.
- (4.) The Advisory Committee on Concentrations discussed the draft of this Decision on 6 December 2006.

## II. THE PARTIES AND THE OPERATION

- (5.) **Glatfelter** is a New York stock market listed manufacturer in the “specialty papers” and “composite fibres” business areas and has production sites in the USA, the Philippines, France and Germany. Specialty papers include wall covering papers and special printing paper. Through its subsidiaries’ factories Glatfelter manufactures wet laid fibre for the production of tea-bags, coffee filters and coffee pads, as well as other specialty papers. In the Philippines the Glatfelter group produces abaca pulp, a long fibre pulp that serves as one of the raw materials for the production of wet laid fibres and is an important raw material for the production of wet laid fibres for tea and coffee filtration applications.
- (6.) Crompton was a manufacturer of specialty papers and wet laid fibre materials, and the leading supplier to the tea-bag and coffee filter industry. Crompton comprised three production facilities with a total of six inclined wire paper machines in the United Kingdom: the Lydney mill with three inclined wire machines and a polypropylene fibre operation, the Simpson Clough mill with two inclined wire machines and the Devon Valley mill with one inclined wire machine and one flat wire machine.
- (7.) After Crompton was placed in court ordered administration (a United Kingdom insolvency procedure) on 7 February 2006, the appointed administrators (“the

Administrators”) decided, [reasoning of the Administrators’ decision]\* to sell off Crompton’s assets. Hence the Administrators held a public sales process.

- (8.) After evaluation of the [several]\* initial indicative bids, the Administrators decided, according to the notifying party, to invite Glatfelter, [names of the companies]\* to submit a final offer. [Names of the companies that submitted offers and explanation of the structure of Glatfelter’s offer]\*.
- (9.) On 9 March 2006 Glatfelter acquired, through its subsidiary Glatfelter UK Ltd. the majority of assets of Crompton’s production facility at Lydney, Gloucestershire, United Kingdom, including all tangible and intangible assets necessary to carry on the Lydney Business as a going concern. However, [description of contracts]\* and the back office functions formerly provided by Crompton’s head office were excluded. The assets subject to the transaction are collectively referred to in this Decision as the “Lydney Business”. The transaction concerning the acquisition of the Lydney Business by Glatfelter is referred to as “the Lydney Transaction”.
- (10.) After referral to the Commission pursuant to Article 22 of the Merger Regulation, the Administrators terminated the conditional contract with Glatfelter that related to the Simpson Clough Business. Subsequently the Administrators sold the Simpson Clough Business to Purico in June 2006. Besides the Simpson Clough mill and the Devon Valley mill, the Simpson Clough Business also includes Crompton’s head office, business name rights, [description of contracts]\* and Crompton’s US sales subsidiary.

### III. CONCENTRATION

- (11.) The notified transaction consists of the acquisition of certain assets, namely the Lydney Business, by Glatfelter. The transaction confers sole control of the Lydney Business to Glatfelter. It therefore constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

### IV. COMMUNITY DIMENSION

- (12.) The concentration does not have a Community dimension under Article 1 of the Merger Regulation. However, on 4 April 2006 the Commission received a request pursuant to Article 22(1) of the Merger Regulation from the competent authority in Germany, the Bundeskartellamt, that the case be examined by the Commission. In accordance with Article 22(2) of the Merger Regulation, the Commission informed the competent authorities of the other Member States as well as Glatfelter and the Administrators of Crompton of the request made by the Bundeskartellamt. The competent authority of the United Kingdom, the Office of Fair Trading (“OFT”), subsequently joined the request pursuant to the second subparagraph of Article 22(2) of the Merger Regulation.
- (13.) On 15 May 2006 the Commission decided, pursuant to Article 22(3) of the Merger Regulation, to examine the concentration. The competent authorities of the Member States and the notifying party were subsequently informed. The operation referred to the

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\* Parts of this text have been edited to ensure that confidential information is not disclosed; those parts are enclosed in square brackets and marked with an asterisk.

Commission originally comprised the acquisition of all of Crompton's assets, but since the Simpson Clough Business was subsequently sold to Purico, only the Lydney Transaction was notified to the Commission.

## V. COMPETITIVE ASSESSMENT

### A. Relevant markets

#### *A.1 Relevant product markets*

(14.) The activities of Glatfelter and the Lydney Business overlap in the segment for the manufacture and sale of wet laid fibre material for tea and coffee filtration (tea-bags, coffee filters, coffee pods/ pads). There also is an overlap with regard to wet laid fibre for electrical and battery applications which is analysed in a separate section of this Decision. The segment of wet laid fibre material for tea and coffee filtration accounts for approximately [60-70]\*% of Glatfelter's and [90-100]\*% of the Lydney Business' 2005 turnover with wet laid fibre materials and for [10-20]\*% of Glatfelter's total sales, according to data provided by the notifying party<sup>2</sup>.

#### **Wetlaid fibre material for tea and coffee filtration**

(15.) The notifying party has identified a world-wide market for wet laid fibre material as the relevant market for the notified transaction.

(16.) Wet laid fibre material are thin sheets of porous tissue made from a mixture of natural and/or synthetic fibres and are produced on inclined wire machines. Wet laid fibre material is paper-like or fabric-like webs of non-woven fibre, manufactured in a modified papermaking process.

(17.) The first step of the production process is to prepare the fibre and water slurry. The fibres may be natural, synthetic or a mixture of both. Natural fibre sources include abaca pulp, hardwood pulp and softwood pulp. Synthetic fibres include polyethylene, polypropylene, polyester, cellulose and glass. Depending on the pulp, the fibres may be brushed and rubbed. Depending on the fibre mix, the fibres may also be refined. Refining is a mechanical wet grinding process that causes the fibrils of the smaller fibres to partially detach and bloom outward. Recycled waste materials from the primary process may also be added to the fibre mix. The fibres are mixed with the water and form a diluted mixture called slurry or stock.

(18.) After the fibre (abaca pulp, hardwood pulp, synthetic fibres or a mix) is mixed with water and prepared, the stock is fed into the head box at the head of the paper machine. The head box extrudes the watery pulp (slurry) onto a wire mesh conveyor belt that moves at a constant rate, using a gate to control the thickness and weight per square meter. As the water is drained, the fibres form a web. The length, diameter and other properties of the fibres used affect the way the web forms, determining the characteristics of the final product. For instance, long fibres give the web a greater tear resistance and thus make it stronger than short fibres. Also the wire belt surface can give the web certain properties or appearance. For example, a patterned wire belt can give the wet laid fibre material a

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<sup>2</sup> Form CO, page 36.

pattern or create a perforated web that is often used in wet wipes<sup>3</sup>. The wet laid fibre material may consist of a single or a multilayer web. Multilayer webs can only be formed by inclined wire paper machines that are equipped with a special head box (multi-ply former) or by inclined wire paper machines that are equipped with multiple head boxes. Wet laid fibre material for stapled (that is to say, non-heat sealed) tea bags is typically produced on a single layer inclined wire paper machine, equipped with one head box. Wet laid fibre material for heat sealed tea bags or coffee pods is typically produced on a multilayer inclined wire paper machine that is equipped with multiple head boxes or a head box that is capable of forming two layers (two ply former or triple ply former) whereby one layer typically consists of natural fibres and the other one of synthetic fibres used for fusion in the heat sealing process.

- (19.) Once the web has been formed on the wire mesh conveyor belt, the web is typically passed through heat rollers. This both removes residual water and helps the fibres bind together. Subsequently, the web is passed through a sizing press which is used to impregnate the paper with various chemicals to obtain other desired performance characteristics. This may involve impregnating the web with latex or another binding agent to improve cohesion. After impregnation the web is again passed through a drying section of the inclined wire paper machine. In some instances, the web may be “heat cured” at the end of the drying process to cause the synthetic fibres in the mix to melt and bond with other natural and/or synthetic fibres in the web.
- (20.) At the finishing stage the web may be subject to further “calendering”. Calendering the web is typically done by passing the web through a series of rollers giving the web a certain surface texture that is desired by the customer or is particularly suitable for a certain application. At the end of the line the web is reeled on to a large reel, which is lifted off the inclined wire paper machine and finished. The finishing may also entail the printing of a logo on the material. Finally, the wet laid fibre material for tea and coffee filtration is sliced into rolls of desired size and weight, in order to make it compatible with the customers’ converting machines. Then the wet laid fibre material is stocked and shipped to the customers.
- (21.) The notifying party argues that the characteristics of wet laid fibre material are suitable for a wide range of consumer, industrial and medical applications. Wet laid fibre material is an intermediate product, sold to industrial customers that further process them into industrial, medical and consumer applications. These include food and beverage casings (for example, sausage casings), tea and coffee filtration (tea and coffee bags/pods), battery components, carrier material for adhesive tapes, wall paper, laminated floorings, medical wipes, packaging material, and others.

#### Demand-side substitutability

- (22.) First, the notifying party acknowledged that from a demand-side perspective, substitutability between different types and grades of wet laid fibre material for individual groups of customers is limited due to customer- and/or product- specific requirements<sup>4</sup>. Different end applications require different properties, such as porosity, thickness,

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<sup>3</sup> J.R. Crompton owned patents for the so-called printed wire technology allowing for the creation of recognisable images, logos and patterns by influencing the drainage of the wet web. These patents were acquired by Glatfelter.

<sup>4</sup> Notifying party’s response of 6 October 2006 to the decision pursuant to Article 6(1)(c) of the Merger Regulation (“the Article 6(1)(c) decision”), at page 1.

flexibility, compliance with regulatory standards (e.g. for food contact), etc. In addition, wet laid fibre material for certain applications, such as tea and coffee filtering, needs to undergo a qualification process with certain customers, aimed at ensuring quality standards of the end product as well as compatibility with customers' processing machines (e.g. tea packaging machines). In relation to tea and coffee filtration wet laid fibre material, the Commission's investigation has also shown that, due to product specifications, customers do not source wet laid fibre material designed for other applications to package tea and/or coffee<sup>5</sup>.

(23.) Almost all customers indicate that this is due to specific technical characteristics<sup>6</sup>. Tea and coffee filtration material needs to have good dust retention: the flavour from the tea or coffee needs to dilute in water in a short time (12-15 seconds average for tea<sup>7</sup>), without letting through the dust that is also enclosed in the bag. Thus the permeability that the wet laid fibre material for tea and coffee filtration has is very typical and can not be found in other types of wet laid fibre material. Wet laid fibre for tea and coffee filtration also needs to be capable of retaining dust and letting through taste while getting wet. Wet-strength is therefore another technical characteristic that wet laid fibre for tea and coffee filtration needs to have, as opposed to other types of wet laid fibre material.

(24.) Wet laid fibre material for tea and coffee filtration needs to be flavour neutral and in compliance with food contact regulations<sup>8</sup>. Therefore certain chemicals or bleaching methods cannot be used. The machines on which the wet laid fibre material for tea and coffee filtration is produced need to be specially adapted to wet laid fibre material for tea and coffee filtration. Several parts of the inclined wire paper machine, in particular the stock preparation system, the approach flow system and the former, where the contact of the machine with the wet laid fibre material is direct, need to be made out of stainless steel. Also other parts, both on the inclined wire machine itself and the pulp preparing line as well as in the environment the machine and other equipment is placed in, need to enable compliance with food contact standards. Therefore, only producers who have adapted their facilities to these standards can be considered as eligible suppliers to customers of wet laid fibre materials for tea and coffee filtration, while wet laid fibre materials from other producers and/or with specifications other than for tea and coffee filtration prove not to be an alternative for the customer.

(25.) In conclusion, from the perspective of the customers (active in packaging and marketing tea and coffee), demand-side substitutability is limited, since the grades of wet laid fibre materials need to match very strict requirements in order to ensure compatibility with the converting machines (different for heat and non-heat sealable) and specific product requirements of the end application.<sup>9</sup> The evidence regarding demand-side substitutability between wet laid fibre material for tea and coffee filtration and wet laid

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<sup>5</sup> For example, because of food safety regulations - Commission Phase II Questionnaire to Customers at Questions 9 and 11.

<sup>6</sup> Commission Phase I Questionnaire to Customers.

<sup>7</sup> Financial Times, Saturday, October 26 2006, "The best drink in the world", p.3 of FT Weekend.

<sup>8</sup> Commission Phase II Questionnaire to Customers at Question 9.

<sup>9</sup> Form CO, p. 34.; Commission Phase II Questionnaire to Customers at Question 11a.



fibre materials for other applications does not underpin the party's submission of a single market for all wet laid fibre material.

- (26.) Second, the notifying party submits that it is constrained by competitive pressure from materials which are alternatives to wet laid fibres<sup>10</sup>. However, the market investigation shows that demand-side substitutability between tea and coffee filtration materials made of wet laid fibre material on the one hand and tea and coffee filtration materials made of other materials (such as synthetics or spun bond) on the other hand is limited from a purchaser's perspective<sup>11</sup>.
- (27.) There are several different materials that are used as alternative materials for coffee and mainly tea filtration. Spun bond material is a material that is made out of converted polymers. In the spun bond process, polymers such as polyethylene terephthalate (PET) and polypropylene are extruded through spinnerets to form filaments. This extrusion process in which a web is formed is a completely dry process as opposed to wet laid fibre materials. After extrusion the material is cooled by an air stream and laid down to form a web on a conveyor. The web is finally bonded by passing the web through rollers.
- (28.) Other alternative materials include melt blown, a process that is close to spun bond and dry laid fibres. The production of dry laid fibres involves the conversion of entangled fibres into uniform webs by combing relatively short fibres into a web. Finally, nylon mesh is used as an alternative to wet laid fibre material for tea and coffee filtration. The process for producing nylon mesh is a standard weaving process coupled with a thermal bonding process to fuse the fibres into position.
- (29.) 4 respondents to the Commission's market investigation thought that there was a general trend towards these alternative materials for use in coffee and tea filtration applications<sup>12</sup> whereas 9 did not. Most respondents are not considering materials other than wet laid fibre materials for their tea and coffee products. Customers indicated that some alternative materials are considered to be too expensive<sup>13</sup>. Although some alternative materials are 100% biodegradable (e.g. spun bond), customers perceive biodegradability as an important advantage of wet laid fibre material over alternative materials, even when some heat sealable wet laid fibre for tea and coffee filtration also consists of synthetic fibres that may not be bio-degradable<sup>14</sup>. The perception of biodegradability is, on the part of customers, an important sales argument towards the end consumer.
- (30.) Customers would also face technical and economical difficulties in switching to alternative materials. Customers have converting machines at their tea packing or coffee pod producing facilities. In those converting plants the customers' tea/coffee packing (or converting) machines convert the reels of wet laid fibre for tea and coffee filtration to tea bags or coffee pods, fill them with tea or coffee, and seal them. The converting machines are specially designed in order to run with this type of material. The vast majority of

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<sup>10</sup> Notifying party's response of 6 October 2006 to the Article 6(1)(c) decision, at page 6.

<sup>11</sup> Commission Phase II Questionnaire to Customers at Question 25.

<sup>12</sup> Commission Phase II Questionnaire to Customers at Question 31.

<sup>13</sup> Commission Phase II Questionnaire to Customers at Question 31.

<sup>14</sup> Commission Phase II Questionnaire to Customers at Question 31.

customers stated that it would not be possible to switch to alternative materials without either purchasing new converting machines or substantially modifying their existing machinery<sup>15</sup>.

- (31.) Modifying the existing machinery would entail major investments. Some customers indicate that so many modifications may be needed that it would be more economical to buy completely new machines<sup>16</sup>. Smaller converting machines cost around EUR 40 000 to EUR 100 000 while the most sophisticated converting machines cost around EUR 1 million.
- (32.) A switch from wet laid fibre material for tea and coffee filtration to an alternative material would involve customer research and product testing both with customers and final consumers. In fact, the market investigation indicates that tea bags and coffee pods made of synthetic or other alternative material currently seem mainly to be sold as high-end or premium brand solutions. At the present time, customers appear to use alternative materials in order to target the upmarket segment of the tea market and sell tea bags made from alternative materials as a more luxurious proposition to the final consumer. The Commission's market investigation showed that the volume of sales of alternative materials for tea and coffee filtration is at present still very limited.<sup>17</sup>
- (33.) For the reasons set out above, according to the Commission's market investigation, a large number of customers do not consider other materials as an alternative.
- (34.) Nevertheless, the fact that a number of respondents indicated that there will be a partial and gradual development towards also using alternative materials<sup>18</sup> must be taken into consideration when assessing the competitive impact of the notified transaction. The effect of this will be to free up some of the production capacity for wet laid fibre material for tea and coffee filtration, creating a limited competitive pressure on the notifying party.

#### Supply-side substitutability

- (35.) The notifying party claims that, notwithstanding limited demand-side substitutability, the product market should be defined as wet laid fibre material due to a high degree of supply-side substitutability across the range of wet laid fibre material applications<sup>19</sup>.
- (36.) According to the notifying party, switching production from wet laid fibre material for one application to wet laid fibre material for another application does not usually require a significant investment<sup>20</sup>. The cost of the machine modification could be recouped within two to three years, according to the notifying party. Several factors determine the scope of production. Wet laid fibre materials are all produced on inclined wire paper machines, and a single machine regularly produces wet laid fibre materials for different applications. The

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<sup>15</sup> Commission Phase II Questionnaire to Customers at Question 25.

<sup>16</sup> Commission Phase II Questionnaire to Customers at Question 25.

<sup>17</sup> Commission Phase II Questionnaire to Customers at Question 30 and 31.

<sup>18</sup> Commission Phase II Questionnaire to Customers at Question 31.

<sup>19</sup> Notifying party's response of 6 October 2006 to the Article 6(1)(c) decision, at page 1.

<sup>20</sup> Notifying party's response of 6 October 2006 to the Article 6(1)(c) decision, at page 1.

mixture of fibre, additives and water can be changed fairly easily to produce different types of wet laid fibre material. Moreover, there may be significant economic incentives to switch production between wet laid fibre materials for different applications. The notifying party thus affirms that the most likely entrants into the markets for wet laid fibre material for tea and coffee filtration are suppliers that are already producing wet laid fibre materials for applications other than tea and coffee filter material.

- (37.) The Commission Notice on the definition of the relevant market for the purposes of Community competition law<sup>21</sup> states that “*when supply side substitutability would entail the need to adjust significantly existing tangible and intangible assets, additional investments, strategic decisions or time-delays, it will not be considered at the stage of market definition*”.<sup>22</sup> In the present case, supply-side substitutability is limited for the following reasons.
- (38.) Some inclined wire paper machines are, to a certain, extent flexible in their use. However, most of the inclined wire paper machines are designed with a particular use in mind. Therefore those machines are optimized for the production of a particular type of wet laid fibre material. As a consequence, generally only those inclined wire paper machines designed to produce wet laid fibre materials for tea and coffee filtration, are capable of doing so. This is largely due to the fact that wet laid fibre material for tea and coffee filtration is, when compared to other types of wet laid fibre material, very lightweight material. Most of the wet laid fibre materials for tea and coffee filtration have a weight that ranges between the [10-15]\* and [40-45]\* grams per square metre. Some of the inclined wire paper machines cannot be modified, or can only be modified with very high investments. Those inclined wire paper machines are typically designed to produce heavier types of wet laid fibre materials.
- (39.) Even on inclined wire machines that are capable of producing wet laid fibre materials for tea and coffee filtration but are currently not producing them, significant investments need to be made in order to be able to produce wet laid fibre materials for tea and coffee filtration. Modifying an inclined wire machine would also take a considerable time (approximately 6 months), as was indicated by suppliers and customers in the Commission’s market investigation<sup>23</sup>. Parts that need to be changed on an inclined wire paper machine would typically be the head box or ply former, where the watery pulp slurry is brought on the conveyer belt. Additionally, the rolls would need to be adjusted. Finally, it was brought to the Commission’s attention that the drying section of an inclined wire paper machine would typically need to undergo modifications in order to be capable of handling wet laid fibre material for tea and coffee filtration<sup>24</sup>.
- (40.) Greenfield entry would need an even larger investment and considerably longer lead time. Investment for a new inclined wire paper machine, stock preparation, warehousing facility etc. would amount to approximately EUR 38 million, depending on the location

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<sup>21</sup> OJ C 372, 9.12.1997, p.5.

<sup>22</sup> Paragraph 23.

<sup>23</sup> Commission Phase II Questionnaires to competitors at Questions 6.

<sup>24</sup> Agreed minutes of telephone conference with Ahlstrom on 19 October 2006.

where such a plant is constructed.<sup>25</sup> Besides the plant itself, successful greenfield entry would also require the setup of a sales, technical support and distribution network.

- (41.) The market investigation also shows that wet laid fibre material for tea and coffee filtration needs to be certified in most countries before it is marketed.<sup>26</sup> Tea and coffee filtration materials have to be checked using analytical methods for determining the suitability of these materials for packaging foodstuffs. The analysis often takes into account the kind and source of raw materials, manufacturing additives and special substances used for the refinement of wet laid fibre material. The resulting certificate thus states that the respective wet laid fibre material for tea and coffee filtration is completely safe to be used as packaging material for foodstuffs.
- (42.) As indicated by the German certification agency Industrie-, Studien- und Entwicklungsgesellschaft ("ISEGA", Germany) such a certification process takes around four weeks<sup>27</sup>. In the framework of the certification, ISEGA receives samples of the products and tests them in their labs. Certification and testing cost typically between EUR 1 500 and EUR 2 000 for each EEA country. If the product's composition is not altered, the certification remains valid for two years.
- (43.) A majority of customers indicate that in addition to the certification procedure they themselves have qualification procedures for each supplier<sup>28</sup>. The customers may qualify the supplier as a whole, specific machines, or specific products. In the market investigation, 4 out of 15 respondents indicate that they qualify the machine rather than the supplier as a whole<sup>29</sup>. The aim of these procedures is to test whether the material complies with the customer's standards. Many customers will test not only compliance with ISEGA certification but also with HACCP standards<sup>30</sup>. HACCP is a unified standard for material that is in direct contact with food. Some customers indicate that they test all materials used in contact with the tissue at all points of manufacture, including storage and delivery, which must also be of direct food contact grade<sup>31</sup>. Customers also indicate that they test against ISO 2001 certification<sup>32</sup>. Some customers indicate that they seek to verify whether the wood pulp component is bleached or bears chlorine containing components. Finally the customers check that their converting machines could run with a specific supplier's wet laid fibre material. Often customers start with a small batch of testing material and consequently scale up over time in order to dedicate a whole converting machine to the wet laid fibre material that is being tested. These qualification procedures may take between 2 months and 12 months and can, in exceptional circumstances, take even longer. This qualification needed for each customer constitutes the lead time that is needed to enter the market for wet laid fibre material for tea and coffee.

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<sup>25</sup> Tea & Coffee Asia, 2006, Notifying party's submission of 25 October 2006, Annex 2.

<sup>26</sup> Commission Phase II Questionnaire to Customers at Question 9.

<sup>27</sup> Commission Phase II Questionnaire to ISEGA at Question 9.

<sup>28</sup> Commission Phase II Questionnaire to Customers at Question 11.

<sup>29</sup> Commission Phase II Questionnaire to Customers at Question 11.

<sup>30</sup> Hazard Analysis and Critical Control Points Standard.

<sup>31</sup> Commission Phase II Questionnaire to Customers at Question 11.

<sup>32</sup> International Organization for Standardization 2001

- (44.) Therefore, in order to supply wet laid fibre material for tea and coffee filtration an entrant would need to modify its inclined wire paper machine at significant cost with significant lead time and subsequently obtain certification and qualify as a supplier of wet laid fibre material for each and every customer it is aiming to supply. Furthermore, it would also need a dedicated network of local presence. EEA respondents to the Commission's market investigation expressed a preference for production or at least warehousing within a reasonable distance<sup>33</sup>. Some customers indicated that stocks should be kept within a day's driving distance of their own converting facility. A majority of 12 out of 15 respondents to the Commission's market investigation agreed on the importance of local support, whether technical or commercial, with some customers explicitly stating that they would not deal with any suppliers who do not offer this infrastructure<sup>34</sup>.
- (45.) The relative ease and low cost of switching production to wet laid fibre materials for tea and coffee filtration from other wet laid fibre materials and vice versa is, according to the results of the investigation, only characteristic of producers who have the necessary know how and machines that are technically apt for the production of such materials, have regulatory certification and are qualified with individual customers<sup>35</sup>. Consequently, a producer of wet laid fibre material for e.g. battery pastings (the grammage of which is very close to that of the Glatfelter's best selling grades, and both battery pastings and these best selling grades being non-heat sealable materials<sup>36</sup>) would need, amongst others, significant lead time and investment to adapt the production in an attempt to start supplying wet laid fibre materials for tea and coffee filtration. In relation to this example, the notifying party itself acknowledges that "*compared to Wetlaid Fibre Materials for tea & coffee filtration applications, the qualification process for electrical & battery grades is somewhat less complex.*"<sup>37</sup>
- (46.) For these reasons, the criteria of effectiveness and immediateness of supply side substitutability that are set out in the Commission Notice on the definition of the relevant market for the purposes of Community competition law are not met with respect to the market for all wet laid fibre materials, as proposed by the parties.
- (47.) While substitutability within the tea and coffee filtration wet laid fibre materials appears limited on the demand side, where the customers need different machines for converting heat and non-heat sealable materials, and different grades for various end applications (e.g. coffee pods versus tea bags), there is significant supply-side substitutability between different grades of wet laid fibre materials for tea and coffee filtration. The market investigation demonstrated that a large majority of inclined wire machines which are used to produce wet laid fibre materials for tea and coffee filtration produce both heat sealable and non-heat sealable grades. Thus, the machines suitable for the production of wet laid materials for tea and coffee filtration, which have, , in particular, the technical characteristics and meet food safety requirements, can by and large be used for the production of a large number of tea and coffee filtration grades,

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<sup>33</sup> Commission Phase II Questionnaire to Customers at Question 18.

<sup>34</sup> Commission Phase II Questionnaire to Customers at Question 21.

<sup>35</sup> See replies to question 21 of the Phase I questionnaire to competitors.

<sup>36</sup> Annex 1 of the notifying party's submission of 24 October 2006.

<sup>37</sup> Annex 3, page 10 of notifying party's submission of 12 October 2006.

including both heat and non-heat sealable grades. Moreover, there is no substantial difference in prices for the various non-heat sealable and heat sealable grades<sup>38</sup>.

### Conclusion

(48.) In view of the above and for the purpose of this Decision, the Commission therefore considers that the relevant product market comprises wet laid fibre material for tea and coffee filtration. However, the existence of some (even if still limited) competitive pressure from alternative materials on the demand side, as well as from other wet laid fibre materials on the supply side will be taken into account in the framework of the competitive assessment.

### **Battery pasting paper**

(49.) The notifying party submits that the most common application of wet laid fibre material for electrical and battery applications is probably the production of lead-acid batteries, used in large commercial or military vehicles<sup>39</sup>. Wet laid fibre material, or battery pasting paper, serves as a substrate for applying the lead pasting paper to the electrode plates, and thus requires porosity characteristics of wet laid fibre material. After assembling the lead paste to the positive and negative electrode plates the battery pasting paper dissolves in the battery acid. In this context, it is important that the battery pasting paper has a low content of metal ions and chlorine, which could contaminate the battery acid.

(50.) The notifying party submits that wet laid fibre material for electrical and battery applications constitutes a small segment of the market for wet laid fibre material<sup>40</sup>. The size of the segment is approximately EUR [5-10]\* million in the EEA and EUR [40-50]\* million worldwide<sup>41</sup>. The notifying party claims that all its arguments as to the supply side substitutability in the production of different types of wet laid fibre material are applicable and provides examples demonstrating the ease of switching production from grades of wet laid fibre material for tea and coffee filtration to wet laid fibre material for electrical and battery applications and *vice versa*<sup>42</sup>.

(51.) The investigation showed that the wet laid fibre material for battery pasting paper requires very lightweight wet laid fibre material, i.e. from 12-13 grams per square metre<sup>43</sup>. As the customers need only this light wet laid fibre material with specifications that enable the lead pasting paper to stick to the electrode plates demand-side substitutability is limited. The process is such that the battery pasting papers have to dissolve without leaving impurities in the battery acid. Hence, customers have indicated that they very carefully assess the specifications of certain types of wet laid fibre materials and that they

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<sup>38</sup> Commission Phase II Questionnaire to Competitors at Question 2.

<sup>39</sup> Notifying party's submission of 12 October 2006, Annex 3 at page 2.

<sup>40</sup> Notifying party's submission of 12 October 2006, Annex 3 at page 1.

<sup>41</sup> Notifying party's submission of 12 October 2006, Annex 3.

<sup>42</sup> Notifying party's submission of 12 October 2006 Annex 3 at page 12.

<sup>43</sup> Commission Phase II Questionnaire to Customers/Battery pastings at Question 15.

cannot substitute wet laid fibre material for battery pasting with wet laid fibre materials for other applications.<sup>44</sup>

(52.) There is a certain degree of supply-side substitutability. As wet laid fibre material for battery pasting paper does not need to satisfy the food contact standards, the number of inclined wire paper machines capable of producing wet laid fibre material for battery and electrical applications is not limited to the machines that are used for e.g. tea and coffee filtration or sausage casings. Most of the machines capable of producing tea and coffee filtration types of wet laid fibre material are, however, able to produce battery pasting paper. The market investigation shows that wet laid fibre material for electrical and battery applications is furthermore produced on machines which, among others, produce wet laid fibre material for vacuum cleaner bags, adhesive tapes and sausage casings.<sup>45</sup>

(53.) For the purpose of this Decision, the exact product market definition can be left open as even on the basis of the narrowest delineation of a relevant product market, namely, “wet laid fibre materials for battery pasting paper” the notified transaction would not significantly impede effective competition.

## ***A.2. Relevant geographic markets***

### **Wet laid fibre material for tea and coffee filtration**

(54.) According to the notifying party, the markets for tea and coffee filtration paper should be defined as world-wide<sup>46</sup>. The manufacturers from the EEA sell their products to customers throughout the world, the products and production process being identical throughout the world. The notifying party indicated that in 2005 Glatfelter exported [40-50]\*%, and the Lydney Business [10-20]\*%, of their respective production of wet laid fibre materials, predominantly for tea and coffee filtration, outside the EEA<sup>47</sup>. The notifying party also estimates that imports into the EEA are in the range of 5-10% and are expected to increase due to the launch of Purico’s new modern Zhejiang Purico Minfeng production facility (“ZPM”, Shanghai, China) which would give imports to the EEA a competitive edge due to low operating costs<sup>48</sup>.

(55.) The market investigation indicates that most of the world’s production capacity for wet laid fibre material for tea and coffee filtration is located in the EEA, with the exception of a US plant owned by Ahlstrom and Purico’s ZPM<sup>49</sup>. Any other additional capacity operated by Asian manufacturers is unlikely to affect prices and quantities in the EEA as these companies appear unable to meet customers’ product specifications. The

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<sup>44</sup> Commission Phase II Questionnaire to Customers/Battery pastings at Question 15.

<sup>45</sup> Commission Phase II Questionnaire to Competitors at Question 2.

<sup>46</sup> Notifying party’s response of 6 October 2006 to the Article 6(1)(c) decision, at page 11.

<sup>47</sup> Form CO, p.57.

<sup>48</sup> Notifying party’s response of 6 October 2006 to the Article 6(1)(c) decision, at page 18.

<sup>49</sup> Commission Phase II Questionnaire to Customers at Question 3.

Commission's investigation confirmed that the producers of wet laid fibre material for tea and coffee filtration export more than a quarter of their total production outside the area of production (e.g. the EEA)<sup>50</sup>. The Commission's market investigation has shown that suppliers ship wet laid fibre material that is produced inside the EEA to various regions in Asia, Russia, South America and North America<sup>51</sup>. A considerable amount of wet laid fibre material for tea and coffee filtration is shipped from a North American plant to the EEA. On the customer level, the investigation showed that almost 50% of wet laid fibre material for tea and coffee filtration supplied to the largest customers from within the EEA is converted outside the EEA<sup>52</sup>.

(56.) According to the market investigation, the transportation costs represent (*below 10%*) of the end price of wet laid fibre material for tea and coffee filtration for supplies within the EEA and (*below 10%*) of the end price of wet laid fibre material for tea and coffee filtration for imports from outside the EEA<sup>53</sup>. In addition, there appears to be no significant difference in the price levels of wet laid fibre material for tea and coffee filtration across the various world regions.

(57.) According to the notifying party, the custom duties for imports into the EEA are on average 6% for tea bag material and 7.2% for other non-woven fibre materials<sup>54</sup>. Concerning exports from the EEA, the notifying party submits that custom tariffs amount to 0% for the USA and Japan, 7.5% for China, 12.5% for India, and 15% for Russia.<sup>55</sup> Neither producers nor any of the customers that responded to the Commission's market investigation indicated any constraints that custom duties would impose on the international trade of wet laid fibre material for tea and coffee filtration.

(58.) Some EEA customers replied that they would be reluctant to buy wet laid fibre from outside the EEA, mainly due to concerns as to quality and reliability of deliveries<sup>56</sup>. Only one customer preferred a supplier who has a production plant in the EEA, which is important to provide a greater flexibility in deliveries<sup>57</sup>. However, nearly all large customers (market share higher than 2% of global sales of packaged tea and coffee pods) took the view that an established distribution network is necessary to successfully supply to EEA customers. On the other hand, contingency stocks within the EEA were mentioned by competitors as an instrument to ensure stable supply.

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<sup>50</sup> Commission Phase II Questionnaire to Competitors at Question 12.

<sup>51</sup> Commission Phase II Questionnaire to Competitors at Question 12 and to Customers at Questions 3 and 4.

<sup>52</sup> Commission Phase II Questionnaire to Customers at Questions 3 and 4.

<sup>53</sup> Form CO, p.83 and Commission Phase II Questionnaire to Competitors at Question 15.

<sup>54</sup> Form CO, p.58.

<sup>55</sup> Notifying party's submission of 15 November 2006.

<sup>56</sup> Commission Phase I Questionnaire to Customers at Questions 16 and 17 and Phase II Questionnaire to Customers at Question 18.

<sup>57</sup> Commission Phase II Questionnaire to Customers at Question 18.



- (59.) As to consistency in quality, the answers by competitors and customers indicate that the food safety standards do not differ significantly throughout different world regions<sup>58</sup>. Suppliers of wet laid fibre material for tea and coffee filtration customarily certify regulatory compliance with the highest standards (US-FDA, Germany-ISEGA) obviating the need for further certification of compliance with less demanding standards (e.g. HACCP standards, ISO 2001).
- (60.) As to the viability of imports from Purico's ZPM into the EEA, the market investigation confirmed that the paper machine has been configured to be capable of producing wet laid fibre material for tea and coffee filtration<sup>59</sup>. The market investigation also indicated that ZPM could constrain the parties with its supplies of wet laid fibre material for tea and coffee filtration both within and outside the EEA. A majority confirm that they would consider purchasing from Purico's ZPM if its wet laid fibre material for tea and coffee filtration met their quality and supply reliability expectations and was offered at a competitive price<sup>60</sup>. As to the latter, the investigation indicates that the relatively low cost base of the ZPM in China is likely to at least outweigh the transportation costs for imports into the EEA.
- (61.) Even though there are some indications that from a demand side perspective there are to a minor extent national preferences, the market investigation yielded no significant evidence that the geographic market would be narrower than the EEA. This is mainly due to supply-side substitutability.
- (62.) Based on the above, there are several indications that the geographic market for wet laid fibre materials for tea and coffee filtration is world wide. These indications comprise world-wide trading patterns, absence of prohibitive transport costs as well as the emergence of additional capacity in China, the ZPM machine, which could constrain the incumbent, who produces mainly in the EEA. Suppliers of wet laid fibre materials for tea and coffee filtration and most of the customers who have world-wide activities also corroborate these findings.
- (63.) For the purpose of the present decision, it is therefore concluded that the relevant geographic market for wet laid fibre material for tea and coffee filtration is world-wide.

### **Battery pasting paper**

- (64.) In relation to a possible relevant geographical market for wet laid fibre material for electrical and battery applications, the notifying party submits that its geographical scope should be world-wide<sup>61</sup>. It claims that all major competitors in the segment for wet laid fibre material for battery pasting paper are active on a global level, and that Glatfelter itself exported approximately [10-20]\*% of its production outside the EEA and

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<sup>58</sup> Commission Phase II Questionnaire to Customers at Question 10.

<sup>59</sup> Commission Phase II Questionnaire to Voith.

<sup>60</sup> Commission Phase II Questionnaire to Customers at Question 16.

<sup>61</sup> Annex 3 to the Notifying Party's submission of 12 October 2006 at page 3 (in fact the party claims this worldwide market is for wet laid fibre material for all applications).

[Glatfelter's export strategy]\*<sup>62</sup>. Imports are, according to the notifying party, on a more limited scale due to different technical standards for e.g. lead acid batteries. However, Purico's ZPM in China would, according to the notifying party, also target European customers of wet laid fibre material for battery pasting paper. Neither shipping costs nor regulatory requirements would pose a barrier to deliveries between continents.

(65.) Although in the market investigation all the respondents indicated that they procure and process wet laid fibre material for battery pasting paper within the EEA<sup>63</sup> and deal directly with the producers of wet laid fibre material for battery pasting paper<sup>64</sup>, the market investigation confirmed that regulatory requirements are not perceived as a barrier to trading on a global level<sup>65</sup>. Producers of battery pasting typically ship their product around the world.

(66.) In relation to shipping costs, the customers' replies corroborate findings in the preceding section on wet laid fibre material for tea and coffee filtration, in that transportation costs are unlikely to be prohibitive for shipments between continents and confirm that the freight costs for imports do not significantly diverge from freight costs for deliveries within the EEA<sup>66</sup>. The lack of technical assistance, a fear expressed by some customers as the reason for their reluctance as regards imports, could be overcome by a local sales and technical support network.

### *Conclusion*

(67.) A number of factors, such as low transportation costs and the absence of regulatory barriers point in the direction of a world-wide market. The lack of technical assistance, a fear expressed by some customers as the reason for their reluctance to imports, could be overcome by a local sales and technical support network. Based on the above and for the purpose of the present decision, the relevant geographic market is defined as world-wide.

## **B. COMPETITIVE ASSESSMENT**

### **B1. Wetlaid fibre material for tea and coffee filtration**

#### **General features of the market for wetlaid fibre material for tea and coffee filtration and the notified transaction**

(68.) The notified transaction would lead to very high combined market shares with a substantial increment. On the world-wide market for wet laid fibre materials for tea and coffee filtration applications, the post-acquisition entity's share in sales amounted to approximately [60-70]\*% (Glatfelter [30-40]\*%, Lydney Business [20-30]\*%) in 2005. The notified transaction increases Glatfelter's market share to the extent that it replaces

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<sup>62</sup> Annex 3 to the Notifying Party's submission of 12 October 2006 at page 4.

<sup>63</sup> Commission Phase II Questionnaire to Customers/Battery pastings at question 10.

<sup>64</sup> Commission Phase II Questionnaire to Customers/Battery pastings at question 14.

<sup>65</sup> Commission Phase II Questionnaire to Customers/Battery pastings at question 18.

<sup>66</sup> Commission Phase II Questionnaire to Customers/Battery pastings at question 11.

former Crompton as the largest supplier in the market and decreases the number of competitors from four (Glatfelter, the Lydney Business, Ahlstrom and Purico (including the Devon Valley and Simpson Clough mills)) to three (Glatfelter, Ahlstrom, Purico). Before Crompton went into administration, there were three principal competitors active in the market (Glatfelter, Crompton and Ahlstrom). After implementation of the notified transaction, there will also be three credible competitors (Glatfelter, Purico and Ahlstrom). Purico, in addition to acquiring Crompton's Simpson Clough and Devon Valley mills (along with the Crompton trademark) is also putting on-stream its new ZPM capacity in China, thus entering the market for wet laid fibre material for tea and coffee filtration more or less concomitantly with the notified transaction. Ahlstrom currently holds a global market share of approximately [20-30]\*% and Purico currently holds a global market share of approximately [10-20]\*% according to data provided by the notifying party<sup>67</sup> and substantially confirmed by the market investigation<sup>68</sup>.

(69.) Based on the notifying party's capacity estimates, Glatfelter together with the Lydney Business accounts for approximately [60-70]\*% of the world wide production capacity currently used for wet laid fibre material for tea and coffee filtration<sup>69</sup>. Glatfelter's total capacity used for wet laid fibre material for tea and coffee filtration in 2005 was [10-20]\* kt p.a. The Lydney Business' total capacity used for wet laid fibre material for tea and coffee in 2005 was [10-20]\* kt.

(70.) According to the findings of the market investigation, Glatfelter and the Lydney Business together control approximately [60-70]\*% of the current world-wide maximum capacity of around [50-60]\*kt, that is currently capable of producing wet laid fibre material for tea and coffee filtration<sup>70</sup>. With the acquisition of the Lydney Mill, Glatfelter added a maximum capacity of approximately [10-20]\* kt p.a. to its own maximum capacity of [20-30]\* kt p.a.. That results in a maximum capacity of [30-40]\* kt p.a.

(71.) The notifying party contends that other smaller or potential producers of wet laid fibre material for tea and coffee filtration, such as MB Papeles (Spain) and Schweitzer-Mauduit (a US-based company with production facilities in France), have extensive wet laid fibre material production capacity that could be switched to tea and coffee applications without significant investment<sup>71</sup>. The market investigation confirmed that these wet laid fibre material producers have additional capacity that could be switched to the production of wet laid fibre material for tea and coffee filtration<sup>72</sup> (see Table 1).

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<sup>67</sup> Form CO, Annex 7.1.3.

<sup>68</sup> Commission Phase II Questionnaire to competitors at Question 3.

<sup>69</sup> Form CO, Annex 7.1.3.

<sup>70</sup> Commission Phase II Questionnaire to competitors at Question 3.

<sup>71</sup> Notifying party's response of 6 October 2006 to the Article 6(1)(c) decision, at page 22-23.

<sup>72</sup> Commission Phase II Questionnaire to competitors at Question 5.

**Table 1: Market shares based on 2005 data (attributing Crompton's figures accordingly to Glatfelter and Purico)**

	In kilotons / year	Share
Ahlstrom	[10-20]*	[20-30%]*
Glatfelter + Lydney	[20-30]*	[60-70%]*
Purico	[0-10]*	[10-20%]*
Others	Less than 1	Less than 2%
<b>Total</b>	<b>[40-50]*</b>	<b>100%</b>

*Source: Data submitted by the notifying party<sup>73</sup>*

(72.) Demand for wet laid fibre material for tea and coffee filtration has increased over recent years and the respective global sales amounted to [40-50]\*kt in 2003, [40-50]\*kt in 2004, and [40-50]\*kt in 2005. Demand for wet laid fibre material generally increases with the rate of GDP growth. However, the relatively large increase of 4kt between 2003 and 2004 is to a great extent due to the introduction of a single serve coffee system. This increase in volume is a single event. In general, producers do not view wet laid fibre materials for tea and coffee filtration as a high growth market segment, even though some additional growth for coffee pods is generally expected.<sup>74</sup>

(73.) The notifying party submits that the demand for wet laid fibre material for tea and coffee filtration is highly concentrated<sup>75</sup>. According to the notifying party, a few sophisticated customers account for a large part of the revenues of Glatfelter and their Lydney Business. In particular, the notifying party's top five customers account for [50-60]\*% of its tea filter sales while for wet laid fibre material for coffee filtration applications [50-60]\*% is bought by the three largest customers<sup>76</sup>. Coffee filtration represents approximately [10-20]\*% of the post-acquisition entity's sales of wet laid fibre for tea and coffee filtration applications<sup>77</sup>. The notifying party submits that these large and sophisticated buyers which include large international companies will exert countervailing buyer power and hamper possible price increases by Glatfelter<sup>78</sup>. The notifying party further submits that producers of wet laid fibre material for tea and coffee filter applications are constrained by a high degree of demand-side substitutability from a number of alternative materials to which the customers can switch<sup>79</sup>.

(74.) The investigation did not confirm that on the customer side there is sufficient countervailing buying power to constrain the notifying party. Although the party's top five customers account for [50-60]\*% of their tea filter sales while for wet laid fibre material for coffee filtration applications [50-60]\*% is bought by the three largest customers, there are still a number of remaining other buyers. Next to the largest

<sup>73</sup> Notifying party's response of 6 October 2006 to the Article 6(1)(c) decision and Form CO p. 66 –68.

<sup>74</sup> Commission Phase II Questionnaire to Customers at Question 7 and to Competitors at Question 23-26.

<sup>75</sup> Notifying party's response of 6 October 2006 to the Article 6(1)(c) decision, at page 23.

<sup>76</sup> Form CO, p. 96 and Commission Phase II Questionnaire to Customers at Question 3.

<sup>77</sup> Form CO, p. 96 and Commission Phase II Questionnaire to Customers at Question 3.

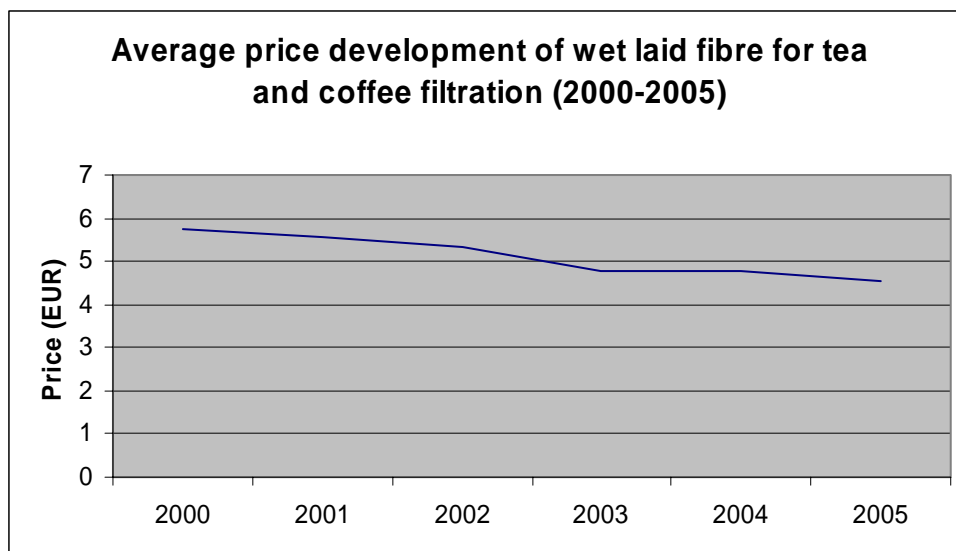
<sup>78</sup> Notifying party's response of 6 October 2006 to the Article 6(1)(c) decision, at page 23.

<sup>79</sup> Notifying party's response of 6 October 2006 to the Article 6(1)(c) decision, at pages 6-10.

customers there are many other customers that account for 2 – 10% of the sales. Approximately [20-30]\*% of the buyers are even smaller buyers that are dispersed<sup>80</sup>.

- (75.) Even though buyer power might exist for the larger customers who to a large extent multi-source and are committed to longer term contracts, this is certainly not the case for the remaining number of smaller customers.
- (76.) On that basis the Commission considers that buyer power is rather limited and by itself is not able to offset the party's ability to restrict output and increase prices.
- (77.) The market investigation has shown that sales prices have had a downward tendency in recent years. (See Graph 1) A reason for this is to be found in the fierce competition that was a result of Crompton's strategy for gaining market share. Another reason may be found in the fact that most producers of wet laid fibre material for tea and coffee filtration were able to bring down their costs of abaca input. In its market investigation, the Commission found that many customers expect the prices to further decrease or remain stable in the post acquisition situation.<sup>81</sup>

**Graph 1.: Average price development of wet laid fibre for tea and coffee filtration 2000 - 2005**



*Source: customers' replies to market investigation.*

- (78.) The market investigation also confirmed that the independent suppliers of abaca pulp have sufficient capacity to supply producers of wet laid fibre material for tea and coffee filtration that are not vertically integrated<sup>82</sup>. Moreover, none of the latter voiced concerns about the availability of abaca pulp. The market investigation has shown that abaca is readily available. The world-wide capacity of abaca pulp is estimated to be approximately

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<sup>80</sup> Form CO, p. 96.

<sup>81</sup> Agreed minutes of telephone interviews conducted on 26 and 27 October 2006.

<sup>82</sup> Questionnaire Phase II to abaca producers at Question 15.

[50-60]\* kt p.a. and is, according to the notifying party, increasing<sup>83</sup>. Over 50% of the abaca capacity is owned by non-vertically integrated producers. The market investigation also showed that significant pulping capacity was recently introduced by one of the largest non-vertically integrated producers of abaca pulp. Moreover, it was brought to the attention of the Commission, during its market investigation, that currently not all available capacity for abaca pulping is used<sup>84</sup>.

#### **(a) Non-Coordinated Effects**

##### **The proposed transaction will not result in a significant impediment to effective competition due to constraints from available capacity for wet laid fibre material for tea and coffee filtration**

(79.) The high market share and significant increment in capacity of the post acquisition entity are indications of market power. The question therefore arises whether the post-acquisition entity would be in a position to significantly impede effective competition. On the basis of market share and capacity share, the post-acquisition entity might be thought to have the ability to increase prices. However, the competitive assessment in this case cannot be limited to a mere analysis of market shares. It must also focus on constraints resulting from the available capacity for wet laid fibre material for tea and coffee filtration.

(80.) The analysis in this Decision will demonstrate the existing and potential suppliers' ability to prevent, through their available capacity for wet laid fibre material for tea and coffee filtration, the notifying party from being able to unilaterally affect competition on the market for wet laid fibre material for tea and coffee filtration.

#### **Competitors**

(81.) Committed and potential entry will constrain the post acquisition entity. Many customers have indicated to the Commission that price is an important criterion on which they decide to embark on a qualification process with a certain supplier<sup>85</sup>. The Commission's market investigation has also shown that most customers do multi-source or strive to multi-source<sup>86</sup>. Hence, customers would typically qualify at least two suppliers for supplying wet laid fibre materials for their converting machines. This practice makes the converter less dependent on the deliveries of a particular supplier.

#### **Purico**

(82.) An important competitive constraint on Glatfelter will be exerted by Purico. Purico employs 4 500 people world-wide in several professional fields, including wet laid fibre materials for tea and coffee filtration. It recently entered the market for tea and coffee

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<sup>83</sup> Notifying party's response of 6 October 2006 to the Article 6(1)(c) decision, at page 4.

<sup>84</sup> Questionnaire Phase II to abaca producers at Questions 8, 14 and 15.

<sup>85</sup> Commission Phase II Questionnaire to Customers at Question 17.

<sup>86</sup> Commission Phase I Questionnaire to Customers at question 27 and Phase II Questionnaire to Customers at Question 11 and Question 16.

filtration material by the acquisition of Crompton's Simpson Clough Business, and therefore currently holds a market share of 12% on the world-wide market for tea and coffee filtration material. Furthermore, Purico has recently installed the ZPM in Shanghai that can produce wet laid fibre materials for tea and coffee filtration.

- (83.) The market investigation showed that Purico is committed to continuing Crompton's product range while developing new and innovative products in line with the market requirements<sup>87</sup>. Purico has announced that the acquisition of the Simpson Clough Business gives it "*an advantage to have papers for the beverage industry being manufactured in the UK to go with (Purico's) operations in China*"<sup>88</sup>. The market investigation indicates that the shared know-how of ZPM and the Simpson Clough Business will allow Purico to use the facilities available in the United Kingdom and the state of the art machine in China to offer more innovative solutions to Purico's existing and new customers<sup>89</sup>.
- (84.) The ZPM was originally designed for the production of cigarette paper only. In view of declining global demand for cigarettes, it was adapted during construction to also allow for the production of other wet laid fibre materials, including tea and coffee filtration material<sup>90</sup>. The market investigation showed that the ZPM is a highly sophisticated and flexible machine. It has a three ply inclined hydro former which means it can produce both single layer and multi layer types of wet laid fibre materials. It has a width of 3.5 metres. According to the supplier of the machine, the ZPM is able to produce wet laid fibre products for the food and beverage industry without additional investment. This is confirmed by the German certification body, ISEGA, and by several customers.<sup>91</sup>
- (85.) Purico has acquired certain patents and know-how from Crompton and from other competitors. Purico relocated technical staff from Simpson Clough to China in order to further develop the production of wet laid fibre material for tea and coffee filtration. Purico also hired technical staff from its competitors.<sup>92</sup> This enabled Purico to develop wet laid fibre materials for tea and coffee filtration that are already certified and to develop other wet laid fibre materials for tea and coffee filtration. At the moment, the ZPM is capable of producing around [1-10]\* kt p.a.<sup>93</sup> of wet laid fibre material for tea and coffee filtration or around [10-20]\* kt p.a. of some other wet laid fibre material products according to the notifying party<sup>94</sup>.
- (86.) Purico is establishing a sales network around the world. Purico has opened a European sales office in Germany and has hired members of the former Crompton sales office in the

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<sup>87</sup> Tea & Coffee Asia, 2006, Notifying party's submission of 25 October 2006, Annex 2.

<sup>88</sup> Tea & Coffee Asia, 2006, Notifying party's submission of 25 October 2006, Annex 2.

<sup>89</sup> Tea & Coffee Asia, 2006, Notifying party's submission of 25 October 2006, Annex 2.

<sup>90</sup> Commission Phase II Questionnaire to Voith.

<sup>91</sup> Commission Phase II Questionnaire to ISEGA and Questionnaire to Customers at Question 16.

<sup>92</sup> Notifying party's submission of 25 October 2006, Annex 3.

<sup>93</sup> Notifying party's submission of 25 October 2006, Annex 2.

<sup>94</sup> Form CO, p.75 .

USA<sup>95</sup>. Purico has also hired sales staff from its competitors, as was confirmed by the Commission's market investigation.<sup>96</sup> Purico has signed and intends to sign contracts with companies who became or will become local agents in countries around the world, as is evidenced by the letter of Hanseatic trading<sup>97</sup>. Therefore, by purchasing the Simpson Clough Business Purico gained immediate credibility to the market.

(87.) In the market investigation, customers highlighted the reliability of supplies as one of the most important factors for their supply decision.<sup>98</sup> Firstly, with the Simpson Clough Mill and the ZPM, Purico has a double-site production of wet laid fibre materials for tea and coffee filtration, which reduces the supply risk. Moreover, the risks related to long-haul shipping (delays, long response time in case of defective material, etc.) can be reduced by establishing appropriate contingency stocks relatively close to customers.

(88.) As Crompton did in the past, Purico is likely to offer wet laid fibre material for tea and coffee filtration at a very competitive price to its customers. This is due to the costs advantage of producing in China where Purico faces low labour and energy costs. The market investigation showed that in particular the cost of energy and the cost of labour per unit produced is lower for the ZPM than for other facilities. In its market investigation the Commission found that labour costs account for approximately (10 – 30%) of the total production costs for producers of wet laid fibre material for tea and coffee filtration. Energy accounts for (10 – 30%) of the cost.<sup>99</sup> According to Purico, its ZPM facility is able to produce at (10 – 30%) lower cost than Purico's other facilities when its capacity is completely filled.<sup>100</sup>

(89.) The cost advantage is not offset by transportation costs from China to the EEA which amount to only (*less than 10%*) of the final price.. ZPM's cost advantage is also not offset by custom duties for imports of wet laid fibre material for tea and coffee filtration into the EEA, which only amount to 6% on average. Its low costs basis will enable Purico to compete fiercely on the market, particularly since a number of customers indicated that they were price sensitive<sup>101</sup>. Since ZPM's investment costs are already sunk, Purico will have every incentive to fill its capacities as soon as possible and to compete aggressively on the market. Its low costs basis will enable Purico to compete aggressively on a sustainable basis. This was not the case for Crompton whose bankruptcy was partly due to an aggressive pricing strategy which was not based on accordingly low costs.

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<sup>95</sup> Reply to Commission Phase II questionnaire to Purico at Question 15.

<sup>96</sup> Notifying party's submission of 25 October 2006, Annex 3 and reply to Commission Phase II questionnaire to Purico at Question 15.

<sup>97</sup> Notifying party's submission of 15 September, Annex 3, and the notifying party's reply of 6 October 2006 to the Article 6(1)(c) decision, Annex 5.

<sup>98</sup> Commission Phase I questionnaire at question 16 and Phase II questionnaire at questions 18 and 21.

<sup>99</sup> Commission Phase II Questionnaire to competitors at Question 9 and notifying party's submission of 27 September 2006.

<sup>100</sup> For confidentiality reasons these figures are given in ranges.

<sup>101</sup> Commission Phase II Questionnaire to Customers at Question 17.



- (90.) According to the results of the market investigation, the ZPM capacity is committed to competition in the global market for wet laid fibre material for tea and coffee filtration<sup>102</sup>. Based on the established brand and distribution network stemming from the acquisition of Crompton's assets and on the significant new capacity with a low cost basis, Purico would have the ability and the incentive to constrain Glatfelter's ability to raise prices or restrict output considerably (ZPM available capacity amounts to roughly 15-20% of the global demand for wet laid fibre materials for tea and coffee filtration).
- (91.) Purico has not only contacted smaller customers, but has also contacted larger customers who are active in the EEA and world-wide. According to Purico, it has started the qualification process with (*most*) of the customers<sup>103</sup>. Because of the length of time that qualification procedures may take with some customers Purico will need several more months to finalize all tests. Therefore, Purico expects demand for wet laid fibre materials for tea and coffee filtration produced by the ZPM to increase gradually. Many of the larger customers are also committed to longer term contracts, which will result in a gradual expansion of Purico's output. However, Purico expects already to sell a significant volume of wet laid fibre material for tea and coffee filtration in 2007. Purico expects that (*30 – 50%*) of the total production capacity of wet laid fibre material for tea and coffee filtration from ZPM will be sold to customers with converting machines in Asia and the EEA. Purico's expectations of its sales from the ZPM mean that Purico expects to gain (*10 to 30%*) market share already in 2007<sup>104</sup>
- (92.) According to the market investigation, the vast majority of customers considered Purico to be in a position to produce wet laid fibre material for tea and coffee filtration<sup>105</sup>. Those respondents who thought that Purico would at some point be a contender for this market referred to the technical expertise Purico has acquired through hiring former Crompton staff as well as buying Crompton's intellectual property rights<sup>106</sup>. Customers pointed out to the Commission during its market investigation that Purico now has access to the technology and personnel.
- (93.) According to the market investigation, 12 out of 15 respondents are aware of possible supplies of wet laid fibre material for tea and coffee filtration from Purico's ZPM<sup>107</sup>. Customers who are aware of Purico are divided between those who have been contacted by that company and those who contacted Purico themselves with a view to securing a new supplier following the developments in the market. The vast majority of the customers were approached by Purico.
- (94.) Customers are willing to buy wet laid fibre materials for tea and coffee filtration from Purico's ZPM. 12 out of 16 respondents to the Commission's market investigation would

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<sup>102</sup> Article in Tea & Coffee - December/January, 2006, "Zhejiang Purico Minfeng Paper Starts Production", accessible at: <http://www.teaandcoffee.net/1205/trade.htm>, and Notifying party; submission of 25 October 2006, Annex 2.

<sup>104</sup> Commission Phase II Questionnaire to Competitors at Question 35.

<sup>105</sup> Commission Phase II Questionnaire to Customers at Question 15.

<sup>106</sup> Commission Phase II Questionnaire to Customers at Question 18.

<sup>107</sup> Commission Phase II Questionnaire to Customers at Question 13.

consider starting qualification for wet laid fibre material for coffee and tea filtration with Purico if it acquired the certificates of compliance with EEA food safety standards<sup>108</sup>. The German certification agency ISEGA confirmed that a number of non-heat sealable wet laid fibre materials for tea and coffee filtration produced on Purico's ZPM has already been certified.<sup>109</sup> Criteria that customers consider important for taking a decision to enter into the qualification process are price, quality assurance and flexibility and reliability of supply<sup>110</sup>. While local production in Europe is not strictly necessary, the majority of customers stressed the importance of a good distribution network that guarantees reliable supply at short notice<sup>111</sup>. They also indicated the necessity of an assistance network since a customer generally does not want to interrupt production on his converting machines whenever a problem with wet laid fibre material occurs<sup>112</sup>.

(95.) By acquiring the Simpson Clough and Devon Valley plants, Purico has gained the position and advantages of an established supplier with respect to customers, including those active on a global level. The assets that Purico acquired from Crompton, together with its state of the art ZPM in China will give Purico a particularly good position to compete effectively with its ZPM production of wet laid fibre material for tea and coffee filtration. As confirmed in the market investigation, this machine constitutes a significant competitive constraint on European manufacturers, as it is at present capable of producing around [1-10]\* kt. p.a. of products for the same industries as Simpson Clough, which is wet laid fibre material predominantly for tea and coffee filtration<sup>113</sup>. Due to customer qualification procedures and long term customer contracts, the actual expansion of output from Purico's ZPM might take place more gradually rather than releasing the output of around [1-10]\* kt. p.a. to the market at once. ZPM's capacity will only be gradually filled up for the production of wet laid fibre material for tea and coffee filtration. This does however not mean that the capacity that amounts to 10 – 20% of the total market volume is not a significant threat to Glatfelter. On the contrary, the Commission considers that Purico, with its ZPM machine exerts an important competitive constraint on Glatfelter, as a result of which Glatfelter will not be able to increase prices or restrict output.

#### *Ahlstrom*

(96.) Not only is Purico exerting an important competitive restraint on Glatfelter, but Glatfelter will also be constrained by Ahlstrom, the second largest supplier of wet laid fibre material for tea and coffee filtration. Ahlstrom has a total of 9 inclined wire machines<sup>114</sup> in the EEA and in the USA that are producing non woven materials, including wet laid fibre material. It has a number of machines that produce wet laid fibre material for tea and coffee filtration today. Ahlstrom's other machines produce

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<sup>108</sup> Commission Phase II Questionnaire to Customers at Question 16.

<sup>109</sup> Commission Phase II Questionnaire to ISEGA at Question 16 (although this does not specify WFM for tea and coffee filtration or the ZPM) and Notifying party's submission of 15 September 2006, Annex 3.

<sup>110</sup> Commission Phase II Questionnaire to Customers at Question 17.

<sup>111</sup> Commission Phase II Questionnaire to Customers at Question 18.

<sup>112</sup> Commission Phase II Questionnaire to Customers at Question 21.

<sup>113</sup> Notifying party's submission of 25 October 2006, Annex 2.

<sup>114</sup> Commission Phase II Questionnaire to Competitors at question 4.

predominantly heavier weight products for applications other than tea and coffee filtration. Ahlstrom is also involved in the production of alternative material for tea and coffee filtration and in the production of other food and foodstuffs packaging materials.

- (97.) Ahlstrom is a well-known producer in Europe of wet laid fibre material for tea and coffee filtration, with a distribution and sales network already in place. According to the notifying party, Ahlstrom currently produces approximately [10-20]\* kt p.a. of wet laid fibre material for tea and coffee filtration applications at its production sites in Scotland and the USA<sup>115</sup>. Customers have indicated to the Commission in its market investigation that they rank Ahlstrom especially high as regards service, technology, quality, innovation and reliability.<sup>116</sup> However, some customers perceive Ahlstrom as being more expensive than other suppliers. Overall, many customers have ranked Ahlstrom as the second most competitive supplier.<sup>117</sup>
- (98.) The Commission's market investigation showed that if the notifying party were to increase prices or decrease output for wet laid fibre material for tea and coffee filtration, Ahlstrom could increase output<sup>118</sup>. If Glatfelter increased the price significantly and profitability for wet laid fibre materials for tea and coffee filtration thus possibly increased for Ahlstrom, Ahlstrom could divert capacity or could invest in adding capacity by converting an existing machine or purchasing and converting a second hand machine. Ahlstrom has the know-how and technology in order to be able to convert and operate such a machine. Ahlstrom also already has the distribution and sales network in place. Ahlstrom has indicated to the Commission that it is likely that it would seek to increase output and/or capacity if the price of wet laid fibre material for tea and coffee filtration increased by (10 – 30%).<sup>119</sup>

#### Others

- (99.) Next to Purico and Ahlstrom, other suppliers of wet laid fibre material are also constraining Glatfelter. In its market investigation the Commission has found that there are suppliers of wet laid fibre material who are seeking to produce different wet laid fibre material products on their inclined wire machines from that which they are currently producing. One supplier has recently invested significantly in adapting its inclined wire machines for the production of wet laid fibre material for tea and coffee filtration applications. It has since started testing and supplying small amounts of wet laid fibre material for tea and coffee filter materials. Another supplier is capable of producing wet laid fibre material for tea and coffee filtration without any additional investment costs and has increased its respective volumes and customer base in recent years.
- (100.) The reason those suppliers indicated to the Commission during its market investigation was that demand for the wet laid fibre products that they are currently producing was declining, that they want to diversify or that customers had been

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<sup>115</sup> Notifying party's response of 6 October 2006 to the Article 6(1)(c) decision, at page 14.

<sup>116</sup> Commission Phase II Questionnaire for customers at question 25.

<sup>117</sup> Commission Phase II Questionnaire for customers at question 25.

<sup>118</sup> Agreed minutes of telephone conference with Ahlstrom on 19 October 2006.

<sup>119</sup> Agreed minutes of telephone conference with Ahlstrom on 19 October 2006, figures are given in ranges for confidentiality reasons.

approaching them. The total potential capacity of those suppliers is (*around 19 kt p.a.*) Those suppliers are however at the moment also committed to producing wet laid fibre material for other purposes than coffee and tea filtration. The current volumes produced for coffee and tea filtration are at present still low.

- (101.) These suppliers currently do not all have the ability to produce double layer wet laid fibre materials. Because those suppliers are testing their wet laid fibre materials for tea and coffee filtration, they currently seem to mainly target smaller customers with lower quality standards than most of the larger customers. However, when those suppliers have developed their wet laid fibre materials for coffee and tea filtration further they may also target larger customers. Moreover, even without targeting the larger customers they may be able to increase their sale volume, thereby taking away sales from other producers in tea and coffee filtration, leaving Glatfelter unable to increase its prices or restrict output.
- (102.) It is therefore concluded that those suppliers exert a significant competitive constraint on Glatfelter.

#### Conclusion competitors

- (103.) Competitors have the ability and the incentive to constrain the notifying party. The market investigation indicates that Purico's new ZPM capacity will put it in a position to effectively compete with Glatfelter. Moreover, in recent years and at the moment, demand does not meet capacity as was shown in the Commission's market investigation. While demand for wet laid fibre materials for tea and coffee filtration has increased over the last three years<sup>120</sup>, this is mainly due to the mass introduction of single serve coffee pods in 2003 / 2004. Currently there is still spare capacity in the market. With Purico's new capacity coming on stream in China and other competitors able to further expand in wet laid fibre materials for tea and coffee materials there will be even more capacity in the market.
- (104.) The post acquisition entity's ability to exercise market power and raise prices will therefore be constrained by Purico, Ahlstrom and others. An attempt by the post acquisition entity to raise prices would be counteracted by Purico and other competitors, who have the incentive to fill their existing capacities.

#### **Constraints by alternative materials**

- (105.) The market investigation confirmed that a certain degree of competitive constraint could stem from customers' possibility to switch their tea / coffee packaging to alternative materials, notably spunbond non woven fibre materials and nylon mesh.
- (106.) According to the notifying party, customers can easily switch to such alternative materials<sup>121</sup>. The notifying party submitted that the capacity for spun bond materials is increasing.

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<sup>120</sup> According to the parties, global demand for wet laid fibre material for tea and coffee filtration amounted to [40-50]\*kt in 2003, [40-50]\*kt in 2004, and [40-50]\*kt in 2005. Form CO, Annex 7.1.3.

<sup>121</sup> Notifying party's response of 6 October 2006 to the Article 6(1)(c) decision, at page 9.

- (107.) The notifying party has pointed out to the Commission that prices of spun bond material and wet laid fibre material for tea and coffee filtration are converging<sup>122</sup>. The spun bond process is an entirely dry process. Because a drying section is not necessary less energy is needed as compared to wet laid fibres. Hence, the threat of some customers switching to alternative materials in due course is likely to give customers a certain amount of bargaining power vis-à-vis the post acquisition entity.
- (108.) The majority of the customers did not confirm the notifying party's claims as to the ease of switching tea packaging from wet laid fibre material to alternative materials<sup>123</sup>. Reservations were formulated in relation to both the supply and the demand side
- (109.) On the supply side, customers consider that a switch to alternative materials would entail significant investment in machine modifications or acquisition of completely new machines. Customers also pointed to unsatisfactory product characteristics. Some customers indicated during the Commission's market investigations that some alternative materials can be 10 – 30% higher in price and some may even be 5 times as expensive as wet laid fibre material for tea and coffee filtration.
- (110.) On the demand side, some customers claimed that the final consumer's demand for alternative materials remains limited for the moment.
- (111.) Based on this, a majority of customers do not presently consider switching to alternative materials as economically sensible<sup>124</sup>.
- (112.) Notwithstanding, the market investigation shows that some of the larger customers have started or are considering also using alternative materials although they still remain in the minority<sup>125</sup>. As to the customers' claim that the sales potential of alternative materials is limited since they are not biodegradable and carry the image of artificial products, the investigation pointed towards the existence of alternative materials for tea and coffee filtration that are 100% bio-degradable (e.g. polyactic acid filaments derived from fermentation with lactic acid and polymerisation of natural corn starch<sup>126</sup>). At the same time, heat sealable wet laid fibre materials for tea and coffee filtration themselves include synthetic fibres.
- (113.) Furthermore, quoted prices of spun bond are on a similar level as prices of wet laid fibre material for tea and coffee filtration.
- (114.) While these alternative materials are presently not expected to substitute wet laid fibre material to a significant extent, a portion of customer demand is likely to be redirected towards alternative materials in the future, freeing up additional capacity for wet laid fibre material for tea and coffee filtration and thus to some extent constraining the notifying party's ability to exercise market power and raise prices.

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<sup>122</sup> Notifying party's response of 6 October 2006 to the Article 6(1)(c) decision, at page 8.

<sup>123</sup> Commission Phase II Questionnaire to Customers at Question 25.

<sup>124</sup> Commission Phase II Questionnaire to Customers at Questions 27-31, 33.

<sup>125</sup> Commission Phase II Questionnaire to Customers at Question 27.

<sup>126</sup> Notifying party's response of 6 October 2006 to the Article 6(1)(c) decision, Annex 3.

## **Vertical integration**

- (115.) The notified transaction will not put the post acquisition entity in a position to vertically foreclose its competitors with regard to availability of raw materials, notably polypropylene fibres. The merged entity's vertical integration backwards into abaca is not merger specific since before the merger Glatfelter had already integrated upstream into abaca pulp, the main ingredient for non-heat sealable tea and coffee filters. By acquiring the Lydney mill, Glatfelter further integrated into polypropylene since the Lydney site includes a pulp mill for polypropylene fibres, a main ingredient for heat sealable tea and coffee filters. Yet, the transaction does not change the availability of these raw materials to the other competitors.
- (116.) The market investigation has shown that the backwards integration into polypropylene that Glatfelter acquires with the notified transaction will not enable it to vertically foreclose its competitors and therefore raise its rivals' costs<sup>127</sup>. According to the market investigation, there are a number of independent polypropylene suppliers in the EEA market that have the capacity and the incentive to supply, or already supply non-vertically integrated wet laid fibre material producers such as Purico<sup>128</sup>. Therefore it will not make it more difficult for Glatfelter's competitors to effectively compete on the market for wet laid fibre material for tea and coffee filtration or hamper potential entry.
- (117.) In view of the foregoing, it can be concluded that the notified transaction will not significantly impede effective competition in the world-wide market for wet laid fibre material for tea and coffee filtration (or any sub-market thereof) as a result of non-coordinated effects.

## **(b) Coordinated Effects**

- (118.) As to co-ordinated effects, the wetlaid fibre industry could in principle be prone to tacit co-ordination as the products involved are reasonably homogenous and there is a degree of transparency about important competitive parameters (in particular capacities). The small number of competitors present in the market would also facilitate tacit co-ordination.
- (119.) However, there are no indications that the three leading suppliers (Glatfelter, Crompton and Ahlstrom) were already tacitly co-ordinating their competitive behaviour prior to Crompton's bankruptcy. Indeed, Crompton's bankruptcy by itself makes it highly unlikely that prevailing prices and output represent a co-ordinated equilibrium. Likewise, the observed declining price trend does not point to successful co-ordination.
- (120.) The notified transaction will not facilitate tacit co-ordination . Not only does the number of competitors remain unchanged compared to the pre-bankruptcy situation, but total market capacity has also increased as a result of the entry of Purico's ZPM capacity. Asymmetry of market shares, of shares of unused capacity and of suppliers' costs structures has also increased significantly. In particular Purico has an incentive to expand sales in order to fill its significant new production capacity. Moreover, the transparency of capacity by itself might not be enough to allow for an effective retaliation mechanism.

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<sup>127</sup> Commission Phase II Questionnaire to Polypropylene Suppliers at Questions 14 and 18.

<sup>128</sup> Commission Phase II Questionnaire to Polypropylene Suppliers at Questions 15 and 18.

(121.) In view of the foregoing, the Commission cannot identify any effective co-ordination mechanism that would enable the three leading firms to collude on prices and/ or output despite their diverging cost structures and incentives to expand output. There are, hence, no indications that the notified operation will either create or strengthen a position of collective dominance in the market for wet laid fibre materials for tea and coffee filtration or may otherwise significantly impede effective competition by way of co-ordinated effects. Hence, it can be concluded that the notified transaction will not significantly impede effective competition in the world-wide market for wet laid fibre material for tea and coffee filtration (or any sub-market thereof) as a result of coordinated effects.

## **B2. Wetlaid fibre material for battery pasting**

(122.) The battery pasting paper market segment is valued by the notifying party at approximately EUR [40-50]\* million worldwide, and EUR [1-10]\* million in the EEA. The market investigation showed that some battery producers, who purchase wet laid fibre material for their products, are wary of the impact which the notified transaction may have on their own companies, citing the risks posed by what is perceived as a reduction in the number of potential suppliers<sup>129</sup>. Some battery producers recognised that the notifying party's acquisition of the Lydney mill will give it increased capacity and thus the ability to better meet global demand<sup>130</sup>. In general the battery producers express a desire to see more competition on the market in order to have more competitive prices.

(123.) Demand volume in the market segment of wet laid fibre material for battery applications is relatively low in comparison to that for wet laid fibre material in general. Battery producers purchase smaller volumes of wet laid fibre material than would be needed for tea and coffee filtration products (battery producers purchased up to 450t p.a. whereas tea and coffee filtration purchasers bought volumes from 200t p.a. and up, with several customers purchasing over 1000 t p.a.<sup>131</sup> Customers for wet laid fibre material for battery applications would be able to source their relatively small volumes from other suppliers if the post acquisition entity were to increase its price or restrict its output.

(124.) Moreover, the combined market share of the post acquisition entity is low. The market share reflects that Glatfelter would not, after the acquisition, have such a position that it could impede effective competition significantly. As indicated in the table below, the post acquisition entity's share of sales in the world wide geographic market is estimated at [10-20]\*%. This would fall well short of the market share levels which are normally indicative of dominance. More generally, the market does not appear to be very concentrated on the supply side. Such a diversity of market players would render attempts at raising prices or restricting output more difficult.

(125.) The shares of sales in the segment of battery pasting paper are as shown below (see Table 2).

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<sup>129</sup> Commission Phase II Questionnaire to Customers/Battery pastings at Question 26.

<sup>130</sup> Commission Phase II Questionnaire to Customers/Battery pastings at Question 26.

<sup>131</sup> Commission Phase II Questionnaire to Customers/Battery pastings at Question 9.

**Table 2: Market shares based on 2005 data**

<b>Producer</b>	<b>2005</b>
	<b>global</b>
Glatfelter	[0-10%]*
Lydney Business	[0-10%]*
<b>Combined</b>	[10-20%]*
Purico	[0-10%]*
Ahlstrom	[0-10%]*
MB Papeles	[0-10%]*
Others	[70-80%]*%

*Source: notifying party<sup>132</sup>*

- (126.) In addition to the above characteristics which highlight the low demand as well as the low projected market share of the post acquisition entity, a series of secondary characteristics serve to underline why the market segment of battery pasting paper would not suffer an anticompetitive impact as a result of this merger.
- (127.) The market segment for wet laid fibre material used in battery pasting paper is characterised by relatively low entry barriers. Wet laid fibre material for battery products can be made on the same machines, using the same raw materials, as wet laid fibre material for beverage filtration. Production of battery pasting paper does not require the same level of regulatory compliance, such as food standards certification, as would be necessary to produce wet laid fibre material for food and beverage. All of these characteristics suggest that existing wet laid fibre material producers would be able to switch their production to battery pasting paper from alternative applications with relative ease.
- (128.) The Commission's market investigation has found that existing wet laid fibre material producers for battery applications could be joined by Purico for example, whose ZPM machine in China could easily be used to produce wet laid fibre material for battery pasting paper. In the market investigation suppliers of wet laid fibre materials have also identified a number of producers of wet laid fibre materials who could produce wet laid fibre materials for battery pastings.<sup>133</sup>
- (129.) The fact that battery pasting paper is frequently manufactured as a 'filler product' to cover periods of downtime and save overhead costs when other, higher margin, wet laid fibre material products, such as tea and coffee filtration paper are not being produced, provides further illustration of the ease of entry into the segment by producers of wet laid fibre material for alternative applications.
- (130.) In addition to the high potential for entry or expansion as a competitive constraint on wet laid fibre material producers in this market segment, another factor which would act to constrain the notifying party would be the concentrated demand side. The main battery producing customers are relatively large within that segment. [80-90]\*% of wet laid fibre

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<sup>132</sup> Notifying party's submission of 12 October 2006, Annex 3.

<sup>133</sup> Commission Phase II Questionnaire to competitors / battery pastings at question 33.



material for battery applications is sold to the largest five customers in the segment. The demand side of the market segment for battery pasting paper would appear to be more concentrated than the demand side of the market segment for tea and coffee filtration.

(131.) The Commission's investigation indicates that the market segment for battery pasting paper is characterised by low demand with high potential supply from other wet laid fibre material producers and a concentrated demand side, and that the projected market share of the post acquisition entity would be low. On that basis the Commission considers that this market is unlikely to suffer an anti-competitive impact from the notified transaction.

## V. CONCLUSION

(132.) For the reasons set out above it must be concluded that the notified transaction would not significantly impede effective competition in the common market or in a substantial part of it, in particular as a result of the creation or strengthening of a dominant position. The concentration should therefore to be declared compatible with the common market and the EEA Agreement, in accordance with Article 8(1) of the Merger Regulation, and Article 57 of the EEA Agreement,

HAS ADOPTED THIS DECISION:

### *Article 1*

The notified operation whereby P.H. Glatfelter Company acquires sole control within the meaning of Article 3(1)(b) of Regulation (EC) No 139/2004 of the majority of assets pertaining to the production facility of J.R. Crompton Ltd in Administration's at Lydney, Gloucestershire, United Kingdom is hereby declared compatible with the common market and the functioning of the EEA Agreement.

### *Article 2*

This Decision is addressed to:

P.H. Glatfelter Company  
96 South George Street, Suite 500  
York, Pennsylvania 17401  
USA

Done at Brussels, 20-12-2006

For the Commission  
signed  
Neelie KROES  
Member of the Commission



**EUROPEAN COMMISSION**

Competition DG

Policy and Strategic Support  
**Antitrust Policy and Scrutiny**

## **OPINION**

**of the ADVISORY COMMITTEE on CONCENTRATIONS  
given at its 146<sup>th</sup> meeting on 6 December 2006  
concerning a draft decision relating to  
Case COMP/M.4215– Glatfelter/Crompton Assets**

1. The Advisory Committee agrees with the Commission's definitions of the relevant product markets as stated in the draft decision.
2. The Advisory Committee agrees with the Commission's definitions of the relevant geographic markets as stated in the draft decision.
3. The majority of the Advisory Committee agrees with the Commission that the concentration as notified does not significantly impede effective competition in the common market or in a substantial part of it.
4. The majority of the Advisory Committee agrees with the Commission that the notified concentration should be declared compatible with the Common Market and with the functioning of the EEA Agreement in accordance with Articles 2(2) and 8 (1) of the Merger Regulation and Article 57 of the EEA Agreement.
5. The Advisory Committee asks the Commission to take into account all the other points raised during the discussion.

<u>BELGIË/BELGIQUE</u>	<u>ČESKÁ REPUBLIKA</u>	<u>DANMARK</u>	<u>DEUTSCHLAND</u>	<u>EESTI</u>
K. BOEYKENS	---	---	M. HERBERT	---
<u>ELLADA</u>	<u>ESPAÑA</u>	<u>FRANCE</u>	<u>IRELAND</u>	<u>ITALIA</u>
---	---	B. ALOMAR	---	S. SCHINAIA
<u>KYPROS/KIBRIS</u>	<u>LATVIJA</u>	<u>LIETUVA</u>	<u>LUXEMBOURG</u>	<u>MAGYARORSZÁG</u>
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<u>MALTA</u>	<u>NEDERLAND</u>	<u>ÖSTERREICH</u>	<u>POLSKA</u>	<u>PORTUGAL</u>
---	P. GOUDSMIT	---	---	---
<u>SLOVENIJA</u>	<u>SLOVENSKO</u>	<u>SUOMI-FINLAND</u>	<u>SVERIGE</u>	<u>UNITED KINGDOM</u>
---	---	---	C. MAXE-AGLINDER	T. KRAJEWSKA



EUROPEAN COMMISSION

The Hearing Officer

**FINAL REPORT OF THE HEARING OFFICER**  
**IN CASE COMP/M.4215 – Glatfelter / Crompton Assets**

**(pursuant to Articles 15 and 16 of Commission Decision (2001/462/EC, ECSC)  
of 23 May 2001 on the terms of reference of Hearing Officers  
in certain competition proceedings – OJ L162, 19.06.2001, p.21)**

On 4 April 2006 Germany requested a referral of the case to the Commission pursuant to Article 22 (1) of Council Regulation (EC) No 139/2004 (*Merger Regulation*). In accordance with Article 22 (2) of the Merger Regulation the Commission informed the competent authorities of the other Member States and the undertakings concerned of the request. The referral request was joined by the United Kingdom. On 15 May 2006 the Commission decided to accept the request to examine the concentration and informed the Member States and the undertakings of its decision.

Subsequently, on 16 August 2006, the Commission received a notification of the proposed concentration by which P.H. Glatfelter Company acquires sole control of the Lydney Business of J.R. Crompton Ltd in administration, by way of purchase of assets.

After examining the notification the Commission concluded that the notified transaction fell within the scope of the Merger Regulation and that it raised serious doubts as to its compatibility with the common market and the functioning with the EEA Agreement. Accordingly, on 20 September 2006, the Commission decided to initiate proceedings in accordance with Article 6.1(c) of the Merger Regulation.

Following an in-depth market investigation carried out by the Commission services it was concluded that the proposed transaction would not significantly impede effective competition in the common market or a substantial part of it, in particular as a result of the creation or strengthening of a dominant position, and is therefore compatible with the common market and the EEA Agreement. Accordingly, no Statement of Objections was sent to the parties.

No queries or submission have been made to the Hearing Officer by the parties or any other third party. The case does not call for any particular comments as regards the right to be heard.

Brussels, 7 December 2006.

signed  
**Karen Williams**