

# ***CASE M.6576-MUNKSJÖ /AHLSTROM***

(Only the English text is authentic)

## **MERGER PROCEDURE REGULATION (EC) 139/2004**

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Article 8(2) Regulation (EC) 139/2004

Date: 24/05/2013

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EUROPEAN  
COMMISSION

Brussels, 24.5.2013  
C(2013) 2966 final

*PUBLIC VERSION*

**COMMISSION DECISION**

**of 24.5.2013**

**addressed to:**  
**Munksjö AB**  
**Ahlstrom Corporation**  
**Munksjö Oyj**

**declaring a concentration to be compatible with the internal market and the EEA  
agreement (Case No COMP/M.6576-MUNKSJÖ /AHLSTROM)**

(Text with EEA relevance)

(Only the English text is authentic)

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# COMMISSION DECISION

of 24.5.2013

addressed to:  
**Munksjö AB**  
**Ahlstrom Corporation**  
**Munksjö Oyj**

**declaring a concentration to be compatible with the internal market and the EEA agreement (Case No COMP/M.6576-MUNKSJÖ /AHLSTROM)**

(Text with EEA relevance)

(Only the English text is authentic)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

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(2) thereof,

Having regard to the Commission Decision of 7 December 2012 to initiate proceedings in this case,

Having given the undertakings concerned the opportunity to make known their views on the objections raised by the Commission on 21 February 2013,

Having regard to the opinion of the Advisory Committee on Concentrations,<sup>2</sup>

Having regard to the final report of the Hearing Officer in this case,<sup>3</sup>

Whereas:

## **1. THE NOTIFICATION**

- (1) On 31 October 2012 the European Commission received the notification of a proposed concentration pursuant to Article 4 of Regulation (EC) No 139/2004 involving Munksjö AB (“Munksjö”) and its shareholders and Ahlstrom Corporation

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<sup>1</sup> Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings, p. 1 (“Regulation (EC) No 139/2004”). With effect from 1 December 2009, the Treaty on the Functioning of the European Union (“the Treaty”) has introduced certain changes, such as the replacement of “Community” by “Union” and “common market” by “internal market.” The terminology of the Treaty will be used throughout this decision.

<sup>2</sup> OJ C .....201. , p....

<sup>3</sup> OJ C .....201. , p....

(“Ahlstrom and its shareholders, whereby a newly created entity (“NewCo”), which will be named “Munksjö Oyj”, will acquire sole control over Munksjö and Ahlstrom’s Label and Processing Business within the meaning of Article 3(1)(b) of Regulation (EC) No 139/2004.

## **2. THE PARTIES**

- (2) Munksjö is a Swedish-based manufacturer of high value-added paper products in several product areas (decor paper, pre-impregnated paper (“PRIP”), abrasive paper backings, electrotechnical paper, fine art paper, pulp, Spantex and thin paper). Decor paper is the most important product area and, including PRIP, accounts for around [...] % of Munksjö’s total turnover. Abrasive paper backings and electrotechnical paper account for approximately [...] % and [...] % of Munksjö’s turnover respectively. Munksjö is controlled by the fund EQT III Limited (“EQT”).
- (3) Ahlstrom is a Finnish manufacturer of high performance materials, divided in four business areas: (i) building and energy; (ii) filtration; (iii) food and medical; and (iv) label and processing. The transaction only concerns Ahlstrom’s Label and Processing Business (“ALP”). Within this business segment, the areas of overlapping activities with Munksjö (PRIP, abrasive paper backings and electrotechnical paper) account for around [...] % of ALP’s turnover. The economically most important activities of ALP concern the label and release liners business.
- (4) Munksjö and Ahlstrom are together referred to as “the Parties”.

## **3. THE OPERATION AND THE CONCENTRATION**

- (5) The transaction concerns a series of intermediate steps involving Munksjö (and its shareholders) and Ahlstrom (and its shareholders), whereby Munksjö and ALP shall be transferred to NewCo.
- (6) Upon completion of these steps, NewCo will acquire sole control over Munksjö and ALP within the meaning of Article 3(1)(b) of Regulation (EC) No 139/2004 and will not be controlled, either solely or jointly, by any of its shareholders. Ultimately, NewCo will be renamed “Munksjö Oyj” and listed on the NASDAQ OMX Helsinki Stock Exchange.
- (7) In consideration for contributing Munksjö’s business and ALP, Munksjö’s shareholders, Ahlstrom and Ahlstrom’s shareholders will receive shares in NewCo. Upon completion,<sup>4</sup> Munksjö’s current controlling shareholder EQT will hold 25% of

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<sup>4</sup> The Parties originally envisaged two separate operations, the first one consisted of the transfer of Munksjö and the European part of ALP to NewCo, while the second one would also involve the transfer of the Brazilian part of ALP to NewCo. Given that the two operations are not conditional upon each other, the Commission assessed the first operation as a standalone transaction in accordance with recital 20 of Regulation (EC) No 139/2004 and paragraphs 39 and 43 of the Commission Consolidated Jurisdictional Notice under Council Regulation (EC) No 139/400 on the control of concentrations between undertakings, OJ C 95, 16.4.2008, page 1. However, the description of NewCo's detailed in Recital (7) assumes that both operations are carried out. If only the transaction assessed in this Decision, that is to say the first operation, is completed, the following shareholdings should be considered: EQT 33%, Ahlstrom 20% and Ahlstrom’s shareholders in aggregate 33%.

the shares in NewCo. Ahlstrom will hold a shareholding of 15%, while Ahlstrom's shareholders will in aggregate hold 50% of the shares in NewCo.<sup>5</sup>

#### **4. UNION DIMENSION**

- (8) The transaction does not have a Union dimension within the meaning of Article 1 of Regulation (EC) No 139/2004 because the turnover of the Parties does not meet the thresholds set out in Article 1(2) or 1(3) thereof. According to the Parties, the transaction is reviewable under the national merger control laws of six Member States, namely Austria, Germany, Italy, Poland, Portugal, and Spain.
- (9) Following the filing of a referral request pursuant to Article 4(5) of Regulation (EC) No 139/2004 on 3 July 2012, no Member State expressed its disagreement within the 15 working day deadline. Consequently, the transaction was deemed to have a Union dimension and notified to the Commission on 31 October 2012.

#### **5. THE PROCEDURE**

- (10) Based on the results of the first phase market investigation, the Commission raised serious doubts as to the compatibility of the transaction with the internal market, in particular as concerns the markets for heavy weight abrasive paper backings and PRIP. Therefore the Commission adopted a decision to initiate proceedings pursuant to Article 6(1)(c) of Regulation (EC) No 139/2004 on 7 December 2012 ("the Article 6(1)(c) decision").
- (11) Following a request by the Parties, non-confidential versions of certain key submissions of third parties collected during the first phase investigation were provided to the Parties on 14 December and 20 December 2012.
- (12) On 17 December 2012, at the request of the Parties, the time limit for taking a final decision in this case was extended by 10 working days pursuant to the second subparagraph of Article 10(3) of Regulation (EC) No 139/2004.
- (13) The Parties submitted their reply to the Article 6(1)(c) decision on 18 December 2012.
- (14) On 11 January and 27 February 2013 respectively, the Parties were informed by the Hearing Officer of his decision to recognise the undertakings Papierfabrik August Koehler AG ("Koehler") and IKEA of Sweden AB ("IKEA") as interested third parties pursuant to Article 18(4) of Regulation (EC) No 139/2004.
- (15) On 21 February 2013 the Commission adopted a Statement of Objections pursuant to Article 18 of Regulation (EC) No 139/2004. The Parties did not reply to the Statement of Objections and did not ask for an Oral Hearing.
- (16) In order to address the competition concerns identified in the Statement of Objections the Parties submitted commitments on 19 March 2013 which were subsequently revised on 22 March 2013. The Commission launched a market test of those commitments on 25 March 2013.
- (17) On 17 April 2013 the Parties submitted a further set of commitments.

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<sup>5</sup> In this light, no single shareholder will hold a majority of the shares in NewCo post-transaction.

(18) The meeting of the Advisory Committee took place on 6 May 2013.

## **6. DESCRIPTION OF THE PRODUCTS AND VALUE CHAIN**

(19) The Parties produce paper products in various segments of the paper industry. However, their activities in the EEA overlap horizontally in (i) abrasive paper backings, (ii) PRIP and (iii) electrotechnical paper.

### **6.1. Specialty papers and commodity papers**

(20) Decor papers and abrasive paper backings are specialty papers. According to an industry report by Alexander Watson Associates ("AWA"), specialty papers account for a very small share (6.3%) of the overall paper and paperboard markets while the bulk of international paper production concerns commodity papers.<sup>6</sup>

(21) Commodity papers are traded in high volumes. They are papers with well-defined and closely matching quality requirements which are produced on large equipment, often dedicated to the production of a single grade of paper. Such commodity papers include for example sanitary tissues, newsprint and office papers.<sup>7</sup>

(22) In contrast, specialty papers are much more differentiated. According to AWA, they require *“a wide variation in required properties from application to application and even within an application or between customers serving the same application.”* Moreover, according to the AWA report, specialty papers require *“detailed and often complex technical specifications,” “long and exacting product qualifications with new customers,” “a high degree of market and product understanding and customer service,” “often either particularly light or heavy basis weight products, outside the capabilities of commodity equipment to manufacture” and “special equipment needs such as refining capabilities, high dilution formers, color systems, special drying capabilities, special size presses, coaters and high intensity calendaring.”*<sup>8</sup>

### **6.2. Production of abrasive paper backings and value chain**

(23) The term “abrasive backings” refers to materials designed to act as carriers for abrasive devices (such as grits) to produce final abrasive products (such as belts or discs). Those abrasive devices are generally used to sand or polish different substances such as wood, metals, plastics, glass, ceramics or stone.

(24) Abrasive backings are made out of several materials (such as paper, cloth, film, vulcanized fibre). Abrasive paper backings (“paper backings”) are primarily used in the production of coated abrasive products. Conversely, bonded abrasive products do not require any backing materials, because the grit is bonded into a solid form with the help of different bonding agents (such as resin or clay), resulting in final products such as grinding wheels or a polishing stones.

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<sup>6</sup> AWA, Specialty Papers & Paperboards Global Sourcebook 2013, provided by the Parties with an email dated 10 February 2013, p.38.

<sup>7</sup> Ibid.

<sup>8</sup> Ibid, pages 39 and 40.

### 6.2.1. Production of paper backings at the paper mill

## How paper is made?

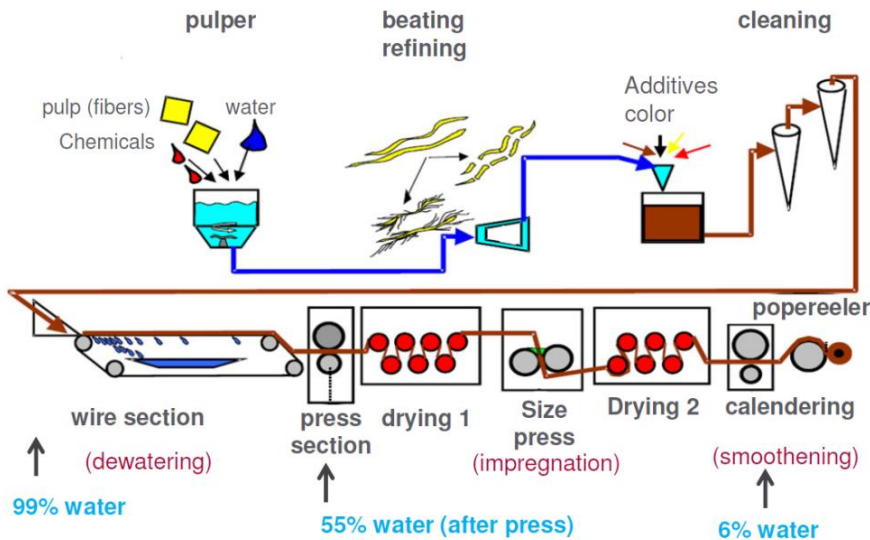
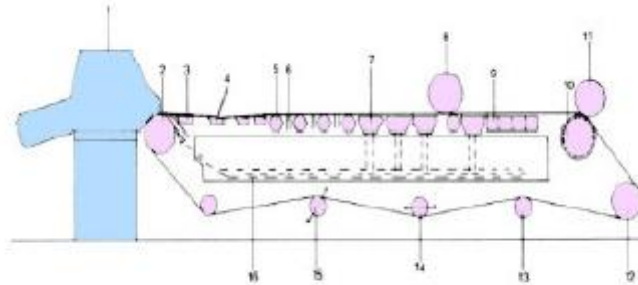


Figure 1: Paper production process<sup>9</sup>

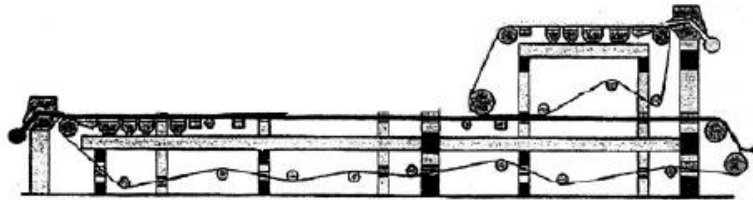
- (25) Paper backings are produced at paper mills and are based on a mixture of pulp, water and other chemicals. Pulp (that is to say cellulose fibers) is the main raw material, but chemicals can have a significant impact on the performance of paper backings. While some suppliers use virgin pulps, others may also use recycled ones. High quality paper backings are generally based on long fibers, which are sourced in bales from selected forests.
- (26) The process starts with the disintegration of pulp bales, which are submerged into water in a process called “dispersing.” At this stage, water and pulp are mixed with chemicals according to recipes designed to guarantee certain properties and performances in the desired end-use application. The mixture is then further refined in a subsequent step, which once again influences properties such as tensile strength, tear strength, density and porosity. The resulting product is cleaned and fed into the forming section of a paper machine through a headbox.
- (27) Modern papermaking assets are based on Fourdrinier machine. This machine uses a special conveyor belt, called “wire,” which starts from the headbox. That “wire” continuously spreads a layer of the mixture over the spinning wire, which in turn creates a continuous paper web. The pace of the wire can vary significantly, according to the type of paper product that needs be produced. Several models of the forming section exist. Most paper machines in the paper backings sector only have one headbox, and one wire, and produce single-layer papers. Some paper machines, however, have either twin headboxes or several cylinders and produce multi-layer papers (see Figures 2, 3 and 4).
- (28) When the mixture is spread over the wire, it still contains roughly 99% of water. To dewater it, it goes through a number of sections (such as the press section, drying

<sup>9</sup> Ahlstrom’s presentation given at the case team’s site visit to the Osnabrück plant, entitled “Paper making. Main steps” of 12 November 2012, slide 3.

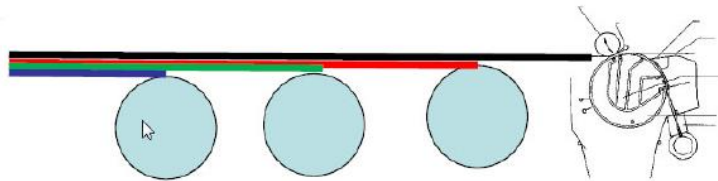
sections, calender section), the specific configuration of these sections which depends on the actual design of the paper machine. The newly formed paper is then treated to obtain a number of additional features (such as single or double barrier, anti-static, anti-slip) and calendered to adjust its smoothness to the different end applications. Finally, it is rolled, cut, and wrapped. The packaging must ensure superior protection against environmental threats. The final paper product is shipped in the shape of “jumbo reels.”



**Figure 2: One headbox paper machine<sup>10</sup>**



**Figure 3: Twin headbox paper machine<sup>11</sup>**



**Figure 4: Multi-cylinder paper machine<sup>12</sup>**

#### 6.2.2. Classification of paper backings

- (29) The abrasive paper sector has never produced an industry standard to distinguish different types of paper backings. Nonetheless, market players use a widely accepted

<sup>10</sup> Ahlstrom’s presentation given at the case team’s site visit to the Osnabrück plant, entitled “Paper making. Main steps” of 12 November 2012, slide 9.

<sup>11</sup> Ahlstrom’s presentation given at the case team’s site visit to the Osnabrück plant, entitled “Paper making. Main steps” of 12 November 2012, slide 9.

<sup>12</sup> Ahlstrom’s presentation given at the case team’s site visit to the Osnabrück plant, entitled “Paper making. Main steps” of 12 November 2012, slide 9.

classification based on basis weights or grammages. The basis weight of paper backings spans from approximately 80 to above 400 gram per square meter (“gr/sqm”) and can be broadly divided into different weight classes ranging from A to H:

Table 1: Classes of paper backings and corresponding grammages

<b>Class</b>	<b>Grammage (gr/sqm)<sup>13</sup></b>
<b>A</b>	Up to 85
<b>B</b>	90-115
<b>C</b>	120-140
<b>D</b>	145-180
<b>E</b>	185-250
<b>F</b>	270-350
<b>G</b>	400-500
<b>H</b>	Above 500

- (30) Based on the Commission’s market investigation, a market report commissioned by Munksjö in 2010 (the 2010 “Pöyry market report”<sup>14</sup>) and the Parties’ internal documents,<sup>15</sup> it is appropriate to distinguish two main categories of paper backings: (i) light weight paper backings and (ii) heavy weight paper backings. In fact, the terms light and heavy weight reflect the positioning of a given paper backing on the scale of grammage.
- (31) The Federation of European Producers of Abrasives (“FEPA”) explained that, to the best of its knowledge, the range between 160 gr/sqm and 220 gr/sqm is not commonly used in the industry and plays to some extent a minor role. Products within this range would probably be defined as “heavy D-weight” or “light E-weight.”<sup>16</sup> This is consistent with the 2010 Pöyry market report where the range [,,]\*.<sup>17</sup>

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<sup>13</sup> Email of 31 January 2013 with Federation of European Producers of Abrasives (“FEPA”). FEPA explained that some years ago there were discussions about whether an industry standard for the paper grades should be adopted. While it was decided not to introduce a standard, there is nevertheless a common understanding in the industry that the different grades roughly correspond to the grammages set out in Table 1.

<sup>14</sup> Pöyry market report entitled “Market Overview for Abrasive Base Paper” of 2 September 2010, p. 16, submitted with an email dated 20 January 2013.

<sup>15</sup> See, *ex multis*, Ahlstrom internal document, entitled “Strategic Planning 2008: Abrasives and OB4,” undated, Annex 10(H), slide 4, submitted with an email dated 18 January 2013.

<sup>16</sup> Email of 31 January 2013 with FEPA.

<sup>17</sup> Pöyry market report entitled “Market Overview for Abrasive Base Paper” of 2 September 2010, p. 7, submitted with an email dated 20 January 2013.

(32) The 2010 Pöyry market report identifies heavy weight classes as paper backings [...]\*.<sup>18</sup> Some market participants also explained that the best cut-off point between light and heavy weight paper backings would be best located between 200 gr/sqm and 220 gr/sqm. However, the Commission retained a lower cut-off point of 180 gr/sqm, as this was more favourable to the Parties.

### 6.2.3. Differences in product characteristics and end uses

(33) Light weight paper backings broadly comprise backings with a basis weight ranging from 80 gr/sqm to approximately 160 gr/sqm, covering the weight classes A – C, and potentially D. This type of paper backings is mainly used to produce abrasive products such as narrow belts, discs and sheets for sanding and polishing in several sectors (such as furniture industry, as well as DIY applications). At least three sub-segments can be identified within the wider segment for light weight paper backings: (i) non-specialized/low quality; (ii) high quality; and (iii) latex treated. In particular, light weight paper backings are particularly suited for latex saturation, which is a treatment needed to increase water resistance and necessary for sanding and polishing in wet environments (such as automotive industry). This sub-segment is particularly lucrative.

(34) Heavy weight paper backings broadly comprise backings with a basis weight ranging from 180 gr/sqm up to more than 400 gr/sqm, covering the weight classes E - G and potentially part of D. They are essentially used to produce industrial abrasive products such as wide belts and discs for heavy duty applications such as sanding metals, wood and marble. The Parties' internal documents describe the segment for heavy weight backings as the [...]\*.<sup>19</sup>

(35) While light weight paper backings generally consist of a single layer, heavy weight paper backings (also called laminates) typically consist of a multilayer structure, where two to five layers of paper are brought together on the production line of a paper machine. Not all paper machines are, however, capable of producing these backings. As explained in Recital (27), only a twin-headbox or multi-cylinder paper machine can achieve a heavy weight target grammage at an efficient production cost.<sup>20</sup>

(36) Besides the basis weight, there is also a wide range of physical properties that affect the performance of paper backings (such as tensile strength, tear resistance, smoothness, porosity, density). The interaction between basis weight and other physical properties makes a paper backing more appropriate for one end-use than another. For example, abrasive products such as wide belts to sand hard wood or metals require a backing that can endure high mechanical attrition. Light weight paper backing would be destroyed in this process. Quite to the contrary, heavy

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<sup>18</sup> Pöyry market report entitled “Market Overview for Abrasive Base Paper” of 2 September 2010, p. 16, submitted with an email dated 20 January 2013.

<sup>19</sup> Ahlstrom internal document, entitled “Strategic Planning 2008: Abrasives and OB4,” undated, Annex 10(H), slide 4, submitted with an email dated 18 January 2013.

<sup>20</sup> Theoretically, it could be possible to produce heavy weight paper backings on a single headbox machine by slowing down the pace of the wire. This would allow the headbox to spread a much higher amount of mixture on the wire. However, this would be cost prohibitive and inefficient and, ultimately, would not produce paper backings at a competitive price.



weight paper backings have high tensile strength and provide an excellent carrier for this end-use. As the Parties acknowledge in their internal documents, “[...]”<sup>21</sup>

- (37) It is widely accepted in the industry that the manufacture of heavy weight paper backings is extremely challenging. In particular, the lamination process that lies at the very heart of the backings presents a number of technical difficulties. First, the process influences the properties of the resulting backing, which in turn will impact the final abrasive product. As noted by one of the Parties’ competitors, “*The more layers a paper is made off, the more technically difficult the production process gets as the different layers can split apart when the paper is used. It is very difficult to achieve a high internal bond for heavy weight paper backings.*”<sup>22</sup> This explains why customers often actively cooperate and share knowledge with new entrants over longer periods of time (very often unsuccessfully), when they wish to qualify new suppliers.

#### 6.2.4. Paper backings applications and markets

- (38) The paper backings sector constitutes a sub-segment of the specialty papers sector and a very small niche in the broader paper industry. According to the Parties’ internal documents, the paper backings sector accounts for approximately [0-5]\*% of the specialty paper sector.<sup>23</sup> Paper backings are highly customised products, which demand extensive know-how. According to the 2010 Pöyry market report, the “[...]”<sup>24</sup>
- (39) This report explains that almost half of the European demand for paper backings in 2010 was used in the wood industry. The metal industry covered one quarter, while the automotive industry was the third largest end-user. Do-It-Yourself (“DIY”) applications were a niche segment.<sup>25</sup> In terms of coated abrasive applications, according to the Parties’ internal documents, “[...]”<sup>26</sup>
- (40) Coated abrasive products in the wood industry are essentially designed for “dry sanding,” a sanding process that exclude the presence of water, which would ultimately damage the wood. According to the 2010 Pöyry market report, “[...]”<sup>27</sup> On the other hand, abrasive products for the metal and automotive industry may also be designed for “wet sanding,” a sanding process that occurs in a wet environment and requires waterproof abrasives.

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<sup>21</sup> Ahlstrom internal document, entitled “Strategic Planning 2008: Abrasives and OB4,” undated, Annex 10(H), slide 3, submitted with an email dated 18 January 2013.

<sup>22</sup> Minutes of the conference call with Weidmann Whiteley Ltd (“Weidmann”) of 14 January 2013.

<sup>23</sup> [...] tons of abrasives paper backings out of [...] tons of specialty paper, see internal document, entitled “Strategic Planning 2008: Abrasives and OB4” of 2007-08, Annex 10(M), slide 6, submitted with an email dated 18 January 2013.

<sup>24</sup> Pöyry market report entitled “Market Overview for Abrasive Base Paper” of 2 September 2010, p. 32, submitted with an email dated 20 January 2013.

<sup>25</sup> Pöyry market report entitled “Market Overview for Abrasive Base Paper” of 2 September 2010, p. 14, submitted with an email dated 20 January 2013.

<sup>26</sup> See internal document, entitled “Strategic Planning 2008: Abrasives and OB4” of 2007-08, Annex 10(M), slide 8, submitted with an email dated 18 January 2013.

<sup>27</sup> Pöyry market report entitled “Market Overview for Abrasive Base Paper” of 2 September 2010, p. 17, submitted with an email dated 20 January 2013.

#### 6.2.5. *Parties' activities in paper backings production*

- (41) The Parties' activities overlap in the production and distribution of paper backings.<sup>28</sup> Munksjö produces paper backings with an average grammage of approximately [...] gr/sqm on its paper machines PM4 and PM8 in Arches, France. Over the last five years, these paper machines have been almost entirely dedicated to the production of paper backings. Ahlstrom produces paper backings with an average grammage of [...] gr/sqm on its paper machines PM4 and PM6 in Osnabrück, Germany. Over the last five years, these machines have produced paper backings, along with other paper products such as electrotechnical paper, release papers, poster papers and wallcover papers.
- (42) Munksjö is focused on both heavy and light weight paper backings. Around [...] % of its sales (by value) of light weight paper backings and [...] % of its total production of paper backings are latex treated.<sup>29</sup> The Parties are the two leading players in the heavy weight segment. As regards the light weight segment, Munksjö is the second player in the segment following the market leader Neenah Paper, Inc. ("Neenah"), while Ahlstrom currently plays a minor role.
- (43) Ahlstrom is primarily focused on the heavy weight segment and is active in the light weight segment only to a minor extent. It produces very limited amounts of latex treated paper backings, amounting to [...] % (by value) of all its light weight paper backings and [...] % of its total production of paper backings.
- (44) The Parties' customers can be subdivided into two main categories: (i) transformers, which bond the backing on to the grit; and (ii) converters, which "convert" the transformed product into abrasive belts, discs, sheets. While all the Parties' customers are transformers, some of them are also integrated downstream in the conversion and distribution stages. Most of these players are, however, small and medium sized enterprises ("SMEs"), with few exceptions such as 3M United Kingdom PLC ("3M"), Saint-Gobain Diamantwerkzeuge GmbH & Co. KG ("Saint Gobain") and Sia Abrasives Industries AG ("Sia Abrasives"), a subsidiary of Robert Bosch GmbH ("Bosch").

### 6.3. **PRIP production and value chain**

- (45) Decor paper is a type of surface material for decorative applications. Other decorative surface materials are veneer, varnish, lacquer and thermoplastic foils. Decor paper's end use is mainly in the furniture, interior-design and construction and renovation industries. PRIP is a specific type of decor paper.

#### 6.3.1. *Decor paper and PRIP production at the paper mill*

- (46) PRIP production at the paper mill follows a similar process to the production of other decor papers. Decor papers are essentially produced from two raw materials: pulp (mainly bleached hard wood kraft pulp) and titanium dioxide ("TiO<sub>2</sub>"). TiO<sub>2</sub> increases the hiding power and the opacity of the decor paper and decreases transparency. White decor paper grades require larger quantities of TiO<sub>2</sub>, while coloured decor paper grades require less TiO<sub>2</sub>, because additional colour pigments will be added in the production of coloured decor papers.

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<sup>28</sup> Munksjö also distributes abrasive cloth backings at a global level, but does not produce them.

<sup>29</sup> The remaining [...] % are non-latex treated.

- (47) The pulp is processed in large paper machines. The production process in the paper machines is similar to the production of paper backings as described in section 6.2.1. Pulp bales are first put in water and mixed with chemicals for dispersing. After an intermediary refining step the pulp mix is dewatered and filtered and the sheets are formed. Afterwards, the sheets are surface-treated and calendared, which brings the required smoothness to the paper.
- (48) All decor papers, including PRIP, are supplied to the customers in rolls. The widths, weights and other specific characteristics can vary depending on the type of decor paper and also between different lots of the same type of decor paper. The Parties explained that all types of decor paper, including PRIP, are mainly manufactured according to the customers' individual technical specifications. For example, according to the Parties, decor paper is available in 10 000 colours and single decor paper orders may relate to as much as 10 to 15 different required paper widths. Decor paper manufacturers do not carry a specific range of decor paper products, but produce the decor paper at the request of the customer.
- (49) Figure 5 illustrates the PRIP production process in the paper machine:

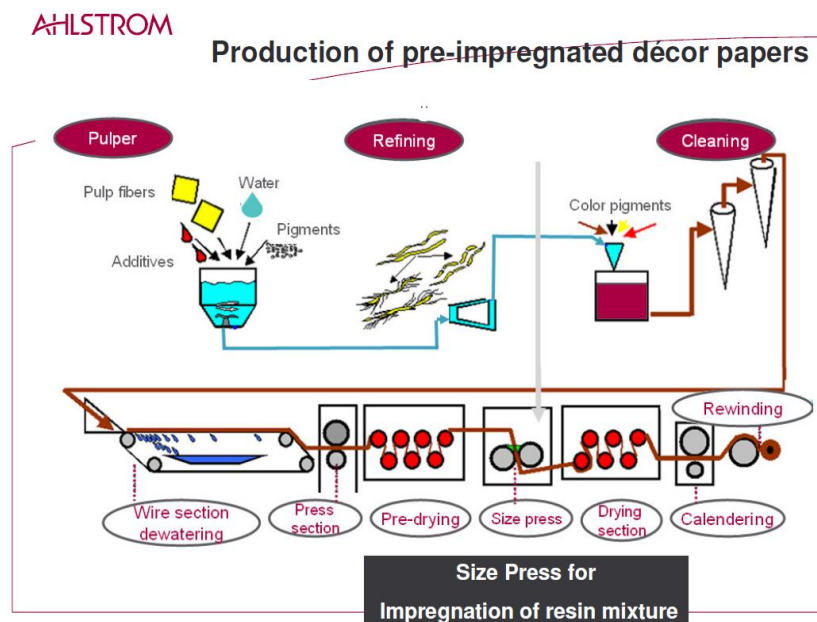


Figure 5: Schematic description of the PRIP production process<sup>30</sup>

- (50) In contrast to other decor papers, PRIP is impregnated already in the paper mill. To this end, a size press is installed in the paper machine. In the size press the sheet is impregnated with a resin. The result is a paper with a certain degree of latex impregnation which has important effects on subsequent processing steps.

### 6.3.2. Processing of decor papers

- (51) The processing steps of all decor papers are illustrated in Figure 6. Although all decor papers are ultimately used in interior design applications, there are important differences in the processing steps between PRIP and decor papers which are not already impregnated in the paper mill (“other decor papers”).

<sup>30</sup> Ahlstrom's presentation given at the case team's site visit to the Osnabrück plant, entitled “Paper making. Main steps” of 12 November 2012, slide 22.

### 6.3.2.1. PRIP processing

- (52) In a first processing step, PRIP is predominantly sold to printers who may print the PRIP with a desired design, such as wood, stone or coloured patterns, and lacquer the PRIP to apply a protective layer and to obtain the desired surface properties.<sup>31</sup> The resulting product is called “finish foil”. The printers subsequently sell the finish foil directly to furniture manufacturers. There are thus no separate impregnation and lamination steps in the processing of PRIP/finish foil.
- (53) The furniture manufacturers purchase the finish foil in rolls. Through the use of specialized equipment (“roller laminators”) the finish foil is wrapped around and glued onto the carriers, such as panels or particle boards. The roller laminators allow for the continuous use of the finish foil without the need for prior cutting. This allows for a speedy and easy processing of the finish foil. Moreover, PRIP can be wrapped around the edges of carrier material resulting in a specific design and making the use of special edge-banding paper superfluous, again resulting in lower processing costs.

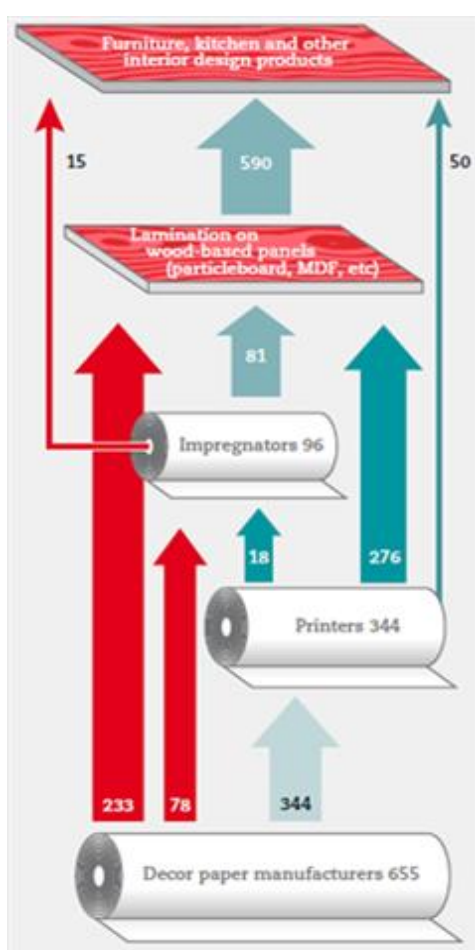


Figure 6: Process and volume flows from paper to final product<sup>32</sup>

<sup>31</sup> For further information see Technocell’s brochure on decor papers, “Dekorpapiere: Basic Facts,” under 2.5, available at [http://www.technocell-dekor.com/fileadmin/user\\_upload/Dokumente/technocell\\_dekor\\_wissen\\_02.pdf](http://www.technocell-dekor.com/fileadmin/user_upload/Dokumente/technocell_dekor_wissen_02.pdf) (retrieved on 5 February 2013) (“Technocell brochure”).

<sup>32</sup> Munksjö’s Annual Report 2011, page 13.

- (54) Furthermore, finish foil processing results in less waste of carrier material. Since the carriers are sawn to the required sizes before the finish foil is glued on, the furniture manufacturer is more flexible to re-use the pieces that are cut off by applying other types of finish foil or other decor papers to the pieces.<sup>33</sup>
- (55) Consequently, the processing of finish foil is cheaper than the processing of other decor papers because of fewer processing steps in the value chain and lower waste of carrier material.

#### 6.3.2.2. Processing of other decor papers

- (56) In contrast to PRIP processing, the processing of other decor papers requires further processing steps. These papers may first be sold to printers - if a specific design is desired - and will subsequently be impregnated with a synthetic resin, such as melamine or urea resin, and dried.
- (57) In a further processing step, the decor paper will be laminated onto wood-based panels through the use of high temperatures and pressure. Laminators use continuous presses or short cycle presses in the process.<sup>34</sup> To prevent a deformation of the carrier during the lamination process, balance paper will be used on the opposite side of the carrier. The melamine on the decor paper acts as a “thermal hardener” which melts under the high temperatures and pressure and subsequently solidifies, creating a stable connection between the decor paper and the carrier.<sup>35</sup> Other decor papers are thus self-bonding decorative surfaces as opposed to PRIP which needs to be glued.<sup>36</sup>
- (58) The lamination presses used have a fixed size to which board producers need to adapt, thus reducing the producers’ flexibility and increasing waste.<sup>37</sup>
- (59) The impregnation and lamination steps of other decor papers may be either carried out by vertically integrated companies or by different companies specializing in only one of the two processing steps.
- (60) The laminated boards will subsequently be further processed by furniture manufacturers who saw the boards and manufacture the final pieces of furniture. Again, the processing steps of lamination and board manufacturing and final furniture manufacturing may be integrated in one company or be carried out by different companies specialized in specific processing steps.
- (61) There are other types of decor papers:
- (62) High pressure laminate paper (“HPL”) is a rather heavy decor paper (80-120 gr/sqm) which will be laminated under particularly high pressure (70-100 bar). It is first

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<sup>33</sup> IKEA estimates that while waste is 10% to 12% in melamine board production this is reduced to 2% in the processing of finish foil, Minutes of the conference call with IKEA of 29 January 2013.

<sup>34</sup> For further information see the Technocell Dekor GmbH & Co. KG (“Technocell”) brochure, under 2.1 - 2.4.

<sup>35</sup> Minutes of the conference call with N.V. Chiyoda Europa S.A. (“Chiyoda”) of 4 February 2013.

<sup>36</sup> See also the document, entitled “The Basics of Pre-Impregnated Paper,” published by Claude Perrin, Dominique Estournes of Arjowiggins in 2002, available at <http://www.tappi.org/Downloads/unsorted/UNTITLED---DIL0411pdf.aspx> (retrieved on 5 February 2012).

<sup>37</sup> Minutes of the conference call with IKEA of 29 January 2013.

laminated with impregnated corestock papers before being applied to carrier boards. The two processing steps are more cost-intensive but result in a particularly scratch resistant and wear resistant surface suitable for use in kitchens and other high impact areas.<sup>38</sup>

- (63) Low pressure laminate paper (“LPL”) is a lighter decor paper than HPL (70-80 gr/sqm) and will be laminated with lower pressure (20-40 bar). LPL is used in the production of different types of furniture, laminate flooring and other interior applications.<sup>39</sup>
- (64) Print base paper (“PBP”) is a term used to describe a decor paper which is printed with different designs before being processed through high or low pressure lamination as described in the previous two Recitals.<sup>40</sup>
- (65) Balance paper is used on the back of carrier material to prevent deformation during the lamination process. Balance paper can be made from waste paper in the production of other decor papers.<sup>41</sup>
- (66) Edge-banding paper is used to cover the cutting edges of the carrier material. It is printed, impregnated and lacquered to reach the required surface properties, such as high gloss and high smoothness, and subsequently glued to the edges.<sup>42</sup>

### 6.3.3. Demand shift between PRIP and other decor paper

- (67) The decor paper market has seen a shift in demand between different types of decor paper over the past decade. PRIP consumption has grown at the expense of other decor papers, in particular LPL and PBP used in low pressure lamination. Thus, PRIP usage has increased considerably while the consumption of other decor papers has been in decline through a shift in demand towards PRIP consumption.<sup>43</sup>
- (68) This is also reflected consistently in Ahlstrom’s internal analyses of the PRIP market. For example, Ahlstrom noted in 2009: “[...]”, “[...]” and “[...]”.<sup>44</sup> Similar statements can be found in a number of Ahlstrom’s internal analyses between 2008 and 2012. According to Ahlstrom’s internal estimates, the PRIP market has been growing at a rate of approximately [...] % p.a.<sup>45</sup>

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<sup>38</sup> See the Technocell brochure, fn.31, under 2.2; Minutes of the conference call with Chiyoda of 4 February 2013.

<sup>39</sup> Ibid, Technocell brochure, under 2.1.

<sup>40</sup> In the Technocell brochure (fn. 31), Technocell does not discuss a separate product category of print base paper, but considers these as printed HPL and LPL.

<sup>41</sup> Ibid, under 2.6; see also paragraph 113 of the Form CO.

<sup>42</sup> Ibid, under 2.3; see also footnote 23 of the Form CO.

<sup>43</sup> Minutes of the conference calls with Technocell of 23 January 2013; with Malta Decor S.A. (“Malta Decor of 21 January 2013; with Chiyoda of 4 February 2013.

<sup>44</sup> Ahlstrom internal document, entitled “Strategic Planning 2009. OB3 – PRIP” of 21 April 2009, Annex 14(Z), slides 2 and 18, submitted with email dated 18 January 2013.

<sup>45</sup> Ibid, slide 3. Similar estimates can be found in a number of Ahlstrom’s internal analyses between 2008 and 2012.

- (69) This shift in demand has to a large extent been driven by furniture retailer and manufacturer IKEA.<sup>46</sup> IKEA switched from purchasing laminates, pigments and veneers for decorative surface applications to purchasing PRIP approximately 15 years ago. It is expected that IKEA will significantly increase its indirect PRIP purchases over the coming years. In their internal analyses, the Parties come to the following conclusions: “[...]”<sup>47</sup>.
- (70) Further details, including the reasons for IKEA’s current preference for PRIP-based products for some of its major furniture lines, will be explained in detail in the market definition section of this Decision, in the context of the analysis of the scope for indirect demand substitution by IKEA (see Section 7.2.2.3.B).
- 6.3.4. *Resulting differences between PRIP and other decor papers*
- (71) Although all decor papers are produced for interior design purposes, the differences in the production processes result in differences in terms of (i) product characteristics, (ii) end uses, (iii) price levels and (iv) specialization of the players in the value chain.
- (72) As regards the differences in product characteristics, PRIP has different haptic and optic qualities from other decor papers.<sup>48</sup> As PRIP is not impregnated and laminated through the use of melamine resin, it is perceived as a warmer and less glossy material that comes closer to the appearance and feeling of real wooden surfaces. Printers have also explained that PRIP quality has evolved significantly over the past five years and now offers a range of printing possibilities. At the same time, PRIP has lower product qualities than other decor paper because of its lower levels of scratch and tear resistance.
- (73) As regards differences in end uses, PRIP is perceived and treated as a low-cost product for lower quality applications. It is exclusively used for the production of furniture and wall panels. In particular, it is not suitable for the production of laminate flooring or similar high impact applications because of its lower levels of scratch-resistance.
- (74) According to customers, PRIP is thus primarily used for the production of low impact bedroom, living room and children’s furniture. In contrast, other decor papers can also be used for kitchen furniture, bathroom furniture, table tops and school furniture as well as for alternative interior applications such as laminate flooring and door panels.<sup>49</sup>

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<sup>46</sup> Minutes of the conference calls with IKEA of 8 January 2013 and of 29 January 2013; according to IKEA, its internal PRIP demand has been rising by 12% p.a.; see also the Minutes of the conference calls with Technocell of 23 January 2013; with Malta Decor of 21 January 2013; with Schattdecor AG (“Schattdecor”) of 23 January 2013; with Interprint GmbH (“Interprint”) of 23 January 2013; with Koehler of 18 January 2013.

<sup>47</sup> Ahlstrom internal document, entitled “Business Plan 2012-2015” of 2 May 2012, Annex 10(K), slide 5, submitted with an email dated 18 January 2013.

<sup>48</sup> See replies to questions 10 and 15 - Phase II questionnaire to customers (PRIP).

<sup>49</sup> See replies to questions 11 and 15 - Phase II questionnaire to customers (PRIP).

- (75) Moreover, the easier and faster processing of finish foil at the furniture making level results in overall lower costs in the production of furniture based on PRIP compared to the production of furniture based on other decor papers.<sup>50</sup>
- (76) Finally the described differences in the processing of the different decor papers also lead to a specialization of the players in the value chain. Customers and competitors have explained that due to considerable investments in the processing equipment and the required know-how, board and furniture manufacturers regularly specialize in the processing of PRIP or in the processing of other decor papers.<sup>51</sup>
- (77) Detailed evidence from the market investigation on the differences in product characteristics and end uses between PRIP and other types of decor paper will be further discussed in the market definition section of this Decision.

#### 6.3.5. *Parties' activities in PRIP production*

- (78) Munksjö has been active in PRIP production since its acquisition of ArjoWiggins SAS (“Arjo Wiggins”) in 2011.<sup>52</sup> Prior to that acquisition, Munksjö exclusively manufactured other decor papers. Munksjö currently produces PRIP in its paper machines PM31 and PM34 in Dettingen Germany with a maximum width of [...] meters (“m”) and [...] m respectively.
- (79) Ahlstrom has been active in PRIP production for many years and [...]. Ahlstrom produces PRIP on its paper machine OSN03 in Osnabrück, Germany, with a maximum width of [...] m.
- (80) The Parties sell PRIP almost exclusively to printing customers. These customers are primarily based in Germany.

### 6.4. **Electrotechnical paper production**

- (81) Electrotechnical papers, also called electrical insulation papers, are used for insulation of cables (such as high voltage submarine cables), transformers (such as for isolating the transformer core from the windings), motors, generators and bushings. Such electrical equipment generates a large amount of heat due to the concentration of electrons passing through it and must therefore be insulated in order for the electricity to be effectively distributed and to prevent short circuits.
- (82) All electrotechnical papers are made from the same raw material, which is well delignified [...]\*. They are manufactured so as to not conduct electricity and to maintain their dimensional stability even at elevated temperatures. Consequently, electrotechnical papers are able to withstand heat without losing their insulation properties.

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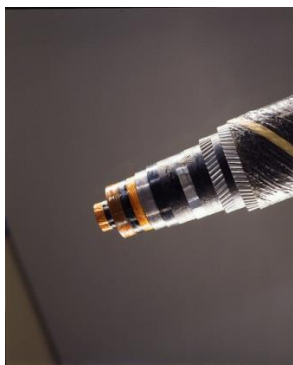
<sup>50</sup> See replies to questions 12.1 and 15 - Phase II questionnaire to customers (PRIP).

<sup>51</sup> Minutes of the conference calls with Interprint of 23 January 2013; with Impress Decor GmbH / Impress Surface GmbH (“Impress Décor”) of 21 January 2013; with Decor Druck Leipzig GmbH (“Decor Druck”) of 25 January 2013; with Chiyoda of 4 February 2013; with Likora Dekorfolien GmbH (“Likora”) of 23 January 2013; with Schattdecor of 23 January 2013; with Süddecor GmbH (“Süddecor”) of 22 January 2013; with Surteco SE (“Surteco”) of 25 January 2013; with Koehler of 18 January 2013.

<sup>52</sup> The acquisition was cleared by the European Commission on 21 February 2011, see Case COMP/M.5950, *Munksjö/Arjowiggins (Decor and abrasive business)*, OJ C96, 29 March 2011, p.4.



- (83) There are two types of electrotechnical paper: (i) oil-impregnated electrotechnical paper used for cables, transformers and bushings and (ii) dry electrotechnical paper used for rotating electrical equipment such as motors and generators.
- (84) Oil-impregnated electrotechnical papers for insulation of cables, transformers and bushings are all produced on the same machine. The papers are manufactured to be subsequently impregnated with oil by the electrotechnical paper customers in order to maximize their insulation properties.



**Figure 7: Electrotechnical paper for insulation of cables<sup>53</sup>**

- (85) In contrast, the production process for dry electrotechnical papers used for rotating electrical equipment such as motors and generators, including press papers,<sup>54</sup> is different. The applications for which these papers are used require the electrotechnical paper to be entirely dry that is to say without any impregnation fluid. Furthermore, to achieve the density required for the paper to withstand electrical load in dry conditions, the papers must be heavily compressed in the paper machine by the use of a “super calander” (a specific device used to compress the paper).
- (86) The Parties’ activities only overlap with respect to oil-impregnated electrotechnical paper. Neither Munksjö nor ALP produces dry electrotechnical paper.

## **7. RELEVANT PRODUCT MARKETS**

### **7.1. Abrasive backings**

#### *7.1.1. Parties’ arguments*

##### 7.1.1.1. Paper backings and other backing materials

##### 7.1.1.1.A. Demand-side substitutability

- (87) According to the Parties, there would be direct demand-side substitutability between different backing materials, because (i) customers purchase all types of backing materials; (ii) all backing materials undergo the same transformation and conversion process; and (iii) the same machines are used regardless of the type of abrasive backings. The Parties acknowledge that there are certain “*price differences*” between different types of backing materials.<sup>55</sup> However, they believe such differences to be minor, if the entire lifespan of a given material such as cloth is taken into account.

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<sup>53</sup> Form CO, Paragraph 57.

<sup>54</sup> A specific type of highly compressed electrotechnical papers for insulation of motors and generators.

<sup>55</sup> Form CO, Paragraph 165.

Finally, the Parties explain that some customers have in-house capabilities and can choose whether to purchase paper backings or increase in-house production of backings based on other materials.<sup>56</sup>

- (88) Moreover, the Parties argue that there would also be indirect demand-side substitutability between different backing materials, since coated abrasive products based on different abrasive backings can - to a large extent - be used for the same applications. Therefore, final customers can easily switch between coated abrasive products based on paper, cloth, film or other backing materials.
- (89) In their reply to the Article 6(1)(c) decision, the Parties contest the Commission's preliminary conclusion that paper backings form a distinct product market. They reiterate that (i) there is wide substitutability between different backing materials, (ii) the higher price of cloth is outweighed by its longer lifespan; and (iii) a reduction in cotton price would trigger a shift from paper to cloth backings.
- (90) The Parties therefore reiterate that all types of abrasive backing materials (such as paper, cloth, film, vulcanized fibre) belong to the same product market.

#### 7.1.1.1.B Supply-side substitutability

- (91) The Parties point out that the production processes relating to different types of backing materials are different. Consequently, unless a supplier of backings has made the necessary investments in equipment to produce backings of different materials, it will not be able to switch production between the said materials.
- (92) Therefore, according to the Parties, there is no immediate supply-side substitutability between backings of different materials.<sup>57</sup>

#### 7.1.1.2. Light and heavy weight paper backings

##### 7.1.1.2.A Demand-side substitutability

- (93) The Parties argue that a market segmentation between light and heavy weight paper backings has limited relevance from a demand-side perspective. For example, a given heavy weight grammage may not be substitutable with another heavy weight grammage, despite their being in the same market segment, because customers demand highly customised products and the basis weight of an abrasive backing is only one of a set of parameters that together form the exact specification required by a given customer for a specific end-use application.
- (94) In their reply to the Article 6(1)(c) decision, the Parties reiterate that this market segmentation is further blurred by the possibility of laminating two or more layers of light weight paper backings together to achieve higher grammages. In particular, they argue that (i) most customers already have lamination units, (ii) lamination is widely common in the industry, as demonstrated by the existence of combinations between different backing materials, (iii) off-line lamination allows customers to control the lamination process and achieve costs savings, and (iv) a lab trial carried out by Ahlstrom would demonstrate that [...]\*. With regard to the evidence put forward by the Commission, the Parties explain that this evidence is either unsubstantiated or irrelevant.

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<sup>56</sup> Form CO, Paragraph 166.

<sup>57</sup> Form CO, Paragraph 169.

#### 7.1.1.2.B Supply-side substitutability

(95) The Parties contest the Commission's view that producing heavy weight paper backing is difficult and requires extensive know how. They point out that (i) the entry in the last two years of two market players: Weidmann and Vilaseca S.A. ("Vilaseca"), shows that the production of heavy weight paper backings does not involve any meaningful difficulties; (ii) the presence of a multitude of small players that use paper backings as a filler further corroborates that these products are relatively easy to manufacture; (iii) the investments identified by the Commission to start producing heavy weight paper backings are overstated and unrealistic, as a simple rebuild of an existing paper machine would suffice to successfully enter the market; and (iv) just like customers, suppliers of light weight paper backings could start laminating two or more layers of light weight paper backings together to achieve higher grammages.

#### 7.1.2. Commission's assessment

##### 7.1.2.1. Paper backings and other backing materials

###### 7.1.2.1.A. Demand-side substitutability

(96) The Commission has so far never investigated the abrasive backings industry within merger control proceedings. Based on the Phase I investigation, the Commission preliminarily concluded that paper backings are generally not substitutable with other backing materials from a demand-side perspective. During the Phase II investigation, the Commission investigated this issue further.

(97) In response to the Commission's Phase II questionnaire, all customers agreed that each backing material (such as paper, cloth, film, vulcanized fibre) belongs to a separate market, because each backing material offers distinct properties, answers different needs and has a different price.<sup>58</sup>

(98) Therefore, the view of the industry suggests that paper backings are not substitutable with other backing materials, as each backing is expected to serve for a given application further down the supply chain. As explained by a large customer, "*... the choice of backing materials (i.e. paper, cloth, vulcanized fibre or other types of backing materials) to produce abrasive products is ultimately determined by the end-use application of such products.*"<sup>59</sup> This also rebuts the Parties' argument that indirect demand-side substitutability would exist between different backing materials. It has been noted that cases where a given backing material can be used for different applications are very rare.

(99) Moreover, several customers pointed out that switching between different backing materials is also unrealistic, because the market for abrasive products is a very conservative market where changes to the established patterns are not welcome. It is illustrative to quote some of those customers: "*... customers of abrasive backings are extremely conservative. They do not show flexibility and generally do not accept changes to their established purchasing patterns ... A 5-10% variation in price would not be enough to trigger any changes in the purchasing and selling patterns of this very conservative market ... The market for abrasive paper is very conservative*

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<sup>58</sup> Reply to question 7 - Phase II Questionnaire to customers (paper backings).

<sup>59</sup> Minutes of the conference call with Sia Abrasives of 25 October 2012.

*and even the smallest change can trigger customer dissatisfaction*<sup>60</sup> and *“the market for industrial abrasives [is] an extremely conservative, B2B market made up of highly customized products.”*<sup>61</sup> This is also borne out by the Parties’ internal documents: *“The abrasive market is traditionally a [...]”*<sup>62</sup>

#### Substitutability between cloth and paper backings

- (100) As regards cloth and paper backings in particular, at the end of Phase I, the Commission preliminarily concluded that substitutability between cloth and paper backings is limited. That finding was essentially based on three elements: (i) cloth and paper backings do not share the same physical properties, (ii) cloth backings might substitute paper backings only in a limited number of applications (for example in floor sanding instead of heavy weight paper backings), and (iii) within this limited number of applications, the price differential between cloth and paper backings remained too wide to be economically acceptable.
- (101) This view was based on the responses to the Phase I questionnaire, which had already provided strong indications that cloth and paper backings did not belong to the same product market. The vast majority of customers stated that paper backings were not substitutable with cloth backings, taking into account product characteristics, price and intended use.<sup>63</sup> All customers explained that there are certain applications for which only coated abrasives with a paper backing, instead of a cloth backing, can be used.<sup>64</sup> In that respect, one customer explained *“The high cost of cloth coated abrasives puts [cloth backings] out of the market in all the applications where a heavy paper backing can be used. For instance in most wood working applications.”*<sup>65</sup>
- (102) In terms of price differential, the majority of customers explained that coated abrasives with a paper backing are significantly cheaper than coated abrasives with a cloth backing and that the price differential sharply distinguishes the two backing materials.<sup>66</sup> Some customers accepted that cloth backings might have a longer life span than paper backings, which outweighs, at least partially, the significant price difference.
- (103) In their reply to the Article 6(1)(c) decision, the Parties also argue that a reduction in cotton price would push customers to switch away from paper backings and toward cloth backings.<sup>67</sup> However, the argument is directly contradicted by the responses on price-induced substitution provided by the majority of customers. As borne out by

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<sup>60</sup> Minutes of the conference call with Saint Gobain of 10 January 2013.

<sup>61</sup> Minutes of the conference call with Sia Abrasives of 25 October 2012.

<sup>62</sup> Ahlstrom internal document, entitled “Business Plan 2012-2015” of 2 May 2012, Annex 10(K), slide 13, submitted with an email dated 18 January 2013.

<sup>63</sup> Replies to question 14 - Phase I Questionnaire to customers (paper backings).

<sup>64</sup> Replies to question 18 - Phase I Questionnaire to customers (paper backings).

<sup>65</sup> Reply of Nastroflex to question 18 - Phase I Questionnaire to customers (paper backings).

<sup>66</sup> Replies to question 22 - Phase I Questionnaire to customers (paper backings).

<sup>67</sup> Reply to the Commission’s Article the 6(1)(c) Decision, Paragraph 64.

the market investigation, a permanent 5% to 10% change in relative prices<sup>68</sup>, be it a reduction in the price of cloth backings with the price of paper backings remaining constant or an increase in the price of paper backings with the price of cloth backings remaining constant, does not trigger any material switching.

- (104) Moreover, one large customer explained the following: “*In 2011, when cotton prices increased by 300% and the supply of cotton was scarce, Saint Gobain considered replacing cloth with paper. However, it did not find suitable papers to do so.*”<sup>69</sup> Therefore, even after this peak in the price of cloth backings, this customer absorbed the price increase because paper backings were not technically suitable for the applications where cloth backings were previously employed. It is telling that cotton or polyester roughly represent more than half of the cost of the final coated abrasive product with a cloth backing.<sup>70</sup>
- (105) In the context of the Phase II questionnaire, the great majority of customers explained that they would not switch to cloth backings for heavy duty applications, in the event of a permanent 5% to 10% price increase in paper backings (the price of cloth backings remaining constant). A few customers would only switch a percentage of their purchases ranging from 2% to 30%.<sup>71</sup> It is worth noting that customers were expressly asked to take into account the longer durability of cloth backings, when addressing the above question.<sup>72</sup>
- (106) When asked whether their own customers further down the supply chain would accept switching to cloth backings for heavy duty applications, customers nearly unanimously replied that this switch would not be acceptable for the following reasons: (i) technical difficulties, (ii) different physical properties and (iii) the existence of a substantial price difference between the two materials.<sup>73</sup>
- (107) The Commission also held conference calls with several customers with a view to assessing the existing competitive pressure between cloth and paper backings. Once again, customers confirmed that substitutability between cloth and paper backings can occur in a limited number of applications and, even within such applications, the price differential between the two materials makes the switch economically non-sensible. In this regard, one of the Parties’ competitors, Neenah, explained during a conference call - already in Phase I - that “*cloth and film abrasive backings [are] too expensive to be real alternatives.*”<sup>74</sup>
- (108) It is worth recalling that the Parties themselves acknowledge that cloth backings can be three to five times more expensive than paper backings.<sup>75</sup> In their reply to the

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<sup>68</sup> The permanent 5% to 10% change in relative price or price increase also refers to the small but significant and non-transitory price increase (“SSNIP”) test.

<sup>69</sup> Minutes of the conference call with Saint Gobain of 10 January 2013.

<sup>70</sup> Email exchange dated 13 February 2013 with Bamberger Kalico GmbH (“Bamberger”); and email exchange dated 14 February 2013 with Platex s.r.o (“Platex”).

<sup>71</sup> Replies to question 1 - Phase II Questionnaire to customers (paper backings).

<sup>72</sup> Replies to question 1.2 - Phase II Questionnaire to customers (paper backings).

<sup>73</sup> Replies to question 2 - Phase II Questionnaire to customers (paper backings).

<sup>74</sup> Minutes of the conference call with Neenah of 12 October 2012.

<sup>75</sup> Form CO, Paragraph 160.

Article 6(1)(c) decision, they accept that there is a “*substantial price differential*.”<sup>76</sup> Customers almost unanimously agree that cloth backings are significantly more expensive than paper ones.<sup>77</sup> Moreover, as reviewed in Recital (105), the majority of customers stated that a permanent 5-10% increase in the price of paper would be insufficient to trigger any material switching to cloth backings.

- (109) Moreover, the Parties’ internal documents confirm the analysis in the previous Recital. In particular, an internal document explains: “[...]”.<sup>78</sup> A further internal document clearly shows that, in the coated abrasive products segment, paper backings represent only [...] of the total value, despite being the first material by volume with [...]%. Instead, it is particularly telling that cloth backings rank first by value with [...]%, despite only having [...] by volume ([...] the volume of paper).<sup>79</sup> The price differential between these two backing materials seems clear. Finally, the 2010 Pöyry market report also points out: [...]”.<sup>80</sup>
- (110) In the light of the above, the Commission concludes that demand-side substitutability between cloth and paper backings is very limited.

#### Substitutability between film and paper backings

- (111) At the end of the Phase I investigation, the Commission found that the relationship between film and paper backings is almost equivalent to that existing between cloth and paper backings. In fact, the Commission preliminarily concluded that substitutability between film and paper backings is limited. That finding was essentially based on three elements: (i) film and paper backings do not share the same physical properties, (ii) film backings might substitute paper backings only in a limited number of applications (for example for some finishing purposes instead of light weight paper backings), and (iii) within this limited number of applications, the price differential between film and paper backings remained too wide to be economically acceptable.
- (112) In the context of the Phase II questionnaire, the majority of customers explained that they would not switch to film backings, in the event of a permanent 5% to 10% price increase in paper backings, if the price of film backings remained constant. Some customers would only switch a percentage of their purchases ranging from 2 to 25%.<sup>81</sup>
- (113) When asked whether their own customers further down the supply chain would accept switching to film backings, the great majority of customers replied that this switch would not be acceptable for the following reasons: (i) technical difficulties, (ii) different physical properties and (iii) the existence of a substantial price

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<sup>76</sup> Reply to the Commission’s Article the 6(1)(c) Decision, Paragraph 63.

<sup>77</sup> Replies to question 3 - Phase II Questionnaire to customers (paper backings).

<sup>78</sup> Ahlstrom internal document, entitled “Strategic Planning 2008: Abrasives and OB4,” undated, Annex 10(H), slide 3, submitted with an email dated 18 January 2013.

<sup>79</sup> Ahlstrom internal document, entitled “Welcome to the World of Abrasive Specialty Papers” of 2011, Annex 10(M), slide 8, submitted with an email dated 18 January 2013.

<sup>80</sup> Pöyry market report entitled “Market Overview for Abrasive Base Paper” of 2 September 2010, p. 10, submitted with an email dated 20 January 2013.

<sup>81</sup> Replies to question 4 - Phase II Questionnaire to customers (paper backings).

difference between the two materials.<sup>82</sup> One customer explained “*the film is too fragile, too brittle and on top of that has bad consequences on environment (solvent glue, backing...)*.” As explained at Recital (107), during a conference call Neenah explained that film and cloth backings are also too expensive to be considered sensible alternatives to paper backings.

- (114) In the light of what is stated in Recitals (111) to (113), the Commission concludes that demand-side substitutability between film and paper backings is very limited.

#### 7.1.2.1.B Supply-side substitutability

- (115) As regards supply-side substitutability, the Commission and the Parties agree that this is limited or non-existent, as the relevant machinery and production process differ according to the type of backing material. For instance, cloth backings manufacturers would not be able to switch their production to paper backings, unless significant investments were made. In addition, the majority of the Parties’ competitors indicated that competition between market players takes place within each type of backing material.<sup>83</sup>
- (116) In response to the Commission’s Phase II questionnaire, the majority of suppliers of abrasive backings agreed that each backing material (such as paper, cloth, film, vulcanized fibre) belongs to a separate market, because each backing material has distinct properties, answers different needs and has a different price.<sup>84</sup> It is illustrative to quote some competitors’ statements: “*there are totally different specifications and applications and customer needs,*”<sup>85</sup> “*Different technical properties and materials costs*”<sup>86</sup> and “*Customers need for their abrasive work certain properties that are mainly just fulfillable with a specific backer.*”<sup>87</sup>
- (117) In the light of what is said in Recitals (115) and (116), the Commission concludes that supply-side substitutability between paper backings and other backing materials is limited or even non-existent.

#### 7.1.2.1.C Conclusion

- (118) In the light of what is stated in Recitals (96) - (117), the Commission concludes that paper backings constitute a distinct product market from other backing materials.

#### 7.1.2.2. Light and heavy weight paper backings

##### 7.1.2.2.A Demand-side substitutability

- (119) Based on the Phase I investigation, the Commission preliminarily concluded that light and heavy weight paper backings belong to distinct product markets. During the Phase II investigation, the Commission further investigated this matter.

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<sup>82</sup> Replies to question 5 - Phase II Questionnaire to customers (paper backings).

<sup>83</sup> Replies to question 22 - Phase I Questionnaire to competitors (paper backings).

<sup>84</sup> Replies to question 7 - Phase II Questionnaire to competitors (paper backings).

<sup>85</sup> Reply of Cilander to question 7 - Phase II Questionnaire to competitors (paper abrasive backings).

<sup>86</sup> Reply of Weidmann to question 7 - Phase II Questionnaire to competitors (paper backings).

<sup>87</sup> Reply of Neenah to question 7 - Phase II Questionnaire to competitors (paper backings).

- (120) As an introductory remark, already in the context of the Phase I questionnaire customers unanimously agreed that light and heavy weight paper backings are not substitutable with each other. This is so because heavy weight paper backings are essentially meant to be used in heavy duty applications, where the paper backings are subject to high mechanical stress and high tensile strength is required.<sup>88</sup> Moreover, the vast majority of customers explained that there are applications where only heavy weight paper backings can be used.<sup>89</sup>
- (121) In the context of the Phase II questionnaire, customers unanimously explained that they would not switch from heavy to light weight paper backings in the event of a permanent 5% to 10% price increase in heavy weight paper backings, while the price of light weight paper backings remained constant.<sup>90</sup>
- (122) With regard to the Parties' arguments, the Commission acknowledges that, from a demand-side perspective, substitutability within the light or heavy weight segments of the paper backings market is limited. Customers may accept slightly lighter or heavier backings, but a shift in grammage, even within the same class, may be problematic. However, this finding does not call into question the unanimous consensus among customers that light and heavy weight paper backings are two distinct products. Customers agree that a distinction between light and heavy weight paper backings is necessary: "*... the abrasive paper backings market is composed of three sub-segments: (i) latex treated paper backings (for wet applications), (ii) light weight and (iii) heavy weight paper backings (both being used for dry applications).*"<sup>91</sup>
- (123) The existence of a widely accepted market segmentation between light and heavy weight is also apparent from (i) the 2010 Pöyry market report, which qualifies paper backings [...]\*<sup>92</sup> and (ii) the Parties internal documents, which consistently distinguish between light and heavy weight paper backings.<sup>93</sup> For example, Figure 8 contains the very same market segmentation indicated by Sia Abrasives.<sup>94</sup> As already explained in Recital (32), the cut off point used by the Commission to distinguish between light and heavy weight paper backings is 180 gr/sqm.

### Summary of Key Business Measures

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<sup>88</sup> Replies to question 11 - Phase I Questionnaire to customers (paper backings).

<sup>89</sup> Replies to question 15 - Phase I Questionnaire to customers (paper backings).

<sup>90</sup> Replies to question 8 - Phase II Questionnaire to customers (paper backings).

<sup>91</sup> Minutes of the conference call with Sia Abrasives of 25 October 2012.

<sup>92</sup> Pöyry market report entitled "Market Overview for Abrasive Base Paper" of 2 September 2010, p. 7-8, submitted with an email dated 20 January 2013.

<sup>93</sup> See, *ex multis*, Munksjö internal document, entitled "Munksjö Strategy" of May 2011, Annex 10(A), slide 35, submitted with an email dated 18 January 2013; and Ahlstrom internal document, entitled "Annual Plan 2011" of 8 November 2010, Annex 10(E), slide 30, submitted with an email dated 18 January 2013.

<sup>94</sup> Ahlstrom internal document, entitled "Product Family Strategy 2012-2015" of 27 March 2012, slide 11, submitted with an email dated 18 January 2013.



[...]\*

**Figure 8: Product Family Strategy**<sup>95</sup>

Off-line lamination by customers

- (124) The Parties argue that heavy weight paper backings can be efficiently produced off-line. Consequently, customers could purchase light weight paper backings and laminate two or more layers of light weight paper backings together to achieve higher grammages in the event of a permanent 5% to 10% price increase in heavy weight paper backings. The Parties, therefore, are essentially arguing that the offline lamination process (whether carried out by customers themselves or via specialized third-party manufacturers) makes light weight paper backings substitutable with heavy weight paper backings from a demand-side perspective.
- (125) In particular, the Parties refer to one of their customers, [...]\*)\*, who is already producing heavy weight papers by off-line lamination indicating that any customer could start using this alternative production method and thereby counter any attempt to raise prices in the segment of heavy weight paper backings.
- (126) In the market investigation, the great majority of customers explained that they never considered laminating together two or more layers of light weight paper backings to create heavy weight paper backings.<sup>96</sup> Few customers have an off-line lamination unit which could theoretically be used for this purpose<sup>97</sup> and, until now, these units have only been used for the production of combination material such as paper/velcro or paper/cloth materials. Finally, most customers underlined that this process, besides being technically too complex, would in any event not be economically viable.<sup>98</sup>
- (127) One customer summarized the issue as follows: *“Lamination of several layers of paper is a very complex operation: ply adhesion would be critical; it would require specific equipment and it would certainly be anti-economic. This is an odd idea.”* and *“Heavy weight paper backing 300 gsm costs €0.67/sm (antistatic, premium quality). Light weight paper backing 150 costs gsm € 0.33/sm (this price refers to paper with poorer properties compared to above 300 gsm). Lamination (acrylic or vinylic) € 0.38/sm. TOTAL 0.33+0.33+0.38= € 1.04 (non antistatic). This is an odd idea.”*<sup>99</sup>
- (128) The Commission also held numerous conference calls with customers to fully assess this method of production. In short, customers believe that off-line lamination would be technically challenging and economically non-sensible, because (i) they do not generally have the necessary knowledge in-house, (ii) most customers would need to invest in new equipment and personnel, (iii) there is no guarantee that the resulting products would be comparable in terms of quality to the Parties’ paper backings; (iv) even if some customers might be able to efficiently laminate off-line, the process would still entail an additional step and raise costs, (v) some customers might

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<sup>95</sup> Ahlstrom internal document, entitled “Product Family Strategy - Abrasive Papers” of 27 March 2012, Annex 10(L), slide 11, submitted with an email dated 18 January 2013.

<sup>96</sup> Replies to question 12 - Phase II Questionnaire to customers (paper backings).

<sup>97</sup> Replies to question 13 - Phase II Questionnaire to customers (paper backings).

<sup>98</sup> Replies to question 12 - Phase II Questionnaire to customers (paper backings).

<sup>99</sup> Reply of SAIT Abrasivi Spa (“SAIT Abrasivi”) to question 12 and 13.2 - Phase II Questionnaire to customers (paper backings).

eventually not be able to off-line laminate and have to resort to outsourcing agreements which means higher production costs and (vi) the shift to off-line lamination might take several years of hands-on experience to become a reality.

- (129) As regards [...]\*, while it is true that this undertaking indeed produces heavy weight paper backings by laminating off-line, [...]\* also explained that it is not able to achieve the same quality as the Parties' heavy weight paper backings produced "on-line." In fact, [...]\* still has to buy heavy weight paper backings from the Parties. [...]\* also pointed out that achieving acceptable results via off-line lamination entailed a long learning process, which required significant investment in terms of time, personnel and machinery.
- (130) Therefore, it is clear that the off-line lamination does not represent a viable alternative to purchasing heavy weight paper backings. Customers would not be able to quickly start laminating off-line to counter a price increase by the merged entity post-transaction. It took [...]\* several years to develop this laminated product and in [...]\*'s view it requires even the employment of personnel from the paper industry, because a manufacturer of coated abrasive products does not possess the necessary know-how.
- (131) It is also worth considering the Parties' own analysis of off-line lamination. Ahlstrom identified in a 2007-08 internal document a so-called "[...]\*" product. The document explains that [...]\*\*\*<sup>100</sup> was [...]\*\*\*.<sup>101</sup> This demonstrates that [...]\*\*\* were already studying off-line lamination in 2007 and, since then, no other customer or competitor has been able to follow suit. After so many years, only [...]\*\*\* is currently able to laminate off-line.
- (132) The Parties also put forward the argument that the off-line lamination of several layers can also be performed by specialized companies such as toll-manufacturers.<sup>102</sup> Although these players seem to be able to off-line laminate papers and achieve grammage of up to 300 gr/sqm, one customer explained that it had only used toll manufacturers for laminating different backing materials, that is to say combination materials. This customer did not believe that toll-manufacturers would be able to produce heavy weight paper backings that could compare to the quality/cost ratio or the control aspect of heavy weight paper backings produced on-line.<sup>103</sup>
- (133) Another customer confirmed that toll-manufacturers are usually involved for producing combination materials. In this regard, it would be very unusual to achieve higher grammages of paper through outsourcing off-line lamination to these players. When asked whether it was sensible to start purchasing light weight paper backings and outsource off-line lamination to toll manufacturers, this customer further stated: *"No, this would not be sensible. Reasons: Price increase for laminated backings of 50 - 100 %; Additional efforts for logistic, organizing and handling; Additional efforts for quality management; Quality and quality consistency probably worse than*

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<sup>100</sup> [...]\*\*\*.

<sup>101</sup> Ahlstrom internal document, entitled "Strategic Planning 2008: Abrasives and OB4," undated, Annex 10(H), slide 5, submitted with an email dated 18 January 2013.

<sup>102</sup> State of Play meeting on 1 February 2013.

<sup>103</sup> Email received from Ekamant Production AB ("Ekamant") dated 8 February 2013.

*a non-laminated backing of suitable grammage. Never considered as a technical solution, because generally problems of lamination processes are well known.”*<sup>104</sup>

- (134) The Commission therefore concludes that the off-line lamination of light weight paper backings to create heavy weight paper backings, by either customers or specialized toll-manufacturers, is not a viable alternative to purchasing heavy weight paper backings produced on-line. Customers would not be able to counter a price increase by switching or threatening to switch to off-line laminated paper backings. It is not considered technically possible and economically feasible, and, even if it were technically and economically feasible (*quod non*), it could not be done in a sufficiently short time frame because [...]’s experience has shown that it would need several years to be successfully deployed.
- (135) Finally, with regard to the Parties’ laboratory trial, the Commission takes the view that, regardless of its reliability, this laboratory trial is irrelevant. This is because the issue under examination is not whether the Parties are able laminate off-line with good results, which might well be conceivable since they are the two top players in the market for heavy weight paper backings, but whether customers could use that production method to impose a competitive constraint on the merged entity.
- (136) Based on the evidence, the Commission finds that it is not possible for customers to use off-line lamination to switch to laminated paper backings at no cost or a low cost and in a timely fashion.
- (137) In the light of what is stated in Recitals (119) to (136), the Commission concludes that demand-side substitutability between light and heavy weight paper backings is very limited.

#### 7.1.2.2.B Supply-side substitutability

- (138) As an introductory remark, the Parties’ arguments relating to new entries will be assessed in this Section only in so far as supply-substitutability is concerned. The substantial effects of those alleged entries will be analysed in Section 9.2, in the context of competitive constraints exercised by other competitors.
- (139) The main question to be dealt with is whether a permanent 5% to 10% price increase in heavy weight paper backings would spur suppliers of light weight paper backings (or other paper companies) to start producing the heavy weight ones. This switch should occur without significant investments and in a timely fashion in order to be described as supply-side substitutability that is relevant for market definition purposes.<sup>105</sup> During the Phase I investigation, the Commission took the view that suppliers of heavy weight paper backings could easily and timely switch to light weight ones, but not the other way round. The issue was further analysed during the Phase II investigation.
- (140) Almost all the undertakings identified by the Parties as competitors in the heavy weight segment explained that they cannot produce heavy weight paper backings as (i) the production of heavy weight paper backings demands special equipment, namely either a twin/double headbox or a multi-cylinder paper machine and (ii)

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<sup>104</sup> Email received from Hermes Schleifmittel GmbH & Co (“Hermes”) dated 12 February 2013.

<sup>105</sup> See the European Commission “Notice on the definition of the relevant market for the purposes of Community competition law,” (“Commission Notice on Market Definition”), 97/C 372/03, para. 20.

suppliers of light weight paper backings generally own single headbox paper machines. Therefore, even in the event of a permanent 5% to 10% price increase in heavy weight paper backings, they are not able to switch production to the heavy weight segment.

- (141) This is also evidenced by the Parties' internal documents, where Ahlstrom carries out an assessment of its competitors based on the type of paper machine and grammage that can be achieved on that given machine.<sup>106</sup> As shown in Figure 9, Ahlstrom and ArjoWiggins, which was acquired by Munksjö in 2011, [...]\*. In another internal document, Ahlstrom summarizes the competitive landscape as follows: "[...]"<sup>107</sup> and "[...]"<sup>108</sup>

[...]\*

**Figure 9: Ahlstrom's view on paper backing competition and offering**

- (142) Against this background, the Commission asked suppliers of light weight paper backings if they could redirect production to the heavy weight segment. Two competitors, BillerudKorsnäs and Weidmann, replied positively.
- (143) Weidmann, however, is currently trying to enter the heavy weight market and, as noted in Recital (139), suppliers of heavy weight paper backings are equipped with paper machines theoretically capable of producing both heavy and light weight paper backings. Therefore, Weidmann's reply is not representative of the situation faced by suppliers of light weight paper backings when considering a possible expansion into heavy weight paper backings; hence, no weight can be given to it.
- (144) BillerudKorsnäs' reply must be qualified in the light of the discussions held with the Commission. BillerudKorsnäs acquired its paper backings business from UPM in 2012.<sup>109</sup> Currently, BillerudKorsnäs is not able to redirect the paper machine actually used for producing light weight paper backings to the heavy weight segment. BillerudKorsnäs explained that the BillerudKorsnäs group - as a whole - does own papermaking assets theoretically capable of producing heavier papers. However, these papermaking assets are currently used for producing other paper products.<sup>110</sup> To date, BillerudKorsnäs has never considered restructuring its product portfolio and has told the Commission that its papermaking assets are not well suited to this purpose. Therefore, no relevance can be given to BillerudKorsnäs' reply as regards the question of supply-side substitutability.
- (145) In the light of what is stated in Recitals (142) and (144), the size and timing of the investments required to start producing heavy weight paper backings becomes relevant. During the Phase I investigation, Hokuetsu Kishu Paper Co., Ltd. ("Hokuetsu"), one of the very few paper companies active in the market for heavy weight paper backings, explained that "... [switching from light to heavy weight]

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<sup>106</sup> Ahlstrom internal document, entitled "Strategic Planning 2008: Abrasives and OB4," undated, Annex 10(H), slide 9, submitted with an email dated 18 January 2013.

<sup>107</sup> Ahlstrom internal document, entitled "Annual Plan 2013" of October 2012, Annex 10(G), slide 5, submitted with an email dated 18 January 2013.

<sup>108</sup> Ahlstrom internal document, entitled "Business Plan 2012-2015" of 2 May 2012, Annex 10(K), slide 25, submitted with an email dated 18 January 2013.

<sup>109</sup> See footnote 100 above.

<sup>110</sup> Minutes of the conference call with BillerudKorsnäs of 14 November 2012.

would take 1.5 years to complete, and cost approx. 10Mil euros.”<sup>111</sup> BillerudKorsnäs took the view that “For a machine with only one headbox ... installation of a new headbox is a major investment, rough estimation tens of MEUR. Time consumption would be up to a year.”<sup>112</sup> Neenah explained that “Neenah Gessner has tried to enter the Heavy weight market with light weight saturated products but has been unsuccessful with this.”<sup>113</sup>

- (146) The Commission asked suppliers of light weight paper backings to indicate in more detail the cost of adding a second headbox. The following could be noted: (i) BillerudKorsnäs explained that this cost would amount to EUR 25 to 30 million;<sup>114</sup> (ii) Domtar Inc (“Domtar”) pointed out that “It would be technically infeasible and cost prohibitive;”<sup>115</sup> (iii) according to Wausau Paper Corp. (“Wausau”) “The cost estimate would be 20-50 million US dollars;”<sup>116</sup> and (iv) Neenah explained that “It is not possible to install an additional headbox on Neenah’s paper mill. There are two restrictions: Technically impossible; If technically possible, we would not be unable to continue [...] product on the machine. So additional headboxes would result in a change of current product portfolio (sic).”<sup>117</sup> This is in stark contrast with the Parties’ view that an extra headbox (and flat wire) would cost EUR 3 million.<sup>118</sup>
- (147) The Commission also consulted Voith GmbH (“Voith”) which is a major manufacturer of, *inter alia*, paper machines, to reconcile the figures stated in the previous Recital. Voith explained that it is generally difficult to precisely estimate the cost of a rebuild, because this cost depends on the specific design of a given paper machine, as well as on other factors such as the civil work required to host the new spare parts. On average, Voith quantified this cost at around EUR 4 to 7 million.
- (148) The Commission also asked the Parties’ competitors to estimate the cost of an additional cylinder former. Only Hokuetsu provided a meaningful reply and indicated an estimate of EUR 700 000.<sup>119</sup> This is because the overwhelming majority of the Parties’ competitors do not operate multi-cylinder paper machines. Consequently, they would need to install an entirely new cylinder wire system. According to Neenah, the investment would amount to EUR 40 to 50 million.<sup>120</sup> Hokuetsu considered the investment to amount to EUR 15 million, while Voith

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<sup>111</sup> Reply of Hokuetsu to question 8 - Phase I Questionnaire to competitors (paper backings).

<sup>112</sup> Reply of BillerudKorsnäs to question 8 - Phase I Questionnaire to competitors (paper backings).

<sup>113</sup> Reply of Neenah to question 7 - Phase I Questionnaire to competitors (paper backings).

<sup>114</sup> Minutes of the conference call with BillerudKorsnäs of 14 November 2012.

<sup>115</sup> Reply of Domtar to question 24 - Phase II Questionnaire to competitors (paper backings).

<sup>116</sup> Reply of Wausau to question 24 - Phase II Questionnaire to competitors (paper backings).

<sup>117</sup> Email exchange with Neenah dated 19 February 2013.

<sup>118</sup> Reply to the Article 6(1) (c) decision, Paragraph 85.

<sup>119</sup> Reply of Hokuetsu to question 25 - Phase II Questionnaire to competitors (paper backings).

<sup>120</sup> Reply of Neenah to question 26 - Phase II Questionnaire to competitors (paper backings).

indicated EUR 10 million.<sup>121</sup> The Parties' themselves quantified the cost at EUR 10 to 15 million.<sup>122</sup>

- (149) Moreover, several competitors explained that there would be no possibility to rebuild their paper machines to start producing heavy weight paper backings. One competitor pointed out that *“To change most light weight machines to make heavy basis weights with good formation and at output for acceptable margins would require a major investment.”*<sup>123</sup> It is also telling that, according to the Parties' internal documents, [...] <sup>124</sup> [...] <sup>125</sup>. The project was not successful for UPM, which shows that the rebuild of a paper machine to enter the heavy weight segment is not as simple as advocated by the Parties.<sup>126</sup>
- (150) As regards the availability of second hand equipment, few competitors thought that theoretically some equipment might be found on the market. However, none of them provided any meaningful information to this effect. Only Wausau estimated the cost of this investment at *“20% of the cost of new equipment after refurbishing and installation.”*<sup>127</sup> If this percentage is applied to the addition of a second headbox, this would mean that Wausau, in any event, would have to invest USD 4 to 10 million. In that regard, Voith explained that, even if a fully-fledged second hand market for spare parts existed, this option would remain unrealistic because every paper machine has its own specific design and, therefore, the second hand spare part would have to perfectly fit, and be compatible with, the paper machine in which it has to be installed. According to Voith, this is very unlikely.
- (151) Regardless of the time and magnitude of these investments, which is clearly significant, customers explained that these suppliers would also have to undergo lengthy qualification processes. Even with the right equipment, competitors would not be able to start producing heavy weight paper backings in a timely fashion. It is very telling that Weidmann has been trying to qualify with customers for 18 months with little or no results, despite the fact that its papermaking assets are well suited for the heavy weight segment.<sup>128</sup>
- (152) Already in the Phase I investigation, customers explained that qualifying new suppliers can take up to two years or even longer in all segments. In this regard, the vast majority of customers explained that they cannot switch to other suppliers without incurring major costs and undergoing significant disruptions in

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<sup>121</sup> Email exchange with Hokuetsu dated 19 February.

<sup>122</sup> Reply to the Article 6(1) (c) decision, Paragraph 86.

<sup>123</sup> Reply of Wausau to question 18.1 - Phase II Questionnaire to competitors (paper backings).

<sup>124</sup> See footnote 100 above.

<sup>125</sup> Ahlstrom internal document, entitled “Strategic Planning 2008: Abrasives and OB4,” undated, Annex 10(H), slide 5, submitted with an email dated 18 January 2013.

<sup>126</sup> Reply of BillerudKorsnäs to question 20 - Phase II Questionnaire to competitors (paper backings).

<sup>127</sup> Reply of Wausau to question 28 - Phase II Questionnaire to competitors (paper backings).

<sup>128</sup> Minutes of the conference call with Weidmann of 14 January 2013.

production.<sup>129</sup> One major competitor stated that: “... customers of abrasive backings have long qualification processes (up to two years) due to the high customization of the input they want to receive. Intuitively, this seems to lead to high switching costs for customers wishing to switch to another source of supply.”<sup>130</sup> In a following conference call, this competitor also pointed out that lengthy qualification processes make large investments very risky.<sup>131</sup>

(153) In the Phase II investigation, nearly all customers stated that they do not switch often between different suppliers of abrasive backings mainly because of the time and costs related to this switch.<sup>132</sup> Even well-equipped customers, such as Saint Gobain and Sia Abrasives, explained that their qualification process generally takes more than 12 months period in all segments.<sup>133</sup> On balance, the qualification processes in the market for heavy weight paper backings seems to be complex and demanding. As noted at Recital (391), this was also confirmed by Weidmann, which is currently trying to produce high quality heavy weight paper backing.

(154) According to the evidence, the Commission concludes that supply-side-substitutability between light and heavy weight paper backings is not immediate and would require significant investments.

#### Off-line lamination by competitors

(155) According to what is stated in this Section, the Parties claim that competitors, just like customers, could start laminating together two or more layers of light weight paper backings to achieve higher grammages. As a consequence, suppliers of light weight paper backings could easily switch production to heavy weight paper backings. However, the Commission’s market investigation did not confirm this.

(156) In the context of the Phase II questionnaire, the Commission asked competitors if they had ever considered off-line lamination as an alternative to on-line production of heavy weight paper backings. Only two competitors seem to have explored or at least considered this option, that is to say UPM and Neenah.

*“Billerud never tried it, but the business that we acquired from UPM has some experience of this as they tried it long time ago with a converter. Problems associated with competitiveness of the total economy of the product as well as with technical challenges made none of the companies proceed with the project.”<sup>134</sup>*

According to Neenah, *“first studies showed that a off-line laminated product would not reach a price of 2,00 €/kg which we would see as the price target we would need to achieve to have a competitive product.”<sup>135</sup>*

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<sup>129</sup> See “pie diagram” of the replies to question 23 - Phase I Questionnaire to customers (abrasive backings), containing both confidential and non-confidential replies, Saint Gobain’s reply was not registered on the system and must be added to the pie diagram.

<sup>130</sup> Minutes of a conference call with Neenah of 12 October 2012.

<sup>131</sup> Minutes of a conference call with Neenah of 24 October 2012.

<sup>132</sup> Replies to question 56 - Phase II Questionnaire to competitors (paper backings).

<sup>133</sup> Replies to question 58 - Phase II Questionnaire to competitors (paper backings).

<sup>134</sup> Reply of BillerudKorsnäs to question 20 - Phase II Questionnaire to competitors (paper backings).

<sup>135</sup> Reply of Neenah to question 20 - Phase II Questionnaire to competitors (paper backings).

- (157) This is not surprising. As noted at Recital, manufacturers of final abrasive products and their own customers are extremely conservative and rarely accept products they are not accustomed to. Additionally, as explained in Recitals (124) *et seq.*, customers are extremely sceptical about this possibility, because (i) there is no guarantee that the resulting products would be comparable in terms of quality (namely, internal bond) to the Parties' paper backings; (ii) the price of the backings obtained through this process would probably be higher; (iii) the shift to off-line lamination may take several years of learning by doing even for the Parties' competitors.
- (158) In the light of what is stated in Recitals (138) and (157), the Commission concludes that supply-side substitutability between light and heavy weight paper backings is very limited.

#### 7.1.2.2.C. Conclusion

- (159) In the light of what is stated in Recitals (119) and (158), the Commission concludes that light and heavy weight paper backings constitute distinct product markets. For the sake of completeness, even if the Parties were to argue that a hypothetical overall market for paper backings were to be retained, this does not alter the outcome of the competitive assessment in this case.

## 7.2. Decor paper – PRIP

### 7.2.1. Parties' arguments

- (160) The Parties argue that PRIP does not constitute a distinct product market and should be included in the overall product market for decor paper. In particular, the Parties claim that there is direct and indirect demand-side substitutability as well as supply-side substitutability between PRIP and other types of decor paper.
- (161) The Parties further argue that PRIP can be substituted by light impregnated base papers and thermoplastic films.

#### 7.2.1.1. Direct demand-side substitutability

- (162) The Parties submit that there is direct demand-side substitutability between PRIP and PBP. As explained in Recital (64), PBP is a term used to describe a decor paper which is printed with different designs before being processed through high or low pressure lamination.<sup>136</sup> Direct demand-side substitutability refers to the substitutability between different decor papers from the perspective of the printers who are the immediate PRIP customers.
- (163) According to the Parties, the majority of printers purchase both PRIP and PBP and directly substitute between purchasing these two products. The Parties argue that this is because (i) both papers have equivalent qualities necessary for printing, (ii) both papers are printed in the same machines, (iii) switching generates no additional costs and (iv) both papers are mainly purchased by the same end customers, that is to say the furniture, laminate flooring and interior applications industries.<sup>137</sup>

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<sup>136</sup> The direct demand-side substitutability only refers to PBP because only PBP will be printed. In contrast, HPL/LPL as defined by the Parties are uni-coloured and not printed. See Section 0 above for the definitions of the different types of decor paper.

<sup>137</sup> Form CO, Paragraph 124.



(164) In this context, the Parties also argue that all decor papers, including PRIP, are customized products, which means that requirements in respect of smoothness, width and opacity of the paper might differ considerably between orders. Nevertheless, the Parties argue that the most important characteristic of PRIP which is intended for printing is the printability of the paper which is similar to PBP.<sup>138</sup>

#### 7.2.1.2. Indirect demand-side substitutability

(165) Furthermore, the Parties argue that there is indirect demand-side substitutability between PRIP and other decor papers. Indirect demand-side substitutability refers to the substitutability between different decor papers further downstream in the value chain, for example at the furniture manufacturing and retailing level. The Parties argue that this substitutability acts as an indirect constraint on upstream producers.

(166) According to the Parties, PRIP and other decor papers (mainly HPL, LPL, PBP) are used for the same end applications, for example the production of kitchens, table tops and cabinets. The only difference would lie in the different processing steps through which they move within the decor paper value chain, as described in section 6.3.2.<sup>139</sup>

(167) Furthermore, the Parties claim that there is no substantial price difference between finish foils and wooden panels after impregnation and lamination. At the same time, they acknowledge, however, that finish foil is “*typically slightly cheaper*” than the laminated wooden panel mainly due to the lower heat and scratch resistance associated with the PRIP based finish foil.<sup>140</sup>

(168) The Parties also concede that finish foil production results in less waste of wood because producers glue the finish foil on to the already cut-to-size wooden panels. Any waste therefore consists mainly of finish foil. In contrast, laminated wooden panels are purchased and subsequently cut-to-size, resulting in waste of wood because the cut-off pieces of laminated wooden panels cannot be reused for other purposes. If reuse could be possible, it would be only to a limited extent.<sup>141</sup>

(169) Overall, however, the Parties claim that the end-customers in the furniture, laminate flooring and interior applications industries can substitute finish foils for laminated wooden.<sup>142</sup> The end-customer’s choice would depend on which option is cheaper. Relative price changes would thus result in switching, leading to indirect substitution between PRIP and other types of decor paper.<sup>143</sup>

(170) The Parties cite two examples of switching between PRIP and other decor papers by indirect customers.

(171) First, according to the Parties, furniture maker and retailer IKEA to a large part switched from purchasing laminated wooden panels to finish foil some years ago. IKEA now purchases both laminated wooden panels and finish foils for the

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<sup>138</sup> Form CO, Paragraph 106; reply to the Commission's Article 6(1)(c) Decision, 7 December, submitted with an email dated 18 December 2012, Paragraph 6.

<sup>139</sup> Form CO, Paragraph 126.

<sup>140</sup> Form CO, Paragraph 130 and Footnote 33.

<sup>141</sup> Form CO, Paragraph 129.

<sup>142</sup> Form CO, Paragraph 129.

<sup>143</sup> Form CO, Paragraph 131.

production of their different furniture lines. The Parties submit that if IKEA saw an economic advantage in purchasing laminated wooden panels instead of finish foil it would most likely switch back to purchasing laminated wooden panels.<sup>144</sup>

- (172) Second, according to the Parties, the Classen Industries GmbH (“Classen”), a manufacturer of laminate flooring, has switched back and forth between the use of finish foils and laminated wooden panels. Historically, Classen purchased printed PBP to produce low pressure laminated boards for laminate flooring. In 2006, however, Classen decided to invest in the necessary machinery and to switch to producing a large share of its laminate flooring with PRIP-based finish foils. The Parties further explain that Classen did not achieve its target volumes of laminate flooring based on finish foil and found that focusing on LPL-based flooring was more cost efficient. Thus, Classen decided in 2009 to switch back to LPL-based laminate flooring.<sup>145</sup>

#### 7.2.1.3. Supply-side substitutability

- (173) The Parties argue that there is supply-side substitutability. They refer to the Commission’s finding in the *Munksjö/Arjowiggins*<sup>146</sup> case of 2011 that there is a high degree of supply-side substitutability between HPL, LPL, PBP and balance paper. According to the Parties, subject to certain initial investments, the degree of supply-side substitutability is just as high between PRIP and other types of decor paper.
- (174) The Parties submit that PRIP is made from the same raw materials and is produced on the same production line as other decor papers.<sup>147</sup> Therefore, they argue that switching production between PRIP and other decor papers in the same paper machine could be done on a regular basis, with an overall switching time usually not exceeding three hours and at virtually no costs.<sup>148</sup>
- (175) However, the Parties also acknowledge that in order to be able to produce PRIP, a decor paper machine needs to be equipped with a size press. A size press is a type of specialized equipment installed in the paper machine which impregnates the paper sheet with a resin (see Figure 5 in Section 6.3.1). Without a size press, switching to producing PRIP is not possible. According to the Parties, the cost of a size press is approximately [...]\*.<sup>149</sup>
- (176) The Parties also acknowledge the Commission’s finding in the Article 6(1)(c) decision that the only decor paper competitor who currently has a decor paper machine equipped with a size press is Technocell. Technocell is currently the only other major PRIP producer.

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<sup>144</sup> Form CO, Paragraph 132.

<sup>145</sup> Form CO, Paragraph 133.

<sup>146</sup> Commission Decision of 21 February 2011 in case No COMP/M.5950 - *Munksjö/Arjowiggins (Decor and abrasives business)*.

<sup>147</sup> Form CO, Paragraph 136.

<sup>148</sup> Reply to the Commission’s Article 6(1)(c) Decision, 7 December, submitted with an email dated 18 December 2012, Paragraph 5.

<sup>149</sup> This would include costs associated with additional bins and mixing agents required for the production of the resin applied in the paper production process as well as costs for installation, *ibid*, Paragraph 23.

(177) However, referring to both supply-side substitutability and potential entry, the Parties argue that alternative producers could start PRIP production. The Parties submit that its decor paper competitor Cartiere di Guarcino SpA. (“Cartiere di Guarcino”) already has two paper machines equipped with size presses.<sup>150</sup> Furthermore, they argue that Koehler and other competitors could invest in a size press and start production within approximately 6 to 9 months.<sup>151</sup> The Parties also claim that both Cartiere di Cuarcino and Koehler have the technical know-how to produce PRIP.<sup>152</sup>

#### 7.2.1.4. Substitutability with non-decor paper products

(178) The Parties also argue that PRIP can be substituted with light impregnated base papers or thermoplastic films.

(179) The Parties claim that light impregnated base papers are gaining importance and already exert competitive pressure on PRIP in end applications such as panels for walls and ceilings. The Parties specifically refer to the activities of BillerudKorsnäs.<sup>153</sup> According to the 2010 Pöyry market report submitted by the Parties, [...]\*.<sup>154</sup>

(180) Furthermore the Parties submit that customers might use thermoplastic films as a substitute for PRIP. Thermoplastic films could be based on for example polypropylene (“PP”) or polyvinyl chloride (“PVC”). The Parties cite the specific examples of customers Süddekor GmbH (“Süddekor”) and Interprint, for its business in the United States.

#### 7.2.2. Commission’s assessment

(181) In the Article 6(1)(c) decision, the Commission preliminarily concluded that there were indications that PRIP constitutes a distinct product market because of a lack of both demand-side and supply-side substitutability.

(182) In the second phase market investigation, the Commission investigated the relevant product market definitions further. The Commission took into account the practice in previous cases, the results of the market investigation regarding both demand-side and supply-side substitutability as well as the Parties’ approach to the decor paper markets as resulting from their internal documents.

##### 7.2.2.1. Precedents

(183) In *Munksjö/Arjowiggins*,<sup>155</sup> the Commission has taken the view that the relevant product market for the competitive assessment in that case was the market for decor paper, including in particular HPL, LPL, PBP and balance paper.

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<sup>150</sup> Ibid, Paragraph 26.

<sup>151</sup> Reply to the Commission’s Article 6(1)(c) Decision, 7 December, submitted with an email dated 18 December 2012, Paragraphs 31 and 32.

<sup>152</sup> Ibid, Paragraphs 26 and 31.

<sup>153</sup> Ibid, Paragraph 56.

<sup>154</sup> Pöyry report, “Independent study of the decor paper and abrasive base paper industry,” page 10, submitted by the Parties with an email dated 28 January 2013.

<sup>155</sup> Commission Decision of 21 February 2011 in Case No COMP/M.5950 - *Munksjö/Arjowiggins (Decor and abrasives business)*.

- (184) In its assessment, the Commission pointed to existing price differences between the different types of decor paper, including PRIP. The Commission also found that the production of PRIP requires an investment to equip decor paper machines with a size press. Therefore, the Commission concluded that there was only one-way supply-side substitutability given that PRIP suppliers could switch to supplying other decor papers but not vice versa.<sup>156</sup>
- (185) However, the Commission left open whether there was a distinct product market for PRIP, because the issue had no impact on the outcome of the competitive assessment in the *Munksjö/Arjowiggins* case. Only one of the parties, ArjoWiggins, was active in PRIP production and consequently no overlap existed in PRIP.<sup>157</sup>
- 7.2.2.2. Direct demand-side substitutability
- (186) The evidence collected during the first and second phase market investigation confirms the Commission's previous finding that the direct demand-side substitutability at the printing level of the value chain is at best limited.
- (187) The printers, who are the direct first customers of the decor paper manufacturers, could generally process both PRIP and other decor papers interchangeably according to customer orders. However, the decision between the use of PRIP and other decor papers ultimately does not lie with the printers themselves. It is the printers' customers, the board and furniture manufacturers, who decide on the type of decor paper to be used. The printers purchase decor papers following the orders from their customers and subsequently print the decor papers with the desired designs without any relevant scope for independent purchasing decisions.<sup>158</sup>
- (188) Accordingly, the vast majority of direct customers have indicated that they would not switch any of their purchase of PRIP to any other type of decor paper in reaction to a permanent 5% to 10% increase in the relative price of PRIP.<sup>159</sup> Additionally, the vast majority of respondents also explained that they would not switch their purchases away from PRIP towards less expensive types of decor paper or non-decor paper products.<sup>160</sup>
- (189) Finally, Koehler's past experience is indicative of demand-side substitutability. When Koehler stopped producing PRIP in 2002, it lost the business of its PRIP customers completely. None of Koehler's PRIP customers switched to other decor paper products produced by Koehler.<sup>161</sup> This consideration is also relevant to indirect demand-side substitutability, which is further discussed in Section 7.2.2.3.

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<sup>156</sup> Ibid, Paragraphs 22, 25 and 26.

<sup>157</sup> Ibid, Paragraph 27.

<sup>158</sup> Minutes of the conference calls with Chiyoda of 4 February 2013; with Impress Decor of 21 January 2013; with Interprint of 23 January 2013; with Likora of 23 January 2013; with Schattdecor of 23 January 2013; with Süddekor of 22 January 2013; with Surteco of 25 January 2013.

<sup>159</sup> Replies to question 20 - Phase II questionnaire to customers (PRIP).

<sup>160</sup> Replies to question 19 - Phase II questionnaire to customers (PRIP).

<sup>161</sup> Minutes of the conference call with Koehler of 18 January 2013.

- (190) As it is apparent that direct customers are not able to make independent purchase decisions in reaction to a permanent 5% to 10% price increase. The Commission concludes that there is no direct demand-side substitutability.

#### 7.2.2.3. Indirect demand-side substitutability

##### 7.2.2.3.A Limits to the scope for indirect demand substitution

- (191) The evidence obtained by the Commission indicates that there are substantial economic limits to the scope for indirect demand substitution between PRIP and other types of decor paper. In particular, the evidence indicates that switching between the usage of PRIP-based finish foil and standard decor paper (such as PBP, LPL and/or HPL) at the furniture manufacturing level entails significant economic costs. These costs are either borne directly by the furniture manufacturers, or can be partially financed by major retailers as in the case of IKEA.
- (192) These switching costs significantly limit the scope for indirect demand substitution of different types of decor paper, in particular substitution by furniture manufacturers.
- (193) Moreover, the differences in product characteristics and costs between different types of decor paper further limit the likelihood of indirect demand substitution between PRIP and other types of decor paper.
- (194) The evidence obtained by the Commission on the limits for indirect demand substitution is summarised in Section 7.2.1.3.C, starting with evidence on IKEA's specific role in the value chain, and then turning to the more general evidence on indirect demand-side substitution provided by the Parties' direct customers and competitors, including those active in the wider decor paper market.

##### 7.2.2.3.B Importance of IKEA as an end-consumer of PRIP-based products

- (195) As part of its investigation, the Commission contacted IKEA in order to assess the Parties' claims on the feasibility of indirect demand substitution. IKEA's decision to switch some of its purchases from standard decor paper to PRIP for some of its products is the main example of indirect demand substitution put forward by the Parties.<sup>162</sup> Therefore, the evidence from IKEA is particularly important in order to assess the Parties' claims.
- (196) Moreover, there is extensive evidence that IKEA has been one of the key drivers behind the recent increase in the consumption of PRIP, and is likely to remain so in the future.
- (197) This is recognised in the Parties' own internal documents. For example, a strategic document from Ahlstrom of April 2009 describes the "*value chain dynamics*" for PRIP, identifying the fact that [...]\*, and also that [...]\*.<sup>163</sup> In later documents from October 2012, Ahlstrom notes that "[...]\*" .<sup>164</sup>

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<sup>162</sup> Form CO, Paragraph 132, and reply to the Commission's Article 6(1)(c) Decision, 7 December, submitted with an email dated 18 December 2012, Paragraphs 7 and 8.

<sup>163</sup> Ahlstrom internal document, entitled "Strategic Planning 2009. OB3 – PRIP" of 21 April 2009, Annex 14(Z), slide 18, submitted with an email dated 18 January 2013.

<sup>164</sup> Ahlstrom internal document, "Annual Plan 2013. Business Unit Processing" of October 2012, Annex 10(G), slide 26, submitted with an email dated 18 January 2013.

- (198) Similarly, an internal Munksjö document from April 2011 contains [...]\*, with the comment that “[...]”.\*”<sup>165</sup> [...]\*. A later Munksjö document from October 2011, contains a discussion of [...]\* cited by Munksjö on the same slide.<sup>166</sup>
- (199) IKEA’s importance as an end consumer of PRIP is also recognised by IKEA itself. IKEA has explained that PRIP is an essential part of its “foil on board” furniture products, which is part of the “material area flatline”. The “material area flatline” is the largest business of IKEA (accounting for approximately 30% of IKEA furniture sales), and “foil on board” is in turn the largest category within IKEA’s “material area flatline” business, representing roughly two thirds of this business. Most “foil on board” products are based on PRIP, including some of IKEA’s most important furniture products, mainly PAX, BILLY and BESTÅ.<sup>167</sup>
- (200) IKEA estimates that its demand for finish foils has increased by over 10% per annum over the past 10 years, and that it currently constitutes a significant share of the worldwide demand.<sup>168</sup> The growth in consumption of PRIP-based foils by IKEA is due to its recent conversion of major ranges such as PAX from standard decor paper (LPL) to PRIP, coupled with the overall growth of IKEA’s sales.<sup>169</sup>
- (201) The Parties’ direct customers and competitors also stress the importance of IKEA as a strategic trend-setter in the market for PRIP. IKEA’s decisions reflect a long-term trend and are subsequently followed by other furniture manufacturers. According to market players, business with IKEA is growing significantly and growing demand has resulted in PRIP capturing volumes from other decor papers.<sup>170</sup>
- (202) Therefore, it is concluded that IKEA has been, and is likely to continue to be, a key player in driving developments in the market for PRIP, and that it accounts for a significant share of total consumption of PRIP. The Commission therefore attaches particularly important probative value to the evidence put forward by IKEA on its ability to engage in indirect demand substitution between PRIP and other types of decor paper.

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<sup>165</sup> Munksjö internal document, entitled “An introduction to pre-impregnated paper (PRIP). Sales Workshop Unterkochen” of 19 April 2011, Annex 14(B), slide 10, submitted with an email dated 18 January 2013.

<sup>166</sup> Munksjö internal document, entitled “Coordination Meeting for pre-impregnated papers business: Sales/Marketing/TCS – R&D – Production” of 24 October 2011, Annex 14(C), slide 14, submitted with an email dated 18 January 2013.

<sup>167</sup> PAX furniture is currently the biggest single article in terms of PRIP consumption, followed by BESTÅ. Purchases of PRIP-based foil represent 10% to 15% of the final cost of foil on board products, and are the second largest cost category for those products.

<sup>168</sup> See in particular the IKEA Presentation “PRIP in IKEA” of 8 January 2013, slide 6, and the minutes of the conference call with IKEA of 8 January 2013.

<sup>169</sup> Reply of IKEA to question 8 - Phase II Questionnaire to end customers; IKEA Presentation “PRIP in IKEA” of 8 January 2013, and the minutes of the conference call with IKEA of 8 January 2013.

<sup>170</sup> Minutes of the conference call with Chiyoda of 4 February 2013; with Decor Druck of 25 January 2013; with Likora of 23 January 2013, with Technocell of 23 January 2013; with Koehler of 18 January 2013; and with Malta Decor of 21 January 2013.

### 7.2.2.3.C Evidence from IKEA on its ability to engage in indirect demand-side substitution

- (203) IKEA has provided extensive evidence to the Commission on its position in the overall value chain for PRIP, and its ability to substitute PRIP-based products.<sup>171</sup>
- (204) IKEA has explained that it has gradually switched from purchasing melamine boards (or laminates) to purchasing PRIP-based finish foil, at first only for the BILLY product, and more recently also for other major products such as PAX. Other major furniture lines that use finish foil include BESTÅ, which has recently been converted from low base weight papers (“LBWP”) and the new EXPEDIT.
- (205) The conversion of PAX from standard decor paper to PRIP-based finish foil was initiated by IKEA in 2007 after a two-year study, and it has just been completed, with the exception of Russia, due to supply constraints.
- (206) IKEA also explained that for product lines where IKEA uses PRIP, no other types of decor paper are employed. IKEA does not alternate between PRIP and other decor paper for a given product line (for example BILLY or PAX) nor between countries. There are only some exceptions to this practice. For example, IKEA does not use PRIP for PAX in Russia, due to lack of relevant capacities.

#### Benefits of PRIP and rationale for the conversion

- (207) IKEA’s strategic change towards PRIP was driven by the superior properties of PRIP relative to other decor paper in terms of appearance, efficiency and costs. In particular, IKEA stated that PRIP has several advantages and unique properties over other materials, including the possibility of foil wrapping, flexibility, superior surface feeling, and suitability for efficient large scale industrial set-ups.<sup>172</sup>
- (208) In terms of the manufacturing process, IKEA estimates that using finish foil results in significantly lower wastage than standard decor paper, (from 10% to 12% of the surface, to just 2%). This is because the high-capacity short-cycle presses required for melamine boards have a fixed size, which board producers need to adapt to and which significantly reduces flexibility relative to integrated complete lines that are used to process finish foil. Melamine sheets have also fixed dimensions (1.4 to 1.8m in width), and are significantly narrower than finish foil which measure up to 2.7 m in width.
- (209) Moreover, significantly higher processing speeds can be achieved with finish foil. Achieving the same speed for laminates would require very expensive machinery that only a limited number of suppliers can provide.
- (210) Furthermore, IKEA has been developing a new “light weight carrier” which are either boards that are hollow on the inside or boards with adapted density.<sup>173</sup> The use of light weight carriers makes the product much lighter and easier to handle. Moreover, light weight carriers require less raw material and reduces transport costs

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<sup>171</sup> The evidence summarised in the rest of this sub-section is based on the minutes of the two conference calls with IKEA of 8 and 29 January 2013 and the slide presentation provided by IKEA, of 8 January 2013, unless otherwise indicated.

<sup>172</sup> Reply of IKEA to question 9 - Phase II Questionnaire to end customers.

<sup>173</sup> A certain share of PAX production is already today based on these adapted boards, and PAX conversion is on-going in the other remaining markets. Another major PRIP/LBWP range, BESTÅ, has been developed specifically to use hollow board.

and CO<sub>2</sub> emissions. PRIP is the only paper with which the use of this light weight carrier is possible.<sup>174</sup> Melamine paper would require a 40 bar short cycle press and the hollow boards would not stand this pressure. Light weight carriers are therefore not suitable for kitchen applications. IKEA's new strategy of moving towards these light weight boards thus requires the use of PRIP.

#### IKEA's need to build a supply chain around PRIP

- (211) IKEA's switch to PRIP for PAX was implemented gradually, first in Italy, then France, Sweden, Germany and thereafter in other countries. IKEA could not switch everything at once given supply chain constraints and the logistics involved. In particular, the switch to PRIP based finish foils for PAX meant that IKEA had to essentially build a new supply chain worldwide for PAX given that there was not enough existing capacity to process PRIP.
- (212) The need to build a new supply chain was based on the fact that it is not possible to process PRIP based finish foils with the same machinery that processes melamine paper. IKEA estimates that the cost of investing in new machinery to process PRIP-based finish foil is at least EUR 30 million euros, for just the machinery investment in one standard factory. IKEA has 5 PAX factories in the EEA, some of which are double the size of a standard factory or larger.
- (213) Given the large volumes of PAX, becoming part of the PAX supply chain essentially meant that many furniture manufacturers had to build new factories or separate production lines to process PAX based on PRIP. IKEA itself invested in a large factory in Sweden which is highly automated and custom made to manufacture PAX on the basis of PRIP.
- (214) IKEA has underpinned the required investment in its supply chain, either directly (for instance through its furniture manufacturing subsidiary Swedwood Group, "Swedwood"), or indirectly through long-term volume commitments. In particular, IKEA entered into long-term (3-7 years) volume commitments with furniture manufacturers willing to make the necessary investments.<sup>175</sup> As part of its long-term volume commitments, IKEA undertakes to compensate the manufacturers if its purchases fall below the volume guarantee, either through an order for a separate product, or through monetary compensation. Partly as a result of these contractual commitments, IKEA has an incentive to keep the capacity utilisation in its value chain as high as possible, since otherwise it has to pay for the spare capacity itself.
- (215) IKEA has around 20 to 30 furniture suppliers in its supply chain, mostly based in the EEA. For most of these furniture manufacturers IKEA is currently either the largest or the only customer.
- (216) Whilst IKEA has made a conscious business decision to not interfere with market dynamics and competition in the overall supply chain, it does direct the investment in its supply chain at a technical level, by specifying the required product design for its furniture, including the fact that only PRIP-based foil should be used in specific

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<sup>174</sup> See also, *ibid*, reply to question 12.1.

<sup>175</sup> IKEA's volume commitments also include performance improvement obligations (reflecting the expected learning curve effects) and indicate a certain base price that can be adapted in the presence of performance improvements. Additionally, these contracts contain price indexation clauses whereby prices can be raised if the price of the raw material goes up.



product lines. IKEA does not tell its furniture producers which type of PRIP to use or from which foil or PRIP producer to buy but does recommend a number of foil producers/printers per product. If IKEA buys products from new furniture producers, IKEA checks the quality and certifies the supplier from a quality control perspective.

- (217) IKEA stated that it largely contributed to developing the technology and in covering the pioneering costs of PRIP's large scale introduction into the furniture industry. In fact, in IKEA's assessment when the decision to switch to PRIP was taken, originally the costs of the final products based on PRIP were in line with those based on melamine boards. However, having worked with the furniture manufacturers to improve technology, processing speed, and efficiency, the final product is now significantly cheaper.
- (218) IKEA also incurred switching costs at the retail level during the switch to PRIP for its PAX furniture line. This related to the need to empty its sales channel of the previous design, and adapt and update its showrooms (due to the undesirability of exhibiting PAX based on PRIP and PAX based on other decor paper side-by-side in a store).

#### Lack of indirect demand-side substitutability by IKEA

- (219) From IKEA's point of view, it would not be possible to substitute PRIP with other kinds of decor paper. In particular in relation to laminates, IKEA stated that they are generally more expensive, have a slower production process, do not allow for wrapping, have limited surface effects, and according to customers result in a surface that feels cold and synthetic. As a result of these considerations, IKEA stated that there is "*no real substitute [for finish foil] in the present.*"
- (220) Moreover, there would be significant switching costs at the furniture manufacturer level if IKEA were to switch back to other decor paper from PRIP, for example if there were to be a price increase. In particular IKEA stated that "*refitting the factories to work with different surface materials means needs for investments in billion euro magnitude, not manageable by many but the strongest players.*"<sup>176</sup>
- (221) In the event of a switch away from PRIP, IKEA itself would, in addition to losing the direct investments made, also incur significant switching costs relating to the need to empty its sales channels of PRIP based products, and to adapt its exhibitions in the showrooms. Although IKEA updates its showrooms on regular basis, the planning is done one year in advance and changing the planning would be an enormous task.

#### Commission's conclusion on the IKEA evidence

- (222) In the light of what is stated in this Section, the Commission concludes that IKEA as one of the main buyers of PRIP and a trendsetter in the industry would not be able to engage in indirect demand-side substitution.

#### 7.2.2.3.D Evidence from the Parties' direct customers and competitors

- (223) The evidence obtained by the Commission from the Parties' direct customers and competitors, including those active in the wider decor paper market, provides further support to the evidence from IKEA that the ability of end customers to engage in indirect demand substitution is highly constrained.

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<sup>176</sup> Ibid, reply to question 42.4.

- (224) In their evidence to the Commission, several printers and decor paper competitors have highlighted the differences in product characteristics, end uses, final costs and production processes between PRIP and standard decor paper.
- (225) The differences in product characteristics and end uses were mentioned explicitly, during the market investigation, by most of the responding competitors and direct customers. Market players stressed differences between PRIP and other types of decor paper in terms of surface feeling, surface resistance, foil-wrapping and cost.<sup>177</sup>
- (226) The market investigation also supports the fact that there are significant differences in final prices between products based on standard decor paper, and finish foil. For example, Decor paper competitor Malta Decor estimates that the price difference between melamine-based products and PRIP-based finish foil is in the range of 10-30%.<sup>178</sup> Other participants raise the same issue without directly quantifying the price differences.<sup>179</sup>
- (227) The fact that there are significant differences in final prices between products based on standard decor paper and based on finish foil is confirmed by Ahlstrom which recognized that “[...]”<sup>180</sup>
- (228) The market investigation has also shown that a majority of the biggest direct customers of the Parties consider that the processing chains for PRIP and other types of decor paper are significantly different, implying that switching PRIP to other decor papers and vice versa would entail substantial costs for furniture manufacturers.<sup>181</sup>
- (229) As part of its market investigation the Commission has also asked the Parties’ main direct customers whether in their opinion PRIP could be used interchangeably or substituted with other types of decor paper for some applications by the end-customers.

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<sup>177</sup> Chiyoda’s reply to question 12.1 of the Phase II questionnaire to customers (PRIP) and minutes of the conference call with Chiyoda of 4 February 2013; Minutes of the conference call with Schattdecor of 23 January 2013; Minutes of the conference call with Koehler of 18 January 2013; Minutes of the conference call with Decor Druck of 25 January 2013; Minutes of the conference call with Technocell of 23 January 2013; Minutes of the conference call with Malta Decor of 21 January 2013; Minutes of the conference call with Interprint of 23 January 2013; Minutes of the conference call with Likora of 23 January 2013; and Minutes of the conference call with BillerudKorsnäs of 21 January 2013.

<sup>178</sup> Minutes of the conference call with Malta Decor of 21 January 2013.

<sup>179</sup> Minutes of the conference call with Süddekor of 22 January 2013, Minutes of the conference call with Koehler of 18 January 2013, Minutes of the conference call with Technocell of 23 January 2013, Minutes of the conference call with Schattdecor of 23 January 2013 and Surteco’s reply to question 12.1 of the Phase II questionnaire to customers (PRIP).

<sup>180</sup> Ahlstrom internal document, PRIP marketing material entitled “Ahlstrom pre-impregnated decor paper. One step ahead,” Annex 15(E), page 3, submitted with an email dated 18 January 2013.

<sup>181</sup> A number of market participants provided evidence to the Commission that the furniture manufacturers regularly specialise in the processing of PRIP and that of other decor paper, due to the considerable investments required – Interprint’s reply to question 20.1 – Phase II questionnaire to customers (PRIP); see also minutes of the conference calls with Likora of 23 January 2013; with Surteco of 25 January 2013; with Koehler of 18 January 2013; with Impress Decor of 21 January 2013; with Interprint of 23 January 2013; with Schattdecor of 23 January 2013; with Süddekor of 22 January 2013; with Decor Druck of 25 January 2013; with Chiyoda of 4 February 2013.

- (230) It is apparent from the responses obtained by the Commission that the scope for indirect demand substitution is limited.<sup>182</sup>
- (231) In response to the question of whether other types of decor paper could be used for the same applications as PRIP, the majority of respondents replied that this was not possible.<sup>183</sup> Moreover, two of the players who responded that other types of decor paper could be used in the same applications as PRIP have also explained that substitution between the different types of decor paper would entail significant cost at the manufacturing level.
- (232) In response to the question of whether PRIP-based products are substitutable for other types of decor paper products, the majority of respondents answered that this was not the case with respect to standard decor paper (HPL, LPL, and PBP).<sup>184</sup> Explanations for the negative responses included the fact that standard decor paper is more expensive than PRIP and the presence of switching costs at the furniture manufacturing level due to differences in equipment. Even some of the direct customers who stated that substitution was possible, qualified this response by stating that substitution would be difficult from an economic point of view or that it could take place only over the long term and would require investments.<sup>185</sup>
- (233) In response to a specific question on substitution between PRIP and PBP for the same end application, the majority of respondents said that this was not possible.<sup>186</sup> Moreover, a number of the respondents who stated that substitution was possible also said that the substitution would be economically unlikely in practice and would entail significant switching costs at the processing level.<sup>187</sup>
- (234) In response to a specific question on substitution between PRIP and HPL/LPL for the same end application, half of the respondents said that this was possible.<sup>188</sup> However, the majority of the respondents who gave an affirmative answer to this question

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<sup>182</sup> Likora did not respond to the Commission's Phase II questionnaire. The Commission however interviewed Likora in a conference call, during which Likora made it clear that it considered substitution possibilities between PRIP and standard decor paper (melamine paper) to be limited, even in the event of an increase in the relative price of PRIP. The response from Likora is included in the figures provided in the main text, in accordance with the minutes of the conference call held with Likora (see Minutes of the conference call with Likora of 23 January 2013).

<sup>183</sup> Replies to question 12 - Phase II Questionnaire to customers (PRIP) (including Likora as responding negatively to this question).

<sup>184</sup> Replies to question 25 - Phase II Questionnaire to customers (PRIP) (including Likora as responding negatively to this question).

<sup>185</sup> Reply of UAB to question 25.1 - Phase II Questionnaire to customers (PRIP) and reply of Impress Decor to question 25.1 - Phase II Questionnaire to customers (PRIP).

<sup>186</sup> Replies to question 26 - Phase II Questionnaire to customers (PRIP) (including Likora as responding negatively to this question).

<sup>187</sup> Minutes of the conference calls with Schattdecor of 23 January 2013; with Süddekor of 22 January 2013; with Decor Druck of 25 January 2013; and with Surteco of 25 January 2013.

<sup>188</sup> Replies to question 27 - Phase II Questionnaire to customers (PRIP) (including Likora as responding negatively to this question).

indicated in their response the high economic costs associated with indirect substitution.<sup>189</sup>

- (235) Finally, in response to a question of whether end customers would switch to other types of decor paper products in response to a 5-10% increase in the relative price of PRIP, the majority of respondents answered that switching would be unlikely.<sup>190</sup>
- (236) The Parties' competitors in the wider decor paper market also indicated that substitution possibilities between PRIP and other types of decor paper are limited, because PRIP is a lower cost product used for lower quality applications than those for which other types of decor papers, like HPL, are used.<sup>191</sup>

#### 7.2.2.3.E Specific Evidence on Classen

- (237) The Commission's investigations showed that, contrary to the Parties' claims, the Classen did not switch to producing a large share (33%) of its laminate flooring with PRIP-based finish foils. According to Classen, they only added one new single lamination-line with this technology in 2007, representing approximately 15% of their full production capacity.<sup>192</sup>
- (238) Moreover, Classen also submitted that PRIP-based finish foil and laminate flooring are by no means substitutable: *"In our experiences with FF/PRIP there are clear differences to paper-based laminate flooring. PRIP has obvious disadvantages in the important parameters abrasion resistance, surface structuring; design scope and haptic-effects. So as a resume: for our own quality-demand FF/PRIP is not suitable."*<sup>193</sup>
- (239) Against this background, Classen took the decision to start purchasing PRIP-based finish foil in 2007 only for cost reasons and stopped its purchases in 2009 due to substantial quality issues with the foil, without replacing PRIP-based finish foil products with laminate flooring products but only by stopping that product-segment.<sup>194</sup>

#### 7.2.2.3.F Implications for Market Definition

- (240) The evidence summarised in Sections 7.2.2.3.C and 7.2.2.3.D on the economic constraints on indirect demand substitution indicates that the market for PRIP constitutes a relevant product market.
- (241) The evidence shows that substitution in response to a hypothetical price increase for PRIP would require furniture manufacturers to invest in new and expensive

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<sup>189</sup> Reply of UAB to question 27.1 - Phase II Questionnaire to customers (PRIP); reply of Surteco to question 25.1 - Phase II Questionnaire to customers (PRIP); minutes of the conference calls with Schattdecor of 23 January 2013; and with Decor Druck of 25 January 2013.

<sup>190</sup> Replies to question 24 - Phase II Questionnaire to customers (including Likora as responding negatively to this question).

<sup>191</sup> See in particular minutes of the conference call with Technocell of 23 January 2013; with Koehler of 18 January 2013; and reply of BillerudKorsnäs to questions 15 and 16 - Phase II Questionnaire to competitors (PRIP).

<sup>192</sup> Classen's submission, received with an email dated 24 January 2013.

<sup>193</sup> Ibid.

<sup>194</sup> Ibid.

machinery in order to process other types of decor paper. The switching costs would therefore deter substitution away from PRIP at the furniture manufacturer level.

- (242) Similarly, a retailer like IKEA would need to incur significant switching costs at the retail level in order to substitute some of its product lines with other types of decor paper. Moreover, IKEA would face additional switching costs at the procurement level in the event of a switch to other types of decor paper, due to its long-term volume commitments to furniture manufacturers that are currently processing finish foil. If IKEA were to engage in such a switch, it is likely that it would not be able to meet the minimum volume commitments in the contracts.
- (243) The presence of economically significant switching costs at the end-customer level, that is to say at the furniture manufacturer/retailer level, indicates that substitution away from PRIP in the event of a hypothetical permanent 5% to 10% price increase in PRIP would be unlikely to result in a significant substitution to other types of decor paper on the part of end-customers.<sup>195</sup> This indicates that a hypothetical permanent 5% to 10% price increase in PRIP would be profitable, implying that PRIP is likely to constitute a relevant product market.
- (244) In addition, the fact that a strategic decision to invest significant resources in a supply chain based on finish foil has already been made in the past (for instance, by IKEA, in relation to important furniture products such as PAX and BESTÅ) also indicates that there were expected savings between the price of laminated boards using standard decor paper, and the cost of finish foil. Those savings were evidently sufficient to justify the investment in the specialised equipment required to process finish foil.
- (245) Therefore, whilst a hypothetical permanent 5% to 10% price increase in PRIP, and thereby in finish foil, would erode the profitability of the investment, potentially even making the investment unprofitable on an ex-ante basis, it would not be sufficient to induce a switch back to decor paper ex-post, once the investment has been incurred. The experience and economies of scale achieved by IKEA as a result of its large-scale strategic shift to PRIP reinforces this conclusion, since it has resulted in a further lowering of the cost of finish foil relative to the time when the strategic investment decision was made.
- (246) The significant differences in the qualities and costs of PRIP-based foils and products based on standard decor paper indicated by market players, provide further evidence of the fact that the PRIP market is likely to constitute a relevant product market. In particular, coupled with the presence of switching costs, the evidence indicates that a hypothetical small increase in the relative price of PRIP is unlikely to result in sufficient substitution to other types of decor paper so as to make the price increase unprofitable.
- (247) This conclusion is in turn reinforced by the fact that PRIP constitutes only a component of the total cost of the furniture that is based on finish foil. For example, in the case of IKEA, PRIP represents 10-15% of the total costs of the final product. This means that a permanent 5-10% increase in the relative price of PRIP would translate into a significantly smaller increase in the cost of the furniture, further

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<sup>195</sup> See the Commission Notice on Market Definition, paragraphs 15-19 and paragraph 42.

reducing the incentives to IKEA's end-customers to switch to different types of furniture like for example furniture based on melamine boards).

- (248) The evidence also indicates that the shift towards PRIP and away from standard decor paper observed in the market place in the recent past and which is expected to continue in the future, is not the type of price-based demand substitution that is relevant for product market definition. Instead, from the evidence it is apparent that the different demand trends for PRIP and for standard decor paper have been largely driven by strategic investment decisions by IKEA to gradually shift some furniture products to PRIP, in the light of the expected cost saving that would result from such a shift coupled with the superior features of PRIP-based finish foil for some applications. This switch has not however been determined or accentuated by short-term changes in relative prices for PRIP.<sup>196</sup>

#### 7.2.2.3.G. Commission's conclusion on indirect demand-side substitutability

- (249) On the basis of the evidence available, the Commission concludes that there is insufficient indirect demand-side substitutability to include PRIP in the overall decor paper market.

#### 7.2.2.4. Supply-side substitutability

- (250) According to the Commission Notice on Market Definition,<sup>197</sup> supply-side substitutability needs to be effective and immediate. Suppliers have to be able to switch production in reaction to a SSNIP in the short term and without incurring significant additional costs or risks. When supply-side substitution would entail the need to adjust significantly existing tangible and intangible assets, additional investments, strategic decisions or time delays, the possible switch in production should not be examined in the context of market definitions but is best assessed as a question of potential entry.
- (251) First, the Commission notes that, as acknowledged by the Parties, supply-side substitutability is one way: PRIP producers can switch production to other decor papers; however, producers of other decor papers cannot switch to PRIP production without investing in a size press. Unless a decor paper producer has a size press installed on a decor paper machine, it cannot produce PRIP. In contrast, any decor paper producer that has a size press installed on its decor paper machine can technically alternate between PRIP and other decor papers.
- (252) When considering supply-side substitutability, a distinction must therefore be made between three different types of decor paper producers: (i) those who already have a size press installed on a decor paper machine, (ii) those who own a size press but that size press is installed on a non-decor paper machine and (iii) those who would need to invest in a size press.
- (253) As regards the decor paper producers falling the first category, except for the Parties, the only current decor paper producer who has a size press installed on a decor paper machine is Technocell, the Parties' only competitor in PRIP. The Commission

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<sup>196</sup> See in particular the minutes of the conference calls with Interprint of 23 January 201, Schattdecor of 23 January 2013 and Technocell of 23 January 2013.

<sup>197</sup> Commission Notice on Market Definition, paragraphs 20 to 23.

acknowledges that technically, Technocell has the ability to switch between PRIP and other types of decor paper.

- (254) However, those decor paper producers that fall in the categories (ii) and (iii) mentioned in Recital (252) cannot switch production to PRIP in reaction to a permanent 5% to 10% price increase in the short term and without incurring significant additional costs and risks.
- (255) The second type of decor paper producers, that is to say those that own a size press but the size press is installed on other decor paper machines, would have to make a strategic decision to remove the size press from use for other types of papers. This would entail costs, a time delay and the inability to use the size press for other types of papers.
- (256) Moreover, not all producers can technically simply remove a size press and install it on their decor paper machine. In that respect, it is worth noting that for example Koehler (which the Parties consider has the ability to switch from other decor papers to PRIP) considers that in order to install a size press on its decor paper machine PM6, it would have to extend the existing building to accommodate for the additional space.<sup>198</sup>
- (257) As regards the third type of decor paper producer, that is to say those who would have to invest in a size press, it entails a significant investment with risks associated with it.<sup>199</sup> Moreover, that type of “switching” would not be immediate but would require the companies to take a longer-term strategic decision.
- (258) The Commission has been able to confirm what is stated in this Section on the basis of the market investigation. The majority of competing decor paper producers who responded to the second phase questionnaire considered that in the event of a permanent 5% to 10% price increase in PRIP, their company would not switch any of its production from other types of decor paper toward PRIP within a 6 to 12 month period of time.<sup>200</sup>
- (259) The Commission considers that the fact that Technocell, the Parties’ only active competitor in PRIP, has a size press and therefore is currently able to potentially switch between producing PRIP and other decor papers, should be taken into account in the competitive assessment, when considering Technocell’s ability and incentives to expand post-transaction. However, this fact does not imply that there is supply-side substitutability between PRIP and standard decor paper, given that Technocell’s current ability to switch production between different types of decor paper is the result of a significant investment incurred by Technocell in the past, and of a gradual process of gaining acceptance in the market for PRIP.
- (260) For all other decor paper producers, the decision to switch to PRIP production requires additional investments in tangible assets through the purchase of a size press which is a strategic decision with a time delay of at least one year. The likelihood of

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<sup>198</sup> Minutes of the conference call with Koehler of 18 January 2013.

<sup>199</sup> Reply of Technocell to question 44 - Phase I Questionnaire to competitors (PRIP); minutes of the conference call with Technocell of 23 January 2013; with Koehler of 18 January 2013.

<sup>200</sup> Replies to question 28 - Phase II Questionnaire to competitors (PRIP) and reply of Malta Decor to question 60 - Phase II Questionnaire to competitors (PRIP).

such investments taking place post-transaction will be relevant to the competitive assessment of potential entry.

- (261) The Commission therefore concludes that the degree of supply-side substitutability between PRIP and other decor papers is not sufficient to justify the definition of an overall decor paper market which would include PRIP.

#### 7.2.2.5. Substitutability with non-decor paper products

- (262) The Commission has also investigated the Parties' claims that PRIP can be substituted with certain non-decor paper products, namely, light impregnated base papers and thermoplastic films.

##### 7.2.2.5.A Light impregnated base papers

- (263) As regards light impregnated base papers, the market investigation has confirmed that BillerudKorsnäs is currently the only supplier of those papers.
- (264) However, it is clear from the responses to the market investigation that those papers are not considered to be a credible alternative to PRIP.
- (265) BillerudKorsnäs explained that it sold its light impregnated base paper, internally called 'light PRIP', only for wall panel production. BillerudKorsnäs confirmed that its products differ considerably from PRIP. According to BillerudKorsnäs, its product is a clay-coated paper with very little or no resin impregnation constituting the low quality end of PRIP and is used only in wall panel production for purely decorative functions.<sup>201</sup>
- (266) Furthermore, BillerudKorsnäs' production "*faces several limitations compared to standard PRIP producers*". "*BillerudKorsnäs has limited drying capabilities due to a lack of space around the paper machine concerned*", "*The width of BillerudKorsnäs' machines (around 2.85m) does not match the width of the printers' machines that work on 2,4 and 8 foot paper*" and "*BillerudKorsnäs is currently not able to produce coloured PRIP (such as beige, tan, black) but only produces white PRIP*".<sup>202</sup>
- (267) In this context, Decor Druck, a current customer of BillerudKorsnäs' light impregnated base papers explained: "*Decor Druck does not consider this paper to be real PRIP and internally treat this as a different product line from PRIP/finish foils. In general, this paper is of lower quality and cannot be applied in furniture applications.*"<sup>203</sup>
- (268) The results can be confirmed on the basis of customer responses. In response to the question whether and what other types of decor paper or non-decor paper products could be used for the same applications as PRIP, none of the customers listed light impregnated base papers as produced by BillerudKorsnäs.<sup>204</sup>
- (269) Therefore, the Commission finds that light impregnated base papers cannot be used in the production of furniture foils and are not considered as substitutes by

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<sup>201</sup> Minutes of the conference with BillerudKorsnäs of 21 January 2013.

<sup>202</sup> Ibid.

<sup>203</sup> Minutes of the conference call with Decor Druck of 25 January 2013.

<sup>204</sup> Replies to questions 12 and 13 - Phase II Questionnaires to customers (PRIP); replies to questions 18 and 19 - Phase II Questionnaire to end customers (PRIP).



customers. Thus the Commission concludes that light impregnated base papers cannot be considered to constitute an alternative to PRIP and therefore do not fall in the same relevant product market.

#### 7.2.2.5.B Thermoplastic films

- (270) In case M.3946 *Renolit/Solvay*,<sup>205</sup> the Commission has previously assessed the market for “decorative laminates,” a type of industrial foil for non-packaging applications made of PVC and polyolefin (“PO”). Those foils are used, among other things, for furniture surfaces. It is apparent that “*the market investigation confirmed the view of the parties that decorative laminates can be substituted for by laminated paper in many applications in the furniture industry*”<sup>206</sup> without further describing the type of laminated paper concerned. However, as no competition concerns arose even under the narrower market definition, the market definition was ultimately left open.
- (271) From the assessment it is apparent that the “*market investigation has also indicated that, in the furniture/kitchen applications decorative laminates and alternative materials (in particular decor paper), are close substitutes*,”<sup>207</sup> again without further describing the type of decor paper concerned.
- (272) However, the Commission notes that the term “*laminates*” suggests that the decision refers to laminated decor papers and thus not PRIP which is processed into a foil which is glued to the carrier material. This is supported by the fact that market players use the term “*laminates*” to denote other decor papers, such as LPL and HPL, and not PRIP.<sup>208</sup>
- (273) In any case the Commission assessed the substitutability between thermoplastic films and PRIP in the market investigation.
- (274) The Commission notes that only a clear minority of customers contacted currently purchase thermoplastic films for the EEA market.<sup>209</sup>
- (275) In response to the question whether and what other types of decor paper or non-decor paper products could be used for the same applications as PRIP, none of the respondents mentioned thermoplastic films.<sup>210</sup> Furthermore, none of the respondents indicated that they have in the past switched or would be able to switch purchases to non-decor paper products.<sup>211</sup> In addition, none of the direct and indirect customers mentioned thermoplastic films as possible substitutes to PRIP in the conference calls during the first and second phase market investigation.
- (276) In contrast, a number of customers have raised competition concerns on the basis of a lack of alternative products to PRIP.

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<sup>205</sup> Commission decision of 22 February 2006 in Case COMP/M.3946 – *Renolit/Solvay*, OJ C 6, 11 January 2006, p.6.

<sup>206</sup> Ibid, Paragraph 22.

<sup>207</sup> Ibid, Paragraph 40.

<sup>208</sup> For example, IKEA’s attachment to the Phase II Questionnaire to end customers (PRIP).

<sup>209</sup> Replies to question 7 - Phase II Questionnaire to competitors (PRIP).

<sup>210</sup> Replies to questions 12, 13 and 20-25 - Phase II Questionnaires to customers (PRIP).

<sup>211</sup> Replies to question 20-25 - Phase II Questionnaires to customers (PRIP).

- (277) In particular, a number of customers indicated that PRIP is less expensive than thermoplastic films and that the products are not comparable.<sup>212</sup>
- (278) Direct customer Surteco further explained that “thermoplastic PVC foils are much slower to process”. “Due to the lower processing speed and the fact that they are made from more expensive raw materials, thermoplastic PVC foils are much more expensive than PRIP”. “It is a different product with different processing needs and ultimately different end applications. “Switching between PRIP and thermoplastic PVC foils is ultimately a question of price. However, due to substantial price differences, such switching would not happen in practice.”<sup>213</sup>
- (279) As regards end customers from the furniture manufacturing or retailing industry, there was no indication that any of the respondents consider them an immediate replacement to PRIP. Similar to the direct customers, end customers found that their companies would not switch their purchases of finish foils based on PRIP to any other type of products.<sup>214</sup>
- (280) In particular, IKEA explained: “*Thermoplastic films based on PP or PVC would give a different look and feeling to the end product and would change the appearance of the established IKEA products considerably. Moreover a switch to these films would require very high investments as IKEA suppliers would have to rebuild their factories. Furthermore, the suppliers of such materials would not have enough capacity to produce these raw materials to a sufficient extent. IKEA is not using PVC in any of their products, as it is regarded as a health hazardous material.*”<sup>215</sup>
- (281) As regards decor paper producers, the majority of respondent consider that there is no substitutability between PRIP and thermoplastic films.<sup>216</sup> Those seeing a degree of substitutability, concede that thermoplastic films have advantages compared to PRIP products and that substitution is very limited due to cost considerations.<sup>217</sup>
- (282) Therefore, the Commission finds that thermoplastic films cannot be regarded as a substitute for PRIP and therefore are not part of the same relevant product market.

#### 7.2.2.6. The Parties’ own approach to the PRIP market

- (283) The Commission notes that in numerous internal documents of the Parties, the PRIP market is consistently and continuously recognised as a separate market.
- (284) Ahlstrom’s internal strategic documents on its position in the production of PRIP [...]\*.<sup>218</sup> [...]\*

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<sup>212</sup> Replies to question 17 - Phase II Questionnaires to customers (PRIP).

<sup>213</sup> Minutes of the conference call held with Surteco on 11 February 2013.

<sup>214</sup> Replies to questions 18 and 19 - Phase II Questionnaire to end customers (PRIP).

<sup>215</sup> Minutes of the conference call with IKEA of 8 January 2013.

<sup>216</sup> Replies to question 20 - Phase II Questionnaire to competitors (PRIP).

<sup>217</sup> Replies of Technocell and Koehler to question 20 - Phase II Questionnaire to competitors (PRIP).

<sup>218</sup> Ahlstrom internal documents, entitled “Strategic Planning 2008. OB3 – PRIP” of 20/21 May 2008, Annex 14(Y); entitled “Strategic Planning 2009. OB3 – PRIP” of 21 April 2009, Annex 14(Z); entitled “Ahlstrom Business Plan 2010-2013 OSN3 - Pre-impregnated Decor Papers” of 7 May 2010, Annex 14 (ZA); entitled “Annual Plan 2011, Business Unit, Processing” of 8 November 2010, Annex 10(E), entitled “Business Plan 2011-2014 - Processing” of 9 May 2011, Annex 10(J); entitled “Annual Plan

- (285) In Ahlstrom’s documents, [...]\*. [...]\*\*\*<sup>219</sup>; “[...]\*\*\*<sup>220</sup>; “[...]\*\*\*<sup>221</sup>).
- (286) If standard decor paper producers were active in the same market as Ahlstrom, Ahlstrom would consider them as actual rather than potential competitors, and would not simply monitor the prospect of entering the PRIP market. Moreover, Ahlstrom’s internal documents [...]\*, which again suggest that the PRIP is a relevant product market.
- (287) Finally, one of Ahlstrom’s documents also identifies the fact that [...]\*\*\*.<sup>222</sup> If PRIP were part of a broader decor paper market, the exit of one competitor would be expected to lead to a redistribution of volumes across the entire decor paper market, rather than specifically to other PRIP producers like Ahlstrom.<sup>223</sup>
- (288) Munksjö’s internal documents also discuss the company’s position in the PRIP “market”, computing market size and market shares by reference to PRIP volumes.<sup>224</sup> Some of those documents contain detailed market share estimates by competitor, stretching back to [...]\*\*\*.<sup>225</sup> Those estimates include only actual and past PRIP suppliers, with no monitoring of the volumes supplied by other decor paper producers. Similarly, the main competitors to Munksjö in the PRIP market are repeatedly identified as [...]\*\*\*.
- (289) Moreover, in response to the Commission’s request for bidding data, Munksjö provided a list of orders’ for pre-impregnated paper covering the period 2008-2012. For each customer included in the dataset, made up of approximately [...]\*\*\* customers, including the biggest PRIP customers of Munksjö, there is information on

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2012. Business Unit, Processing” of 18 January 2011, Annex 10(F); entitled “Product Family Strategy 2012-2015. Pre-impregnated decor papers (PRIP)” of 27 March 2012, Annex 14 (ZB); entitled “Business Plan 2012-2015” of 2 May 2012, Annex 10(K); entitled “Annual Plan 2013. Business Unit Processing” of October 2012, Annex 10(G), all submitted with an email dated 18 January 2013.

<sup>219</sup> Ahlstrom internal document, entitled “Strategic Planning 2009. OB3 – PRIP” of 21 April 2009, Annex 14(Z), submitted with an email dated 18 January 2013.

<sup>220</sup> Ahlstrom internal document, entitled “Product Family Strategy 2012-2015. Pre-impregnated decor papers (PRIP)” of 27 March 2012, Annex 14 (ZB), submitted with an email dated 18 January 2013.

<sup>221</sup> Ahlstrom internal document, entitled “Business Plan 2012-2015” of 2 May 2012, Annex 10(K), submitted with an email dated 18 January 2013.

<sup>222</sup> Ahlstrom internal document, entitled “Annual Plan 2011, Business Unit, Processing” of 8 November 2010, Annex 10(E), submitted with an email dated 18 January 2013.

<sup>223</sup> This is in line with Koehler’s submission that they lost their PRIP customers after giving up PRIP production rather than seeing those customers switch their purchases to Koehler’s production of other decor papers, Minutes of the conference all with Koehler of 18 January 2013.

<sup>224</sup> Munksjö internal documents, entitled “An introduction to pre-impregnated paper (PRIP). Sales Workshop Unterkochen” of 19 April 2011, Annex 14(B); entitled “Coordination Meeting for pre-impregnated papers business: Sales/Marketing/TCS – R&D – Production” of 24 October 2011, Annex 14(C); entitled “Pre-impregnated papers coordination meeting: Sales/Marketing/TCS – R&D – Production” of 16 May 2012, Annex 14(D); entitled “Pre-impregnated papers coordination meeting: Sales/Marketing/TCS – R&D – Production” of 3 December 2012, Annex 14(E); all submitted with an email dated 18 January 2013.

<sup>225</sup> Munksjö internal documents, entitled “Pre-impregnated papers coordination meeting: Sales/Marketing/TCS – R&D – Production” of 16 May 2012, Annex 14(D); entitled “Pre-impregnated papers coordination meeting: Sales/Marketing/TCS – R&D – Production” of 3 December 2012, Annex 14(E), slide 3, all submitted with an email dated 18 January 2013.

varieties and volumes, with corresponding prices, ordered from Munksjö over the last 5 years. [...]\*.<sup>226</sup> [...]\*

- (290) The Commission considers that the Parties' internal documents and data on their respective positions in the PRIP market are supportive of a definition of the PRIP market as a relevant product market.

#### 7.2.3. *Commission's conclusion*

- (291) In the light of what is stated in this Section, the Commission finds that due to a lack of sufficient levels of demand-side and supply-side substitutability, PRIP cannot be considered to be part of the wider decor paper market but constitutes a distinct product market of its own.

### 7.3. **Electrotechnical paper**

- (292) The overlap between the Parties' activities concerns only oil-impregnated electrotechnical papers as the Parties do not produce dry electrotechnical papers. Accordingly, this Decision will address only product market definition questions regarding oil-impregnated electrotechnical papers, thus discussing the smallest plausible market definitions with the largest overlaps without prejudice to the question as to whether dry and oil-impregnated electrotechnical papers could possibly fall within the same product market.<sup>227</sup>

#### 7.3.1. *Parties' arguments*

- (293) The Parties submit that the relevant product market definition should be the overall market of oil-impregnated electrotechnical paper due to a high degree of supply-side substitutability despite the limited demand-side substitutability. This market should include oil-impregnated electrotechnical papers for cables, transformers and bushings.

##### 7.3.1.1. Demand-side substitutability

- (294) According to the Parties, each of the different applications of oil-impregnated electrotechnical papers requires different qualities and characteristics since electrotechnical papers need to have optimal qualities for each specific end use.<sup>228</sup>

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<sup>226</sup> Decor Druck has confirmed to the Commission that it sources certain volumes of decor paper from BillerudKorsnäs, in particular, paper for application in wall panels. Decor Druck does not consider this paper to be real PRIP and internally treat this as a different product line from PRIP/finish foils. In general, this paper is of lower quality and cannot be used in furniture applications. See Minutes of the Conference Call with Decor Druck of 25 January 2013.

<sup>227</sup> The market investigation was inconclusive on whether dry electrotechnical papers and oil-impregnated electrotechnical papers belong to the same product market, see replies to questions 8 and 9 - Phase I Questionnaire to competitors (Oil-impregnated electrotechnical papers) and replies to question 7 - Phase I Questionnaire to customers (Oil-impregnated electrotechnical papers); however, given that neither of the Parties produces dry electrotechnical papers, the question can be left open.

<sup>228</sup> For example, it is particularly important that electrotechnical papers for insulation of high voltage cables have a high degree of chemical purity and a low power loss factor in order to maximize the transmissions efficiency, while dielectric strength and ageing qualities are characteristic for electrotechnical papers for insulation of transformers. As regards electrotechnical papers for insulation of motors, density is a necessary characteristic to obtain satisfactory non oil-impregnated insulation, while electrotechnical papers for insulation of bushings need to have low density and very absorbent characteristics to maximize impregnability.

Therefore, customers do not switch between different types of oil-impregnated electrotechnical papers produced for different end applications.

- (295) Furthermore, according to the Parties, customers have their own unique specifications for different oil-impregnated electrotechnical papers that are optimal for their particular applications and consequently request custom made electrotechnical papers. The Parties submit that a customer would therefore not necessarily switch to another type of oil-impregnated electrotechnical paper based on another customer's specification, even though the papers are manufactured for the same end application.
- (296) Consequently, according to the Parties, there is no demand-side substitutability between the different types of oil-impregnated electrotechnical papers.

#### 7.3.1.2. Supply-side substitutability

- (297) The Parties submit that the production process for oil impregnated electrotechnical papers is different from the production process of dry electrotechnical papers.<sup>229</sup> Consequently, according to the Parties there is no immediate supply-side substitutability between those papers.
- (298) In contrast, the Parties submit that switching production between different types of oil-impregnated electrotechnical papers involves very limited technical adjustments and no considerable costs.
- (299) Generally, different types of oil-impregnated electrotechnical papers are produced on the same paper machine, usually together with other types of specialty papers. Furthermore, producers switch production between different types of oil-impregnated electrotechnical papers on a daily basis. When one order (a "lot") of a specific type of oil-impregnated electrotechnical paper for a certain application is finished, the paper machine is adjusted to produce a new lot, which may be another type of oil-impregnated electrotechnical paper for a different application.<sup>230</sup>
- (300) The Parties underline that there are no real expenses or costs connected with a switch between the different types of oil-impregnated electrotechnical papers, as the only "cost" involved in switching production is the idle time of the machinery, that is to say the time during which the paper machine is not producing anything, which in these cases is the few minutes it takes to adjust and clean the machinery.

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<sup>229</sup> As explained above in Recital (85), dry electrotechnical papers are generally produced on different paper machines equipped with a "super calander" that compresses the paper in order to make it sufficiently dense. It is not possible to achieve the required density of the paper with the type of paper machine generally used for production of oil-impregnated electrotechnical papers. On the other hand, it is not possible to produce oil-impregnated electrotechnical papers on the type of paper machine generally used for the production of dry electrotechnical papers.

<sup>230</sup> In Munksjö's case, each paper machine produces approximately [...] tons of oil impregnated electrotechnical paper per hour, and an average lot size is approximately [...] tons (lots may be larger or smaller depending on the requirements of the customers). When a lot is finished, the paper machine is cleaned and adjusted for the next lot (which may be an oil-impregnated electrotechnical paper for a different application). Consequently, in a single paper machine, production can be – and generally is – switched between lots 5 to 15 times a day.

(301) Consequently, according to the Parties, there is a substantial degree of supply-side substitutability with regard to the production of different types of oil-impregnated electrotechnical papers.

#### 7.3.2. *Commission's assessment*

(302) In the absence of Commission precedents, the argument according to which there is a substantial degree of supply-side substitutability with regard to different types of oil-impregnated electrotechnical papers was subject to market investigation in Phase I. The investigation aimed at assessing if the different types of oil-impregnated electrotechnical papers (for insulation of cables, transformers and bushings) belong to one relevant product market or if each of them constitutes a separate product market.

##### 7.3.2.1. Demand-side substitutability

(303) The first phase market investigation was not entirely conclusive on whether the different end applications of oil-impregnated electrotechnical papers (insulation of cables, transformers, motors/generators and bushings) require electrotechnical paper to have different qualities and characteristics.

(304) However, a large majority of customers considered that competition for oil-impregnated electrotechnical papers takes place at a level comprising all types of oil-impregnated electrotechnical papers. Moreover, there were indications in the market investigation that oil-impregnated electrotechnical papers designed for different end applications could be used interchangeably.<sup>231</sup>

##### 7.3.2.2. Supply-side substitutability

(305) The Phase I market investigation showed that both customers and competitors believe that the production processes for the different types of oil-impregnated electrotechnical paper are similar to each other, that the costs involved with switching production are low, if any, and that, as a consequence, competition takes place in an overall market encompassing all types of oil-impregnated electrotechnical paper.<sup>232</sup>

#### 7.3.3. *Commission's conclusion*

(306) Consequently, the Commission concludes that there are indications that there is an overall product market for the different types of oil-impregnated electrotechnical papers for different end applications (for cables, transformers and bushings). However, this question can ultimately be left open since there is no significant impediment to effective competition even under narrower product market definitions.

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<sup>231</sup> Replies to Question 6 - Phase I Questionnaire to customers (Oil-impregnated electrotechnical papers).

<sup>232</sup> See replies to Questions 6, 6.1 and 7 - Phase I Questionnaire to competitors (Oil-impregnated electrotechnical papers) and replies to Question 6 - Phase I Questionnaire to customers (Oil-impregnated electrotechnical papers).

## 8. RELEVANT GEOGRAPHIC MARKETS

### 8.1. Abrasive backings

#### 8.1.1. Parties' arguments

- (307) The Parties submit that the relevant geographic market for abrasive backings is global in scope (including China).<sup>233</sup> To support their claim, they submit the following arguments: (i) the sector features extensive exports and imports and low transportation costs (generally within the range of [0-10%]\* of the overall product costs),<sup>234</sup> (ii) there are no barriers to entry as between different regions of the world exist and abrasive backings are widely traded worldwide,<sup>235</sup> (iii) there are no appreciable price differences between different Member States and no material price differences between the EEA and other regions of the world,<sup>236</sup> (iv) technical specifications are homogeneous across different regions of the world<sup>237</sup> and (v) customers do not require a local presence.<sup>238</sup>
- (308) The Parties' claim that imports from outside the EEA are sizeable and refer to Neenah, Domtar and Monadnock Paper Mills Inc ("Monadnock"), all North American suppliers of light weight paper backings. They also argue that other smaller players, mainly Asian undertakings, export abrasive backings to Europe.<sup>239</sup> In their reply to the Article 6(1)(c) decision, the Parties, however, admit that "*direct import* [of paper backings] *into the EEA are currently not substantial.*"<sup>240</sup>
- (309) With regard to the heavy weight paper backings segment, they stress that there are other suppliers besides the Parties such as Hokuetsu in Japan and Jiangxi Lemen Paper Co., Ltd ("Lemen Paper") and Hubei Haifeng Paper Co ("Haifeng Paper") in China. However, they admit that those suppliers do not currently export to the EEA
- (310) Next, the Parties explain that there are significant indirect imports of abrasive backings into the EEA from China, that is to say imports of final products based on non-EEA paper backings. However, the Parties are not able to assess the competitive pressure exercised by these indirect imports. They admit that jumbo reels and abrasive products imported into the EEA may "*to some extent*" be based on paper backings originally exported from the EEA<sup>241</sup>.
- (311) Finally, the Parties provided the Commission with a study from Pöyry (the "Pöyry study"), according to which the imports of paper backings from China to the EEA amounted to approximately [...]\*.<sup>242</sup>

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<sup>233</sup> Form CO, Paragraph 237.

<sup>234</sup> Form CO, Paragraph 230.

<sup>235</sup> Form CO, Paragraph 231.

<sup>236</sup> Form CO, Paragraph 232.

<sup>237</sup> Form CO, Paragraph 233.

<sup>238</sup> Form CO, Paragraph 233.

<sup>239</sup> Form CO, Paragraph 288.

<sup>240</sup> Reply to the Commission's Article 6(1)(c) Decision, Paragraph 91.

<sup>241</sup> Reply to the Commission's Article 6(1)(c) Decision, Paragraph 93.

<sup>242</sup> Submission of 28 January 2013, p. 21.

## 8.1.2. Commission's assessment

### 8.1.2.1. Geographic market definition for heavy weight paper backings

(312) In its Article 6(1)(c) decision, the Commission preliminarily concluded that the relevant geographic market for heavy weight paper backings is most likely EEA-wide. However, the Commission stressed that its analysis would remain unchanged, even if a hypothetical wider geographic market were to be retained.

#### 8.1.2.1.A. Results of the investigation

(313) The results of the Commission's further investigation support the preliminary conclusions of the Article 6(1)(c) decision. In particular, the internal documents and the results of the market investigation provided strong indications that the relevant geographic market for heavy weight paper backings is EEA-wide in scope.

(314) According to the results of the market investigation, just the Parties' combined market share accounts for more than [90-100]% in the EEA. The Commission acknowledges that the Parties' Chinese competitors have not provided any meaningful data and, consequently, their exports could not be factored in this market reconstruction. However, all customers, except Saint Gobain, declared that they have not purchased paper backings from a Chinese supplier over the last two years and Saint Gobain used these paper backings in a manufacturing site in China, that is to say it did not import those backings into the EEA.<sup>243</sup> Therefore, imports of heavy weight paper backings into the EEA are marginal.<sup>244</sup>

(315) The Commission has been able to confirm this on the basis of the results of the Phase II market investigation. The majority of customers source heavy weight paper backings for their EEA manufacturing sites exclusively from manufacturers based in the EEA<sup>245</sup>. The customers have given different reasons for this geographic focus in heavy weight paper backings on EEA manufacturers, such as high and stable quality, reliability, lead times, existence of environmental threats during overseas transportation, easy business communication.

(316) Several customers stated that they would be willing to purchase heavy weight paper backings from a supplier based outside their current sourcing area, if the price of heavy weight paper backings were to increase on a permanent basis by 5-10%.<sup>246</sup> However, no customer believed that non-EEA suppliers (excluding Chinese undertakings) would have the ability and incentive to enter the EEA's market in the next two years, if EEA prices were to permanently increase by 5% to 10%.<sup>247</sup>

(317) This is consistent with the Parties' internal documents, where the Parties themselves [...]\*. In fact, the two main competitive threats for the Parties seem to be [...]\*. However, neither of these two undertakings is active in the heavy weight market. Additionally, the Parties themselves acknowledge that there are only two or three

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<sup>243</sup> Replies to question 44 - Phase II Questionnaire to customers (paper backings), email received from Saint Gobain dated 1 February 2013.

<sup>244</sup> For a more detailed analysis of the market structure, see section 0.

<sup>245</sup> Replies to question 24 - Phase II Questionnaire to customers (paper backings).

<sup>246</sup> Replies to question 25 - Phase II Questionnaire to customers (paper backings).

<sup>247</sup> Replies to question 40 - Phase II Questionnaire to customers (paper backings).



undertakings worldwide active in the heavy weight market, the third one being Hokuetsu in Japan.

#### 8.1.2.1.B. Role of China

- (318) Chinese heavy weight paper backings and the heavy weight paper backings produced by the Parties are not the same from a technical perspective. The Parties themselves describe the Chinese heavy weight paper backings as being [...]\*.<sup>248</sup> In terms of ply adhesion, the Parties explain that the Chinese paper [...]\*.
- (319) Even if the Parties' technical comparison were to be found non-controversial, it would not be sufficient to alter the Commission's findings. In fact, it is clear that the Parties themselves do not consider Chinese paper backings as being well suited to endure heavy duty applications, where resistance to high mechanical stress is crucial. Therefore, the fact that Chinese heavy weight paper backings might be used in some light industrial applications does not change the fact that the Chinese products are of different technical quality to those produced by the Parties.
- (320) The Parties' internal documents confirm these findings, stating on several occasions that "[...]\*"<sup>249</sup> "[...]\*"<sup>250</sup> "[...]\*"<sup>251</sup> "[...]\*"<sup>252</sup> and "[...]\*"<sup>253</sup>

#### 8.1.2.2. Commission's conclusion

- (321) There are strong indications that the market for heavy weight paper backings is EEA-wide in scope. The question as to whether the market for heavy weight paper backings should be defined as EEA-wide, worldwide excluding China or worldwide can be left open, because it does not alter the outcome of the competitive assessment in this case.

#### 8.1.2.3. Geographic market definition for a hypothetical overall market for paper backings

- (322) In its Article 6(1)(c) decision, the Commission preliminarily concluded that the relevant geographic market for a hypothetical overall paper backings market (that is to say including both light and heavy weight) is most likely EEA-wide. However, the Commission also stressed that the transaction would equally raise serious doubts even under a wider market definition.

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<sup>248</sup> Submission of 18 January 2013, cover email.

<sup>249</sup> Ahlstrom internal document, entitled "Annual Plan 2011, Business Unit, Processing" of 8 November 2010, Annex 10(E), slide 7, submitted with an email dated 18 January 2013.

<sup>250</sup> Ahlstrom internal document, entitled "2. Business Unit Processing" of 2011, Annex 10(F), slide 4, submitted with an email dated 18 January 2013.

<sup>251</sup> Ahlstrom internal document, entitled "Annual Plan 2013, Business Unit Processing" of October 2012, Annex 10(G), slide 5, submitted with an email dated 18 January 2013.

<sup>252</sup> Ahlstrom internal document, entitled "Strategic Planning 2008: Abrasives and OB4," undated, Annex 10(H), slide 5, submitted with an email dated 18 January 2013; and Ahlstrom internal document, entitled "Ahlstrom Business Plan 2010-2013" of 7 May 2013, Annex 10(I), submitted with an email dated 18 January 2013.

<sup>253</sup> Ahlstrom internal document, entitled "Business Plan 2012-2015" of 2 May 2012, Annex 10(K), slide 25, submitted with an email dated 18 January 2013.

### 8.1.2.3.A. Results of the investigation

- (323) The results of the Commission’s further market investigation support these findings. In particular, the Parties’ internal documents, the Commission’s market reconstruction and the views expressed by customers confirm that imports of paper backings into the EEA are very limited and only some volumes of light weight paper backings are shipped from North America.
- (324) During the Phase I investigation, some competitors explained that a permanent 5-10% price increase would not trigger a shift in their geographic focus, whereas some US-based competitors indicated that this price increase, along with other favourable market circumstances, might provide incentives to enter the EEA market.<sup>254</sup> However, customers repeated that in the heavy weight segment there are no suppliers at all outside the EEA.
- (325) In their internal documents, the Parties identify [...]\*.<sup>255</sup> The former has mills located in both the EEA and the United States. According to the Commission’s market reconstruction, the EEA market share by volume of all four competitors would amount to [90-100]% in 2011. The Commission acknowledges that the Parties’ Chinese competitors have not provided any meaningful data and, consequently, their exports could not be taken into account in the market reconstruction. However, all customers, except Saint Gobain, declared that they have not purchased paper backings from a Chinese supplier over the last two years and this customer used these paper backings in a manufacturing site in China, that is to say it did not import those backings into the EEA.<sup>256</sup> Therefore, the Commission finds that market share to be reliable and that imports into the EEA are marginal.
- (326) The reliability of that market share is also consistent with the Pöyry study, where it is clearly stated that “Imports of abrasive base papers from non-EEA countries to EEA is estimated [...]\*based on our industry interviews ... according to our industry and converter interviews the volumes [of imports] [...]\*.”<sup>257</sup>
- (327) The Phase II questionnaires further investigated the issue, but were not conclusive. While some customers considered the overall paper backings market to be worldwide including China, several other customers disagreed. Some of them considered the market to be EEA-wide, while others considered it to be worldwide excluding China.<sup>258</sup> In this context, some customers remarked once again that, in any event, the heavy weight paper backings market is EEA-wide in scope.
- (328) Customers also have diverging opinions with regard to transport costs. Several customers consider that transport costs represent a significant proportion of the

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<sup>254</sup> Replies to question 43 - Phase I Questionnaire to competitors (paper backings).

<sup>255</sup> See, *ex multis*, Ahlstrom internal document, entitled “Annual Plan 2013. Business Unit Processing” of October 2012, Annex 10(G), slide 3, submitted with an email dated 18 January 2013; and Ahlstrom internal document, entitled “Strategic Planning 2008: Abrasives and OB4,” undated, Annex 10(H), slide 5, submitted with an email dated 18 January 2013.

<sup>256</sup> Replies to question 44 - Phase II Questionnaire to customers (paper backings), email received from Saint Gobain dated 1 February 2013.

<sup>257</sup> Parties’ submission of 28 January 2013.

<sup>258</sup> Replies to question 47 - Phase II Questionnaire to customers (paper backings).

purchase price of the paper backings they purchase.<sup>259</sup> At the same time, most customers consider that transport costs do not constitute a constraining factor for trade between the EEA and other geographic areas.<sup>260</sup>

- (329) Doubts also arise as to whether non-EEA suppliers of paper backings (excluding Chinese undertakings) exert significant competitive pressure on EEA suppliers. Although half of the customers replied that non-EEA suppliers (excluding Chinese undertakings) have products of comparable quality, the other half gave a negative reply or did not have experience in that regard.<sup>261</sup> However, no customer believed that non-EEA suppliers (excluding Chinese undertakings) had the ability and incentives to enter the EEA heavy or light weight paper backings markets in the next two years.<sup>262</sup>

#### 8.1.2.3.B. Role of China

- (330) First, it must be noted that the Parties themselves do not seem to be able to estimate to what extent Chinese competitors are selling paper backings into the EEA. The evidence they have submitted, along with the result of the market investigation, seems to confirm that Chinese competitors may, at best, exert some marginal competitive pressure on the light weight segment.
- (331) During the Phase I investigation, customers explained that paper backings of Chinese origin are of much lower quality.<sup>263</sup> As the Parties point out in their Form CO, "*What is ultimately most important for the abrasive backings customer is the quality of the backing material.*" Accordingly, nearly all customers confirmed that they have a preference for abrasive backings of European make.<sup>264</sup>
- (332) In the context of the Phase II investigation, only one customer had purchased abrasive backings from a Chinese supplier over the last two years.<sup>265</sup> That customer, Saint Gobain, explained that it only purchased kraft paper backings for DIY applications in China for its Chinese facilities.<sup>266</sup>
- (333) As regards direct imports from China to the EEA, it is argued in the Pöyry study that around [...] of paper backings were imported into the EEA from China in 2012. That is, however, inconsistent with the customers' replies according to which none of them - except Saint Gobain - has purchased paper backings from a Chinese supplier over the last two years and in that case it was for use by Saint Gobain's Chinese facilities.<sup>267</sup> It is very likely that these alleged imports may have concerned low quality light weight paper backings for DIY applications rather than high quality backings for industrial ones.

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<sup>259</sup> Replies to question 34 - Phase II Questionnaire to customers (paper backings).

<sup>260</sup> Replies to question 37 - Phase II Questionnaire to customers (paper backings).

<sup>261</sup> Replies to question 39 - Phase II Questionnaire to customers (paper backings).

<sup>262</sup> Replies to questions 40 and 41 - Phase II Questionnaire to customers (paper backings).

<sup>263</sup> Minutes of the conference call with Sia Abrasives of 25 October 2012.

<sup>264</sup> Replies to question 33 - Phase I Questionnaire to customers (paper backings).

<sup>265</sup> Replies to question 44 - Phase II Questionnaire to customers (paper backings).

<sup>266</sup> Email received from Saint Gobain dated 1 February 2013.

<sup>267</sup> Replies to question 44 - Phase II Questionnaire to customers (paper backings).

- (334) With regard to the alleged indirect imports of paper backings from China into the EEA, it can be noted from the explanations of the Parties in the Form CO that (i) [...] \*% of the sales volume shipped from Munksjö's Arches plant in France is destined for China, which is the [...] \* and (ii) [...] \*% of the sales volume shipped from Ahlstrom's Osnabrück plant in Germany is destined for China, which is the [...] \*.<sup>268</sup>
- (335) In addition, several customers explained that their own Chinese competitors use Munksjö's and Ahlstrom's paper backings to compete in the EEA: *“Many of the Chinese producers produce their material on backings from Europe and because of that they come quite close to the quality of EU produced material,”*<sup>269</sup> *“The market” believes that the high quality coated abrasives currently manufactured in China are made using Munksjö or Ahlstrom backings,”*<sup>270</sup> *“... we hear that even high quality abrasive products manufactured in China are made with European backings”*<sup>271</sup> and *“The best of our Chinese competitors' products for industrial application have an European abrasive paper backings (or American abrasive latex treated paper backings): does it mean something?”*<sup>272</sup>
- (336) As noted in Recital (330), the Parties themselves are not able to assess the competitive pressure exercised by these alleged indirect imports. They admit that jumbo reels and abrasive products imported into the EEA from China may *“to some extent”* be based on paper backings originally exported from the EEA.<sup>273</sup> This is in line with the customers' view that the Parties themselves are supplying paper backings to Chinese manufacturers of final abrasive products.
- (337) Therefore, the Commission concludes that the evidence provided by the Parties is insufficient to support any finding that direct or indirect imports of paper backings from China into the EEA exercise competitive pressure on EEA-based suppliers of paper backings.

#### 8.1.2.4. Commission's conclusion

- (338) There are strong indications that the hypothetical overall market for paper backings is EEA-wide in scope or, alternatively, worldwide excluding China. In any event, the question as to whether a hypothetical overall market for paper backings should be defined as EEA, worldwide excluding China or worldwide can be left open, because it does not alter the outcome of the competitive assessment in this case.

#### 8.1.2.5. Commission's overall conclusion

- (339) The Commission therefore concludes that there are indications that the market for heavy weight paper backings is EEA-wide in scope, while a hypothetical overall market for paper backings would be either EEA-wide or worldwide excluding China in scope. However, the geographic market definition can ultimately be left open,

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<sup>268</sup> Form CO, Paragraph 235.

<sup>269</sup> Reply of Ekamant to question 42 - Phase II Questionnaire to customers (paper backings).

<sup>270</sup> Reply of Nastroflex to question 33 - Phase I Questionnaire to customers (paper backings).

<sup>271</sup> Reply of Nastroflex to question 42 - Phase II Questionnaire to customers (paper backings).

<sup>272</sup> Reply of SAIT Abrasivi to question 42 - Phase II Questionnaire to customers (paper backings).

<sup>273</sup> Reply to the Commission's Article 6(1)(c) Decision, Paragraph 93.

because the question does not alter the outcome of the competitive assessment in this case.

## **8.2. Decor Paper – PRIP**

### *8.2.1. Parties' arguments*

- (340) The Parties submit that the relevant geographic market for all decor papers (including PRIP) should be defined as worldwide excluding China or, alternatively, at least EEA-wide.<sup>274</sup> The Parties have not submitted a separate analysis of the geographic scope of the PRIP market.
- (341) According to the Parties, the market for decor paper is characterised by extensive exports and imports as there is a significant cross border trade flow within the EEA.<sup>275</sup> At the same time, however, the Parties are not aware of any significant decor paper imports from outside the EEA at present.<sup>276</sup> It was stated in the Pöyry study that overall decor paper imports are relatively small, originating from [...] with a small number of additional imports from [...]. It does not include specific findings on the PRIP market.<sup>277</sup>
- (342) The Parties further submit that the market for decor papers is characterised by low transportation costs. For sales within the EEA, the Parties' transport costs are [0-10]\*% of the overall product costs. For exports to the Americas, transport costs amount to up to [0-10]\*%, and for exports to the rest of the world (excluding China), transport costs are within the range of [0-10]\*-[0-10]\*% of the overall product costs.<sup>278</sup>
- (343) According to the Parties, with the exception of China, there are no barriers to entry between the different regions of the world. Furthermore, there are no appreciable price differences and no differences between technical specifications around the world. In addition, the Parties submit that no local presence is required.<sup>279</sup>
- (344) Furthermore, according to the Parties, in many countries there are only a few customers for decor paper, though they are large customers who often have a central purchasing department in one country to negotiate all purchases on behalf of their international subsidiaries.
- (345) As regards PRIP in particular, the Parties further argue that there are credible non-EEA PRIP producers that impose a competitive constraint on EEA-producers. According to the Parties, these non-EEA competitors include the companies Tentok Paper Co. Ltd. ("Tentok") and KJ Specialty Paper Co. Ltd. ("KJ Specialty Paper") from Japan as well as Multiverde Papéis Especiais Ltda ("Multiverde") from Brazil.

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<sup>274</sup> Form CO, Paragraph 213.

<sup>275</sup> Form CO, Paragraphs 220 and 290.

<sup>276</sup> Form CO, Paragraph 287.

<sup>277</sup> Pöyry report, "Independent study of the decor paper and abrasive base paper industry", 28 January 2013, page 16, submitted by the Parties with an email dated 28 January 2013.

<sup>278</sup> Form CO, Paragraph 221.

<sup>279</sup> Form CO, Paragraphs 222 and 223.

The Parties submit that expansion by those and other non-EEA producers is feasible, especially if the Parties increased PRIP prices post-transaction.<sup>280</sup>

- (346) As regards China in particular, the Parties explain that the Chinese market for decor papers is characterised by entry barriers such as import duties. Consequently, imports account for only [0-5]\*% of the total Chinese demand and Chinese customers are mainly supplied by producers with decor paper products of lower quality than decor paper produced in the EEA. According to the Parties, due to the entry barriers and lower quality products supplied on the domestic Chinese market, neither the Parties nor their main competitors currently sell decor papers in China to any significant extent.<sup>281</sup> Munksjö supplied [...] \*% and Ahlstrom supplied [...] \*% of its total decor paper sales to China in 2011.<sup>282</sup>

#### 8.2.2. Commission's assessment

- (347) In *Munksjö/Arjowiggins*, the Commission found that the relevant geographic market for decor papers was at least EEA-wide in scope.<sup>283</sup> On one hand, the Commission considered that transport costs were low. On the other hand, the Commission found that imports into the EEA were very limited. Ultimately, however, the Commission left the exact market definition open.
- (348) The Commission has also considered that the relevant geographic market was EEA-wide in scope for (i) other paper products, such as fine paper and magazine paper,<sup>284</sup> and (ii) for industrial foils and decorative laminates.<sup>285</sup>
- (349) In its Article 6(1)(c) decision, the Commission preliminarily concluded that the relevant geographic market is most likely EEA-wide. However, the Commission also stressed that the transaction would equally raise serious doubts even under a wider definition of the market as world-wide excluding China.

##### 8.2.2.1. Results of the investigation

- (350) The results of the Commission's investigation support the preliminary conclusions of the Article 6(1)(c) decision. In particular, [...] \* and the results of the market investigation confirm that imports and exports to and from the EEA are limited.
- (351) In their internal analyses, the Parties identify only [...] \* main PRIP producers in the world, all of them with current PRIP production [...] \*.<sup>286</sup> The market shares of those

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<sup>280</sup> Reply to the Commission's 6(1)(c) Decision, submitted with an email dated 18 December 2012, Paragraph 35; Pöyry report, "Independent study of the decor paper and abrasive base paper industry," page 10, submitted by the Parties with an email dated 28 January 2013.

<sup>281</sup> Form CO, Footnote 62.

<sup>282</sup> Response to Questions 9-10 of Request For Information ("RFI") of 20 December 2012, submitted by email of 8 January 2013 (for Munksjö); Form CO, paragraph 225 (for Ahlstrom).

<sup>283</sup> Commission's Decision of 21 February 2011 in Case No COMP/M.5950 - *Munksjö/Arjowiggins (Decor and abrasives business)*, Paragraph 31.

<sup>284</sup> Commission's Decision of 31 October 2008 in Case No COMP/M.5283 - *Sappi/M-REAL*, Paragraphs 28-29, OJ C324, 19 December 2008; Commission's Decision of 13 July 2011 in Case No COMP/M.6101 - *UPM/Mylykoski and Rhein Papier*, Paragraph 95.

<sup>285</sup> Commission Decision of 22 February 2006 in Case No COMP/M.3946 - *Renolit/Solvay*, Paragraph 33 and Commission Decision of 19 September 2007 in Case No COMP/M.4525 - *Kronospan/Constantia*, Paragraph 37, OJ C134, 13 June 2009, p.4.

[...]\* account for more than [90-100]\*% in the EEA and imports of PRIP into the EEA are therefore marginal.<sup>287</sup>

- (352) The vast majority of customers thus stated that they do not source any PRIP from outside the EEA.<sup>288</sup> The Commission also notes that the overwhelming majority of customers currently do not believe that suppliers outside the EEA and in particular from the Far East generally exert a significant competitive pressure on PRIP prices generally and within the EEA.<sup>289</sup> The results are similar among the indirect customers who responded to the question in the market investigation.<sup>290</sup> Furthermore, the vast majority of EEA customers find that the PRIP market comprises only the EEA while non-EEA customers find the market to be worldwide.<sup>291</sup>
- (353) Moreover, the Parties' sales are clearly focused on the EEA. Munksjö and Ahlstrom achieved [...]\*% and [...]\*% of their PRIP sales within the EEA over the past three years (2010-2012) respectively.<sup>292</sup> According to Ahlstrom's internal analysis, "[...]\*"<sup>293</sup> [...]\*:

#### PRIP Sales Plan 2010

[...]\*

Figure 10: PRIP Sales Plan of Ahlstrom<sup>294</sup>

#### 8.2.2.2. Role of China

- (354) As regards China in particular, the Commission agrees with the Parties' submission that domestic Chinese PRIP volumes should be excluded from the market. This is based on the facts submitted by the Parties described in Recitals (350) to (353) and on the results of the market investigation.
- (355) In particular, almost none of the Parties' customers and competitors contacted in the market investigation are aware of Chinese PRIP imports into the EEA.<sup>295</sup>

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<sup>286</sup> For example, Munksjö internal documents, entitled "Coordination Meeting for pre-impregnated papers business: Sales/Marketing/TCS – R&D – Production", 24 October 2011, Annex 14(C), slide 4; entitled "Pre-impregnated papers coordination meeting: Sales/Marketing/TCS – R&D – Production" of 16 May 2012, Annex 14(D), slide 3, both submitted by email on 18 January 2013.

<sup>287</sup> For a more detailed analysis of the market structure, see section 0 below.

<sup>288</sup> Replies to question 9 - Phase I Questionnaire to customers (Decor paper); replies to question 34 - Phase II Questionnaire to customers (PRIP).

<sup>289</sup> Replies to questions 63 and 64 - Phase II Questionnaire to customers (PRIP).

<sup>290</sup> Replies to question 31 - Phase II Questionnaire to end customers (PRIP).

<sup>291</sup> Replies to question 39 - Phase II Questionnaire to customers (PRIP).

<sup>292</sup> Response to Question 11 of RFI of 20 December 2012, submitted with an email dated 8 January 2013.

<sup>293</sup> Ahlstrom internal document, entitled "Annual Plan 2013. Business Unit Processing" of October 2012, Annex 10(G), slide 4, submitted with an email of 18 January 2013.

<sup>294</sup> Ahlstrom internal document, entitled "Annual Plan 2010. Pre-impregnated Decor Papers" of 9 November 2009, Annex 14(X), slide 18, submitted with an email dated 18 January 2013.

<sup>295</sup> See replies to question 37 - Phase II Questionnaire to customers (PRIP) and replies to question 41 - Phase II Questionnaire to competitors (PRIP); minutes of the conference calls with Cartiere di Guarcino of 16 January 2013; with IKEA of 8 January 2013; with Impress Decor of 21 January 2013; with Koehler of 18 January 2013; with Likora of 23 January 2013; with Süddekor of 22 January 2013; with Technocell of 23 January 2013.

Furthermore, EEA customers have explained that Chinese decor papers are not comparable to PRIP of European make and cannot be used for the same end applications because the papers are much thinner, much lower in quality and consequently much cheaper.<sup>296</sup>

- (356) The Commission therefore finds that any eventual Chinese production of PRIP cannot be considered as currently constituting a competitive constraint on PRIP supply in the EEA.

#### 8.2.3. *Commission's conclusion*

- (357) The Commission therefore finds that there is substantial evidence to conclude that the market is EEA-wide. However, as will be shown in Sections 9.3.1 to 9.3.4, the question as to whether the market is EEA-wide or worldwide excluding China can ultimately be left open, as under both scenarios the transaction is likely to lead to a significant impediment of competition, in particular through the creation of a dominant position.

### 8.3. **Electrotechnical paper**

#### 8.3.1. *Parties' arguments*

- (358) According to the Parties, the geographic market for oil-impregnated electrotechnical papers is global (including China). The market is characterised by extensive exports and imports and low transportation costs which are generally within the range of [0-10%] of the overall product costs. Furthermore, there are no barriers to entry between the different regions of the world.

- (359) Moreover, the Parties submit that they are active worldwide and ship to different regions of the world. According to the Parties, around [...] \*% of Munksjö's sales of oil-impregnated electrotechnical papers are sold outside the EEA, while Ahlstrom achieves around [...] \*% of its sales outside the EEA.

#### 8.3.2. *Commission's assessment*

- (360) In the absence of Commission precedents, the relevant geographic market definition was also subject to the first phase market investigation.

- (361) It was overwhelmingly clear that the market is perceived by customers to be world-wide (including China),<sup>297</sup> while opinions of competitors were divided between a world-wide (including China) and an EEA-wide market.<sup>298</sup>

#### 8.3.3. *Commission's conclusion*

- (362) However, the geographic market definition can ultimately be left open, because the question does not alter the outcome of the competitive assessment. There is no

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<sup>296</sup> Chiyoda's reply to question 8 - Phase I Questionnaire to customers (PRIP) and to question 30.1 - Phase II Questionnaire to customers (PRIP); Fritz Egger GmbH & Co KG's reply to question 38.1 - Phase II Questionnaire to customers (PRIP); minutes of the conference call with Interprint of 23 January 2013; with Likora of 23 January 2013; with Süddekor of 22 January 2013; with Technocell of 23 January 2013.

<sup>297</sup> Replies to question 15 - Phase I Questionnaire to customers (Oil-impregnated electrotechnical papers).

<sup>298</sup> Replies to Question 17 - Phase I Questionnaire to competitors (Oil-impregnated electrotechnical papers).



significant impediment to effective competition even under the narrower geographic market definition.

## 9. COMPETITIVE ASSESSMENT – NON-COORDINATED EFFECTS

### 9.1. Analytical framework

- (363) Through its control of mergers, the Commission prevents mergers that would be likely to deprive consumers of the benefits that effective competition brings by significantly increasing the market power of firms.<sup>299</sup> What is meant by increased market power is the ability of a firm to profitably increase prices, reduce output, choice or quality of goods and services, diminish innovation or otherwise influence parameters of competition.<sup>300</sup> A merger would, *inter alia*, significantly impede effective competition if it would create or strengthen a dominant position of a single firm, which typically would have an appreciably larger market share than the next competitor post-merger.<sup>301</sup>
- (364) In line with the Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings<sup>302</sup> (“Horizontal Merger Guidelines”), the Commission focused on a number of factors to determine whether the transaction is likely to significantly impede effective competition, in particular as a result of the creation of a dominant position and in the light of the merged entity’s ability to behave to a significant extent independently of its customers and competitors.

### 9.2. Abrasive backings

#### 9.2.1. Heavy weight paper backings

- (365) The Parties asserted that there is no reliable market data for any of the affected markets<sup>303</sup> and, therefore, provided their own best estimates. According to these estimates, the total size of the market for heavy weight paper backings would be approximately EUR [...] million in the EEA and EUR [...] million worldwide. However, based on the Parties’ internal documents, these figures seem grossly overstated. Ahlstrom’s internal documents estimate the global market for heavy weight paper backings at around EUR [...] million.<sup>304</sup> Although Munksjö’s internal documents do not contain an estimate regarding the total market size by value, their estimates by volume equally show that these value figures are overstated.<sup>305</sup> Based on

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<sup>299</sup> Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings, paragraph 8, (OJ C31, 5.2.2004, p.5) (“Horizontal Merger Guidelines”).

<sup>300</sup> Ibid.

<sup>301</sup> Ibid, paragraph 25.

<sup>302</sup> OJ C 31, 5.2.2004, p. 5.

<sup>303</sup> Form CO, Paragraph 249.

<sup>304</sup> Ahlstrom internal document “Annual Plan 2011, Business Unit Processing” of 8 November 2010, page 30, submitted with an email dated 18 January 2013.

<sup>305</sup> According to internal documents (such as Munksjö internal document entitled “Munksjö Strategy” of June 2011, Annex 10(B), page 30, submitted with an email 18 January 2013), the heavy weight market volume is estimated at [...] million worldwide whereas according to the estimates submitted in the Form CO, the market was

the Commission’s market reconstruction, the EEA market of the heavy weight paper backings seems even smaller and amounts to a value of approximately EUR 20 million.

9.2.1.1. Market shares and market structure including Herfindahl–Hirschmann Index (“HHI”)

- (366) Table 2, Table 3 and Table 4 provide the market shares of the Parties and their main competitors according to different sources.
- (367) Absent reliable data, the Commission carried out a limited market reconstruction exercise during pre-notification stage and, subsequently, completed this data set with the market investigation (Table 2) to verify the Parties’ estimates (Table 3). Based on that, the Parties’ combined market share post-transaction would amount to [90-100]%, with an increment contributed by Munksjö of [40-50]%.
- (368) Moreover, the Parties’ estimates contained in the Form CO significantly differ from the estimates contained in the Parties’ own internal documents. According to those internal documents,<sup>306</sup> Ahlstrom estimates its global market share at around [40-50]\*%. Since the Parties have [...] in this market, this would lead to a combined market share of around [80-90]\*% even at a worldwide level. Therefore, both the Commission’s market reconstruction and the Parties’ internal documents point to market shares that are significantly higher than the [50-60]\*% (by value) and [40-50]\*% (by volume) indicated in the Form CO.

**Table 2: Heavy weight paper backings - Market shares by value and volume in 2011**

	EEA		Worldwide (excluding Chinese suppliers)	
	Value	Volume	Value	Volume
Ahlstrom	[50-60]%	[50-60]%	[40-50]%	[40-50]%
Munksjö	[40-50]%	[40-50]%	[40-50]%	[40-50]%
<b>Combined</b>	<b>[90-100]%</b>	<b>[90-100]%</b>	<b>[90-100]%</b>	<b>[90-100]%</b>
<b>Total</b>	<b>[90-100]%</b>	<b>[90-100]%</b>	<b>[90-100]%</b>	<b>[90-100]%</b>

Source: Commission’s market investigation

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estimated [...]worldwide, see Annex 7.2 (F) of the Form CO and Annex 7, entitled “underlying data (2011)” submitted with an email dated 26 November 2012. This figure of [...] was re-iterated in the reply to the Commission’s Article 6(1)(c) Decision, Paragraph 73.

<sup>306</sup> Ahlstrom’s internal documents consistently estimated its share in the market for heavy weight paper backings at [40-50]\*%, for example documents entitled “Annual Plan 2011” of 8 November 2010, Annex 10(E), page 4, and Ahlstrom internal document “Annual Plan 2013” of October 2012, Annex 10(G), slide 26, all submitted with an email of 18 January 2013. While Munksjö’s internal documents do not contain an estimate for the entire heavy weight paper backings market, it estimates its share in certain segments of the heavy weight market at [50-60]\*% which shows also Munksjö’s relative strength in this market, see document, entitled “Munksjö strategy, June 2011,” Annex 10(B), page 33, submitted with an email dated 18 January 2013.

**Table 3: Heavy weight paper backings - Market shares by value and volume in 2011**

	EEA		Worldwide (including China)	
	Value	Volume	Value	Volume
Ahlstrom	[40-50]*%	[40-50]*%	[20-30]*%	[20-30]*%
Munksjö	[30-40]*%	[30-40]*%	[20-30]*%	[20-30]*%
<b>Combined</b>	<b>[70-80]*%</b>	<b>[70-80]*%</b>	<b>[50-60]*%</b>	<b>[40-50]*%</b>
Krempel	[0-5]*%	[0-5]*%	[0-5]*%	[0-5]*%
Weidmann	[0-5]*%	[0-5]*%	[0-5]*%	[0-5]*%
Vilaseca	[0-5]*%	[0-5]*%	[0-5]*%	[0-5]*%
Omniafiltra	[0-5]*%	[0-5]*%	[0-5]*%	[0-5]*%
Hubei Haifeng	-	-	[10-20]*%	[10-20]*%
Jiangxi Lemen Paper	-	-	[10-20]*%	[10-20]*%
Hokuetsu	-	-	[0-5]*%	[0-5]*%
Lintec Europe B.V.	-	-	[0-5]*%	[0-5]*%
Fujian Huamin	-	-	[0-5]*%	[5-10]*%
Neenah	-	-	[0-5]*%	[0-5]*%
Lianzhou Lianfa	-	-	[0-5]*%	[0-5]*%
Vijaya Mercantile	-	-	[0-5]*%	[0-5]*%
Others	[10-20]*%	[10-20]*%	[0-5]*%	[0-5]*[0-5]*%
<b>Total</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>

Source: Parties' estimates in the Form CO

- (369) The concentrated nature of the market for heavy weight paper backings is also reflected in the HHI.<sup>307</sup> Based on the Commission's market reconstruction, the figures show an HHI level of approximately [more than 3200]\* (by value) and [more than 3200]\* (by volume) before the transaction in 2011 and of around [more than 8100]\* (by value) and [more than 8100]\* (by volume) after the transaction, with a variation in the HHI ("delta") of around [4000-5000]\* (by value) and [4000-5000]\* (by volume).
- (370) The Commission has also assessed the evolution of the Parties' market shares over the past three years (2009-2011), which showed that their market shares remained stable.

<sup>307</sup> Horizontal Merger Guidelines, Paragraph 16.

**Table 4: Heavy weight paper backings - Parties' market shares by value in 2009-11**<sup>308</sup>

	EEA			Worldwide		
	2009	2010	2011	2009	2010	2011
Ahlstrom	[50-60]	[50-60]	[50-60]	[40-50]	[50-60]	[40-50]
Munksjö	[40-50]	[40-50]	[40-50]	[40-50]	[40-50]	[40-50]
<b>Combined</b>	[90-100]	[90-100]	[90-100]	[90-100]	[90-100]	[90-100]
<b>Total</b>	100%	100%	100%	100%	100%	100%

Source: Commission's market investigation

(371) Ahlstrom in its internal documents covering the years 2008-2012 consistently estimated its market share in the worldwide market for heavy weight paper backings at around [40-50]\*%. In the EMEA region (Europe, Middle-East, Asia), Ahlstrom estimates its market share in the same market at [50-60]\*% in 2012.<sup>309</sup>

#### 9.2.1.2. The Parties' arguments

(372) The Parties have maintained that the relevant market comprises paper backings, as well as other backing material such as cloth, film and vulcanized fibre. Nevertheless, they put forward a number of arguments to prove that the transaction does not give rise to serious concerns, regardless of whether the transaction is assessed in the context of a market for paper backings only or in a narrower market for heavy weight paper backings.

(373) First, they argue that, post-transaction, the merged entity would continue to face a sufficient number of strong market players such as Krempel GmbH ("Krempel"), Weidmann, Vilaseca and Omniafiltra Carteria del Torano S.p.A. ("Omniafiltra").

(374) Second, they claim that suppliers of light weight paper backings could easily enter the market for heavy weight paper backings with minor investments or by laminating off-line two or more layers of light weight paper backings.<sup>310</sup>

(375) Third, they explain that customers have buyer power and they would be able to easily switch from one supplier to another and would sponsor new entrants, if required.<sup>311</sup> Customers could also threaten to retaliate and switch their purchases of light weight paper backings to other suppliers in response to a price increase in heavy weight paper backings.<sup>312</sup>

(376) Fourth, the Parties explain that the market presents substantial overcapacity, which competitors would promptly use to defeat any price increase by the merged entity.

(377) Fifth, they argue that, in any event, barriers to entry are very low in terms of both geographic location and product specifications. In fact, the Parties are already

<sup>308</sup> Please note that Munksjö's market shares for 2009-10 are based on gross sales. Please note that worldwide market shares do not include data from the Parties' Chinese competitors.

<sup>309</sup> See Ahlstrom internal document, entitled "Product Family Strategy 2012-2015, Abrasive Papers" of 27 March 2012, Annex 10 (L), page 12, submitted with an email dated 18 January 2013.

<sup>310</sup> See reply to the Commission's Article 6(1)(c) Decision, Paragraph 110.

<sup>311</sup> See reply to the Commission's Article 6(1)(c) Decision, Paragraph 108.

<sup>312</sup> See reply to the Commission's Article 6(1)(c) Decision, Paragraph 109.

experiencing direct and indirect competition from China, that is to say from existing suppliers of heavy weight paper backings and exporters of jumbo reels and finished products.<sup>313</sup>

### 9.2.1.3. The Commission's assessment

#### 9.2.1.3.A. Elimination of a significant competitive constraint

- (378) According to the Horizontal Merger Guidelines, market shares and concentration levels provide useful first indications of the market structure and of the competitive importance of both the merging parties and their competitors.<sup>314</sup>
- (379) The combined market share of around [80-90]\*% (according to the Parties' internal documents) or nearly 100% (according to the Commission's market reconstruction) is in itself therefore an indication of market power. The transaction removes the competitive constraint the Parties were so far exercising on each other and would bring together the only two players, or at least the only two major players, in the market, granting them monopolistic power and the ability to increase prices.
- (380) In its internal documents, Ahlstrom consistently describes itself as [...]\*<sup>315</sup> with a market share of around [40-50]\*%.<sup>316</sup> [...]\*.<sup>317</sup> [...]\*<sup>318</sup> [...]\*.<sup>319</sup> [...]\*.<sup>320</sup>
- (381) By the same token, Munksjö's internal documents [...]\*,<sup>321</sup> that is to say heavy weight paper backings with a grammage of 185 gr/sqm or more.<sup>322</sup> [...]\*.<sup>323</sup>

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<sup>313</sup> Reply to the Commission's Article 6(1)(c) Decision, Paragraph 112.

<sup>314</sup> Horizontal Merger Guidelines, paragraph 14.

<sup>315</sup> Ahlstrom internal document, entitled "Business Plan 2012-2015" of 2 May 2012, Annex 10(K), slide 25, submitted with an email dated 18 January 2013; Ahlstrom document, entitled "Annual Plan 2012. Business Unit, Processing" of 18 January 2011, Annex 10(F), slide 7, submitted with an email dated 18 January 2013; Ahlstrom internal document, entitled "Annual Plan 2011, Business Unit, Processing" of 8 November 2010, Annex 10(E), page 4, submitted with an email dated 18 January 2013.

<sup>316</sup> Ahlstrom internal document, entitled "Business Plan 2012-2015" of 2 May 2012, slide 25, Annex 10(K), submitted with an email dated 18 January 2013; Ahlstrom internal document, entitled "Business Plan 2010-2013 PL: OSN 4- Abrasive and Cable Papers" of 7 May 2010, Annex 10(I), slide 4, submitted with an email dated 18 January 2013; Ahlstrom internal document, entitled "Annual Plan 2011, Business Unit, Processing" of 8 November 2010, Annex 10(E), page 4, submitted with an email of 18 January 2013.

<sup>317</sup> Ahlstrom internal document, entitled "Business Plan 2012-2015" of 2 May 2012, Annex 10(K), slide 25, submitted with an email dated 18 January 2013.

<sup>318</sup> See footnote 100.

<sup>319</sup> Ahlstrom internal document, entitled "Strategic Planning 2008: Abrasives and OB4," Annex 10(H), page 5, submitted with an email dated 18 January 2013.

<sup>320</sup> See Ahlstrom internal document, entitled "Business Plan 2012-2015" of 2 May 2012, Annex 10(K), page 25, submitted by email on 18 January 2013.

<sup>321</sup> See Recital (30) which set out the grades.

<sup>322</sup> Munksjö internal document, entitled "Munksjö Strategy 2011" of June 2011, Annex 10(B), slide 33, submitted with an email dated 18 January 2013.

<sup>323</sup> Munksjö internal document, entitled "Munksjö Strategy 2011" of June 2011, Annex 10(B), slide 34, submitted with an email dated 18 January 2013

- (382) During the market investigation, nearly all customers were very concerned about the transaction and expect both a price increase<sup>324</sup> and a reduction in innovation<sup>325</sup> post-transaction. Customers unanimously said that the transaction raises concerns for their future purchasing strategies in all of the three segments (heavy weight paper backings, light weight paper backings and latex-treated light weight papers).<sup>326</sup> When asked to name the suppliers which they would consider as a reliable source for heavy weight paper backings, no undertaking other than Ahlstrom and Munksjö was mentioned.<sup>327</sup> The concerns of customers are clear from following statements:

*“The merger between Munksjö and Ahlstrom would create a monopoly in the heavy paper backings market.”*<sup>328</sup>

*“Merger of both companies would dramatically affect market for light and heavy paper backings: No competition, smaller product portfolio.”*<sup>329</sup>

*“There will be only one supplier of heavy weigh paper within the EEA.”*<sup>330</sup>

*“It would become a global monopoly in high quality heavy weight backings. This will last until a new supplier will develop, but it may take several years.”*<sup>331</sup>

- (383) The responses received from customers and competitors thus demonstrate that the Parties impose a key competitive constraint on each other in the market for heavy weight paper backings. Therefore, the transaction would eliminate the competitive constraint that the Parties previously exercised upon each other.

#### 9.2.1.3.B. Competitive constraint by other competitors

- (384) The Parties claim that, post-transaction, a sufficient number of alternative suppliers of heavy weight paper backings, namely Krempel, Vilaseca and Weidmann, would remain in the market. In particular, those suppliers would be able to quickly expand their production, creating a significant competitive constraint on the merged entity’s behaviour post-transaction.
- (385) This argument clearly does not stand in the light of the Commission’s market investigation and the Parties’ own internal documents.

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<sup>324</sup> For example replies to question 62 - Phase II Questionnaire to customers (paper backings): the large majority of customers fear price increases in the market for heavy weight papers. Only one customer, L’Abrasive S.A.S. (“Abrasive”) welcomed the transaction as it would help to create a “EEA supplier strong enough to compete worldwide,” see reply of Abrasive to question 64 - Phase I Questionnaire to customers (paper backings).

<sup>325</sup> For example Minutes of the conference call with Mirka on 21 January 2013, Minutes of the conference call with Saint Gobain of 10 January 2013; replies by Napoleon Abrasives SPA and Nastroflex to question 61.3 - Phase I Questionnaire to customers (paper backings), reply by Starcke to question 61.1. - Phase I Questionnaire to customers (paper backings); reply of SAIT Abrasivi to question 60 - Phase II Questionnaire to customers (paper backings), reply of Ekamant to question 60.1 both - Phase II Questionnaire to customers (paper backings).

<sup>326</sup> Replies to question 60 - Phase II Questionnaire to customers (paper backings).

<sup>327</sup> Replies to question 46 - Phase I Questionnaire to customers (paper backings).

<sup>328</sup> Reply of Nastroflex to question 66 - Phase II Questionnaire to customers (paper backings).

<sup>329</sup> Reply of Hermes to question 66 - Phase II Questionnaire to customers (paper backings).

<sup>330</sup> Reply of Smirdex S.A. to question 61 - Phase I Questionnaire to customers (paper backings).

<sup>331</sup> Reply of Nastroflex to question 61 - Phase I Questionnaire to customers (paper backings).

- (386) In the Parties' internal documents, none of those three suppliers, namely Krempel, Vilaseca and Weidmann, [...]\*.<sup>332</sup> [...]\*.<sup>333</sup>
- (387) Therefore, based on Ahlstrom's internal documents, it does not seem that Ahlstrom perceived J. Vilaseca or Weidmann as real competitive threats. With regard to Krempel (who has been present on the market longer than the other two players), it is worth noting that Ahlstrom's assessment did not change over the years. The internal documents [...]\*.<sup>334</sup> The assessment of those other competitors is in sharp contrast with the Parties' assertion about the competitive strength of those players.
- (388) During the market investigation, customers dismissed the claim that there were credible alternatives to the Parties for the supply of heavy weight paper backings. In this regard, some customers explained that trials with Weidmann, Krempel and Vilaseca had been pursued. However, in most cases the trials had not delivered sufficient results and it could not be estimated, at that stage, how long it would take for any of those undertakings to become a reliable alternative to the Parties.<sup>335</sup>
- (389) The Commission below analyses each of those three companies in turn:

Weidmann

- (390) Weidmann is a paper manufacturer focused on the production of electrotechnical paper. The Parties argue that Weidmann has recently shifted part of its production of electrotechnical paper to a new paper mill in the United States, thereby freeing up substantial capacity (up to 10 000 tons per year) in its manufacturing site in the United Kingdom. Therefore, Weidmann would have a strong incentive to fill its capacity in the existing mill with an alternative product such as paper backings.<sup>336</sup>
- (391) While Weidmann has historically not been active in the market for paper backings, it has recently decided to enter with a view to establishing long-term activities in this sector. It has, however, been attempting to qualify with customers for the last 18 months with little or no success.<sup>337</sup> Based on its experience so far, Weidmann explained that the production of heavy weight paper backings is extremely challenging due to the multilayer structure of those backings. Additionally, customers demand highly customized products, which in turn makes the whole process much more complex.<sup>338</sup>

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<sup>332</sup> Ahlstrom internal document, entitled "Strategic Planning 2008: Abrasives and OB4," undated, Annex 10(H), page 8, submitted with an email of January 18, 2013: "[...]\*." See similar statements in Annex 10(E), page 4.

<sup>333</sup> Ahlstrom internal document, entitled "Annual Plan 2013. Business Unit Processing" of October 2012, Annex 10(G), page 11, submitted with an email of 18 January 2013.

<sup>334</sup> Ahlstrom internal document, entitled "Strategic Planning 2008: Abrasives and OB4," undated, Annex 10(H), page 8, submitted with an email of 18 January 2013; Ahlstrom internal document, entitled "Annual Plan 2011, Business Unit, Processing" of 8 November 2010, Annex 10(E), page 4, submitted with an email of 18 January 2013

<sup>335</sup> For instance, Minutes of the conference call with Imperial Abrasivi of 22 November 2012.

<sup>336</sup> Reply to the Commission's Article 6(1)(c) Decision, Paragraph 104

<sup>337</sup> Minutes of the conference call with Weidmann of 14 January 2013.

<sup>338</sup> Minutes of the conference call with Weidmann of 14 January 2013.

- (392) Customers do not consider Weidmann as an actual competitor of the Parties, because it has yet to develop a product that can compare to the Parties' paper backings. According to these customers, Weidmann is still in an early development stage and it is unclear if and when it would become a competitive constraint on the Parties. Several customers such as Nastroflex SPA ("Nastroflex"), Imperial Abrasivi SRL ("Imperial Abrasivi") and Fiar Fabbrica Italiana Abrasivi Resinati Srl ("Fiar") replied that, despite their intentions, they were not able to qualify Weidmann for heavy weight paper backings.
- (393) Based on its lack of prior experience in the market and know-how, as well as the fairly negative response from customers so far, it seems highly unlikely that Weidmann would be able to act as a competitive constraint on the merged entity within the next two to three years.

#### Vilaseca

- (394) Vilaseca is a specialty paper producer whose core business is the production of security paper. Its production of paper backings represents a very small niche and it has only very recently started producing this product, after having been approached by one of the Parties' customers.<sup>339</sup>
- (395) The Parties present Vilaseca as a recent - but fully-fledged – competitor with an offering of paper backings up to 250 gr/sqm.<sup>340</sup>
- (396) However, it should first be noted that, even if Vilaseca were able to produce paper backings with a basis weight of up to 250 gr/sqm, that range would not match the Parties' product portfolio, which reaches up to 400 gr/sqm. Vilaseca itself confirmed that, based on the capabilities of its paper machines, it can only achieve a very limited product portfolio. In fact, it can only produce paper backings with a basis weight of around 180 gr/sqm, that is to say the lower end of heavy weight paper backings.<sup>341</sup>
- (397) This was also confirmed by the the market investigation. The only EEA-based customer, which has qualified some of Vilaseca's paper backings, that is to say Saint Gobain, explained that Vilaseca was qualified for paper backings below 200 gr/sqm and that trials above that basis weight had been halted because of technical problems, the paper backings would split in two.<sup>342</sup>
- (398) Therefore, Vilaseca's offering is limited to the lower end of heavy weight paper backings. As explained in Recital (32), there is no unanimous understanding in the industry as to whether this grammage, 185 gr/sqm, should be qualified as heavy weight, because some respondents draw the dividing line between heavy and light weight paper backings at around 200 gr/sqm to 220 gr/sqm. Additionally, as mentioned in Recital (31), FEPA suggested that this grammage does not play an

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<sup>339</sup> Minutes of the conference call with Saint Gobain of 10 January 2013 and minutes of the conference call with Vilaseca of 18 December 2012.

<sup>340</sup> Annex 5 to the reply to the Commission's Article 6(1)(c) Decision, submitted with an email dated 18 December 2012.

<sup>341</sup> Minutes of the conference call with Vilaseca on 18 December 2012.

<sup>342</sup> Minutes of the conference call with Saint Gobain on 10 January 2013.



important role in the paper backings industry, let alone in the market for heavy weight paper backings.

- (399) On this basis, it seems unlikely that Vilaseca would be able to act as a competitive constraint on the merged entity in the market for heavy weight abrasive paper backings within the next two to three years.

#### Krempel

- (400) Krempel explained that paper backings are not one of its key areas, it being focused on electrotechnical paper. While it is able to produce paper backings of up to 300 gr/sqm, it explained that its paper machines are not "*state of the art*," which casts serious doubts on its ability to produce high quality paper backings.<sup>343</sup> Krempel also stated that it would not be able to nor would it have incentives to increase supply to compete with the merged entity, even in case of a permanent 5% to 10% price increase in heavy weight paper backings. Even assuming that Krempel's papermaking assets allowed it to redirect focus on the market for heavy weight paper backings (*quod non*),<sup>344</sup> any increase in its current capacity would require a major investment which Krempel is not prepared to make.<sup>345</sup>
- (401) This was also confirmed by a customer who stated that it had recently tried to qualify Krempel as a new supplier with poor results.<sup>346</sup> This customer pointed out that at this stage it was not possible to envisage when Krempel would become a reliable alternative to the Parties. Another customer stated that, based on its negative experience with Krempel, Krempel does not have the required assets to produce high quality heavy weight paper backings.<sup>347</sup>
- (402) Based on the views expressed by customers, Krempel's own assessment and Ahlstrom's perception of Krempel as evidenced in the internal documents,<sup>348</sup> it seems highly unlikely that Krempel would be able to act as a competitive constraint on the merged entity in the market for heavy weight paper backings within the next two to three years.

#### Omniafiltra

- (403) Regarding Omniafiltra, the fourth company which the Parties named as a competitor in the market for heavy weight paper backings, the Commission understands that it was liquidated a few years ago and that its assets were partly acquired by Omniafibra, which has never been active in the production of paper backings.

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<sup>343</sup> Email received from Krempel dated 15 November 2012.

<sup>344</sup> Ibid.

<sup>345</sup> Ibid.

<sup>346</sup> For example, minutes of the conference call with Imperial Abrasivi of 22 November 2012.

<sup>347</sup> Minutes of the conference call with Mirka of 28 January 2013.

<sup>348</sup> Ahlstrom internal document, entitled "Strategic Planning 2008: Abrasives and OB4," undated, Annex 10(H), page 8, submitted with an email of 18 January 2013; Ahlstrom internal document, entitled "Annual Plan 2011, Business Unit, Processing" of 8 November 2010, Annex 10(E), page 4, submitted with an email dated 18 January 2013

### Conclusion on the competitive constraint by existing competitors

(404) In sum, based on the market investigation it is not conceivable that any of these three or four players (Krempel, Vilaseca, Weidmann and Omniafiltra) would be able to act as a competitive constraint on the merged entity post-transaction. Even assuming that Krempel, Vilaseca and Weidmann could be regarded as active players, they would in any event have insignificant market shares based on the Commission's market reconstruction and would not constitute credible alternative sources of supply for customers. A price increase in heavy weight paper backings would not be defeated by any of these competitors.

#### 9.2.1.3.C. Market entry

(405) According to the Parties, the market for heavy weight paper backings is very dynamic as regards new entries.<sup>349</sup> This is because paper backings can be produced on paper machines that also produce other specialty papers and no specific know-how is required for their production. The Parties point to the recent (the last 1-2 years) entries into the market for heavy weight paper backings by Weidmann and Vilaseca in the last one to two years.<sup>350</sup>

(406) As explained in Recitals (138) *et seq.* on supply-side substitutability, special machinery is required to produce heavy weight paper backings. In addition to the investment necessary for the machinery, there are significant entry barriers in terms of know-how, as demonstrated by Krempel, Vilaseca and Weidmann's difficulty entering the market and becoming full competitors.

(407) Multiple customers have explained that they have tried to qualify other suppliers in order to avoid being entirely dependent on the Parties and to instil more competition in this highly concentrated market. However, their attempts have not succeeded.<sup>351</sup>

(408) The Parties' own internal documents and the market investigation do not support the Parties' argument that entry barriers are low. Moreover, suppliers of light weight paper backings do not appear to either have the ability or the incentives to enter the market for heavy weight paper backings, as alleged by the Parties. Finally, suppliers from regions other than the EEA also seem to lack both the ability and the incentives to make an effective entry into the EEA for heavy weight paper backings.

Technical expertise and know-how in the production of heavy weight paper backings as a barrier to entry

(409) According to the Horizontal Merger Guidelines, incumbents in a market may enjoy technical advantages over potential new rivals in the form of preferential access to innovation and research and development ("R&D"), and potentially also intellectual property rights. Those factors may constitute a barrier to entry in the market. Similarly, barriers to entry may also exist because of the established position of the incumbent firms, as a result of their experience and reputation for a high quality product.<sup>352</sup>

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<sup>349</sup> Reply to the Commission's Article 6(1)(c) Decision, Paragraph 98.

<sup>350</sup> Ibid.

<sup>351</sup> Reply of Ekamant to question 61 - Phase II Questionnaire to customers (paper backings).

<sup>352</sup> Horizontal Merger Guidelines, Paragraphs 71-72.

- (410) The evidence collected during the market investigation confirmed that the production of heavy weight paper backings requires significant know-how.

Evidence from internal documents

- (411) The Parties' internal strategic documents regarding the market for paper backings provide proof that the market is characterized by technical complexity and expertise, as well as high quality standards. Ahlstrom repeatedly notes that "[...]"<sup>353</sup>
- (412) Ahlstrom mentions as its three key capabilities as "[...]"<sup>354</sup> and states "[...]"<sup>355</sup>
- (413) Ahlstrom's internal document "*Welcome to the world of abrasive specialty papers*"<sup>356</sup> discusses at length the technical parameters required for high quality paper backings, such as "[...]"<sup>357</sup>. Therefore, it is evident that paper backings are products with complex technical features.
- (414) The Parties themselves in the State of Play meeting of 19 November 2012 acknowledged that the products are highly differentiated and that it would take a producer several years to develop papers with those different technical features.

Evidence from the market investigation

- (415) First, customers frequently mentioned properties such as anti-static, low curl, chemical barrier and others as very important for high quality paper backings. Those properties are the outcome of several years of product development, which prior to this transaction was essentially the result of the existing competition between the Parties.<sup>357</sup> Customers also unanimously confirmed that quality is the most important criterion for a customer when choosing a supplier.<sup>358</sup>
- (416) Second, Weidmann's difficulties as an entrant in the market for heavy weight paper backings are illustrative of the difficulties a new player will face when trying to enter this market. As described more in detail in Recitals (390) - (393), Weidmann has tried to enter the market over the past 18 months, so far with limited or no success. The evidence given by the customers who tried to qualify Weidmann's products clearly shows that it is crucial for a new entrant to have the required technical know-how. It also demonstrates how difficult it is to acquire this know-how, even in a situation where customers are actively cooperating and sharing their own know-how with the new entrant.

Market entry by suppliers of light weight paper backings

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<sup>353</sup> Ahlstrom internal document, entitled "Business Plan 2012-2015" of 2 May 2012, Annex 10(K), page 12, submitted with an email dated 18 January 2013.

<sup>354</sup> Ahlstrom internal document, entitled "Business Plan 2012-2015" of 2 May 2012, Annex 10(K), page 13, submitted with an email dated 18 January 2013.

<sup>355</sup> Ahlstrom internal document, entitled "Product Family Strategy 2012-2015, Abrasive Papers" of 27 March 2012, Annex 10 (L), page 3, submitted with an email dated 18 January 2013.

<sup>356</sup> Ahlstrom internal document, entitled "Strategic Planning 2008: Abrasives and OB4" of 2007-08, Annex 10(M), submitted with an email of dated 18 January 18, 2013.

<sup>357</sup> Minutes of conference call with Ekamant of 19 November 2012.

<sup>358</sup> In their replies to question 54 of the Phase II Questionnaire, all customers mention quality as the most important criteria for their purchase decision.

- (417) Regarding the market entry by current suppliers of light weight paper backings, the Commission assessed, in particular, whether Neenah, a supplier of latex treated light weight paper backings (and the market leader in the light weight market), and BillerudKorsnäs, which produces non-latex light weight kraft paper backings, would have the ability and incentives to enter the market for heavy weight paper backings.
- (418) Neenah, which currently specialises in latex treated paper backings estimates that the investment required to purchase a cylinder machine for producing heavy weight paper backings would amount to approximately EUR 50-60 million.<sup>359</sup> For Neenah, the upgrade of its machinery by adding a second headbox would be difficult due to technical reasons. Neenah explained that it *“is not possible to install an additional headbox on Neenah’s paper mill. There are two restrictions: technically impossible; If technically possible, we would be unable to continue [...] product on the machine. So additional headboxes would result in a change of current product portfolio.”*<sup>360</sup>
- (419) Neenah also estimated that it would take two to three years to install the new specialized paper machine and achieve acceptable results and a sufficient scale of production, given that technology and know-how play a significant role. The uncertainty as to when it would achieve the required quality and, therefore, be able to qualify with customers would make this investment even riskier. Overall, Neenah believed that a supplier of paper backings would need up to three years to become an active player in the market for heavy weight paper backings.<sup>361</sup>
- (420) Neenah also explained: *“Neenah Gessner has tried to enter the Heavy weight market with light weight saturated products but has been unsuccessful with this.”*<sup>362</sup> Internal documents of Ahlstrom (dating from 2008 and 2010) mentions that Neenah tried to develop a new heavy weight business.<sup>363</sup> However, taking into account that Neenah is not currently present in the market for heavy weight paper backings and that Neenah’s attempts to enter [...]\*, it can be concluded that Neenah did not manage to develop a heavy weight business or did not find a cost-effective solution to produce heavy weight paper backings on its current machinery. Ekamant, one of the Parties’ customers, explained that it had tested heavy weight paper backings produced by Neenah several years ago, but those backings were never approved.<sup>364</sup> In the light of the above, Neenah’s entry into the market for heavy weight paper backings is unlikely.
- (421) BillerudKorsnäs is a large paper producer focusing, in particular, on sack and packaging paper. BillerudKorsnäs explained that it has limited market knowledge (it inherited its paper backings activities from UPM)<sup>365</sup> and could not start producing

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<sup>359</sup> Minutes of the conference call with Neenah on 24 October 2012.

<sup>360</sup> Email received from Neenah dated 19 February 2013.

<sup>361</sup> Minutes of the conference call with Neenah on 24 October 2012.

<sup>362</sup> Reply of Neenah to question 7 - Phase II questionnaire to competitors (paper backings).

<sup>363</sup> Ahlstrom internal document, entitled “Strategic Planning 2008: Abrasives and OB4,” undated, Annex 10(H), page 5, submitted with an email dated 18 January 2013. Ahlstrom internal document, entitled “Annual Plan 2011, Business Unit, Processing” of 8 November 2010, Annex 10(E), page 4, submitted with an email dated 18 January 2013.

<sup>364</sup> Emails received from Ekamant dated 12 and 19 February 2013.

<sup>365</sup> See footnote 100 above.

heavy weight paper backings on the paper machine it is currently using to produce light weight paper backings. This is because this machine is a single-headbox foudrinier machine, and the thickness it can produce is limited.<sup>366</sup> It estimated that the installation of a second headbox to that paper machine would amount to approximately EUR 25-30 million.<sup>367</sup> However, even with a second headbox BillerudKorsnäs could only reach a basis weights of up to 300 gr/sqm,<sup>368</sup> that is to say still below the capabilities of the Parties' paper machines which can reach 400 gr/sqm.

- (422) BillerudKorsnäs explained that, within its activities, it owns paper machines which are capable of producing heavier papers. However, this would trigger a reshuffling of its portfolio, which to date has not been considered. In any event, those machines would probably not meet the requirements of customers, because they are ill-suited for the production of highly customized products such as paper backings, where customization is a key requirement in order to qualify with customers. In BillerudKorsnäs's view, its paper machines are better suited for commodity products due to their large capacities.
- (423) In any event, considering the experiences customers have had with Weidmann, Vilaseca and Krempel, it is difficult to see how new entrants could emerge quickly enough in this market to be able to constrain the merged entity. As one customer put it: "*... it is very unlikely to see any new entrants in this market. First, any new entrant would need to invest several millions of Euro in updating the production lines. In case such a new entrant would have to set up a whole new production line, this will cost minimum EUR 30 million. Second, they would need to develop the necessary know-how, a process that can take years because the production of abrasive paper backings is very different from the production of other papers. Third, Munksjö and Ahlstrom would probably strive to make this entry more difficult, if not*

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<sup>366</sup> Minutes of the conference call with BillerudKorsnäs on 14 November 2012.

<sup>367</sup> In their reply to the Commission's Article 6(1)(c) Decision, the Parties' argued that investments to upgrade an existing paper machine with, for example, a second headbox or an extra cylinder to add another layer of paper are much less costly than described by the Commission. In particular, they estimated that a second headbox, including an additional flat wire, would cost around EUR 3 million and that an extra cylinder for an existing cylinder machine would cost around EUR 500 000. Moreover, if an existing paper machine would instead have to be equipped with a completely new cylinder wire line, Ahlstrom estimates that this cost would amount to approximately EUR 10 to 15 million. As noted in Recital (147), Voith explained that the cost of adding an extra headbox and a wire to a single headbox paper machine would amount to around EUR 4 to 7 million, depending on the specific design of the paper machine. As regards the purchase of an entirely new cylinder wire line, which remains the most efficient way of producing heavy weight paper backings, the Parties' own estimate, that is to say EUR 10 to 15 million, is already too high for a total market of around EUR 40 to 48 million worldwide, where undertakings are unwilling to make that investment due to the uncertainties in the development of heavy weight paper backings and the presence of two top players such as the Parties. Please also refer to Recitals (138) *et seq.* on supply-side substitutability which also discusses the cost of upgrading existing machinery.

<sup>368</sup> Minutes of the conference call with BillerudKorsnäs on 14 November 2012.

*impossible.*<sup>369</sup> Accordingly, customers do not expect to be able to switch to new suppliers within the next two years.<sup>370</sup>

- (424) Based on the Commission's analysis there are currently no other EEA or non-EEA suppliers of light weight paper backings that would be able or willing to enter the heavy weight market (other than Weidmann, Vilaseca and Krempel). In sum, the market investigation and Ahlstrom's own internal documents confirmed that any entry into the market for heavy weight paper backings would be too difficult due to, among other factors, the required know-how, the long time span that would be necessary to acquire it and the uncertainties associated with entry into the market.
- (425) The Commission further investigated if other paper producers, in particular producers of sack or packaging papers, would be able and willing to enter the market for heavy weight paper backings. None of the three responding paper manufacturers has plans to enter the market for heavy weight paper backings "*since it is not related to our core business and there's no machinery and necessary know-hows,*"<sup>371</sup> or because "*The machinery setup in our mills is not suitable.*"<sup>372</sup>

#### Entry from other regions

- (426) As concluded in Recital (321), the market for heavy weight paper backings is mostly likely EEA-wide. For this reason, the Commission in the following assesses the competitive constrained exercised by competitors from other regions and, in particular, if those competitors would have the ability and the incentives to enter the EEA market.
- (427) Regarding the Parties' arguments, they acknowledge that only a small amount of heavy weight paper backings of Chinese or Japanese origin is imported into the EEA.<sup>373</sup> However, they argue that they are experiencing fierce competition from Chinese suppliers in Asia and that those suppliers could also enter the EEA market. In fact, they claim that they are experiencing competition indirectly through the imports of coated abrasive jumbo reels from converters in China.<sup>374</sup>

#### Potential entry from China

- (428) Pöyry estimated on the basis of [...] that around [...] of paper backings per year are imported into the EEA and that the main producers are mainly producing it for

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<sup>369</sup> Minutes of the conference call with Awuko on 21 January 2013.

<sup>370</sup> For example, minutes of the conference call with Ekamant on 19 November 2012: "*Ekamant has tried to qualify new suppliers, but trials have not yet delivered sufficient results. At this stage, it is highly unlikely that Ekamant could switch to new suppliers in the next two years*" and also minutes of the conference call with Imperial Abrasivi of 22 November 2012.

<sup>371</sup> Reply of Cellulose Irani S.A. ("Cellulose Irani") to question 6 - Phase II Questionnaire to Kraft paper producers.

<sup>372</sup> Reply of Mondi Group AG ("Mondi") to question 6 - Phase II Questionnaire to Kraft paper producers. Equally, Smurfit Kappa confirmed that it has "*no plans to enter this market,*" see their email dated 23 January 2013.

<sup>373</sup> Reply to the Commission's Article 6(1)(c) Decision, Paragraph 92.

<sup>374</sup> Reply to the Commission's Article 6(1)(c) Decision, Paragraph 93.

the domestic market.<sup>375</sup> Based on the Commission’s investigation, paper backings, in particular heavy weight paper backings, do not seem to be imported into the EEA, as no customer bought paper backings of Chinese origin in the last two years for a manufacturing site in the EEA.<sup>376</sup> Ahlstrom’s internal documents repeatedly contain the following statement “[...]”.<sup>377</sup>

- (429) The Commission in its market investigation did not find any evidence that there are any non-EEA suppliers of heavy weight paper backings, either Chinese or from other regions. Only one customer, Saint Gobain, replied that they had bought paper backings from a Chinese producer within the last two years.<sup>378</sup> Saint Gobain, further confirmed that it purchased only light weight kraft paper backings for DIY end applications and that this purchase was destined for its Chinese facilities.<sup>379</sup> Finally, only one other customer was able to provide a meaningful list of Chinese suppliers of paper backings.<sup>380</sup>
- (430) Based on the market investigation, it seems that the quality of paper backings of Chinese origin is not comparable to the products manufactured in the EEA. Although the Commission, in its market investigation, had not explicitly asked for heavy weight paper backings, but only for paper backings in general (comprising also latex and non-latex treated light weight paper backings) the replies to the market investigation are still significant.
- (431) Half of the customers believe that Chinese suppliers of paper backings do not guarantee the same level of quality as the paper backings produced in the EEA. Almost all the remaining customers could not provide an answer, because they have never explored that option. Only one customer believes that Chinese suppliers can guarantee the same level of quality as EEA suppliers.<sup>381</sup> This one customer, Saint Gobain, purchases only light weight kraft paper backings from Chinese suppliers for its Chinese manufacturing sites.<sup>382</sup>
- (432) Some customers pointed out that Chinese manufacturers of abrasive products very often use paper backings sourced from the two main EEA suppliers and stated that this is due to the inferior quality of Chinese paper backings. As one customer explained: “*The best of our Chinese competitors’ products for industrial application have an European abrasive paper backings (or American abrasive latex treated*

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<sup>375</sup> Pöyry market report, entitled: “Independent study of the decor paper and abrasive base paper industry”, submitted with an email dated 28 January 2013, page 21.

<sup>376</sup> The only customer who bought from paper backings, namely kraft paper backings for DIY applications, is Saint Gobain for a manufacturing site in China, see email received from Saint Gobain dated 1 February 2013.

<sup>377</sup> Ahlstrom’s most recent business plan “Annual Plan 2013” of October 2012, Annex 10 (G), page 5, mentions “[...]” similar statements are in Ahlstrom’s Annual Plan 2011, November 8, 2010, Annex 10(E), page 7; and Annex 10 (F), page 7, all submitted with an email dated 18 January 2013.

<sup>378</sup> Replies to question 44 of Phase II Questionnaire to customers (paper backings).

<sup>379</sup> Email received from Saint Gobain dated 1 February 2013.

<sup>380</sup> Reply of Sia Abrasives to question 46 - Phase II Questionnaire to customer (paper backings).

<sup>381</sup> Replies to question 42 - Phase II Questionnaire to customer (paper backings).

<sup>382</sup> Email received from Saint Gobain dated 1 February 2013.

*paper backings): does it mean something?"<sup>383</sup> Another customer points out: "We have never tried Chinese backing suppliers. But we hear that even high quality abrasive products manufactured in China are made with European backings."<sup>384</sup>*

- (433) The fact that not a single EEA customer is buying heavy weight paper backings from China and that instead Chinese producers source their supplies at least partly from the EEA<sup>385</sup> clearly indicates that the quality of their domestic suppliers is not sufficient for the specifications of EEA customers.<sup>386</sup> Given the importance of know-how, any entry into the heavy weight paper backings market would be difficult and require time.

#### Potential entry by Hokuetsu

- (434) The Parties further argue that the Japanese supplier Hokuetsu could enter the EEA market and that the mere fact that it could enter would constrain the merged entity from increasing prices.<sup>387</sup>
- (435) In its internal documents, Munksjö mentions [...]\*.<sup>388</sup> Munksjö's internal document from 2011 also estimates [...]\*.<sup>389</sup>
- (436) In the market investigation, Hokuetsu explained that while the transaction "*may provide Hokuetsu with an opportunity to look at the price developments in this market. However, - realistically speaking - there is very little room for an entry into the EEA. Hokuetsu focuses on nearby customers and has never tried to qualify with European customers. This is because distance and lead time make business cooperation very difficult.*"<sup>390</sup> In its reply to the Commission's market investigation, Hokuetsu also qualifies quality and lead time as the two key priorities for customers when choosing/switching between suppliers.<sup>391</sup>
- (437) Based on Hokuetsu's self-assessment and Munksjö's views in its internal documents, it seems unlikely that Hokuetsu would be capable of entering the EEA market sufficiently quickly and in an effective manner which creates competitive constraints on the behaviour of the merged entity.

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<sup>383</sup> Reply of SAIT Abrasivi to question 42 - Phase II Questionnaire to customer (paper backings).

<sup>384</sup> Reply of Nastroflex to question 42 - Phase II Questionnaire to customer (paper backings).

<sup>385</sup> This is also shown by the significant exports of the Parties to China.

<sup>386</sup> Although one customer points out, that "Chinese sources believe that the quality of their locally produced paper will improve as this is the typical evolution of manufacturing processes in that country." 3M's reply to question 42 -Phase II Questionnaire to customer (paper backings).

<sup>387</sup> Reply to the Commission's Article 6(1)(c) Decision, Paragraph 92.

<sup>388</sup> Munksjö internal document, entitled "Munksjö Strategy 2011" of June 2011, Annex 10(B), Annex 10(B), page 34, submitted with an email dated 18 January 2013.

<sup>389</sup> By way of comparison, the Parties' combined production in 2011 was around [...]\* tons in 2011 out of which around [...]\* tons account are heavy weight paper backings, which shows that Hokuetsu is a much smaller player than the Parties.

<sup>390</sup> Minutes of conference call with Hokuetsu of 31 January 2013.

<sup>391</sup> Reply of Hokuetsu to question 73.2 - Phase II Questionnaire to competitors (paper backings).



### Potential entry from other regions

- (438) Ahlstrom's internal documents mention a few other competitors, [...]\*. The Parties do not mention them as potential entrants in the market for heavy weight paper backings but it seems unlikely that they would be able to be quick enough in developing heavy weight products and qualify with EEA customers.
- (439) In particular, those three undertakings are based in North America and have very limited or no sales of light weight paper backings in the EEA. Given the difficulties of other manufacturers, such as J. Vilaseca, Krempel or Weidmann, which in principle have the appropriate machinery, it is extremely difficult to see how these undertakings could develop heavy weight products quickly enough. In addition, given that they have no or little presence in the EEA, establishing themselves with EEA customers would be an additional hurdle.
- (440) Contrary to the Parties' claims, the market for heavy weight paper backings is not dynamic in terms of recent entries and technical know-how is in fact a high barrier to entry. In particular, entry from manufacturers expanding from light-weight paper backings into heavy weight paper backings or from manufacturers active in other regions seems unlikely and, in any event, would not be timely and effective so as to constrain the behaviour of the merged entity.

#### 9.2.1.3.D Buyer power, sponsoring entry and possibility of off-line lamination

##### Buyer power

- (441) The Horizontal Merger Guidelines set out the conditions as to when countervailing buyer power can be considered as a constraining factor on a supplier and also state that "*Countervailing buyer power cannot be found to sufficiently off-set potential adverse effects of a merger if it only ensures that a particular segment of customers, with particular bargaining strength, is shielded from significantly higher prices or deteriorated conditions after the merger. Furthermore, it is not sufficient that buyer power exists prior to the merger, it must also exist and remain effective following the merger. This is because a merger of two suppliers may reduce buyer power if it thereby removes a credible alternative.*" (emphasis added)
- (442) Given that the transaction would lead to the creation of a monopoly or near monopoly in the market for heavy weight paper backings, customers would not wield any meaningful buyer power post-transaction and would not be able to prevent any price increase. As one customer pointed out: "*Munksjö and Ahlstrom are the only suppliers of abrasive paper backings, which we can use. A combination of both companies would make an oligopoly to a monopoly. This would be fatal for the market!!*"<sup>392</sup> Another customer pointed out: "*Up to now Ahlstrom and Munksjö have been alternative sources for heavy and light papers. No bargaining power after the merger.*"<sup>393</sup> Moreover, even if one or two larger customers<sup>394</sup> could somehow exercise a certain degree of bargaining power, this would not apply to the majority of customers.

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<sup>392</sup> Reply of Awuko to question 36 - Phase I Questionnaire to customers (paper backings).

<sup>393</sup> Reply of Sia Abrasives to question 60 - Phase I Questionnaire to customers (paper backings).

<sup>394</sup> Minutes of the conference call with Saint Gobain of 10 January 2013 who considered that "*it would be difficult for the merged entity to impose a price increase on Saint Gobain without any commercial justification. However, the case might be different for smaller customers.*"

As explained in the previous Recital, it is not enough if only a particular segment of the customers has buyer power and is shielded from significantly higher prices.

- (443) It seems that customers' buyer power is already limited due to the duopoly of the Parties: *"In the past years the abrasive paper backing suppliers have worsen the supply conditions: they have increased prices, they have reduced payment terms, they have lowered the service (i.e. they took away the possibility of having a safety stock dedicated to us). All this happened and with very little notice and without giving us the possibility to negotiate. We had to accept because we have no alternative on the market."*<sup>395</sup> This situation would worsen were the transaction to take place.
- (444) Other customers described the pre-transaction situation differently, but they nonetheless pointed out that any existing price competition between the Parties would disappear post-transaction: *"We have experienced continuous price increases from Munksjö during the years where we had them as a single source, due to these price increases we developed the co-operation with Ahlstrom. Thanks to this new business relationship, the cost picture of the heavy weight paper that we purchase has now changed completely, and there is now a healthy competitiveness between Munksjö and Ahlstrom, as it also should be. Before that we have been forced to absorb all price increases."*<sup>396</sup>
- (445) Regarding the Parties' argument that customers would be able to retaliate against any attempted price increase in heavy weight paper backings by purchasing elsewhere some volumes of other types of paper backings,<sup>397</sup> nearly all customers have stated that they would not be able to counter any price increases using that strategy. Only one customer stated that this would be possible to a limited extent.<sup>398</sup> In addition, some customers are mainly focused on heavy weight products only or a significant part of their business involves heavy weight products<sup>399</sup> and, therefore, would not be able pursue this strategy.
- (446) Finally, offline lamination is not a means by which customers could exercise buyer power for the reasons set out in Recital (124) - (136) on market definition.

#### Sponsoring of new entry

- (447) The majority of customers stated that they would not be willing to sponsor new entries,<sup>400</sup> because the risk that a potential new entrant would not be able to produce a product of sufficient technical quality is considered too high. A large customer (Nastroflex), who stated that they were willing to sponsor a new entry, submitted that they *"would sponsor the new supplier by testing his products in their manufacturing*

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<sup>395</sup> Reply of Nastroflex to question 60.1 - Phase I Questionnaire to customers (paper backings).

<sup>396</sup> Reply of Ekamant to question 33 - Phase II Questionnaire to customers (paper backings).

<sup>397</sup> Reply to the Commission's Article 6(1)(c) Decision, Paragraph 109.

<sup>398</sup> Replies to question 62 - Phase II Questionnaire to customers (paper backings), and the minutes of the conference call with Mirka of 28 January 2013.

<sup>399</sup> These are for example Ekamant (reply to the Commission's Article 6(1)(c) Decision, Paragraph 108), Nastroflex (reply of Nastroflex to question 36 - Phase I Questionnaire to customers (paper backings)), Awuko (Minutes of the conference call with Awuko of 21 January 2013).

<sup>400</sup> Replies to question 54 - Phase I Questionnaire to customers (paper backings).

*plant and letting him see what went wrong/well,*<sup>401</sup> which is ultimately different from a fully-fledged sponsoring by virtue of, for example, volume commitments.

- (448) Another customer (Awuko Abrasives Wandmacher GmbH & Co. KG, "Awuko") explained his unwillingness to sponsor a new entrant as follows: *"Awuko would not be able or willing to sponsor any new entrants. Even if Awuko endeavoured to raise EUR 2-3 million to invest in a new entrant this project would be very risky because there is no guarantee that the new entrant would be able to produce high quality paper backings. Moreover, a strategy of committing Awuko's volumes to entice new market entry would not be successful, because Awuko's purchasing volumes are too small and not attractive enough to attract market entry. Moreover, a commitment of volumes for one year would not be sufficient and no company is likely to commit to multiple years. In addition, this new entrant would sooner or later take advantage of the new market scenario and increase prices."*<sup>402</sup>
- (449) Therefore, it is clear that the Parties' arguments in relation to buyer power and sponsoring are not valid in the light of the Commission's market investigation. Instead, it can be concluded that the large majority of customers would not have sufficient buyer power to prevent a price increase by the merged entity post-transaction.

#### 9.2.1.3.E Conclusion – Heavy weight paper backings

- (450) It is highly likely that the Parties would enjoy a quasi-monopoly in the market for heavy weight paper backings post-transaction, giving rise to substantial anticompetitive effects. In addition, no new suppliers are likely to have the ability or the incentives to enter the market in the following two to three years. A hypothetical price increase could not be defeated by either customers or competitors and would probably be absorbed by the Parties' customers.
- (451) Therefore, the Commission concludes that the transaction would significantly impede effective competition in the internal market, as a result of the creation of a dominant position in the market for heavy weight paper backings, irrespective of any geographic market delineation.

#### 9.2.2. Paper backings – hypothetical overall market for paper backings

##### 9.2.2.1. Preliminary remarks

- (452) The available evidence clearly indicates that the relevant product market comprises only heavy weight paper backings. However, the Commission assessed the wider market comprising all paper backings, as the Parties argued that paper backings form an overall product market and that a distinction between heavy and light weight paper backings is misguided. As explained below in Recital (499), even if that wider market were to be retained (*quod non*), the Commission concludes that the transaction would in any event lead to a significant impediment to effective competition for the reasons set out in Recitals (453) – (499).

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<sup>401</sup> Reply of Nastroflex to question 54 - Phase I Questionnaire to customer (paper backings).

<sup>402</sup> Minutes of the conference call with Awuko on 21 January 2013.

### 9.2.2.2. Market size, market shares and market structure (including HHI)

- (453) In the Form CO the Parties estimated the total size of the market for paper backings to be approximately EUR [...] million in the EEA and EUR [...] million worldwide. However, in their internal documents, the Parties consistently estimate the worldwide market to be between EUR [...] million,<sup>403</sup> although Ahlstrom in one of its documents estimates the market size as being slightly lower, at around EUR [...] million.<sup>404</sup> Volume-wise, the market shares in the Form CO assume a total market for paper backings of [...] tons, while the Parties' internal documents assume a market of around [...] tons (Munksjö's internal documents) and between [...] tons (Ahlstrom's internal documents). This is roughly in line with a recent report by the consultancy Alexander Watson Associates, which estimates the total market size at around [...] tons worldwide.<sup>405</sup>
- (454) In the absence of reliable data, the Commission carried out a limited market reconstruction exercise based on sales data received by competitors during pre-notification and in the context of the market investigation. On this basis, the size of the total market is likely to be approximately EUR 40 million in the EEA and around EUR 120 million worldwide, excluding Chinese suppliers from which the Commission was unable to obtain sales figures.
- (455) Tables 5, 6 and 7 show the Parties' market shares in the EEA and worldwide by value and volume based on different sources:
- (1) Table 5 illustrates the market shares based on the Commission's market reconstruction;
  - (2) Table 6 illustrates the market shares as found in Ahlstrom's internal documents;
  - (3) Table 7 illustrates the market shares from the Form CO. With regard to this last table, it should be noted that the Parties' estimates in their own internal documents differ significantly from their submission in the Form CO, as well as from the Commission's market reconstruction for the EEA and worldwide excluding Chinese suppliers.

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<sup>403</sup> See for example Ahlstrom's internal documents, entitled "Annual Plan 2011," November 8, 2010, Annex 10 (E), page 2: "*paper grades account for [...]\*;*" entitled "Annual Plan 2013" of October 2012, Annex 10 (G), page 3: "*Abrasive Base Papers: [...]\*;*" entitled "Product Family Strategy 2012-2015, Abrasive Papers" of March 27, 2012 Annex 10 (L): "*total market is about [...]\*;*" documents all submitted with an email dated 18 January 2013.

<sup>404</sup> Ahlstrom internal document "Business Plan 2010-2013, PL: OSN 4 - Abrasive & Cable Papers," of 7 May 2010, Annex 10 (I), page 4 submitted with an email dated 18 January 2013.

<sup>405</sup> Alexander Watson Associates, Specialty Papers and Paperboards Global Sourcebook 2013, page 194, submitted with an email dated 31 January 2013.

**Table 5: Paper backings - Market shares by value and volume**

	EEA		Worldwide without Chinese suppliers <sup>406</sup>	
	Value	Volume (m <sup>2</sup> )	Value	Volume (m <sup>2</sup> )
Ahlstrom	[20-30]%	[20-30]%	[10-20]%	[10-20]%
Munksjö	[30-40]%	[20-30]%	[40-50]%	[30-40]%
<b>Combined</b>	<b>[60-70]%</b>	<b>[50-60]%</b>	<b>[50-60]%</b>	<b>[50-60]%</b>
<b>Total</b>	100%	100%	100%	100%

*Source: Commission's market investigation*

**Table 6: Paper backings - Market shares by value projected for 2013**

	Worldwide
	Value
Ahlstrom	[10-20]*%
Munksjö	[30-40]*%
Neenah	[20-30]*%
Others	[20-30]*%
<b>Combined</b>	<b>[40-50]*%</b>

*Source: Ahlstrom's internal documents<sup>407</sup>*

<sup>406</sup> Despite best efforts, it has not been possible to obtain any data from Chinese suppliers of paper backings. However, the above shares still represent a meaningful proxy to assess the Parties' market power in this case. With regard to Munksjö's market shares in the EEA and worldwide, it should be noted that Munksjö exports the large majority of its production outside the EEA, leading to a similar and sometimes higher market share at the worldwide level.

<sup>407</sup> Ahlstrom internal document, entitled "Annual Plan 2013 - Business Unit Processing" of October 2012, Annex 10 (G), slide 3, submitted with an email dated 18 January 2013. It should be noted that this is a lower estimate compared to other internal documents where Ahlstrom estimated the combined market share at [50-60]\*%, that is to say roughly at the same level as shown by the Commission's market reconstruction; Ahlstrom internal document, entitled "Business Plan 2012-2015 Business Unit Processing" of 2 May 2012, Annex 10 (K), page 25, submitted with an email dated 18 January 2013. In a Munksjö internal document, entitled "Munksjö Strategy 2011" of May 2011, Annex 10 (A), slide 40, where Munksjö estimates the combined market share at [40-50]\*% on the basis of volume figures, Neenah with [10-20]\*%, UPM (now BillerudKorsnäs) at [5-10]\*% and "Others" (unaccounted) at [40-50]\*%.

**Table 7: Paper backings - Market shares by value and volume**

	EEA		Worldwide (including Chinese suppliers)	
	Value	Volume	Value	Volume
Ahlstrom	[20-30]*%	[10-20]**%	[5-10]**%	[5-10]**%
Munksjö	[20-30]*%	[20-30]**%	[20-30]**%	[10-20]**%
<b>Combined</b>	<b>[40-50]*%</b>	<b>[40-50]**%</b>	<b>[30-40]**%</b>	<b>[20-30]**%</b>
Neenah	[30-40]*%	[30-40]**%	[10-20]**%	[10-20]**%
Billerud	[0-5]**%	[5-10]**%	[0-5]**%	[0-5]**%
Monadnock	[0-5]**%	[0-5]**%	[0-5]**%	[0-5]**%
Krempel	[0-5]**%	[0-5]**%	[0-5]**%	[0-5]**%
Smurfit Kappa Group	[0-5]**%	[5-10]**%	[0-5]**%	[0-5]**%
Weidmann	[0-5]**%	[0-5]**%	[0-5]**%	[0-5]**%
Vilaseca	[0-5]**%	[0-5]**%	[0-5]**%	[0-5]**%
Omniafiltra	[0-5]**%	[0-5]**%	[0-5]**%	[0-5]**%
Domtar	[0-5]**%	[0-5]**%	[0-5]**%	[0-5]**%
Jiangxi Lemen	-	-	[5-10]**%	[5-10]**%
Hubei Haifeng	-	-	[5-10]**%	[5-10]**%
Hokuetsu			[5-10]**%	[0-5]**%
Hubei Yuli	-	-	[5-10]**%	[10-20]**%
Others	[5-10]**%	[5-10]**%	[10-20]**%	[20-30]**%
<b>Total</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>

*Source: Parties' estimates in the Form CO*

- (456) The concentrated nature of the market for paper backings is also reflected in the results of the application of the HHI.<sup>408</sup> It shows a level of HHI of approximately [more than 2000]\* (by value) and [more than 2000]\* (by volume) before the transaction in 2011 and around [more than 4000]\* (by value) and [more than 3000]\* (by volume) after the transaction, with a change in the HHI directly brought about by the merger (the delta) of around [1500-2500]\* (by value) and [1000-2000]\* (by volume).
- (457) The Commission has also investigated the evolution of market shares over time and has for this purpose reconstructed the market shares for the years 2009-2011. These are as follows:

<sup>408</sup> Horizontal Merger Guidelines, Paragraph 16.

**Table 8: Parties' Market Shares in Paper Backings in 2009-11 by value**

	EEA			Worldwide (without Chinese suppliers)		
	2009	2010	2011	2009	2010	2011
Ahlstrom	[30-40]%	[20-30]%	[20-30]%	[10-20]%	[20-30]%	[10-20]%
Munksjö	[30-40]%	[30-40]%	[30-40]%	[30-40]%	[30-40]%	[40-50]%
<b>Combined</b>	<b>[70-80]%</b>	<b>[60-70]%</b>	<b>[60-70]%</b>	<b>[50-60]%</b>	<b>[50-60]%</b>	<b>[50-60]%</b>
<b>Total</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>

Source: Commission's market investigation<sup>409</sup>

### 9.2.2.3. The Parties' arguments

- (458) The Parties contest the Commission's market reconstruction and reiterate that the scope of the markets at issue is global. Therefore, in their view, the merged entity would hold a mere [30-40]\*% market share by value and continue to face fierce competition post-transaction.
- (459) They also disagree with the Commission's findings as regards closeness of competition. While they acknowledge that Ahlstrom is indeed Munksjö's closest competitor in the market for heavy weight paper backings, they explain that in the wider market for paper backings Munksjö's closest competitor is Neenah, given that Ahlstrom does not manufacture latex treated light weight backings which is Munksjö's focus.
- (460) In addition, they argue that the market is so dynamic that it featured three recent new entries only in the last two years, that is to say Weidmann, J. Vilaseca and Potsdam Specialty Paper Inc. ("Potsdam") (Potsdam entered in the light weight segment). They point out that in the paper industry there is no expectation of genuinely new entries. According to the Parties, new competitors enter the market in order to either take advantage of spare capacity or to restructure an unprofitable product portfolio. In that regard, a simple rebuild of an existing paper machine would suffice to make effective entry.
- (461) They also raise the argument of countervailing buyer power with regard to the hypothetical overall market for paper backings, as they did with respect to the narrower market for heavy weight paper backings.

### 9.2.2.4. The Commission's analysis

#### 9.2.2.4.A Elimination of an important competitive constraint – closeness of competition

- (462) In the light of the Parties' claims that they should not be considered each other's closest competitors in the hypothetical overall market for paper backings, the Commission also assessed whether the transaction would eliminate a significant competitive constraint based on the closeness of competition existing between the Parties. To that end, the Commission analysed the Parties' internal documents and the results of the market investigation.

<sup>409</sup> Please note that worldwide market shares do not include data from the Parties' Chinese competitors.

### The Parties' internal documents

(463) The Parties' internal documents contain several analyses of the competitive environment in the market for paper backing pre- transaction. [...] The documents provide evidence of significant pre-transaction competition between the Parties in terms of product quality.

(464) Figure 11 is slide from Munksjö which analyses the competitive landscape and identifies [...]\*, that is to say the paper grades E to H which correspond to a grammage of more than 185 gr/sqm. It also shows that Munksjö allocates itself a market share of more than [50-60]% in two sub-segments of the market for heavy weight paper backings, namely [...]\*.<sup>410</sup>

[...]\*

**Figure 11: Munksjö's analysis of the competitive landscape<sup>411</sup>**

(465) Ahlstrom's internal documents from 2008 [...]\*

(466) Another of Ahlstrom's internal documents maps the Parties and their main competitors on the basis of their machinery and the grammages they can achieve with these machines. This slide clearly shows that [...]\*

[...]\*

**Figure 12: Ahlstrom's analysis of its competitors based on grammage<sup>412</sup>**

(467) Similarly, Ahlstrom identifies Munksjö as its most important competitor in the paper backings market. In the following slide taken from Ahlstrom's Business Plan 2012-2015, Ahlstrom identifies [...]\*

[...]\*

**Figure 13: Ahlstrom's analysis of the competitive landscape<sup>413</sup>**

(468) Figure 13 identifies [...]\*

(469) It should also be noted that the heavy weight segment is a large segment of this hypothetical overall market for paper backings and, indeed, Ahlstrom's internal documents describe it as follows "[...]".<sup>414</sup> In those documents, the volume of the total market is estimated at EUR [...] million, of which the heavy weight segment accounts for EUR [...] million.<sup>415</sup>

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<sup>410</sup> For the colour code of Munksjö's product range see (website accessed on 16 February 2013):

<sup>411</sup> Munksjö internal document, entitled "Munksjö Strategy" of June 2011, Annex 10(B), slide 33, submitted with an email dated 18 January 2013

<sup>412</sup> Ahlstrom internal document, entitled "Strategic Planning 2008 Abrasives and OB4," undated, Annex 10 (H), slide 9, submitted with an email dated 18 January 2013. Please note that ArjoWiggins was subsequently acquired by Munksjö

<sup>413</sup> Ahlstrom internal document, entitled "Business Plan 2012-2015" of 2 May 2012, Annex 10(K), slide 25, submitted with an email dated 18 January 2013

<sup>414</sup> Ahlstrom internal document, entitled "Business Plan 2010-2013, PL: OSN 4 - Abrasive & Cable Papers" of 7 May 2010, Annex 10(I), page 4, submitted with an email dated 18 January 2013.

<sup>415</sup> The other segments are: "light weight dry (high quality)" with EUR [...] million; "waterproof/finishing (high quality)" with EUR [...] million and "low quality abrasive papers ... typically in emerging markets (China/Asia, South Americas etc.)" with EUR [...] million.



(470) Based on the Parties' internal documents, it is therefore possible to conclude that the Parties are exercising an important competitive constraint on each other and, as acknowledged by the Parties, they are each other's closest competitor as regards the heavy weight segment. As the heavy weight segment constitutes a large part of the hypothetical overall market for paper backings, the removal of the closest competitor in that segment would also result in a significant impediment to effective competition in the wider market.

(471) In addition, Ahlstrom's internal documents<sup>416</sup>

[...]\*.<sup>417</sup>

“[...]”<sup>418</sup>

(472) As such, the transaction also removes Ahlstrom as an emerging force in the latex treated light weight paper backings segments.

#### Results of the market investigation

(473) In the context of the market investigation, all customers replied that Munksjö and Ahlstrom are close competitors in the hypothetical overall market for paper backings.<sup>419</sup> One customer stated that: *“On E and F weight paper (which today cover a large part of our purchases) they are the only 2 high quality suppliers in the market worldwide, to our knowledge. ... The product portfolio is very similar in no-latex B, C, D, E and F weight paper. The prices are very similar for products with similar technical specifications.”*<sup>420</sup> Another customer explained *“Munksjö and Ahlstrom have the same: - product range, - same customers, - same pricing, - same value, - similar production capacity.”*<sup>421</sup>

(474) When asked about what company was “the closest competitor” to Munksjö, all customers replied that Ahlstrom was the closest competitor (one of them also mentioning Neenah alongside Ahlstrom).<sup>422</sup> When asked what company was the closest competitor to Ahlstrom, all customers replied that Munksjö was the closest competitor to Ahlstrom.<sup>423</sup>

(475) The Commission therefore concludes that the transaction would remove the most important constraint on each of the Parties with respect to customers in the heavy weight segment of the hypothetical overall market for paper backings.

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<sup>416</sup> Ahlstrom internal document, entitled “Annual Plan 2012. Business Unit, Processing” of 18 January 2011, Annex 10(F), slide 2, submitted with an email dated 18 January 2013.

<sup>417</sup> Ahlstrom internal document, entitled “Business Plan 2011-2014 – Processing” of 9 May 2011, Annex 10(J), page 8, submitted with an email dated 18 January 2013.

<sup>418</sup> Ahlstrom internal document, entitled “Product Family Strategy 2012-2015, Abrasive Papers” of 27 March 2012, Annex 10 (L), page 3, submitted with an email dated 18 January 2013.

<sup>419</sup> See replies to question 36 of Phase I Questionnaire to customers (paper backings).

<sup>420</sup> Reply of Nastroflex to question 36 - Phase I Questionnaire to customers (paper backings).

<sup>421</sup> Reply of Starcke to question 36 - Phase I Questionnaire to customers (paper backings).

<sup>422</sup> Replies to question 37 - Phase I Questionnaire to customers (paper backings).

<sup>423</sup> Replies to question 38 - Phase I Questionnaire to customers (paper backings).

- (476) In accordance with the Commission’s decisional practice, “*the relative "closeness" of the various products on the market as regards their substitutability from the customer’s point of view is [...] an essential factor of competition in the relevant markets and basically determines each supplier’s market strength.*”<sup>424</sup> As the Horizontal Merger Guidelines point out “*Products may be differentiated within a relevant market such that some products are closer substitutes than others. The higher the degree of substitutability between the merging firms’ products, the more likely it is that the merging firms will raise prices significantly.*”<sup>425</sup>
- (477) Given that the Parties are each other’s closest competitor for heavy weight paper backings and close competitors with regard to other segments, such as non-latex treated light weight paper backings, the removal of the competitive constraint they exercise on each other clearly increases the likelihood of a price increase by the merged entity for at least some of its product portfolios.

#### 9.2.2.4.B. Competitive constraint by other competitors

- (478) To assess the competitive constraints exercised on the Parties by existing competitors, such as Neenah and BillerudKorsnäs, the Commission has analysed the Parties’ internal documents and the results of the market investigation.
- (479) Ahlstrom’s internal documents clearly show [...] <sup>426</sup> are perceived as the main competitors, as they are [...] <sup>427</sup> that are individually monitored by Ahlstrom. Munksjö’s internal documents only mention [...] <sup>428</sup> [...]\*. Both Neenah and BillerudKorsnäs have a different focus and product ranges to that of the Parties.
- (480) Neenah focuses on latex treated light weight paper backings, which are used for wet applications, such as in the automotive industry, and competes in this segment mainly with Munksjö.
- (481) UPM (whose activities in the light weight segment were subsequently acquired by BillerudKorsnäs)<sup>429</sup> is perceived by Ahlstrom as [...]\*. Figure 14 comes from Ahlstrom’s Business Plan 2010-2013 and [...]\*.

[...]\*

**Figure 14: Ahlstrom’s analysis of the competitive landscape**<sup>430</sup>

<sup>424</sup> Commission decision's of 30 April 2003 in Case COMP/M.2861 *Siemens/Drägerwerk/JV*, O.J. L291, 8.11.2003, p. 1, para. 72.

<sup>425</sup> Horizontal Mergers Guidelines, Paragraph 28.

<sup>426</sup> See footnote 100 above.

<sup>427</sup> Ahlstrom internal document, entitled “Annual Plan 2013. Business Unit Processing”, October 2012, Annex 10(G), slide 3, submitted by email on 18 January 2013; mentioning only Neenah; Ahlstrom internal document, entitled “Strategic Planning 2008: Abrasives and OB4,” undated, Annex 10(H), page 5, submitted by email of January 18, 2013.

<sup>428</sup> See Munksjö internal document, entitled “Munksjö Strategy 2011” of June 2011, Annex 10(B), slide 33, submitted with an email dated 18 January 2013.

<sup>429</sup> See footnote 107 above.

<sup>430</sup> Ahlstrom internal document, entitled “Business Plan 2010-2013” of 7 May 2010, Annex 10(I), slide 5, submitted with an email dated 18 January 2013

- (482) However, in more recent business plans, such as the “Business Plan 2012-2015”<sup>431</sup> (see Figure 13) [...]\*. The same document mentions that [...] in the production of heavy weight paper backings are known. The potential threat by UPM in the heavy weight segment, which was mentioned in Figure 14, clearly did not materialize.
- (483) In the market investigation, BillerudKorsnäs explained that it “*considered that the “off-line” production of heavy weight paper backings, i.e. by laminating together two or more layers of light weight paper backings, could be technically possible, but it would not allow Billerud to reach the market at a competitive price*”<sup>432</sup> and that “*Billerud’s entry in the heavy weight segment of the abrasive paper backings market had not yet been considered.*”<sup>433</sup>. With regard to paper backings in general, it emphasized “*that bigger paper machines, like Billerud’s one, can produce more abrasive backings on the expense of other kraft paper products, but that these bigger machines are sensitive to lost production and grade changes. Larger paper machines tend to produce products in large volume with relatively low amount of grade changes. In this regard, smaller paper machines can be much more flexible. This is a particularly strong advantage in the abrasive backings industry, where customers demand highly customized products.*”<sup>434</sup>
- (484) Although Neenah has a relatively strong position with a market share of [20-30]\*% according to Ahlstrom’s internal documents<sup>435</sup> in the hypothetical overall market for paper backings, its market share comes only from latex treated light weight papers. Neenah has currently no plans to enter the market for heavy weight paper backings and is not willing to invest in upgrading its machinery.<sup>436</sup> Therefore, Neenah will not become a close competitor of the merged entity post-transaction, that is to say it will not be able to compete against the merged entity in all the segments of the hypothetical overall market for paper backings.
- (485) The limited capabilities of Weidmann, Krempel and Vilaseca are already assessed in Recitals (390) to (402). Weidmann with its 7-cylinder paper machine<sup>437</sup> is well-suited to producing heavy weight paper backings, but would also be able to produce light weight paper backings. Based on the reasons explained in Recitals (391) - (394), Weidmann seems far from being able to produce paper backings at a sufficient quality within the next two to three years.
- (486) It appears that Vilaseca would be able to produce papers with grammages of up to 185 gr/sqm with a satisfactory quality and, indeed, it was able to qualify with a customer in a relatively short period of time of around six to nine months.<sup>438</sup> However, Vilaseca is not able to produce paper backings of sufficient quality above

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<sup>431</sup> For example, Ahlstrom internal document, “Business Plan 2012-2015” of 2 May 2, 2012, Annex 10 (K), slide 25, submitted by with an email of dated 18 January 2013.

<sup>432</sup> Minutes of conference call with BillerudKorsnäs of 14 November 2012.

<sup>433</sup> Minutes of conference call with BillerudKorsnäs of 14 November 2012.

<sup>434</sup> Minutes of conference call with BillerudKorsnäs of 14 November 2012.

<sup>435</sup> Ahlstrom internal document, entitled “Annual Plan 2013. Business Unit Processing” of October 2012, Annex 10(G), slide 3, submitted with an email dated 18 January 2013.

<sup>436</sup> Email received from Neenah dated 19 February 2013.

<sup>437</sup> Minutes of conference call with Weidmann of 14 January 2013.

<sup>438</sup> Minutes of conference call with Saint Gobain of 10 January 2013.

200 gr/sqm. Therefore, it is highly unlikely that it will evolve into a full competitor capable of competing against the merged entity in all the segments of the hypothetical overall market for paper backings.

- (487) The transaction would create by far the strongest player in a hypothetical overall market for paper backings and the only player in the segment for heavy weight paper backings, where the merged entity would wield unfettered market power.
- (488) Therefore, it is highly unlikely that either BillerudKorsnäs nor Neenah, or the other smaller competitors, would be able to exercise a sufficient competitive constraint on the merged entity post-transaction, particularly in the segment for heavy weight paper backings where the Parties are each other's closest competitor.

#### 9.2.2.4.C. Market entry

- (489) The Parties claim that the abrasive backings is a dynamic market and stress that the fact that companies such as Weidmann, Vilaseca and Potsdam have recently entered the market shows that there are no or low barriers to entry.<sup>439</sup>
- (490) Based on its reply to the Commission's market investigation, Potsdam has not yet entered the market, but is still developing a set of light weight paper products.<sup>440</sup> In addition, Potsdam stated, that "*when we do launch light weight paper backings, it is planned to be in North America, South America and Asia. [There is] no competitive advantage or opportunity in Europe with USA based manufacturing.*"<sup>441</sup> Potsdam also explained that transport costs constitute a constraining factor for trade between the EEA and other geographic areas.<sup>442</sup> Finally, Potsdam pointed out that being a small supplier, the presence of very few, strong suppliers in the EEA market would make it very difficult for it to penetrate that market.<sup>443</sup>
- (491) For the reasons expressed in Recitals (330) to (337) and (428) to (433), it is highly unlikely that Chinese suppliers of paper backings will enter the market. The Parties' internal documents clearly show that Chinese suppliers of paper backings are minor players, focused on local markets. In fact, only one customer purchased paper backings of Chinese origin over the last two years. As noted in Recital (429), this customer purchased light weight kraft paper backings for its Chinese facilities. Additionally, customers explained that high quality paper backings are exported by the Parties to Chinese producers of abrasive products, because of their superior quality.
- (492) Finally, it is very difficult to see how Chinese suppliers with no local presence and outstanding quality issues would qualify with EEA customers, given that EEA suppliers of paper backings, which have a local presence, have so far failed to qualify. For these reasons, the Commission takes the view that a timely entry into the paper backings market by Chinese customers so as to constrain the behaviour of the merged entity post-transaction is highly unlikely, if possible at all.

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<sup>439</sup> Reply to the Commission's Article 6(1)(c) Decision, Paragraph 98.

<sup>440</sup> Reply to the Commission's Article 6(1)(c) Decision, Paragraph 125.

<sup>441</sup> Replies of Potsdam to questions 43.1 and 43.2 - Phase II Questionnaire to competitors (paper backings).

<sup>442</sup> Reply of Potsdam to question 49 - Phase II Questionnaire to competitors (paper backings).

<sup>443</sup> Reply of Potsdam to question 82 - Phase II Questionnaire to competitors (paper backings).

(493) The potential entry of other manufacturers, such as kraft paper manufacturers was assessed above in Recital (425). Given the lack of machinery and know-how, they all confirmed not to have any plans to enter the market for paper backings.

#### 9.2.2.4.D. Buyer power

(494) Regarding buyer power, the Parties put forward the same arguments they advanced with respect to the market for heavy weight paper backings.<sup>444</sup> Essentially, they reiterate that some customers which have buyer power would be able sponsor entry into the paper backings market and could also start laminating off-line to achieve higher grammages either in-house or through toll-manufacturers.

(495) Therefore, the Commission's reasoning contained in Recitals (441) to (446) applies *mutatis mutandis*. In particular, the Parties' arguments do not stand in the light of the results of the market investigation. Based on the evidence set out in these Recitals, the large majority of customers does not have buyer power and is not willing to sponsor new entrants.

#### 9.2.2.4.E. Conclusion - hypothetical overall market for paper backings

(496) The Parties can be considered to be close competitors and, as far as the segment for heavy weight paper backings is concerned, they are each other's closest competitor and the only sources of supply. As that segment constitutes a large part of the hypothetical overall market for paper backings, the Commission concludes that the elimination of the closest competitor for customers of heavy weight paper backings would result in a significant impediment to effective competition also in this hypothetical overall market. In addition, Ahlstrom's internal documents show that the transaction would also [...]\*

(497) No new suppliers seem to have the ability or the incentives to enter the hypothetical overall market for paper backings in the next two to three years, at least not to an extent so as to constrain the Parties' behaviour in the heavy weight segment. A hypothetical price increase could not be defeated and would need to be absorbed by the Parties' customers, with a cascade effect down the supply chain.

(498) Therefore, the Commission concludes that the transaction is likely to lead to a significant impediment to effective competition even in the hypothetical overall market that includes all types of paper backings.

(499) It is worth recalling that the Commission concludes that the relevant market comprises only heavy weight paper backings and that the above assessment of the hypothetical overall market for paper backings is included in this Decision only for the purpose of showing that, even if a wider market definition was to be retained (*quod non*), there would still be a significant impediment to effective competition.

#### 9.2.3. Conclusion - Paper backings

(500) The Commission concludes that the transaction would significantly impede effective competition in the internal market, as a result of the creation of a dominant position in the market for heavy weight paper backings, irrespective of any geographic market delineation.

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<sup>444</sup> Reply to the Commission's Article 6(1)(c) Decision, Paragraph 124.

(501) Regarding a hypothetical overall market for paper backings, the Commission concludes that the transaction would significantly impede effective competition in the internal market, irrespective of any geographic market delineation.

### 9.3. Decor paper - PRIP

#### 9.3.1. Market shares and market structure

(502) The specialty paper markets are characterised by a lower degree of transparency than the commodity paper markets. According to the Pöyry study commissioned by the Parties during the second phase investigation, this is mainly due to (i) the lack of public sources like industry or trade statistics and (ii) the fact that a number of small and medium sized producers manufacture numerous specialty grades for many end uses on the same multi-grade paper machines.<sup>445</sup>

(503) In its assessment of the market shares and market structure, the Commission has therefore relied on (i) the Parties' estimates as submitted in the Form CO, (ii) the Parties' internal analyses and estimates as contained in their internal documents and (iii) information received from respondents to the market investigation.

(504) The Parties have estimated the PRIP market shares in 2011 by value and volume in the EEA and worldwide (excluding China) as follows:<sup>446</sup>

**Table 9: PRIP - Market size and shares by value<sup>447</sup>**

Competitor	EEA		Worldwide excluding China	
	MEUR	Share	MEUR	Share
Ahlstrom	[...]*	[20-30]*%	[...]*	[20-30]*%
Munksjö	[...]*	[40-50]*%	[...]*	[40-50]*%
Combined	[...]*	[70-80]*%	[...]*	[70-80]*%
Technocell	[...]*	[10-20]*%	[...]*	[10-20]*%
Others <sup>448</sup>	[...]*	[5-10]*%	[...]*	[5-10]*%
<b>Total</b>	[...]*	100%	[...]*	100%

*Source: Commission's calculations based on the Parties' submissions*

<sup>445</sup> Pöyry report, "Independent study of the decor paper and abrasive base paper industry", 28 January 2013, page 5, submitted by the Parties with an email dated 28 January 2013.

<sup>446</sup> Response to the Commission's RFI of 9 November 2012, submitted with an email dated 12 November 2012.

<sup>447</sup> Totals do not always add up due to rounding.

<sup>448</sup> According to the Parties, there are several smaller competitors in the production of PRIP, including Tentok (Japan) and Multiverde (Brazil).

Competitor	EEA		Worldwide excluding China	
	Tons	Share	Tons	Share
Ahlstrom	[...]*	[30-40]**%	[...]*	[30-40]**%
Munksjö	[...]*	[40-50]**%	[...]*	[40-50]**%
Combined	[...]*	[70-80]**%	[...]*	[70-80]**%
Technocell	[...]*	[10-20]**%	[...]*	[10-20]**%
Others <sup>449</sup>	[...]*	[0-5]**%	[...]*	[0-5]**%
<b>Total</b>	[...]*	100%	[...]*	100%

Source: Commission's calculations based on the Parties' submissions

- (505) The concentrated nature of the PRIP market is also reflected in the results of the application of the Herfindahl-Hirschmann Index (HHI).<sup>450</sup> It shows a level of HHI of approximately [2 500-3 500]\* (by value) and [2 500-3 500]\* (by volume) before the transaction in 2011 and around [5 500-6 500]\* (by value) and [5 500-6 500]\* (by volume) after the transaction with a change in the HHI directly brought about by the transaction (the “delta“) of around [2000-3000]\* (by value) and [2000-3000]\* (by volume).
- (506) The Commission has also assessed the evolution of the Parties' market shares over the past ten years. To this end, the Commission has calculated the Parties' market shares based on global market size estimates as contained in Munksjö's internal documents<sup>451</sup> and based on the Parties' own sales data between 2003 and 2012:

[...]\*

**Figure 15: Evolution of the Parties' market shares in PRIP based on the Parties' sales figures and Munksjö's internal market size estimates<sup>452</sup>**

- (507) The data shows that the Parties' combined market shares in terms of value have increased from around [70-80]\*\*% in 2003-2005 to [70-80]\*\*% in 2009-2012.
- (508) The Parties' own internal strategic documents confirm their high combined market share in the PRIP market.
- (509) Ahlstrom's strategic documents on the PRIP market contain estimates of PRIP market shares by competitor for each of the years between 2008 and 2012.<sup>453</sup> These

<sup>449</sup> According to the Parties, this concerns sales by non-EEA PRIP suppliers Tentok (Japan) and Multiverde (Brazil).

<sup>450</sup> Horizontal Merger Guidelines, Paragraph 16.

<sup>451</sup> Munksjö internal document, entitled “Pre-impregnated papers coordination meeting: Sales/Marketing/TCS – R&D – Production, 3 December 2012, Annex 14(E), slide 3, submitted with an email dated 18 January 2013; [...]\*.

<sup>452</sup> Prior to 2011, the market shares refer to ArjoWiggins volumes. Munksjö only acquired ArjoWiggins in 2011, see case M.5950, *Munksjö/Arjowiggins (Decor and abrasive business)*, Commission decision's of 21 February 2011.

<sup>453</sup> See in particular the following Ahlstrom internal documents: document entitled “Strategic Planning 2008. OB3 – PRIP”, 20/21 May 2008, Annex 14(Y), slide 3; entitled “Strategic Planning 2009. OB3 - PRIP”, 21 April 2009, Annex 14(Z), slide 4.; entitled “Ahlstrom Business Plan 2010-2013 OSN3 - Pre-impregnated Decor Papers” of 7 May 2010, Annex 14 (ZA), slide 4; entitled “2. Business Units Processing” of 2011, Annex 10(F), slide 3; and entitled “Business Plan 2012-2015. Business Unit:

range between [70-80]\*% and [80-90]\*% for Munksjö and Ahlstrom combined (including ArjoWiggins as part of Munksjö throughout the period). According to Ahlstrom's projections, the combined revenue share of the Parties in the PRIP market in 2013 would be of [80-90]\*%.<sup>454</sup>

- (510) Munksjö's internal documents contain similar market share estimates. For example, an October 2011 document contains market shares estimates by company between 2007 and 2010.<sup>455</sup> According to these estimates, the Parties' combined market share ranged between [70-80]\*% in 2007 to [80-90]\*% in 2010.
- (511) The December 2012 Munksjö's internal document that contains the estimate of the total market size used for Figure 15 above, also indicates market shares by competitor. According to these estimates, the Parties' combined market shares have ranged between [70-80]\*% and [90-100]\*% during the 10-year period between 2003 and 2012, averaging at [80-90]\*% during the past three years (2010-2012). This document estimates the Parties' combined share at [70-80]\*% in 2012. However, this may be an underestimate, since it is based on the assumption that Technocell produced [...] tons of PRIP during 2012, whilst its actual production levels have been in the 8 000-9 000 tons range.<sup>456</sup>
- (512) Furthermore, the PRIP market has seen increased concentration over the past decade. The increase in the Parties' market shares occurred simultaneously to market exits. The three paper manufacturers Koehler, Dresden Papier GmbH and Inveresk stopped producing PRIP in 2002, 2003 and 2008 respectively.<sup>457</sup> In this context, Ahlstrom concluded internally [...].<sup>458</sup>
- (513) As a consequence, only three major players remain active in the PRIP market, that is to say the Parties and Technocell. The two non-EEA players Tentoc and Kohjin currently only play a marginal role. Based on Munksjö's internal documents, their combined market share was less than [0-5]\*% in 2011 and 2012, [...].<sup>459</sup>
- (514) Market shares estimates submitted by IKEA to the Commission also confirm the very high market share that the combined entity would hold in the PRIP market.

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Processing" of 2 May 2010, Annex 10(K), slide 24; all documents submitted with an email dated 18 January 2013. The 2008-2010 documents attribute a share of the market to Munksjö based on its production of backing paper at Billingsfors.

<sup>454</sup> Ahlstrom internal document, "Annual Plan 2013. Business Unit Processing" of October 2012, Annex 10(G), slide 3, submitted with an email dated 18 January 2013.

<sup>455</sup> Munksjö internal document, entitled "Coordination Meeting for pre-impregnated papers business: Sales/Marketing/TCS – R&D – Production" of 24 October 2011, Annex 14(C), slide 4., submitted with an email dated 18 January 2013.

<sup>456</sup> Minutes of the conference call with Technocell of 23 January 2013.

<sup>457</sup> Munksjö internal document, entitled "Pre-impregnated papers coordination meeting: Sales/Marketing/TCS – R&D – Production", 3 December 2012, Annex 14(E), slide 3, submitted with an email dated 18 January 2013.

<sup>458</sup> Ahlstrom internal document, entitled "Ahlstrom Business Plan 2010-2013 OSN3 - Pre-impregnated Decor Papers" of 7 May 2010, Annex 14(ZA), slide 3, submitted with an email dated 18 January 2013.

<sup>459</sup> Munksjö internal document, entitled "Pre-impregnated papers coordination meeting: Sales/Marketing/TCS – R&D – Production" of 3 December 2012, Annex 14(E), slide 3, submitted with an email dated 18 January 2013.



Based on an internal market study, IKEA estimates that the merged entity would account for 80% of the market post-transaction.<sup>460</sup>

### 9.3.2. *The Parties' arguments*

(515) The Parties agree that at present the PRIP market is characterised by three major EEA-based producers: the Parties and Technocell. The Parties also acknowledge that Munksjö and Ahlstrom together account for [...]\*

(516) However, the Parties raise a number of arguments relating to (i) the degree of competition between Munksjö, Ahlstrom and their competitors before the transaction; (ii) the competitive constraints imposed by current PRIP competitors; (iii) potential entry of decor paper and other paper competitors; and (iv) countervailing buyer power of customers and the possibility of sponsored entry.

(517) The Parties argue that due to these factors the transaction will not result in a significant impediment to effective competition in the PRIP market.

#### 9.3.2.1. No elimination of a key competitive constraint

(518) The Parties argue that the transaction will not result in the elimination of a key competitive constraint on the merged entity in the PRIP market. They submit that Technocell has in the past imposed the most important and growing competitive constraint on the Parties and that Technocell will continue to do so post- transaction.

(519) First, Munksjö estimates that it lost more volumes to Technocell than to Ahlstrom in 2012. According to the Parties, this indicates that customers would more readily switch between Munksjö and Technocell than between the Parties.<sup>461</sup>

(520) Second, only Munksjö and Technocell are able to produce PRIP of widths exceeding 8 feet (or appr. 2.44 meters). While Munksjö and Technocell can produce PRIP with a width of up to [...]\* meters Ahlstrom produces a maximum width of [...]\* meters. According to the Parties, there is growing demand for wide PRIP from customers. Ahlstrom estimates that total supplies of 8 feet PRIP amounted to around [...]\* tons in 2011 and expects these volumes to increase by [...]\*\*% p.a. Munksjö's sales of wider PRIP have increased substantially, from [...]\*\*% in 2010 to [...]\*\*% in 2011 and 2012. Munksjö also notes that the number of its customers buying larger widths has [...]\* since 2008 ([...] in 2012).<sup>462</sup>

(521) The growth in wide PRIP demand follows investments in larger printing and lacquering lines by certain major customers. Before the transaction, customers had made it clear to Ahlstrom that in order to compete going forward, Ahlstrom would need to be able to supply wider widths.<sup>463</sup> According to the Parties, IKEA is one of

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<sup>460</sup> IKEA Presentation "PRIP in IKEA" of 8 January 2013, slide 13.

<sup>461</sup> Reply to the Commission's Article 6(1)(c) Decision, 7 December, submitted with an email dated 18 December 2012, Paragraph 43.

<sup>462</sup> Ibid, Paragraph 44.

<sup>463</sup> Annexes 1 and 2 of the reply to the Commission's Article 6(1)(c) Decision, 7 December, submitted with an email dated 18 December 2012.

the main drivers behind the trend to move towards wider paper. The complete liners used in IKEA's supply chain need a paper width of 233-256 cm.<sup>464</sup>

#### 9.3.2.2. Continued constraint from current PRIP competitors

- (522) Furthermore, the Parties submit that the merged entity will continue to be constrained by its current PRIP competitors. The Parties cite paragraphs 32-34 of the Horizontal Merger Guidelines to argue that when market conditions are such that competitors have enough spare capacity, it is unlikely that the merger will significantly impede effective competition.<sup>465</sup>
- (523) First, the Parties submit that customers would be able to switch their PRIP purchases to Technocell. According to the Parties, Technocell has sufficient spare capacity to increase its PRIP market share substantially and is actively looking to increase its PRIP business.
- (524) The Parties report that Technocell has six paper mills and produces all types of decor paper. The Parties claim that Technocell has a theoretical total capacity for PRIP production of [...] tons on its paper machines in Drummondville/Canada ([...] tons), Neustadt/Germany ([...] tons<sup>466</sup>) and Osnabrück/Germany ([...] tons).<sup>467</sup> According to the Pöyry study, [...].<sup>468</sup>
- (525) The mills in Drummondville and Neustadt have all the necessary equipment to produce PRIP. However, the Parties acknowledge that the Drummondville mill has focused on other paper types since Technocell started producing PRIP in Neustadt and that the Neustadt mill is used for the production of both PRIP and other decor papers.
- (526) According to the Parties, Technocell is actively pursuing a strategy to increase its PRIP supplies by capturing sales from the Parties. The Parties report as an example that Technocell approached North American PRIP customers shortly after the announcement of the transaction. [...].
- (527) The Parties further submit that Technocell is projecting its PRIP sales to increase by [...] % in 2012 alone (from an estimated [...] tons in 2011 to [...] tons in 2012). They further submitted the Pöyry study, according to which Technocell has in fact increased its production to [...] tons in 2012.<sup>469</sup> Moreover, Technocell has reportedly announced its target to increase its production of PRIP in Neustadt from the estimated [...] tons in 2012 to [...] tons in the mid-term.<sup>470</sup>

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<sup>464</sup> Reply to the Commission's Article 6(1)(c) Decision, 7 December, submitted with an email dated 18 December 2012, Paragraph 44.

<sup>465</sup> Form CO, Paragraph 574.

<sup>466</sup> The Parties submissions are not consistent as regards the spare capacity in Neustadt.

<sup>467</sup> Form CO, Paragraph 387 and Footnote 84, Paragraph 575; reply to the Commission's Article 6(1)(c) Decision, 7 December, submitted with an email dated 18 December 2012, Paragraph 46.

<sup>468</sup> Pöyry report, "Independent study of the decor paper and abrasive base paper industry", 28 January 2013, page 11, submitted by the Parties by email of 28 January 2013.

<sup>469</sup> Pöyry report, "Independent study of the decor paper and abrasive base paper industry", 28 January 2013, page 10, submitted by the Parties by email of 28 January 2013.

<sup>470</sup> Reply to the Commission's Article 6(1)(c) Decision, 7 December, submitted with an email dated 18 December 2012, Paragraph 46.

- (528) Second, the Parties note that non-EEA-producers currently have sales of PRIP in the EEA. While the volumes may currently be comparably small, the existence of imports would still indicate that certain EEA-customers are prepared to source PRIP from non-EEA locations. Moreover, the parties consider that increased imports are feasible if the Parties increased PRIP prices post- transaction.
- (529) According to the Pöyry study, [...] has a total capacity of [...] tons p.a. and a “dormant capacity“ of [...] tons p.a. [...] has a total spare capacity of [...] tons p.a. and a “dormant capacity“ of [...] tons p.a. [...] is not mentioned in the Pöyry study.<sup>471</sup>

#### 9.3.2.3. Potential entry

- (530) The Parties argue that customers can switch their PRIP purchases to potential market entrants. Such potential entrants include most importantly (i) producers of other decor papers with sufficient spare capacity, but also (ii) thin paper producers and (iii) non-EEA producers. The Parties argue that these producers would have the ability and the incentive to respond to any PRIP price increase by starting to supply PRIP.
- (531) According to the Parties, the last greenfield entry in the decor paper market took place in the 1990s by Cartiere di Guarcino and the Kunz Group Inc. (now a part of Technocell). Producers have since then entered the market by rebuilding or refurbishing existing paper machines (Arctic Paper Mochenwangen GmbH, ("Arctic Paper"), Cartiere di Guarcino, Malta Decor and Technocell). As regards PRIP production in particular, the last entry occurred when Technocell started PRIP production in 2004 (in the EEA). The Parties claim that Technocell reached a production level of [...] tons in 2011. There has been no entry into PRIP production since then, allegedly because of existing overcapacity in the decor paper market.<sup>472</sup>
- (532) The Parties estimate that building a new decor paper production plant with a new paper machine, a new size press and other necessary components would cost approximately EUR 60-100 million (not including costs for personnel or costs for obtaining the necessary know-how). They further estimate that rebuilding an existing paper machine formerly used for the production of other paper products would cost approximately EUR 20-30 million (depending on what paper machine is rebuilt).<sup>473</sup>
- (533) As regards potential entry from other decor paper producers, the Parties stress that due to various economic factors, such as the financial crisis in 2008, the level of demand in the decor paper market has decreased significantly during the last years (for example [...] % from 2011 to 2012).<sup>474</sup> In this context, the Parties quote a report by Europäischer Wirtschaftsdienst,<sup>475</sup> issued in May 2012, according to which there

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<sup>471</sup> Pöyry report, “Independent study of the decor paper and abrasive base paper industry”, 28 January 2013, page 11, submitted by the Parties by email of 28 January 2013.

<sup>472</sup> Form CO, Paragraphs 501 and 502.

<sup>473</sup> Form CO, Paragraphs 520 and 521.

<sup>474</sup> Form CO, Paragraph 466-469 and 575; Pöyry report, “Independent study of the decor paper and abrasive base paper industry”, 28 January 2013, page 7, submitted by the Parties by email of 28 January 2013.

<sup>475</sup> Europäischer Wirtschaftsdienst is an industry organization reporting on the paper markets.

was an overall weakening of demand for decor paper in the spring of 2012 leading to the shortening of production cycles and production suspensions.<sup>476</sup>

- (534) According to the Parties this reduction in demand, in combination with the fact that new capacity has been brought on line during the years 2001-2006, has resulted in a considerable overcapacity in the decor paper market. According to estimations provided in the Pöyry report, the capacity utilization rate in the industry has been [...] in recent years, [...].<sup>477</sup> The Parties submit that decor paper producers are thus looking for business opportunities to fill their spare capacity.
- (535) The Parties further argue that investments in the necessary machinery to produce PRIP, that is to say the investment in a size press of approximately [...] would not be prohibitive for decor paper producers. The Parties submit that size presses can also be used for the production of other types of paper, such as thin paper and electrotechnical papers.<sup>478</sup> Moreover, on the basis of their internal calculations, the Parties submit that it would take a maximum of [...] in order to recover the cost of the size press and to sell PRIP profitably. According to the Parties, [...] would be needed to order and install the size press and an additional [...] would be needed to amortize the investment if at least [...] tons of PRIP were produced at a margin over variable cost of EUR [...] per tons in the first [...] of operation.<sup>479</sup> The Parties claim that many PRIP customers individually account for at least [...] tons, including for example [...].<sup>480</sup> The Parties also submit that any market growth in PRIP would facilitate a new entrant's growth.<sup>481</sup>
- (536) Furthermore, the Parties stress that decor paper producers who already own size presses, such as Cartiere di Guarcino, would not need to make this investment.<sup>482</sup>
- (537) The Parties recognize that additional know-how is needed in the production of PRIP, in particular as regards the composition of the resin recipes used to impregnate the paper. Munksjö has developed two patents regarding resin recipes for the production of PRIP. One patent expired in June 2012. The other patent would originally have expired at the end of 2013, but as Munksjö has not paid the fees to maintain the patent for 2013 the patent is as of 1 January 2013 open to the public and the know-how protected by that patent is available to the market. Ahlstrom holds two patents

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<sup>476</sup> Reply to the Commission's Article 6(1)(c) Decision, 7 December 2012, submitted with an email dated 18 December 2012, Paragraph 37.

<sup>477</sup> Pöyry report, "Independent study of the decor paper and abrasive base paper industry", page 7, submitted by the Parties by email of 28 January 2013.

<sup>478</sup> Reply to the Article 6(1)(c) Decision, 7 December 2012, submitted with an email dated 18 December 2012, Paragraph 21.

<sup>479</sup> Based on an estimated margin if there was a [...] price increase in PRIP after the transaction, Email from the Parties submitted on 17 January 2013; the submissions in this email differ from an earlier submission contained in the Parties' reply to the Commission's Article 6(1)(c) Decision, 7 December 2012, submitted with an email dated 18 December 2012, Paragraph 24, where the Parties argue that the whole process would take only [...] for setting up the size press and another [...] of production to amortize the investment).

<sup>480</sup> Ibid, Paragraph 27.

<sup>481</sup> Ibid, Paragraph 28.

<sup>482</sup> Ibid, Paragraph 26.

for the production of PRIP, which will expire in 2016 and 2022 respectively. [...]\*.<sup>483</sup>

- (538) Nevertheless, the Parties submit that even a decor paper producer which doesn't currently produce PRIP already possesses the necessary know-how and that the existence of patents are not a barrier to entry to the PRIP market.<sup>484</sup>
- (539) As regards potential entrants from thin paper producers, the Pöyry report submitted by the Parties suggests that these could enter the PRIP market without discussing further details. The report only contains [...]\*.<sup>485</sup> A size press is needed for thin paper production.
- (540) Finally, as regards entry from non-EEA producers, the Parties submit that Chinese producers will push into the EEA decor paper market in the near future. The Parties specifically mention the companies Kingdecor (Zhejiang) Co., Ltd. ("Kingdecor"), Shandong and Hangzhou. However, the Parties do not make specific reference to the PRIP market in their submission, but only discuss the market for overall decor paper.<sup>486</sup>
- (541) Through the Pöyry report, the Parties submit that there is evidence of current imports of decor paper in the EEA from countries like Brazil, China, Canada and the USA.<sup>487</sup> However, the Pöyry report admits that any such volumes are [...]\*. The Pöyry report specifically mentions the company [...]\* as a potential supplier of PRIP.<sup>488</sup>

#### 9.3.2.4. Buyer power and the possibility to sponsor entry

- (542) Furthermore, the Parties submit that the merged entity would be constrained by the strength of its main customers who have strong buyer power. The Parties submit that a significant amount of buyer power is concentrated in the hands of a very small group of customers.<sup>489</sup>
- (543) First, the Parties claim that customers can frequently use their buyer power to their advantage by switching or threatening to switch to alternative suppliers. According to the Parties, price negotiations occur in intervals of [...]\*, costs of switching between suppliers are very low and customers frequently use multi-sourcing strategies. According to the Parties, any new trials required before switching decor paper suppliers take between [...]\* with [...]\* involved for the customers.<sup>490</sup>

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<sup>483</sup> Form CO, Paragraph 139; Parties' response to the Commission's RFI of 15 January 2013, page 6, submitted with an email dated 18 January 2013.

<sup>484</sup> Ibid and Form CO, Paragraph 577.

<sup>485</sup> Pöyry report, "Independent study of the decor paper and abrasive base paper industry", pages 14 and 15, submitted by the Parties by email of 28 January 2013.

<sup>486</sup> Form CO, Paragraph 511.

<sup>487</sup> Pöyry report, "Independent study of the decor paper and abrasive base paper industry", page 16, submitted by the Parties by email of 28 January 2013.

<sup>488</sup> Ibid, page 13.

<sup>489</sup> Form CO, Paragraph 481; and reply to the Commission's Article 6(1)(c) Decision, 7 December, submitted with an email dated 18 December 2012, Paragraph 53.

<sup>490</sup> Form CO, Paragraphs 476-480.

- (544) As a consequence, the customers could credibly threaten to switch PRIP purchases to the Parties' competitors following a PRIP price increase. The Parties also claim that printers who buy both PRIP and PBP<sup>491</sup> could easily threaten to switch their PBP purchases to alternative PBP suppliers following a PRIP price increase.<sup>492</sup>
- (545) Second, the Parties submit that customers can sponsor new entry.<sup>493</sup> They also claim that customers can sponsor an immediate growth by Technocell. On this point, they in particular estimate that Technocell's Drummondville has a capacity of approximately [...] tons of PRIP, which would demonstrate how customers would be able to support expansion by Technocell.<sup>494</sup>

### 9.3.3. Commission's assessment

#### 9.3.3.1. Parties' position in the market

- (546) The Commission finds that there is substantial evidence to support the conclusion that the transaction reduces customers' choice of supply options significantly and creates a combined entity with market shares well in excess of [70-80]\*%. The Parties have held those high market shares consistently and have increased their market shares over the past 10 years.
- (547) Furthermore, the evidence gathered shows that the transaction reduces the number of PRIP suppliers in the EEA from three to two in an already highly concentrated market. In addition, the remaining major competitor Technocell would be less than a quarter of the market size of the merged entity. Moreover, the post- transaction HHI levels are above [5 500-6 500]\* with deltas above [2 000-3 000]\*.<sup>495</sup>
- (548) The Commission considers that the high market shares of the merged entity in this case and the structure of the market constitute a strong and valid first indication of anticompetitive non-coordinated effects by means of the creation of a dominant position in the market for PRIP.<sup>496</sup>
- (549) According to paragraph 24 of the Horizontal Merger Guidelines:

*“A merger may significantly impede effective competition in a market by removing important competitive constraints on one or more sellers, who consequently have increased market power. The most direct effect of the merger will be the loss of competition between the merging firms. For example, if prior to the merger one of the merging firms had raised its price, it would*

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<sup>491</sup> The argument is only made in relation to PBP because only PBP will be purchased by printers. In contrast, HPL/LPL as defined by the Parties are uni-coloured and not printed and will be sold to impregnators/laminators who do not purchase PRIP. See section 0 above for the definitions of the different types of decor papers.

<sup>492</sup> Parties' presentation at the State of Play meeting of 11 January 2013, page 8, submitted with an email dated 16 January 2013.

<sup>493</sup> Parties' presentation at the State of Play meeting of 11 January 2013, page 8, submitted with an email dated 16 January 2013.

<sup>494</sup> Reply to the Commission's Article 6(1)(c) Decision, 7 December, submitted with an email dated 18 December 2012, Paragraph 47.

<sup>495</sup> See paragraphs 19-21 of the Horizontal Merger Guidelines.

<sup>496</sup> Horizontal Merger Guidelines, Paragraph 17.

*have lost some sales to the other merging firm. The merger removes this particular constraint.*“

- (550) Paragraph 24 of the Horizontal Merger Guidelines is in line with standard economic theories of harm arising from horizontal mergers as a result of non-coordinated effects, which predict that the elimination of competition between the merging parties will provide the merged entity with an incentive to increase price. That incentive arises from the ability of the merged firm to recapture, through the sales of the merger partner’s product, some of the sales that would otherwise be lost as a result of such price increase. The effect is stronger if the merger brings together close competitors or if the concentration in the market is already high.
- (551) The Horizontal Merger Guidelines also recognise that there might be circumstances under which the competitive constraints on the merging parties are sufficient to conclude that a concentration is unlikely to lead to a significant impediment of effective competition.
- (552) In line with the Horizontal Merger Guidelines, the Commission has therefore performed a detailed assessment as to whether a significant impediment to effective competition by means of the creation of a dominant position would indeed arise as a result of the transaction.

#### 9.3.3.2. Results of the market investigation on the effect of the transaction

- (553) The Commission has analysed the effect of the transaction by contacting the Parties’ most important competitors as well as direct and indirect customers in the PRIP market. The majority of the customers and competitors expect the transaction to have negative effects on competition in the PRIP market.
- (554) In their responses to the Commission’s second phase questionnaires, a clear majority of direct and indirect customers stated that they expected the transaction to have a negative impact on their business while a majority of customers also expected PRIP prices to increase after the transaction and number of them considered that innovation would be negatively affected.<sup>497</sup>
- (555) Those expectations were confirmed by the more in-depth interviews with customers and competitors during the second phase investigation. According to almost all the customers and competitors interviewed, the transaction would be a problem in terms of competitive landscape as it would in particular lead to PRIP prices increase and decreases in terms of product innovation and variety.<sup>498</sup>

#### 9.3.3.3. Elimination of a key competitive constraint

- (556) The Commission also assessed whether the transaction will lead to the elimination of a key competitive constraint on the Parties’ market behaviour. Therefore, the

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<sup>497</sup> Replies to question 67 - Phase II Questionnaire to customers (PRIP), including Likora’s reply to question 38 of the phase I Questionnaire since Likora did not provide an answer to the second phase questionnaire, and question 42 - Phase II Questionnaire to end customers (PRIP); see also IKEA’s submission to the Commission of 27 November 2012 and IKEA’s reply to question 42 - Phase II Questionnaire to end customers (PRIP).

<sup>498</sup> Minutes of the conference call with Decor Druck of 25 January 2013; with with Impress Decor of 21 January 2013; with Interprint of 23 January 2013; with Likora of 23 January 2013; with Süddekor of 22 January 2013; with Surteco of 25 January 2013; with Cartiere di Guarcino of 16 January 2013.

Commission (i) analysed the Parties' internal documents, (ii) assessed the results of the market investigation and (iii) examined the win/loss transaction data provided by the Parties.

#### 9.3.3.3.A The Parties' internal documents

- (557) Upon the Commission's request, the Parties have provided internal documents containing analyses of the competitive environment in the PRIP market before the transaction.
- (558) Those documents show that the Parties consider [...]\*. They also provide extensive evidence of significant competition in terms of prices and product quality between the Parties before the transaction.
- (559) Figure 16, part of one of Munksjö's internal documents, analyses the competitive landscape and identifies only [...]\* as active PRIP competitors. Munksjö uses the company name [...]\*. Figure 16 also illustrates that those two competitors [...]\*:

[...]\*

**Figure 16: Munksjö internal document<sup>499</sup>**

- (560) In the same presentation, Munksjö clearly recognises the [...]\*.<sup>500</sup> Moreover, it also clearly identifies [...]\*.<sup>501</sup> In an earlier document of April 2011 Munksjö again [...]\*.<sup>502</sup>
- (561) Furthermore, Munksjö also finds in its internal documents<sup>503</sup> that the PRIP market conditions would have [...]\*.<sup>504</sup>
- (562) The Commission notes that Munksjö [...]\*.<sup>505</sup> The relevance of Technocell's spare capacity, of PRIP machine width and of patent-related issues will be discussed in further detail below. However, those issues do not as such have an impact on the Commission's finding that Munksjö considers Ahlstrom as number 1 player in the PRIP market and as competing head-on with Munksjö before the transaction.
- (563) Moreover, Munksjö's perception of [...]\* has no effect on the fact that the transaction removes Munksjö as the most important competitive constraint on

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<sup>499</sup> Munksjö internal document, entitled "Coordination Meeting for pre-impregnated papers business: Sales/Marketing/TCS – R&D – Production" of, 24 October 2011, Annex 14(C), slide 9, submitted with an email dated 18 January 2013.

<sup>500</sup> Munksjö internal document, entitled "Coordination Meeting for pre-impregnated papers business: Sales/Marketing/TCS – R&D – Production" of 24 October 2011, Annex 14(C), slide 17, submitted with an email dated 18 January 2013

<sup>501</sup> Munksjö internal document, entitled "Coordination Meeting for pre-impregnated papers business: Sales/Marketing/TCS – R&D – Production" of 24 October 2011, Annex 14(C), slide 10, submitted with an email dated 18 January 2013.

<sup>502</sup> Munksjö internal document, entitled "An introduction to pre-impregnated paper (PRIP). Sales Workshop Unterkochen" of 19 April 2011, Annex 14(B), submitted with an email dated 18 January 2013.

<sup>503</sup> Munksjö internal document, entitled "Coordination Meeting for pre-impregnated papers business: Sales/Marketing/TCS – R&D – Production" of 24 October 2011, Annex 14(C), submitted with an email dated 18 January 2013.

<sup>504</sup> Ibid, slide 14.

<sup>505</sup> Ibid, slide 10.



Ahlstrom. The removal of that competitive constraint can itself be expected to result in a significant impediment to effective competition, given that Ahlstrom currently accounts for a significant share of the market.

- (564) The evidence available to the Commission shows that Munksjö is clearly a more important competitive constraint on Ahlstrom than Technocell by virtue of its far more established position in the market place, greater quality standards (discussed in Recital (607) in connection with Technocell's ability to expand) [...]\*.<sup>506</sup>
- (565) Indeed, in its internal strategic documents Ahlstrom [...]\*. In Figure 17 Ahlstrom identifies [...]\*.

[...]\*

**Figure 17: Ahlstrom internal document**<sup>507</sup>

- (566) Figure 17 identifies Munksjö as [...]\*.
- (567) Figure 17 also states that Munksjö is “[...]”. Furthermore, it shows that Ahlstrom considered itself [...]\*.
- (568) In a document dated October 2012, Ahlstrom [...]\*.<sup>508</sup>
- (569) The rest of the internal documents submitted by Ahlstrom (dating back to May 2008) provide extensive support for the proposition that Munksjö (or ArjoWiggins, prior to its acquisition by Munksjö) represents its number one competitor in the market for PRIP, ahead of Technocell.<sup>509</sup>

#### 9.3.3.3.B Results of the market investigation

- (570) The Commission's findings on the basis of the Parties' internal documents are supported by the results of the first and second phase market investigations.
- (571) All of the responding direct customers identified Munksjö as Ahlstrom's closest competitor in the supply of PRIP, while almost all identified Ahlstrom as Munksjö's closest competitor in the supply of PRIP.<sup>510</sup> Competitors, when asked to identify the closest competitor of each of the Parties in PRIP, unanimously identified Ahlstrom as Munksjö's main competitor, while half of the respondents identified Munksjö as

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<sup>506</sup> The data provided by the Parties indicate in particular that Munksjö has a total theoretical production capacity for PRIP at Dettingen of [...]\* tons, relative to a production of PRIP in 2012 of [...]\* tons (Response to the Commission RFI of 20 December 2012, Q3, and Response to the Commission RFI of 15 January 2013, Q11).

<sup>507</sup> Ahlstrom internal document, entitled “Business Plan 2012-2015” of 2 May 2012, Annex 10(K), slide 5, submitted with an email dated 18 January 2013.

<sup>508</sup> Ahlstrom internal document, entitled “Annual Plan 2013. Business Unit Processing” of October 2012, Annex 10(G), slide 4, submitted with an email dated 18 January 2013.

<sup>509</sup> Ahlstrom internal documents, entitled “Strategic Planning 2008. OB3 – PRIP” of 20/21 May 2008, Annex 14(Y), slide 4; entitled “Strategic Planning 2009. OB3 – PRIP” of 21 April 2009, Annex 14(Z), slide 4; entitled “Ahlstrom Business Plan 2010-2013 OSN3 - Pre-impregnated Decor Papers” of 7 May 2010, Annex 14 (ZA), slide 4; entitled “Annual Plan 2011, Business Unit, Processing” of 8 November 2010, Annex 10(E), slides 5 and 7; entitled “Annual Plan 2012. Business Unit, Processing” of 18 January 2011, Annex 10(F), slide 6; entitled “Product Family Strategy 2012-2015. Pre-impregnated decor papers (PRIP)” of 27 March 2012, Annex 14 (ZB), slide 2; all submitted with an email dated 18 January 2013.

<sup>510</sup> Replies to questions 40 and 41 - Phase II Questionnaire to customers (PRIP).

Ahlstrom's main competitor.<sup>511</sup> It is worth noting that Technocell does not consider itself as the closest competitor of either of the Parties.

- (572) These findings correspond to the replies already received during the Phase I market investigation, during which almost all customers and competitors stated that they considered Munksjö and Ahlstrom to be each other's closest competitors.<sup>512</sup> Some customers explained in particular that they considered the Parties' PRIP products as the best in the market.<sup>513</sup>
- (573) In addition, as will be discussed in Section 9.3.3.4, some customers expressed reservations about the quality of Technocell's products currently.
- (574) The responses received from customers and competitors thus demonstrate that the Parties imposed a key competitive constraint on each other before the transaction.

#### 9.3.3.3.C Relevance of PRIP width

- (575) The Commission has further analyzed the relevance of PRIP width in determining the degree of existing competition between the Parties and their main competitor Technocell.
- (576) The Commission finds that Ahlstrom's current inability to produce PRIP of 8 feet or more in width would not have compromised its ability to effectively compete with Munksjö and Technocell to a significant extent absent the transaction.
- (577) First, although the wide PRIP market is growing, customers contacted during the investigation have qualified their statements on the importance of wide PRIP production to effectively compete in the market.
- (578) According to the Parties, a number of customers have invested in wide PRIP printing capabilities.<sup>514</sup> However, two of those customers have explained that wide PRIP represents a small part of the market and one customer has explained that in terms of width the products of Munksjö and Ahlstrom were satisfactory.<sup>515</sup>
- (579) IKEA, as one of the largest end-customers of PRIP-based products also told the Commission that whilst it would like to increase its purchases of wide PRIP for some of its product lines (such as PAX), it continues to buy narrow PRIP in the market place, and can use it without difficulty on a number of its products.<sup>516</sup> That indicates that there is still significant demand for narrow PRIP in the market. This fact is confirmed by Ahlstrom's own internal computation that the size of the wide PRIP

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<sup>511</sup> Replies to questions 46 and 47 - Phase II Questionnaire to competitors (PRIP)

<sup>512</sup> Replies to questions 13.2 and 14 - Phase I Questionnaire to customers (decor paper); replies to questions 13.2 and 14 - Phase I Questionnaire to competitors (decor paper).

<sup>513</sup> Minutes of the conference call with Súddekör of 22 January 2013; reply of Surteco to question 42 – Phase II Questionnaire to customers (PRIP).

<sup>514</sup> This is also acknowledged by Ahlstrom in its internal document entitled "Business Plan 2012-2015. Project: 8 foot PRIP" of May 2012, Annex 16(A), slide 16, submitted with an email dated 18 January 2013.

<sup>515</sup> Minutes of the conference call with Interprint of 23 January 2013; with Súddekör of 22 January 2013; with Surteco of 25 January 2013.

<sup>516</sup> Minutes of the conference call with IKEA of 29 January 2013.

segment in 2011 was of about [...] tons, out of a total market of about [...] tons, implying that wide PRIP currently accounts for [...] of the total market.<sup>517</sup>

(580) Second, Ahlstrom's internal analyses show that while Ahlstrom considered its [...] ,<sup>518</sup> Ahlstrom has been able to [...] .<sup>519</sup>  
[...] .<sup>520</sup>  
[...] .<sup>521</sup>

(581) Third, [...] .<sup>522</sup>

(582) Although Ahlstrom identified different [...] ,<sup>523</sup> [...] .<sup>524</sup> [...] .<sup>525</sup> Figure 18, part of an internal document from 2012, further shows that Ahlstrom [...] .

[...] .  
**Figure 18: Ahlstrom internal document**<sup>526</sup> ,.

(583) Ahlstrom also already produced an estimate of what its market share would be in the wide PRIP business: “[...]” .<sup>527</sup>

(584) [...] .<sup>528</sup>

(585) However, [...] .<sup>529</sup>

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<sup>517</sup> Ahlstrom internal document entitled “Business Plan 2012-2015. Project: 8 foot PRIP” of May 2012, Annex 16(A), slide 4, submitted with an email dated 18 January 2013

<sup>518</sup> Ahlstrom internal document, entitled “Business Plan 2012-2015. Project: 8 foot PRIP” of May 2012, Annex 16(A), slide 4, submitted with an email dated 18 January 2013.

<sup>519</sup> Ahlstrom internal document, entitled “Annual Plan 2013 Business Unit Processing” of October 2012, Annex 10(G), slide 4, submitted with an email dated 18 January 2013.

<sup>520</sup> Ibid, slide 4.

<sup>521</sup> Ahlstrom internal document, entitled “Annual Plan 2013 Business Unit Processing” of October 2012, Annex 10(G), slide 25, submitted with an email dated 18 January 2013.

<sup>522</sup> Ahlstrom internal document entitled “Business Plan 2012-2015. Project: 8 foot PRIP” of May 2012, Annex 16(A), slide 3, submitted with an email dated 18 January 2013.

<sup>523</sup> For instance “[...]” Ahlstrom internal document entitled “8 feet PRIP on STE01 Feasibility study” of 29 November 2011, Annex 16(B), slides 3-5 and 9, submitted with an email dated 18 January 2013.

<sup>524</sup> Ahlstrom internal document, entitled “Business Plan 2012-2015. Business Unit: Processing” of 2 May 2012, Annex 10(K), slide 8, submitted with an email dated 18 January 2013.

<sup>525</sup> Parties' response to Question 16 of the Commission's RFI of 15 January 2013, submitted with an email dated 17 January 2013.

<sup>526</sup> Ahlstrom internal document entitled “Business Plan 2012-2015. Project: 8 foot PRIP” of May 2012, Annex 16(A), slide 8, submitted with an email dated 18 January 2013.

<sup>527</sup> Ahlstrom internal document, entitled “Business Plan 2012-2015. Project: 8 foot PRIP” of May 2012, Annex 16(A), slide 4, submitted with an email dated 18 January 2013.

<sup>528</sup> Munksjö internal document, entitled “Coordination Meeting for pre-impregnated papers business: Sales/Marketing/TCS – R&D – Production” of October 2011, slide 14, submitted with an email dated 18 January 2013.

<sup>529</sup> Parties' response to Question 16 of the Commission's RFI of 15 January 2013, submitted with an email dated 17 January 2013.

- (586) The Commission concludes from the evidence that although Ahlstrom's current inability to produce wide PRIP resulted in a constraint on its ability to be an effective competitor for some customers, Ahlstrom was able in the past to offset that handicap through its [...]\*

#### 9.3.3.3.D Win/loss evidence

- (587) In response to Commission's request for bidding data,<sup>530</sup> Munksjö provided a list of 'orders' for pre-impregnated paper covering the period 2008 to 2012. For each customer included in the dataset (approximately [...] customers, including the biggest PRIP customers of Munksjö), that list provides information on assortments of products, volumes and corresponding prices ordered from Munksjö over the previous 5 years. Orders of a certain customer that were discontinued (over the period 2008 to 2012) are interpreted by Munksjö as switches from and to other suppliers. Information on potential competitors is not always available and furthermore, for orders lost by Munksjö, the dataset does not include any information on the companies with whom the orders were eventually placed.
- (588) Notwithstanding its limitations, that dataset clearly shows that the only players that represent viable alternatives for customers of pre-impregnated paper are Munksjö, Ahlstrom and Technocell. Customers switch back and forth between those three suppliers. Except for one occasion where a customer [...]\*, there is no other potential competitor mentioned apart from Ahlstrom and Technocell. In general, Ahlstrom is mentioned as an alternative supplier for the customers that [...]\* whereas Technocell is perceived as a competitor for [...]\* customers who [...]\*. Therefore, it is suggested that for some [...]\* customers, Ahlström appears to be a closer competitor to Munksjö than Technocell.
- (589) Furthermore, Munksjö's orders database also indicates that most customers multisource to a significant extent from the three big suppliers, Munksjö, Ahlstrom and Technocell (or at least from two of them, that is to say either from Ahlstrom or Technocell on the one hand as well as from Munksjö on the other hand).
- (590) The market investigation provided evidence consistent with the very limited number of PRIP suppliers in the EEA market. The majority of customers replied that, in case they were not able to purchase PRIP from Munksjö and Ahlstrom, they would neither be able nor have the incentive to find alternative suppliers to provide a product of the same quality in the PRIP market.<sup>531</sup>

#### 9.3.3.3.E Conclusion

- (591) The Commission concludes that the transaction would eliminate a key competitive constraint on the PRIP market, and would remove competition which existed before between Munksjö and Ahlstrom.

#### 9.3.3.4. Competition from Technocell

- (592) Paragraph 24 of the Horizontal Merger Guidelines describes the standard reaction by competitors of the merging parties: " *Non-merging firms in the same market can also*

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<sup>530</sup> In response to question 23 of Commission's RFI of 15.01.2013, the Parties submitted by e-mail of 21.01.2013 a win/loss database ("Summary PRIP Loss and Wins Order Income 2008-2012").

<sup>531</sup> Replies to question 59 - Phase II Questionnaire to customers (PRIP).

*benefit from the reduction of competitive pressure that results from the merger, since the merging firms' price increase may switch some demand to the rival firms, which, in turn, may find it profitable to increase their prices.*" However, competitors might act as a sufficient constraining influence if, for example, they have the ability and incentive to increase their supply.<sup>532</sup>

- (593) Furthermore, paragraph 33 of the Horizontal Merger Guidelines states: "*Conversely, when market conditions are such that rival firms have enough capacity and find it profitable to expand output sufficiently, the Commission is unlikely to find that the merger will create or strengthen a dominant position or otherwise significantly impede effective competition.*"
- (594) The Commission therefore assessed whether the most important remaining competitor of the merged entity, Technocell, will have the *ability* to expand output. The Commission then assessed whether it is likely that the merging parties' main competitors, and in particular Technocell, will have an *incentive* to increase output sufficiently to make a price increase by the merged entity unprofitable.
- (595) In their reply to the Commission's Article 6(1)(c) decision, the Parties claim that "*Technocell clearly has significant spare capacity and hence also the ability to increase its supplies of PRIP by capturing sales from the Parties*".<sup>533</sup> This statement appears to suggest that a horizontal merger leading to very large market shares well [70-80]\*% such as the transaction would result in anticompetitive non-coordinated effects only if competitors were to produce close to their full capacity.
- (596) The Commission disagrees with this view. The extent to which competitors constrain the merged entity from raising prices not only depends on the level of their spare capacity but also on whether those competitors have the ability and incentives to react aggressively to a post- transaction price increase.

#### 9.3.3.4.A Ability to expand post- transactionmerger

##### Spare capacity

- (597) The Parties submit that overall Technocell has [...] tons of theoretical decor paper and PRIP production capacity. However, most of it is already contracted for production. Indeed, according to the Pöyry study submitted by the Parties, Technocell has a [...] of PRIP production of [...] tons in Neustadt, Germany, and of [...] tons in Drummondville, Canada.<sup>534</sup> In addition, those excess capacity figures were not entirely confirmed in the Commission's investigation and therefore do not appear to constitute fully reliable data for the Commission's assessment.
- (598) According to Technocell, it only produces PRIP in its Neustadt mill. Although Technocell also has the theoretical capacity to produce PRIP in its Drummondville mill, Technocell does not supply any PRIP production from Canada to the EEA (which is by far the largest market for PRIP). This is because of transport costs, lead

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<sup>532</sup> Horizontal Merger Guidelines, Paragraph 17.

<sup>533</sup> Reply to the Commission's Article 6(1)(c) Decision, 7 December 2012, submitted with an email dated 18 December 2012, Paragraph 46.

<sup>534</sup> Pöyry report, "Independent study of the decor paper and abrasive base paper industry", 28 January 2013, page 11, submitted by the Parties with an email dated 28 January 2013.

times of 4 to 5 weeks and existing demand from North America for other decor paper which fills the machine. Technocell explained that it would not consider importing PRIP from Canada into the EEA even if the price of PRIP went up by 10% in the EEA.<sup>535</sup>

- (599) The Commission therefore finds that only Technocell's paper machine in Neustadt can be taken into account in assessing Technocell's spare capacity, in particular in relation to competition for customers located within the EEA.
- (600) According to Technocell, it has a total capacity of [...] to [...] tons of PRIP production p.a. at its Neustadt mill. Deducting Technocell's current PRIP production of [...] to [...] tons results in a theoretical spare PRIP capacity of approximately [...] tons.
- (601) However, parts of those volumes are currently used for the production of other decor papers and non-decor papers. As Technocell's utilization rate is [80-100]\*%, Technocell's idle capacity is actually much lower. Consequently, Technocell would have to reallocate its paper production across its other paper machines to free up additional volumes in order to significantly increase its PRIP production. Technocell stated that it believed that it would be possible and would not require major efforts if market conditions justified it.<sup>536</sup>
- (602) Potential limits to Technocell's capacity expansion are also recognised by Munksjö in its international documents where Munksjö finds that "[...]\*".<sup>537</sup>
- (603) Moreover, the degree of spare capacity for PRIP production available to Technocell must also be assessed in the light of the expected market growth for PRIP. A growth in demand for PRIP would erode the PRIP players' spare capacity over the years.
- (604) As described in Section 6.3.3, in their internal documents, Ahlstrom expects a future growth rate of approximately [...] p.a, while Munksjö reports that [...]\*, resulting in growth of PRIP consumption of about [...] tons of PRIP.<sup>538</sup> Munksjö also reports that, according to Pöyry's global surfacing material market overview, demand for PRIP [...]\*.<sup>539</sup> Those demand increases are [...] in relation to the overall current PRIP market size of approximately [...] tons.
- (605) Thus Technocell's available capacity for PRIP that could be used to constrain the merged entity is likely to diminish in the short to medium term.

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<sup>535</sup> Minutes of conference call with Technocell of 23 January 2013.

<sup>536</sup> Minutes of conference call with Technocell of 23 January 2013.

<sup>537</sup> Munksjö internal document, entitled "Pre-impregnated papers coordination meeting: Sales/Marketing/TCS – R&D – Production" of 3 December 2012, Annex 14(E), slide 11, submitted with an email dated 18 January 2013.

<sup>538</sup> Munksjö internal document, entitled "An introduction to pre-impregnated paper (PRIP), Sales Workshop Unterkochen" of 19 April 2011, Annex 14(B), slide 10; and entitled "Coordination Meeting for pre-impregnated papers business: Sales/Marketing/TCS – R&D – Production" of 24 October 2011, Annex 14(C), slide 14, submitted with an email dated 18 January 2013.

<sup>539</sup> Munksjö internal document, entitled "Coordination Meeting for pre-impregnated papers business: Sales/Marketing/TCS – R&D – Production" of 24 October 2011, Annex 14(C), slide 14, submitted with an email dated 18 January 2013.

### Quality concerns

- (606) Moreover, the Commission has taken into account existing quality concerns regarding Technocell's PRIP production. Those quality concerns might impact Technocell's commercial ability to expand in the PRIP market post- transaction.
- (607) Some customers have explained that Technocell has not yet reached the quality standards of the Parties since its entry into PRIP production in 2001.<sup>540</sup>
- (608) Furthermore, Technocell's quality problems [...]\*:<sup>541</sup>  
[...]\*.
- (609) Technocell has also acknowledged the existence of commercial and technical constraints on its ability to expand in the PRIP market in the evidence that it provided to the Commission. In particular, one of the reasons given for its failure to use more of its capacity for PRIP production to date was the fact that "*some customers are bound to Ahlstrom's PRIP recipe for technical reasons*".<sup>542</sup>

### Conclusion on Technocell's ability to expand post- transaction

- (610) The Commission thus concludes that Technocell faces limitations on its ability to expand output post- transaction.

#### 9.3.3.4.B Incentive to expand post- transaction

- (611) The Commission has assessed the relevant factors relating to whether the Parties' main rival in the PRIP market, Technocell, might have an incentive to react aggressively to a post- transaction price increase by the merged entity.

### The incentives to expand in a concentrated market

- (612) As it is stated in Paragraph 24 of the Horizontal Merger Guidelines, following a horizontal merger, a price increase from the merged entity shifts some demand to competitors and reduces the competitive pressure on competitors. Faced with increased demand and higher prices by the merged entity, competitors may find it profitable to increase their prices in turn: "*Non-merging firms in the same market can also benefit from the reduction of competitive pressure that results from the merger, since the merging firms' price increase may switch some demand to the rival firms, which, in turn, may find it profitable to increase their prices. The reduction in these competitive constraints could lead to significant price increases in the relevant market.*"
- (613) In this case, non-merging firms, in particular Technocell, can be expected to benefit from the reduction of competitive pressure between Munksjö and Ahlstrom as a

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<sup>540</sup> Minutes of the conference call with Likora of 9 November 2012; with Chiyoda of 4 February 2013; Likora of 9 November 2012; with Decor Druck of 25 January 2013; with Süddekor of 22 January 2013.

<sup>541</sup> The statements are contained (in this order) in Ahlstrom internal document, entitled "Strategic Planning 2008 OB3 - PRIP CET pre-meeting Noormarkku" of 20/21 May 2008, Annex 14(Y); entitled "Strategic Planning 2009 OB3 - PRIP TP meeting Osnabrück" of 21 April 2009, Annex 14(Z); entitled "Ahlstrom Business Plan 2010-2013 OSN3 - Pre-impregnated Decor Papers" of 7 May 2010, Annex14 (ZA); entitled "Annual Plan 2011 Business Unit, Processing" of 8 November 2010, Annex 10(E); and entitled "Annual Plan 2013 Business Unit Processing" of October 2012 , Annex 10(G) , all submitted with an email dated 18 January 2013.

<sup>542</sup> Minutes of the conference call with Technocell of January 23 2013.

result of the transaction. That follows from the fact that a price increase by the merged entity would switch some demand to the rival firms, which in turn might find it profitable to increase their prices, leading to higher overall prices for PRIP after the transaction.

- (614) The reactions from horizontal competitors will not be sufficient to eliminate the incentive for the merged entity to raise price.

Lack of aggressive competition pre- and post-transaction

- (615) In assessing the competitive effects of a merger, the Commission compares the competitive conditions that would result from the notified merger with the conditions that would have prevailed without the merger. Pre-merger competition from rivals provides a relevant benchmark for the post-merger competitive constraints that are likely to be exercised by the rivals, especially in industries such as PRIP where no significant future changes in the market, in particular due to barriers to entry, can be reasonably predicted. The existence of barriers in the PRIP market is further discussed in Section 9.3.3.6.

- (616) As already highlighted in Section 9.3.3.4 in connection with Technocell's ability to expand post-transaction, the PRIP market might be characterised as a market where the main producers have a degree of available capacity, especially if it is assumed that firms can re-allocate their overall decor paper production across different paper machines.

- (617) The PRIP market is also characterised by [...] margins on additional (or incremental) sales of PRIP. In response to the Commission's request for economic data,<sup>543</sup> the Parties provided information allowing for the computation of the parties' margins over variable costs for a period of 3 years. A straightforward calculation provides a value of EUR [...]\*/ton gross margin for Munksjö during the period January to November 2012. Relative to the pre-transaction average net price of Munksjö that value represents a [...] gross margin.<sup>544</sup> Ahlstrom's reported gross margins in 2012 are [...]\*.<sup>545</sup> Given the large share accounted for by the Parties in the PRIP market, the Commission considers that their margins represent a good indication of overall industry profitability.

- (618) The co-existence of potentially significant levels of spare capacity and significant pre-transaction margins in the PRIP market indicates that competition between the current suppliers of PRIP, including Technocell, is not particularly intense pre-transaction and reflects a degree of market power held by the Parties. This accords with the highly concentrated nature of the market, and with the existence of barriers to entry.

- (619) The fact that Technocell does not compete more aggressively pre-transaction (that is to say that it refrains from lowering price slightly to attract additional customers)

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<sup>543</sup> Data sent to the European Commission on 7 January 2013 in response to the data request of 21 December 2012, "Munksjö Decor Dettingen Q1 Q2 and Q4 to Q8."

<sup>544</sup> Margins have been high also the previous years. Munksjö's margin was [...] in 2011 and [...] in 2010. Ahlstrom's margins broadly followed the same trend as Munksjö's during the last 3 years.

<sup>545</sup> Data sent to the European Commission on 7 January 2013 in response to the data request of 21 December 2012, "Ahlstrom Decor paper Q1-Q7".



despite its allegedly significant share of spare capacity, implies that it does not have an incentive to do so or that it faces other constraints on its ability to expand which are unrelated to its degree of spare capacity. In an industry characterised by high margins and spare capacity, in theory it would be possible for firms to lower prices and produce more. However, Technocell prefers not to sell more at a slightly lower price. This implies that, to the extent that Technocell has the ability to expand production, it refrains from doing so due to the fact that its profit maximising output pre-transaction is below full capacity.

- (620) The proposition in Recital (619) is confirmed by the evidence that Technocell has provided to the Commission. In particular, Technocell has stated that "*[it] has not achieved higher market shares in PRIP in the past because it does not want to compromise its margins and prices and because some customers are bound to Ahlstrom's PRIP recipe for technical reasons.*" That indicates that Technocell is not expanding its output pre-transaction due to a combination of lack of incentives and lack of ability.
- (621) The Commission considers that there will be no fundamental change in competition from rivals post-transaction. Under a non-coordinated theory of harm, rivals are expected to react to changes in prices by the merged entity. However, the rivals' reaction to changes in prices post-transaction are likely to be governed by the same incentives as those regarding their actions pre-transaction.
- (622) In particular, the lack of pre-transaction incentives to expand on the part of Technocell implies that it is unlikely to react aggressively to a price increase by the merged entity post-transaction, particularly given that the competitive constraint exercised by the Parties is likely to decrease post-transaction. Technocell is therefore likely to find it more profitable to accommodate a post-transaction price increase by the merged entity than to expand its output sufficiently to make the price increase unprofitable for the merged entity.
- (623) That reaction by Technocell is fully in line with the predictions from economic theories of horizontal competition that are consistent with the existence of a degree of pre-transaction market power.
- (624) Technocell has also stated to the Commission that "*some customers have a preference for larger width PRIP in order to increase productivity.*"<sup>546</sup> As discussed in Section 9.3.3.3.C, the market investigation has revealed that certain customers have a preference for wider PRIP. Technocell and Munksjö are the only two suppliers in the market that can provide wide PRIP. Therefore, Technocell's pre-transaction ability to expand sales in the PRIP market should be even higher, at least relative to Ahlstrom. The fact that despite this apparent latent demand for its products, Technocell has significant levels of spare capacity indicates that either it faces constraints in its ability to produce more (for example due to quality considerations on the part of some customers) or it lacks sufficient incentives to do so in order not to compromise its margins.
- (625) In relation to Technocell's overall output expansion trend in the market for PRIP it is also worth noting that Technocell has told the Commission that it produced [...] to [...] tons of PRIP in 2012. That is in line with Munksjö's estimates of Technocell's

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<sup>546</sup> Minutes of conference call with Technocell of 23 January 2013.

production in 2010 and 2011 and well below Munksjö's estimates of Technocell's production in 2012, which was projected at [...] \* tons. Therefore, while it is true that Technocell expanded its output after its entry into the PRIP market (after overcoming some quality concerns, as extensively recognised in Ahlstrom's internal documents), the evidence indicates that Technocell has not increased its PRIP production from 2010 to 2012.

Effects of expected increase in capacity utilisation because of multi-sourcing strategies

- (626) The market investigation revealed that PRIP customers multi-source to a significant extent.<sup>547</sup> Multi-sourcing strategies might make price increases even more likely to materialise as the transaction leads to a stronger relative reduction in the number of effective suppliers. Moreover, the shift in demand towards the Parties' competitors as a result of multi-sourcing strategies by customers implies that the competitors of the merged entity would in fact have even less incentive to compete intensely to gain customers (relative to a counterfactual in which multi-sourcing does not occur).
- (627) The Commission notes that the shift in demand from the merged entity to its rivals in a market where multi-sourcing occurs would reduce the excess capacity and hence the competitive pressure those rivals exert on the merged entity. Rivals are likely to become less aggressive as multi-sourcing strategies by customers imply that they would automatically face increased demand. This situation is further aggravated by the fact that the PRIP industry is already very concentrated and there are practically only three viable alternatives. It is worth noting that, at most, a transaction which results in two players instead of three, in a market characterised by strong multi-sourcing needs is practically a transaction that results in a monopoly at least for part of the demand because each supplier knows that it would get at least part of the customers' demand, independently of the price set by the rival.

Conclusion on Technocell's incentive to expand post-transaction

- (628) The Commission concludes that the main rival of the merged entity in the market for PRIP, Technocell, does not have the incentive to expand output to an extent which offsets a price increase from the merged entity.

9.3.3.4.C Overall conclusion on Technocell's incentive and ability to expand post-transaction

- (629) The Commission therefore concludes that Technocell faces limitations on its ability to expand output post-transaction and does not have the incentive to expand output sufficiently to offset a price increase by the merged entity.

9.3.3.5. Competition from the merged entity's non-EEA competitors

- (630) The market investigation has not resulted in any reliable evidence of actual PRIP imports into the EEA.<sup>548</sup>

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<sup>547</sup> See replies to question 53 of the RFI sent to customers in Phase II and also Commission analysis of Munksjö's win/loss database ("Summary PRIP Loss and Wins Order Income 2008-2012" submitted by e-mail of 21.01.2013 in response to question 23 of Commission's RFI of 15.01.2013).

<sup>548</sup> For further details see section 0 above.

- (631) As regards the alleged competitor Multiverde in particular, neither the 2010 Pöyry market report submitted by the Parties nor the Parties' internal documents identify any actual PRIP sales of this company.<sup>549</sup>
- (632) Furthermore, in its internal analyses Munksjö finds that non-EEA producers [...] have sold [...] PRIP since 2001. According to Munksjö's internal estimates, those companies together accounted for a maximum of [...] of total annual sales of PRIP worldwide over the last 10 years. The data further shows that there has been [...].<sup>550</sup>
- (633) This conforms with Ahlstrom's own assessment of smaller non-EEA producers. In its 2013 Annual Plan, Ahlstrom attributes only a [...].<sup>551</sup> Moreover, when discussing competitors other than Munksjö and Technocell in a May 2012 analysis of the competitive dynamics of the market, Ahlstrom identifies as actual competitors [...].<sup>552</sup> With respect to those players (and to potential standard decor paper entrants), Ahlstrom notes that "[...]" within a [...] horizon.
- (634) Several statements made by customers made during the market investigation confirm the finding that non-EEA producers currently do not play a role in the PRIP market in the EEA. For the individual statements, please see Section 8.2.2 on the geographic market definition.
- (635) The Commission therefore finds that the Parties' non-EEA competitors do not currently constitute a significant competitive constraint on the Parties.

#### 9.3.3.6. Market entry

- (636) For market entry to be considered a sufficient competitive constraint on the merging parties, it must be shown to be likely, timely and sufficient to deter or defeat any potential anti-competitive effects of the merger.<sup>553</sup>
- (637) The Commission has assessed the likelihood of entry into the PRIP market against the standard in Recital (636) by assessing (i) the technical complexity of PRIP production and resulting barriers to entry, (ii) the example of Technocell entering the PRIP market, (iii) the Parties' internal analysis of the profitability of market entry and (iv) the outcome of the market investigation on the individual claimed entrants and on overall prospects for market entry.

#### 9.3.3.6.A Technical complexity of PRIP production and resulting barriers to entry

- (638) According to the Horizontal Merger Guidelines, incumbents in a market might enjoy technical advantages over potential new rivals in the form of preferential access to

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<sup>549</sup> Munksjö internal document, entitled "Pre-impregnated papers coordination meeting: Sales/Marketing/TCS – R&D – Production" of 3 December 2012, Annex 14(E), slide 3, submitted with an email dated 18 January 2013.

<sup>550</sup> Munksjö internal document, entitled "Pre-impregnated papers coordination meeting: Sales/Marketing/TCS – R&D – Production" of 3 December 2012, Annex 14(E), slide 3, submitted with an email dated 18 January 2013.

<sup>551</sup> Ahlstrom internal document, entitled "Annual Plan 2013. Business Unit Processing" of October 2012, Annex 10(G), slide 3, submitted with an email dated 18 January 2013.

<sup>552</sup> Ahlstrom internal document, entitled "Business Plan 2012-2015" of 2 May 2012, Annex 10(K), slide 24, submitted with an email dated 18 January 2013.

<sup>553</sup> Horizontal Merger Guidelines, Paragraph 68.

innovation and R&D, and potentially also intellectual property rights. Those factors might constitute a barrier to entry in the market. Similarly, barriers to entry might also exist because of the established position of the incumbent firms, as a result of their experience and reputation with customers for high quality products.<sup>554</sup>

- (639) The evidence collected during the second phase market investigation shows that the complexity of PRIP production and the Parties' established position as providers of high-quality PRIP constitute barriers to entry to the PRIP market.

#### Results of the market investigation

- (640) The complexity of PRIP production is mainly linked to the necessary know-how required for the production of PRIP as confirmed by a substantial number of the Parties' competitors and direct customers in the decor paper market.
- (641) Technocell admitted, for example, that its "*entry into PRIP production also required the development of technology and patents. Entry was hard since Technocell had to work around Munksjö's broad patents and still get a workable product*".<sup>555</sup>
- (642) Cartiere di Guarcino stressed that "*entry would be technically difficult since Cartiere has neither the know-how nor the patents for the production of PRIP*",<sup>556</sup> since "*both Munksjö and Technocell have patents. Therefore, a hypothetical entry into the PRIP market would require the development of new patents or licensing patents from Munksjö and/or Technocell. In that context, entry would take more than 2 years*".<sup>557</sup>
- (643) Finally, Malta Decor stated that it "*would have to consider the differences in technical parameters for PRIP production and the relatively long qualification process with PRIP customers*".<sup>558</sup>
- (644) The printers' submissions were similar. Concerning potential entry by a new PRIP producer and the necessary certification process, one customer believes that "*trials with PRIP suppliers can be conducted relatively quickly. However, the subsequent process of adjusting the PRIP production process by the paper producers can be lengthy. As the Technocell example shows it can take a long time to get the required quality right as PRIP is a specialty paper that has to meet very specific product requirements*".<sup>559</sup> Similar statements were made by a number of other customers.<sup>560</sup>

#### Evidence from the Parties' internal documents

- (645) The Parties' internal strategic documents regarding the PRIP market provide extensive evidence that the market is characterized by technical complexity and expertise, and high quality standards.

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<sup>554</sup> Horizontal Merger Guidelines, Paragraphs 71-72.

<sup>555</sup> Minutes of the conference call with Technocell of 23 January 2013.

<sup>556</sup> Minutes of the conference call with Cartiere di Guarcino of 16 January 2013.

<sup>557</sup> Ibid.

<sup>558</sup> Minutes of the conference call with Malta Decor of 21 January 2013.

<sup>559</sup> Minutes of the conference call with Chiyoda of 4 February 2013.

<sup>560</sup> Minutes of the conference call with Decor Druck of 25 January 2013; with Interprint of 23 January 2013; with Surteco of 25 January 2013.

- (646) In its internal documents, Ahlstrom repeatedly notes that the PRIP production process is [...]\*.<sup>561</sup>
- (647) Figure 19 identifies four key capabilities of Ahlstrom regarding the PRIP market. [...]\*.

[...]\*  
**Figure 19:**<sup>562</sup>

- (648) In one of its documents (dated March 2012), with specific reference to potential entry by standard decor producers, Ahlstrom explicitly notes: "[...]\*".<sup>563</sup> Similarly, in a May 2012 analysis of the competitive environment of the PRIP market, Ahlstrom reports that there are "[...]\*", [...]\* then also projects that in five years' time, [...]\*.<sup>564</sup> The Commission considers those statements to correspond to Ahlstrom's view of the market as characterized by a high degree of technical complexity, with corresponding barriers to entry.
- (649) The Commission notes that Ahlstrom's statement on the unlikelihood of entry in the next five years, referred to in Recital (124), is in direct contradiction to the Parties' submissions in the Form CO.<sup>565</sup>
- (650) Munksjö's internal documents [...]\*. In an internal document dated October 2011 Munksjö notes the following: "[...]\*".<sup>566</sup> In a later document of December 2012, Munksjö also states the following strategic aim: "[...]\*".<sup>567</sup>

Relevance of patents

- (651) According to the Horizontal Merger Guidelines, patents and other intellectual property rights can constitute barriers to entry.<sup>568</sup>

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<sup>561</sup> Ahlstrom internal document, entitled "Annual Plan 2011, Business Unit, Processing" of 8 November 2010, Annex 10(E), slide 7; , entitled "Business Plan 2011-2014 - Processing" of 9 May 2011, Annex 10(J), slide 5; entitled "Annual Plan 2012. Business Unit, Processing" of 18 January 2011, Annex 10(F), slide 17; entitled "Product Family Strategy 2012-2015. Pre-impregnated decor papers (PRIP)" of 27 March 2012, Annex 14 (ZB), slide 2; entitled "Business Plan 2012-2015" of 2 May 2012, Annex 10(K), slide 5.; entitled "Product Family Strategy 2012-2015. Pre-impregnated decor papers (PRIP)" of 27 March 2012, Annex 14 (ZB), slide 5; entitled "Annual Plan 2013. Business Unit Processing" of October 2012, Annex 10(G), slide 4; all submitted with an email dated 18 January 2013.

<sup>562</sup> Ahlstrom internal document, entitled "Business Plan 2012-2015, Business Unit: Processing" of 2 May 2012, Annex 10(K), slide 3, submitted with an email dated 18 January 2013.

<sup>563</sup> Ahlstrom internal document, entitled "Product Family Strategy 2012-2015. Pre-impregnated decor papers (PRIP)" of 27 March 2012, Annex 14 (ZB), slide 5, submitted with an email dated 18 January 2013.

<sup>564</sup> Ahlstrom internal document, entitled "Business Plan 2012-2015" of 2 May 2012, Annex 10(K), slide 24, submitted with an email dated 18 January 2013.

<sup>565</sup> Form CO, Paragraph 512.

<sup>566</sup> Munksjö internal document, entitled "Coordination Meeting for pre-impregnated papers business: Sales/Marketing/TCS – R&D – Production", 24 October 2011, slides 8 and 17, Annex 14(C), submitted by email on 18 January 2013.

<sup>567</sup> Munksjö internal document, entitled "Pre-impregnated papers coordination meeting: Sales/Marketing/TCS – R&D – Production", 3 December 2012, slide 22, Annex 14(E), submitted by email on 18 January 2013.

<sup>568</sup> Horizontal Merger Guidelines, Paragraph 71.

- (652) The Commission acknowledges that the patents held by Munksjö have recently expired. It also notes that the patents held by Technocell are contested between market participants. That is confirmed in [...]\*.<sup>569</sup>
- (653) However, Ahlstrom and Technocell's patents remain valid at present and Ahlstrom's two patents will only expire in 2016 and 2022 respectively. In that context, Koehler pointed out that: "*the PRIP market is a growth area (one of few such areas), but not innovative. This is especially due to the fact that Ahlstrom holds patents until May 2017 with regard to the "surface treatment PRIP". This patent is defined broadly, but Ahlstrom does not have the application knowledge to use the patent and they do not have the required coaters in their Osnabrück plant.*"<sup>570</sup>
- (654) The Commission therefore considers that Ahlstrom and Technocell's patents might currently constitute barrier to entry in the PRIP market.

#### Conclusion on barriers to entry

- (655) In summary, the responses received in the market investigation and the Parties' internal documents show that entry into the PRIP market would be very difficult. Not only because of the existence of patents, but more importantly because entry requires the necessary know-how which takes considerable time to acquire.
- (656) The Commission therefore concludes that the complexity and the necessary know-how required to produce PRIP constitutes, amongst others, a barrier to entry into the PRIP market.

#### 9.3.3.6.B Technocell's experience over the past years

- (657) Technocell's experience as an entrant in the PRIP market is illustrative of the difficulties that a new player would face in order to enter and expand in the PRIP market post-transaction .
- (658) Technocell entered the PRIP market in 2001, when it acquired a plant in Drummondville, Canada. In 2004 it rebuilt one paper machine in Neustadt, shifting PRIP production from Drummondville to that machine, and effectively entering the PRIP market in the EEA.<sup>571</sup>
- (659) Technocell's evolution is reflected in Munksjö's internal estimates of Technocell's production, which show PRIP production [...]\*.<sup>572</sup> According to the same estimates, Technocell [...]\*.<sup>573</sup>

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<sup>569</sup> See Munksjö Internal documents, entitled "Pre-impregnated papers coordination meeting: Sales/Marketing/TCS – R&D – Production, 3 December 2012, slide 16, Annex 14(E), submitted by e-mail on 18 January 2013.

<sup>570</sup> Minutes of the Conference call with Koehler of 18 January 2013.

<sup>571</sup> Technocell reply to question 4 - Phase II questionnaire to competitors (PRIP).

<sup>572</sup> Munksjö internal document, entitled "Pre-impregnated papers coordination meeting: Sales/Marketing/TCS – R&D – Production", 3 December 2012, slide 3, Annex 14(E), submitted by email on 18 January 2013.

<sup>573</sup> See Minutes of the conference call with Technocell of 23 January 2013, and Munksjö internal document, entitled "Pre-impregnated papers coordination meeting: Sales/Marketing/TCS – R&D – Production," 3 December 2012, slide 3, Annex 14(E), submitted by email on 18 January 2013.

- (660) Ahlstrom's internal strategic documents provide extensive and direct evidence of Technocell's difficulties in establishing itself on the PRIP market . Starting from the earliest documents made available to the Commission dated May 2008), Ahlstrom's internal analysis indicates that Technocell [...]\*, as already noted in Section 9.3.3.4.<sup>574</sup>
- (661) Ahlstrom's internal documents show [...]\*
- (662) That analysis is confirmed by some of the statements made by the Parties' direct customers about Technocell's technical shortcomings as discussed in Section 9.3.3.4 on Technocell's ability to expand PRIP sales.
- (663) Ahlstrom's internal documents also indicate that Technocell [...]\*
- (664) The Commission considers that Ahlstrom's internal documents on Technocell's difficult and gradual expansion into the PRIP market have high evidentiary value, given that they are based on one of the merging Parties' own strategic analysis of the market, prepared in the normal course of business.
- (665) The Commission considers that the overall evidence on the evolution of Technocell's estimated sales in the PRIP market from 2004 to 2012, Ahlstrom's internal strategic analysis of Technocell's difficulties in establishing itself in the PRIP market and the evidence obtained by market participants on the quality of Technocell's products all indicate that entry and expansion in the PRIP market is difficult. That reflects the complex technical nature of the PRIP market, both on the supply and demand side, as discussed above in Recital (647).

#### 9.3.3.6.C The Parties internal analysis of the profitability of entry

- (666) The Parties have stated that a "*price increase would give incentives to other decor paper suppliers to start producing PRIP*".<sup>575</sup> In order to support this argument, the Parties estimated that the approximate time it would take to recover a [...]\* investment in a size press is [...]\* (including a [...]\* period to purchase the equipment and complete trials). As described in Recital (107), the calculations assume that a new entrant would be able to sell [...]\* in the PRIP market during the [...]\* after entry (equivalent to [...]\* of the total market).<sup>576</sup>
- (667) Based on the same data used by the Parties for that calculation,<sup>577</sup> the Commission estimates that an assumed post-transaction permanent price increase of 5% triggers a

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<sup>574</sup> See Ahlstrom internal documents (in this order), entitled "Strategic Planning 2008. OB3 – PRIP", 20/21 May 2008; Annex 14(Y); entitled "Strategic Planning 2009. OB3 – PRIP", 21 April 2009, Annex 14(Z); entitled "Ahlstrom Business Plan 2010-2013 OSN3 - Pre-impregnated Decor Papers", 7 May 2010, Annex 14 (ZA); entitled "Annual Plan 2011, Business Unit, Processing" of 8 November 2010, slide 5, Annex 10(E); entitled "Annual Plan 2012. Business Unit, Processing" of 18 January 2011, Annex 10(F); entitled "Annual Plan 2013. Business Unit Processing", October 2012, Annex 10(G), all submitted by email on 18 January 2013.

<sup>575</sup> Presentation by the Parties during the post Article 6.(1)(c) decision meeting of 11 January 2013, slide 7, submitted by email of 16 January 2013.

<sup>576</sup> The assumptions underlying the calculations are: i) the cost of a size press is approximately [...]\*; ii) available spare capacity for PRIP is [...]\* tons; iii) margin is EUR [...]\* and iv) time before starting production is [...]\*.

<sup>577</sup> Data sent to the European Commission on 7 January 2013 in response to the data request of 21 December 2012, "Munksjö Decor Dettingen Q1 Q2 and Q4 to Q8".

change in the variable margin of approximately [...]%.<sup>578</sup> That implies that, if with a pre-transaction margin of EUR [...]\*/ton the period necessary to recover the required investment to enter the PRIP market is of [...]\* (according to the Parties' calculations). With a pre-transaction margin of EUR [...]\*/ton this period is approximately [...]\*

- (668) If before the transaction no supplier found it profitable to enter an industry where incremental margins are around [...]%% and the amortization period is approximately [...]\*, the Commission finds it unlikely that post-transaction, a reduction in the amortization period of only a couple of months would be sufficient to trigger entry.
- (669) The fact that the apparent amortization period after entry is short even pre-transaction indicates that there are likely to be barriers to entry and expansion that the example provided by the Parties does not include.
- (670) In particular, the assumption that a new entrant would be able to sell [...]\* tons of PRIP in the market within the first year of operation appears to be unrealistic. The evidence from Technocell, reviewed by the Commission in Recital (659), shows that it took Technocell 7 years after entering the market to sell more than [...]\* tons of PRIP per year. The Parties' example of a profitable market entry therefore appears to significantly understate the technical difficulties that a new entrant would likely face in order to establish itself in the market.
- (671) Furthermore, Technocell's experience of entering the PRIP market indicates that the Parties' assumption of an investment cost of [...]\* in a size press might be an underestimation. Technocell informed the Commission that "*Technocell's investment for entry into PRIP production was approximately €10 million plus the start-up losses. Because of inflation, this sum would be higher today (i.e. around EUR 15 million)*".<sup>579</sup>
- (672) Based on that evidence, and considering the fact that the PRIP industry has recently seen no new market entries (the last successful market entry dates back to 2004, and competitors Inveresk and Koehler exited the market in 2008 and 2002 respectively), the Commission currently does not consider that the example provided by the Parties provides reliable evidence that market entry would be likely post-transaction .

#### 9.3.3.6.D Results of the market investigation on the individual alleged potential entrants and on overall prospects for entry

- (673) The Commission also investigated the issue of potential entry by contacting the alleged potential entrants. Those alleged potential entrants have either explicitly ruled out PRIP market entry or stated that it would take a long time to enter the PRIP market.

##### Cartiere di Guarcino (Decor paper producer)

- (674) Cartiere di Guarcino explained that at present it "*has two paper machines, each of them with a total capacity of [...]\* tons, at its disposal. One is 30 years old and ones is 20 years old, but has been recently refurbished at the cost of significant*

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<sup>578</sup> The pre-transaction margin in 2012 was EUR [...]\*/ton ([...]%% of the pre-transaction price) and the estimated post-transaction margin following a [...]%% price increase would be EUR [...]\*/ton ([...]%% of the pre-transaction price).

<sup>579</sup> Minutes of the conference call with Technocell of 23 January 2013.



*investments, which still need to be recovered. Whereas the capacity of the old machine is exhausted, it would theoretically be possible to produce more on the new paper line by increasing the number of days/shifts. Currently the new paper line operates three shifts 5 days a week. However, Cartiere currently has no plans to invest any further money on these two paper machines.*<sup>580</sup>

(675) Cartiere di Guarcino owns an old size press and would need to make extensive investments of approximately EUR 1.5 to 2.5 million in order to produce PRIP. Moreover, Cartiere's paper machines are old and fully committed to other products, since *"a strategic decision was made by the company two years ago to focus on optimizing the production of other decor papers on the new paper line and focus on improving quality"*.<sup>581</sup>

(676) In the light of recent investments in one of its production lines, Cartiere di Guarcino said that it would not consider investing in PRIP, since *"to produce PRIP a massive investment has to be made"*.<sup>582</sup> Cartiere would not consider investing in PRIP *"[e]ven if big printers offered to sponsor Cartiere's entry"* and the merged entity raised its prices by 10%.<sup>583</sup> In addition, *"entry would be technically difficult since Cartiere has neither the know-how nor the patents for the production of PRIP"*.<sup>584</sup>

Koehler (Decor paper producer)<sup>585</sup>

(677) Koehler explained that it *"currently only has size presses on machines that are dedicated to other than the decor paper markets and that do not have the required widths for PRIP production"*.

(678) None of Koehler's current decor paper producing paper machines can be modified to include a size press: *" More precisely, PM6 and PM3 are not suitable for PRIP production for the following reasons:PM6: Should Koehler wish to increase the length of the PM6 by including a size press, the firm would have to extend the building requiring significant time and investments. Moreover, Koehler would only be able to produce PRIP of [...] on PM6. In addition, the site is currently operating at [...] ([80-100]% of total capacity), so there would be limited idle capacity to produce PRIP. PM3: The machine is very old and there are issues with power generation, effluent treatment and internal transportation"*.

(679) Finally, Koehler stated that it *"would need to build a new competitive paper machine with a size press to enter the PRIP market, allowing also for the re-use of the broke. The costs would be EUR 85 to 120 million (including the building and the power generation facilities). The time required would be 2 – 3 years"*.

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<sup>580</sup> Minutes of the conference call with Cartiere di Guarcino of 16 January 2013.

<sup>581</sup> Ibid.

<sup>582</sup> Cartiere di Guarcino's reply to question 28 - Phase II Questionnaire to competitors (PRIP).

<sup>583</sup> Minutes of the conference call with Cartiere di Guarcino of 16 January 2013.

<sup>584</sup> Ibid.

<sup>585</sup> All quotes in this section on Koehler Decor are taken from the minutes of the conference call with Koehler of 18 January 2013.

Malta Decor (Decor paper producer)<sup>586</sup>

- (680) Malta Decor is the largest decor paper producer who does not own a size press. Malta Decor explained that it *“has never considered entering the PRIP market in the past and has no intention to enter PRIP production in the near future”*. Malta Decor cites the *“differences in technical parameters for PRIP production and the relatively long qualification process with PRIP customers”* as an obstacle to PRIP entry. In addition, Malta Decor has *“a very high capacity utilisation”*, which means that it *“would only consider entering the market for PRIP if their volumes of other decor papers decreased and there was a radical change in the markets”*. In particular, Malta Decor explained that *“prices for PRIP would need to increase by 10% at a minimum to justify an entry decision”*. In any event it would take Malta Decor *“at least 18 months”* to enter the PRIP market.

Other decor paper producers

- (681) The remaining two decor paper producers having responded to the Commission’s market investigation, Arctic Paper Mochenwangen GmbH and Gebr. Hoffsummer Spezialpapier GmbH, also stated that they would not be interested in entering the PRIP market.<sup>587</sup>

BillerudKorsnäs (Light impregnated base papers producer)

- (682) As regards the ability of BillerudKorsnäs to develop its light impregnated base papers further to start selling it for the purpose of furniture foil production, the Commission recalls its findings of Recital (55):
- (683) The light impregnated base papers are currently not considered as a credible alternative to PRIP. Furthermore, BillerudKorsnäs’ production faces several limitations in that it has limited drying capabilities, its machine does not have a suitable width and it is currently not able to produce coloured papers.<sup>588</sup>
- (684) The Commission acknowledges that BillerudKorsnäs stated that *“Depending on innovation in printing and lacquering BillerudKorsnäs cannot exclude that customers like IKEA could buy ‘light PRIP’ for furniture making from BillerudKorsnäs in the future.”*<sup>589</sup> However, BillerudKorsnäs did not explain how long such developments are likely to take and what scale of developments is required to allow BillerudKorsnäs’ to market light impregnated base paper to former PRIP customers.
- (685) In this context the Commission also recalls its conclusion that the customers are currently reluctant to consider BillerudKorsnäs’ products as a substitute for PRIP as described in Recital (55).
- (686) The Commission further notes that potential entry by BillerudKorsnäs is not mentioned in the Parties’ internal documents. Ahlstrom in particular discusses an

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<sup>586</sup> All quotes in this section on Malta Decor are taken from the minutes of the conference call with Malta Decor of 21 January 2013.

<sup>587</sup> See replies to questions 28, 59 and 60 – Phase II Questionnaire to competitors (PRIP).

<sup>588</sup> Minutes of the conference call with BillerudKorsnäs of 21 January 2013.

<sup>589</sup> Ibid.

outlook on the PRIP market over the next five years without mentioning a competitive threat imposed by BillerudKorsnäs.<sup>590</sup>

#### Thin paper producers

- (687) As regards potential entry from thin paper producers, the replies received in the market investigation do not support the Parties' allegation that thin paper producers are potential entrants in the PRIP market to be considered in the competitive assessment.
- (688) The Commission has received responses from six different thin paper producers, including most notably Delfortgroup and Stora Enso.<sup>591</sup>
- (689) Overall only one thin paper producer replied that it would probably be able to start producing PRIP. The other producers simply denied or explained that they would not be able to produce PRIP with their current machinery and equipment.<sup>592</sup>
- (690) Only two respondents replied that a permanent price increase of 5 to 10% in PRIP might induce them to rebalance their product portfolios to enter the PRIP market.<sup>593</sup> However, one of these two respondents made only a general statement to that effect, explaining that "*all paper end uses can be interesting for Stora Enso.*"<sup>594</sup> The other respondent was not able to estimate the time needed to enter PRIP production and the investments involved, stating "*no idea, we are not active at all in this field.*"<sup>595</sup>
- (691) The difficulties faced by thin paper producers in entering the PRIP market are illustrated by the example of Delfortgroup.
- (692) The Delfortgroup reported that it had evaluated the possibility of PRIP market entry some years ago and decided against taking that step. The Delfortgroup's assessment is that "*manufacturing of PRIP products require specific know-how and a high level of skills which are not easily available from external sources*", "*considering the machinery currently in operation at Delfortgroup we believe that investments in the range of EUR 35 to 70 million are needed to start production of PRIP products*" and "*we estimate that a time period of three years would be required to enter into the PRIP market*".<sup>596</sup>
- (693) The Delfortgroup, which by the Parties' estimates would have a dormant capacity of about [...] tons, further explained that "*in light of the investment requirements,*

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<sup>590</sup> See for example Ahlstrom internal document, entitled "Business Plan 2012-2015", 2 May 2012, slide 5, Annex 10(K), submitted by email on 18 January 2013, copied in Paragraph 127 above.

<sup>591</sup> These companies were [...]\*, see Pöyry report, "Independent study of the decor paper and abrasive base paper industry", 28 January 2013, pages 14-15, submitted by the Parties by email of 28 January 2013.

<sup>592</sup> Replies to question 6 – Phase II Questionnaire to thin paper suppliers not yet active in PRIP paper producers.

<sup>593</sup> Replies to question 7 – Phase II Questionnaire to thin paper suppliers not yet active in PRIP paper producers.

<sup>594</sup> Stora Enso's reply to question 7 - Phase II Questionnaire to thin paper suppliers not yet active in PRIP paper producers.

<sup>595</sup> Reply of Goričane tovarna papirja Medvode, d.d. ("Goricane Tovarna") reply to question 7 - Phase II Questionnaire to thin paper suppliers not yet active in PRIP paper producers.

<sup>596</sup> Delfortgroup's submission submitted by email of 5 February 2013.

*market uncertainties and price risk it does not appear attractive to us from today's perspective to enter the PRIP market".*<sup>597</sup>

- (694) Similar statements regarding the unlikelihood of entering the PRIP were made by the vast majority of thin paper producers contacted during the market investigation.<sup>598</sup>

#### Non-EEA entrants

- (695) Furthermore, on the basis of the market investigation, the Commission has found no evidence of any possible non-EEA potential entrant to the PRIP market.<sup>599</sup>
- (696) The Commission recalls its findings from Section 8.2.2 on the geographic market definition and Section 9.3.3.5 on competition from the merged entity's non-EEA competitors which were as follows: There is no indication that competitive pressure is exerted by non-EEA decor paper producers on PRIP producers in the EEA.<sup>600</sup> Furthermore, the customers have concerns that any decor paper produced outside the EEA and in China in particular would not be of sufficiently high quality. For the individual statements, please see Section 8.2.2 on the geographic market definition.
- (697) Furthermore, in its internal analyses Munksjö finds that non-EEA producers [...] have sold [...] volumes of PRIP since 2001 and that there has been [...] in their sales volumes since 2001, but rather [...] over time (as concluded in Recital 122).<sup>601</sup> Ahlstrom also comments on the strength of non-EEA competitors in its internal documents. In particular, Ahlstrom notes [...].<sup>602</sup>

#### Views of the customers on likelihood of entry

- (698) The Commission also investigated whether the printers as the direct customers of the Parties thought that there was a credible possibility of a new entrant in the PRIP market in the next two years.
- (699) In their replies to the Phase II Questionnaire, printers overwhelmingly replied negatively.<sup>603</sup> The same conclusion emerged during the conference calls with the Parties' main customers. Entry was perceived as highly challenging due to the

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<sup>597</sup> Ibid.

<sup>598</sup> See the replies of Stora Enso, Nordic Paper AB, Bolloré Thin Papers, Goricane Tovarna and ABB to the Phase II Questionnaire to thin paper suppliers not yet active in PRIP paper producers.

<sup>599</sup> See replies to question 62 – Phase II Questionnaire to customers (PRIP) and replies to question 75 - Phase II Questionnaire to competitors (PRIP).

<sup>600</sup> See replies to questions 20, 63 and 64 - Phase I Questionnaire to customers (PRIP) and replies to question 48 - Phase II Questionnaire to customers (PRIP).

<sup>601</sup> Munksjö internal document, entitled “Pre-impregnated papers coordination meeting: Sales/Marketing/TCS – R&D – Production, 3 December 2012, slide 3, Annex 14(E), submitted by email on 18 January 2013.

<sup>602</sup> Ahlstrom internal document, entitled “Business Plan 2012-2015”, 2 May 2012, slide 24, Annex 10(K), submitted by email on 18 January 2013.

<sup>603</sup> See replies to question 62 – Phase II Questionnaire to customers (PRIP); only one customer identified Koehler as a potential new entrant in the next two years.

difficulties in achieving the quality required by customers, the existing patent protection and the significant investments needed.<sup>604</sup>

#### Conclusion

(700) The Commission therefore finds on the basis of the market investigation, that none of the alleged potential entrants can be considered as a credible new entrant in the PRIP market.

#### 9.3.3.6.E Conclusion on potential entry

(701) The Commission concludes that contrary to the Parties' submissions, potential entry into the PRIP market does not appear to be likely to occur in a timely and sufficient manner as required by the Horizontal Merger Guidelines.

#### 9.3.3.7. Buyer power, including the possibility of sponsored entry

(702) The evidence collected during the Phase II market investigation contradicts the submission of the Parties as regards both the significant buyer power of their direct and indirect customers and their ability to sponsor new entry.

#### 9.3.3.7.A Buyer power by direct customers

##### Results of the market investigation on the views of the customers

(703) As regards the customers' buyer power, only one respondent, Impress décor, considered that it has significant negotiating power against the producers of PRIP.<sup>605</sup> Schattdecor also told the Commission that it did not expect Munksjö to increase its prices given its importance as a buyer.<sup>606</sup>

(704) The evidence on the customers' general perception of a lack of buyer power is consistent with the widespread concern expressed by the Parties' direct customers that the transaction would lead to adverse effects on their business (see section 9.3.3.2).

(705) The Commission also held conference calls with several customers with a view to assessing their buyer power. The customers were of the view that no customer holds a sufficient degree of market power to counter price increases in PRIP due to switching costs, qualification procedures, a high concentration of décor paper purchases on PRIP and the small size of certain customers.<sup>607</sup>

(706) IKEA also told the Commission that "*Generally, buyers of PRIP have less power than the producers, as printers industry is much less concentrated (15+ vs. 3 players).*"<sup>608</sup>

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<sup>604</sup> Minutes of the conference call with Decor Druck of 25 January 2013; with Interprint of 23 January 2013; with Süddekor of 22 January 2013; with Surteco of 25 January 2013.

<sup>605</sup> See reply to question 46 - Phase II questionnaire to customers (PRIP).

<sup>606</sup> See Minutes of the conference call with Schattdecor of 23 January 2013.

<sup>607</sup> Minutes of the conference call with Surteco of 25 January 2013; with Süddekor of 22 January 2013; with Impress Decor of 21 January 2013; with Chiyoda of 4 February 2013

<sup>608</sup> IKEA's reply to question 38 - Phase II questionnaire to end customers (PRIP).

## Price discrimination and customization in the PRIP market

- (707) The existence of extensive price discrimination and customisation in the PRIP market implies that even if some large buyers may be able to prevent an increase in prices post-transaction, this is not the case for smaller and more fragmented purchases. In particular, the Horizontal Merger Guidelines state:
- “Countervailing buyer power cannot be found to sufficiently off-set potential adverse effects of a merger if it only ensures that a particular segment of customers, with particular bargaining strength, is shielded from significantly higher prices or deteriorated conditions after the merger. Furthermore, it is not sufficient that buyer power exists prior to the merger; it must also exist and remain effective following the merger. This is because a merger of two suppliers may reduce buyer power if it thereby removes a credible alternative.”*<sup>609</sup>
- (708) The possible existence of selective buyer power is consistent with the demand structure in the PRIP market and the ability of suppliers to price discriminate as between purchasers. The Parties explained<sup>610</sup> and the market investigation has extensively confirmed that customers are heterogeneous, that is to say they differ in their demand and size, and that pricing in this industry is not uniform in that the suppliers do not publish price lists but rather negotiate customized contracts with purchasers.
- (709) The ability of PRIP producers to engage in price discrimination, in particular between larger and smaller buyers, is in line with evidence provided to the Commission by IKEA, who stated that *“We have got numerous reports of price increases from our suppliers and sub-suppliers after Munksjö acquired ArjoWiggins in 2010. Munksjö in particular has been known to impose price increases on smaller suppliers and significantly extend delivery lead times. Of the more recent examples, a foil manufacturer, reported to us that they were imposed a 20% price increase by Munksjö during the recent 6 months”*.<sup>611</sup>
- (710) Similarly, Likora Dekorfolien GmbH ("Likora") told the Commission that it *"already observed increased PRIP prices after the Munksjö/Arjowiggins transaction. Munksjö subsequently focused on larger customers and did not offer good conditions to smaller customers such as Likora. Ahlström is currently cheaper and Likora's fear is that Munksjö will immediately raise the previously lower Ahlström prices"*.<sup>612</sup> The statement reflects [...]\*.<sup>613</sup>

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<sup>609</sup> Horizontal Merger Guidelines, Paragraph 67.

<sup>610</sup> Paragraph 303 of the Form CO states: *"sales of decor paper are in general customer specific and a close contact between the decor paper producer and the customer is needed in order to set out the specifications for the decor paper to be delivered"*. Furthermore, paragraph 307 of the Form CO adds: *"prices are generally negotiated and determined individually on a case-by-case basis in connection with the customer's request for an offer in relation to a specific grade of decor paper"*.

<sup>611</sup> IKEA's reply to question 23 - Phase II questionnaire to end customers (PRIP).

<sup>612</sup> Minutes of the conference call with Likora of 23 January 2013.

<sup>613</sup> Munksjö internal document, entitled "Coordination Meeting for pre-impregnated papers business: Sales/Marketing/TCS – R&D – Production", 24 October 2011, slide 9, Annex 14(C), submitted by email on 18 January 2013.

- (711) The evidence regarding price discrimination in the PRIP market implies that, even if a few major customers could negotiate and could exert a certain countervailing buyer power on the merged entity after the transaction, this would not prevent the Parties from raising prices for smaller, more fragmented customers.

Evidence on recent price increases for PRIP

- (712) The absence of significant buyer power of direct customers of PRIP is also illustrated by the fact that suppliers of PRIP have been able to raise their prices significantly in the recent past in order to maintain significant gross margins, and buyers being able to avoid such a price increase.
- (713) The clear majority of direct customers confirmed that the price of PRIP has increased in the past. Most customers emphasised that the reason for that price increase was an increase in the price of raw materials (in particular TiO<sub>2</sub>).<sup>614</sup> However, some customers also stated that the increase reflected a degree of market power of the Parties. For example, in response to the question of whether prices have increased in the past, VTO-Dekor Sp. z o.o. (“VTO-Dekor”) explained that: “*Official reason: increase of the TO2 (titanium white) prices. Real: Since there are two main (Munksjö and Ahlstrom) suppliers on the market the price is regularly increased*”.<sup>615</sup> Similarly, Surteco stated that the 2010 prices increased by 5 to 15% due to “*increase for raw materials (pulp) and improvement of margin*”.<sup>616</sup>
- (714) The Parties’ sales data confirm that average revenues for PRIP have increased by [...] % for Ahlstrom and [...] % for Munksjö during the 2008 to 2012 period.<sup>617</sup> The price increases have enabled the Parties to maintain a high level of incremental margins (from [...] to [...] %), as discussed in Recital (119).
- (715) The fact that the recent price increases have protected the profitability of the PRIP business [...]\*. For example, in November 2010 Ahlstrom noted the following with respect to PRIP pricing [...]\*.<sup>618</sup> Similarly in 2011 Ahlstrom reports the following strategic objective: “[...]”.<sup>619</sup> [...]\*.<sup>620</sup> Finally, in the Action Plan for 2013 (developed in a document dated October 2012), Ahlstrom projects to [...]\*.<sup>621</sup> In the same document, Ahlstrom [...]\*.
- (716) The Commission considers that the ability of Ahlstrom to adjust its prices in order to protect or increase its profitability is indicative that its direct customers do not hold a

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<sup>614</sup> See replies to question 58 – Phase II questionnaire to customers (PRIP).

<sup>615</sup> See VTO Dekor’s reply to question 58 – Phase II questionnaire to customers (PRIP).

<sup>616</sup> See Surteco’s reply to question 58 – Phase II questionnaire to customers (PRIP).

<sup>617</sup> Response to Question 11 of RFI of 15 January 2012.

<sup>618</sup> Ahlstrom internal document, entitled “Annual Plan 2011, Business Unit, Processing” of 8 November 2010, Annex 10(E), submitted by email of 18 January 2013.

<sup>619</sup> Ahlstrom document, entitled “Annual Plan 2012. Business Unit, Processing” of 18 January 2011, slide 2, Annex 10(F), submitted by email of 18 January 2013.

<sup>620</sup> Ahlstrom internal document, entitled “Product Family Strategy 2012-2015. Pre-impregnated decor papers (PRIP)”, 27 March 2012, slide 5, Annex 14 (ZB), submitted by email on 18 January 2013.

<sup>621</sup> Ahlstrom internal document, entitled “Annual Plan 2013. Business Unit Processing”, October 2012, slides 9, 10 and 13, Annex 10(G), submitted by email on 18 January 2013.

strong degree of countervailing buyer power, and are not able to constrain Ahlstrom and consequently the merged entity in its pricing.

Customers' ability to prevent a price increase in PRIP by threatening to switch their purchases of non-PRIP products

- (717) The Commission has also considered the argument made by the Parties that buyers would be able to prevent an increase in the price of PRIP by threatening to reduce their purchases of non-PRIP products from the merged entity.
- (718) That theoretical possibility did not find support in the market investigation conducted by the Commission. The vast majority of the respondents indicated that, in case of a price increase by Munksjö and Ahlstrom in PRIP post-transaction, and even if they also purchase other products than PRIP from the two undertakings, they would not be able to retaliate by threatening to switch their purchases of other products to Munksjö and Ahlstrom's competitors.<sup>622</sup> Among the respondents who replied that they would have the power to retaliate, Lamigraf S.A. specified that the possibility of retaliation would be used but only to a limited extent as "*there aren't so many possibilities also in the PBP.*"<sup>623</sup>
- (719) The argument made by the Parties on the possibility of retaliation to prevent an increase in the price of PRIP is not valid. Even if buyers of PRIP were able to negotiate better terms for their PRIP purchases by using their position as significant buyers for non-PRIP products, that constraint on PRIP prices would already be present pre-transaction. PRIP buyers would therefore have already optimised their purchases of both PRIP and non-PRIP products, obtaining the best available conditions given the degree of competition present in each of the relevant markets pre-transaction. The transaction affects competitive conditions by reducing competition in the PRIP market. That worsens the bargaining positions of PRIP customers,<sup>624</sup> whatever degree of pre-transaction negotiating power they may have, which might, as argued by the Parties, reflect their position as buyers of non-PRIP products and can be expected to lead to less advantageous economic conditions for PRIP purchasers, resulting for example in higher prices or lower quality.

#### 9.3.3.7.B Indirect buyer power at IKEA's level

- (720) The Parties have also argued that buyer power of end-customers, in particular KEA, would be a constraining factor on the merged entity post-transaction. The Commission acknowledges that IKEA may hold a degree of buyer power with respect to its direct suppliers, by virtue of its large size. However, buyer power at the end-customer level does not mean that the prices for PRIP charged to the Parties' direct customers would be constrained.

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<sup>622</sup> See replies to question 48 - Phase II questionnaire to customers (PRIP).

<sup>623</sup> Ibid.

<sup>624</sup> In particular, the transaction would worsen "outside option" of buyers in their negotiations with the Parties. The outside option captures the next best alternative available to any given purchaser relative the one offered by their preferred supplier pre-transaction. By removing an independent competitor from the market, and by inducing non-merging parties to follow the price increase of the merged entity, the transaction leads to a less attractive outside option for purchasers of PRIP.



- (721) In particular, IKEA has explicitly stated to the Commission that it is not involved in commercial negotiations between its suppliers of furniture and the suppliers of finish foil (the printers).<sup>625</sup> IKEA only indicates which suppliers of finish foil are suitable for a particular product, giving a choice of 3 to 5 foil producers per product.<sup>626</sup> IKEA does not intervene in the commercial negotiations that take place further upstream in the value chain, between the printers and the suppliers of PRIP. IKEA therefore considers that it would not be able to constrain the price of PRIP by exercising its buyer power since *“PRIP is too far in the supply chain and we are not directly involved”*.<sup>627</sup>
- (722) Confirming IKEA’s claim, Impress Decor stated that *“Ikea as an important furniture retailer with buyer power does not get involved in negotiations between printers and paper manufacturers”*<sup>628</sup>. Similarly, Interprint told the Commission that *“IKEA is not active in the procurement of decor paper and PRIP, and as such does not exert its buyer power on decor paper producers”*.<sup>629</sup>
- (723) The Commission also notes that even in a hypothetical scenario where PRIP prices were to increase significantly post-transaction and IKEA were to be able to avoid a post-transaction price increase in finish foil (or furniture based on finish foil) at its level of the supply chain (at least in the short-term), the transaction would still result in a significant effective impediment to competition because the Parties’ direct customers would still be negatively affected by the transaction.
- (724) Harm to final consumers (retailers and buyers of furniture) could still materialise in that scenario due to the risk of consolidation and less competition at the printer and foil manufacturer levels, as a result of the increase in input costs due to the transaction. That indirect effect on end consumers reflects the concerns that IKEA has expressed about the transaction: *“In order to cope with increased seller power, the foil manufacturers will have to consolidate as well, destroying competition dynamics in the finish foils market. Refitting the factories to work with different surface materials means need for investments in billions euro magnitude, not manageable by many but the strongest players. This will in turn lead to subsequent consolidations in the furniture manufacturing industry. We believe that the proposed transaction will have a strong negative impact on PRIP market, and affects the subsequent markets as well: foils and furniture.”*<sup>630</sup>
- (725) IKEA itself confirmed to the Commission that *“we pay 15-20% more for PRIP finish foils today compared to 5 years ago”*. That shows that in spite of its significant size, IKEA has not been able to avoid a price increase at its level of the supply chain. That is consistent with evidence on IKEA’s purchasing contracts, and the fact that those contracts include price indexation clauses which protect furniture manufactures in

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<sup>625</sup> Minutes of the conference calls with IKEA of January 8 and January 31.

<sup>626</sup> See for example the IKEA Product Fact sheet for “IKEA Birch Foil emb pre paper”, where three alternative foil suppliers are indicated (Impress, Schattdecor and Interprint), for foil based on pre-impregnated paper.

<sup>627</sup> IKEA’s response to the Commission’s Phase II Questionnaire, question 39.

<sup>628</sup> Minutes of the conference call with Impress Decor of 21 January 2013.

<sup>629</sup> Minutes of the conference call with Interprint of 23 January 2013.

<sup>630</sup> IKEA’s reply to question 42 – Phase II Questionnaire to end customers (PRIP).

the IKEA supply chain from increases in raw material costs.<sup>631</sup> The transaction might therefore directly harm both direct customers of PRIP (printers), and indirect customers such as IKEA.

#### 9.3.3.7.C Sponsored entry

- (726) The ability of customers (including end-customers such as IKEA) to sponsor a new entrant, has not been confirmed by the market investigation. In particular, during the conference calls held by the Commission with various customers, none of them indicated that they would have such ability within a reasonable period of time. Customers found that it was highly unlikely that customers from any of the different levels of the value chain would sponsor entry into the market for PRIP production, in particular due to a lack of financial resources and the risks involved in making such substantial investments. Furthermore, customers underlined that there would be considerable risks for customers in committing to purchase large volumes to support a new PRIP supplier.<sup>632</sup>
- (727) Those views from customers were confirmed by decor paper producer Koehler who told the Commission that: *“Koehler is currently encouraged by PRIP customers to enter the market. To date no letters of intent have been signed. According to Koehler, potential customers for PRIP will not be willing to sponsor a new producer through giving direct financial support or through committing to future purchases at fixed price levels. Potential entrants would not be willing to go ahead only on the basis of volume and not price commitments.”*<sup>633</sup>
- (728) As far as the ability of customers to facilitate further growth of Technocell is concerned, the Commission has already addressed Technocell’s ability and incentives to expand post-transaction in Section 9.3.3.4 and concluded that Technocell faces limitations on its ability to expand output post-transaction and does not have the incentive to expand output sufficiently to offset a price increase by the merged entity.

#### 9.3.3.8. Conclusion on the Commission’s assessment

- (729) In the light of the Parties’ high market shares, the elimination of a key competitive constraint on the Parties as well as the unlikelihood of market entry and the lack of significant countervailing buyer power, the Commission finds that the transaction is likely to lead to the creation of a dominant position in the EEA and global (excluding China) PRIP market.

#### 9.3.4. Conclusion on PRIP

- (730) The Commission therefore concludes that the transaction would lead to a significant impediment to effective competition, in particular through the creation of a dominant position, in the EEA and global (excluding China) PRIP market.

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<sup>631</sup> See Minutes of the conference call with IKEA of 29 January 2013.

<sup>632</sup> See Minutes of the conference call with Interprint of 23 January 2013; with Impress Decor of 21 January 2013; with Süddekor of 22 January 2013; with Likora of 23 January 201; with Koehler of 18 January 2013.

<sup>633</sup> See Minutes of the conference call.

#### 9.4. Electrotechnical paper

(731) As discussed in Recital (292), the Parties' activities only overlap in the production of oil-impregnated electrotechnical papers. Consequently, only the competitive situation in the oil-impregnated electrotechnical papers markets will be assessed in this Decision.

##### 9.4.1. Market shares and market structure

(732) The Parties estimate the size of the oil-impregnated electrotechnical papers market to be around [...] tons in the EEA and [...] tons worldwide in 2011. The value of the market is estimated at approximately EUR [...] million in the EEA and EUR [...] million worldwide in 2011.

(733) In 2011, the EEA and worldwide market shares of the Parties and their main competitors in the market for oil-impregnated electrotechnical papers were, according to the Parties, as set out in Table 11 and Table 12:

**Table 11: Oil-impregnated electrotechnical paper - Market size and shares by volume in 2011<sup>634</sup>**

	EEA		Worldwide	
	Tons	Share %	Tons	Share %
Munksjö	[...]*	[50-60]*	[...]*	[30-40]*
ALP	[...]*	[0-5]*	[...]*	[0-5]*
Combined	[...]*	[50-60]*	[...]*	[40-50]*
Weidmann	[...]*	[10-20]*	[...]*	[10-20]*
Nine Dragons*	[...]*	[0-5]*	[...]*	[5-10]*
Tervakoski	[...]*	[10-20]*	[...]*	[5-10]*
Nordic Paper	[...]*	[10-20]*	[...]*	[5-10]*
Others	[...]*	[5-10]*	[...]*	[10-20]*
TOTAL	[...]*	100	[...]*	100

*Source: Parties' estimates*

\* [...]\*.

<sup>634</sup> Totals do not always add up due to rounding.

**Table 12: Oil-impregnated electrotechnical paper - Market size and shares by value in 2011<sup>635</sup>**

	EEA		Worldwide	
	MEUR	Share %	MEUR	Share %
Munksjö	[...]*	[60-70]*	[...]*	[40-50]*
ALP	[...]*	[0-5]*	[...]*	[0-5]*
Combined	[...]*	[60-70]*	[...]*	[40-50]*
Weidmann	[...]*	[10-20]*	[...]*	[20-30]*
Nine Dragons*	[...]*	[0-5]*	[...]*	[5-10]*
Tervakoski	[...]*	[10-20]*	[...]*	[5-10]*
Nordic Paper	[...]*	[5-10]*	[...]*	[0-5]*
Others	[...]*	[0-5]*	[...]*	[10-20]*
TOTAL	[...]*	100	[...]*	100

*Source: Parties' estimates*

\* [...]\*

- (734) As regards the possibility to further sub-segment the market for oil-impregnated electrotechnical papers according to different types of applications, that is to say production of (i) cables, (ii) transformers and (iii) bushings, the Parties submit that they can only make a rough estimate of their and their main competitors' market shares. According to the Parties their customers and their competitors do not distinguish between oil-impregnated electrotechnical papers for the production of cables, transformer and bushings.
- (735) In 2011, the EEA and worldwide market shares of the Parties and their main competitors in the market for electrotechnical paper attributable to the downstream production of cables, transformers and bushings were estimated, according to the Parties, as set out in Table 13 and Table 14.<sup>636</sup>

<sup>635</sup> Totals do not always add up due to rounding.

<sup>636</sup> The market shares are only provided by volume, as the Parties were not able to provide estimates by value.

**Table 13: Oil-impregnated electrotechnical paper - Market shares per sub-segment (cables, transformers and bushings) by volume in 2011 in the EEA**

	<b>Cables</b>	<b>Transformers</b>	<b>Bushings</b>
Munksjö	[40-50]*%	[60-70]*%	[40-50]*%
ALP	[0-5]*%	[0-5]*%	[0-5]*%
Combined	[40-50]*%	[60-70]*%	[40-50]*%
Weidmann	[0-5]*%	[5-10]*%	[30-40]*%
Tervakoski	[40-50]*%	[5-10]*%	[5-10]*%
Nordic Paper	[10-20]*%	[10-20]*%	[5-10]*%
TOTAL	100%	100%	100%

*Source: Parties' estimates*

**Table 14: Oil-impregnated electrotechnical paper -Market shares per sub-segment (cables, transformers and bushings) by volume in 2011 worldwide**

	<b>Cables</b>	<b>Transformers</b>	<b>Bushings</b>
Munksjö	[20-30]*%	[30-40]*%	[50-60]*%
ALP	[5-10]*%	[0-5]*%	[0-5]*%
Combined	[30-40]*%	[30-40]*%	[50-60]*%
Weidmann	[0-5]*%	[20-30]*%	[20-30]*%
Tervakoski	[20-30]*%	[5-10]*%	[0-5]*%
Nordic Paper	[5-10]*%	[0-5]*%	[10-20]*%
Nine Dragon	[20-30]*%	[5-10]*%	[0-5]*%
Miki Tokushu Paper	[0-5]*%	[5-10]*%	[0-5]*%
TOTAL	100%	100%	100%

**Source: Parties' estimates**

- (736) Post-transaction, the combined entity would be the market leader of the three sub-segmented markets (cables, transformers and bushings) at both the EEA (with respectively [40-50]\*%, [60-70]\*% and [40-50]\*%) and the worldwide (with respectively [30-40]\*%, [30-40]\*% and [50-60]\*%) levels. However, the increment resulting from the transaction is small (between [0-5]\*% and [5-10]\*%).

#### 9.4.2. Parties' arguments

- (737) The Parties submit that post-transaction, the merged entity will continue to face strong competition in the market for oil-impregnated electrotechnical papers. Weidmann Electrical Technology AG ("Weidmann Electrical") will remain the second largest player at both the EEA and worldwide levels with market shares of approximately [10-20]\*% and [20-30]\*% respectively. There are also a number of other producers in the oil-impregnated electrotechnical papers market, who together account for the remaining market shares.
- (738) In addition, the Parties argue that their customers, that is to say large players in the power supply industry (such as Alstom and ABB Asean Brown Boveri Ltd), are strong companies with countervailing buyer power. Those customers would be able to effectively react to and constrain any attempted anti-competitive behaviour such as price increases, by switching supplier and requesting another supplier to produce the

relevant electrotechnical paper according to the specification provided by the customer. Furthermore, the customers do not usually conclude long-term contracts with suppliers (instead, contracts are predominantly concluded for periods of three to twelve months) and there are seldom any volume requirements, which means that the customers are free to switch suppliers on a regular basis.

- (739) Finally, the Parties point out that there is significant overcapacity among all major suppliers in the market for electrotechnical paper and that barriers to entry are low.

#### 9.4.3. *Commission's assessment*

- (740) The increment in market shares resulting from this transaction is small, between [0-5]\*% and [0-5]% for the overall market of oil-impregnated electrotechnical papers and between [0-5]\*% and [5-10]\*% for the three market sub-segments for cables, transformers and bushings. Therefore, the transaction will not have notable effects on the competitive structure of the markets for oil-impregnated electrotechnical papers.
- (741) Furthermore, Ahlstrom is the smallest of the producers of oil-impregnated electrotechnical papers present in the market. Under all possible product and geographic market definitions the remaining competitors have market shares which are much larger than Ahlstrom's.
- (742) The Commission finds that Weidmann Electrical and Tervakoski Oy will remain strong competitors in the EEA, while Nine Dragons Holdings Ltd. will act as a further competitor on the world-wide level. Nordic Paper GmbH is an additional competitor, present both at the EEA and worldwide levels and its production is more than double Ahlstrom's production. There are also a number of other producers in the oil-impregnated electrotechnical papers market, who together account for the remaining market shares. The market investigation also confirmed that the increment brought about by the transaction is limited.<sup>637</sup>
- (743) The Commission notes that Ahlstrom only produces electrotechnical papers in small volumes and as a filler product when its machines are not producing any other type of specialty paper and therefore have spare capacity. Moreover, oil-impregnated electrotechnical papers do not constitute a separate business area for Ahlstrom.
- (744) Neither competitors nor customers of the Parties have raised particular concerns in the first phase market investigation regarding oil-impregnated electrotechnical papers. In particular, market participants found that following the transaction, the combined entity will continue to face strong competition in the market for oil-impregnated electrotechnical papers.<sup>638</sup>
- (745) Furthermore, the market investigation confirmed the existence of sufficient free production capacity in the market for oil-impregnated electrotechnical papers.<sup>639</sup>

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<sup>637</sup> Replies to question 30 – Phase I Questionnaire to competitors (Oil-impregnated electrotechnical papers).

<sup>638</sup> Replies to Questions 19 and 20 – Phase I Questionnaire to competitors (Oil-impregnated electrotechnical papers).

<sup>639</sup> Replies to Question 52 – Phase I Questionnaire to competitors (Oil-impregnated electrotechnical papers) and replies to Question 44 – Phase I Questionnaire to customers (Oil-impregnated electrotechnical papers).

(746) The market investigation also confirmed the Parties' submission regarding the existing degree of countervailing buyer power of their customers. Indeed, a large majority of the respondents to the market investigation considered that customers for oil-impregnated electrotechnical papers have bargaining power vis-à-vis their suppliers.<sup>640</sup>

(747) The Commission therefore concludes that given the existence of several competitors who will continue to exercise competitive pressure on the merged entity and the limited increment brought about by the transaction, as well as the countervailing buyer power of the customers, the transaction will not lead to a significant impediment to effective competition as regards the electrotechnical paper market.

#### 9.4.4. *Commission's conclusion*

(748) The Commission concludes that the transaction does not lead to a significant impediment to effective competition in the markets for electrotechnical papers.

## **10. CONCLUSION ON THE TRANSACTION'S COMPATIBILITY WITH THE INTERNAL MARKET**

(749) The Commission considers that the transaction leads to a significant impediment to effective competition, in particular as a result of the creation of a dominant position, in the following markets:

- (1) the market for heavy weight paper backings in the EEA as well as worldwide
- (2) the market for pre-impregnated paper (PRIP) in the EEA as well as worldwide excluding China.

(750) Even if heavy weight paper backings were to be regarded as a segment of a hypothetical overall market for paper backings (*quod non*), the Commission concludes that the transaction would still lead to a significant impediment to effective competition.

## **11. MODIFICATIONS OF THE TRANSACTION**

### **11.1. Description of the Commitments of 19 March 2013**

(751) The Parties submitted modifications to the transaction on 19 March 2013 ("the Commitments of 19 March") to address the competition concerns identified by the Commission.

(752) According to the Commitments of 19 March, NewCo would sell the Osnabrück plant back to Ahlstrom. Subsequently, Ahlstrom would carve-out<sup>641</sup> all of its paper backings and PRIP operations at that plant. Ahlstrom has no further paper backings and PRIP activities outside of that plant. The carve-out would have thus removed the

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<sup>640</sup> Replies to Question 52 – Phase I Questionnaire to competitors (Oil-impregnated electrotechnical papers) and replies to Question 44 – Phase I Questionnaire to customers (Oil-impregnated electrotechnical papers).

<sup>641</sup> A carve-out is the divestment of a business which has existing strong links or is partially integrated with businesses retained by the Parties, see the "Commission Notice on remedies acceptable under Council Regulation (EC) No 139/2004 and under Commission Regulation (EC) No 802/2004" ('Commission Notice on Remedies'), OJ C 267, 22.10.2008, p. 1-27, paragraph 35.

entire overlap between Munksjö's and Ahlstrom's activities in paper backings and PRIP.

- (753) Under the Commitments of 19 March, Ahlstrom proposed to divest its paper backings and PRIP businesses, including related assets (notably, the two paper machines producing paper backings and PRIP which are named "OSN04" and "OSN03" respectively) and personnel (the "Abrasives and PRIP Business") to one or more purchaser(s). The Osnabrück plant and related infrastructure such as the power plant, the water handling system and the R&D facilities would remain in Ahlstrom's ownership. Similarly, Ahlstrom would continue to own and operate the third paper machine (named "OSN06") producing products that do not overlap with Munksjö's activities.<sup>642</sup> All of the three machines would remain in the Osnabrück plant. The Commitments of 19 March therefore required that the purchaser would operate the Abrasives and PRIP Business within the Osnabrück plant.<sup>643</sup>
- (754) The divestment would be carried out in two steps:
- (i) immediately after the notified transaction, Ahlstrom would buy back the Osnabrück plant from NewCo.
  - (ii) Ahlstrom would subsequently sell the Abrasives and PRIP Business to one purchaser or more purchasers.
- (755) In addition to the two paper machines producing paper backings and PRIP, the divestment would also include other necessary tangible and intangible assets, (including production equipment,<sup>644</sup> patents and trademarks), all customer contracts and all personnel currently employed solely for the production of paper backings and PRIP.
- (756) According to the Parties, the turnover divided between the Abrasives and PRIP Business and Ahlstrom's remaining business at the Osnabrück plant in 2012 was as follows :<sup>645</sup>

Table 15: Turnover split between Abrasives/PRIP business and Ahlstrom's remaining business

	Turnover (in million EUR)	% of overall plant turnover
PRIP	[...]*	[...]*%
Abrasives	[...]*	[...]*%
Abrasives/PRIP Business	[...]*	[...]*%
Remaining business	[...]*	[...]*%
<b>Total</b>	[...]*	<b>100%</b>

<sup>642</sup> Non-overlap products currently produced on OSN06 are wall cover paper, poster paper and silco.

<sup>643</sup> The paper machine producing paper backings (OSN04 - to be operated by the purchaser) is situated in the same building as the paper machine producing non-overlap products (OSN06 - to be operated by Ahlstrom). A further physical separation of these two machines is not possible.

<sup>644</sup> In addition to the paper machines OSN03 and OSN04, the proposed commitments of 19 March listed in particular the [...]\*, see Paragraph 5 of the Schedule to the proposed commitments of 19 March.

<sup>645</sup> See the Parties' response to the Commission's Request for Information of 14 March 2013, question 3, submitted by the Parties on 18 March 2013.



- (757) Given that the Abrasives and PRIP Business would remain situated within the Osnabrück plant, the Commitments of 19 March provided for a number of ancillary agreements that would have to be entered into between the purchaser and Ahlstrom to ensure that the Abrasives and PRIP Business could operate in the plant and have access to relevant inputs.
- (758) Those ancillary agreements would include:
- (i) one or more lease agreements for the production and administration buildings;
  - (ii) an energy, steam, gas and pressurised air supply agreement;
  - (iii) a fresh water supply and waste water handling agreement;
  - (iv) a transitional sourcing and supply agreement in relation to the supply of raw materials (for example pulp, TiO<sub>2</sub>, colour pigments and latex);
  - (v) transitional services agreements in relation to quality control, roll grinding, wrapping and storage;
  - (vi) IT transitional services agreements in relation to IT programs and services necessary for the production of paper backings and PRIP.
- (759) According to the Commitments of 19 March, the agreements would be entered into “on commercially viable terms“. However, the Parties did not provide further clarifications regarding a number of important elements such as pricing formulas, duration, enforcement and termination.
- (760) The Commitments of 19 March also did not contain any obligations on Ahlstrom to separate shared facilities relating to core functions such as R&D, quality control and pulp preparation.

## **11.2. Assessment of the Commitments of 19 March**

### *11.2.1. The Parties’ arguments*

- (761) In the Parties’ view, the Commitments of 19 March would remove all of the horizontal overlaps in paper backings and PRIP and thus address all of the competition concerns identified by the Commission.<sup>646</sup>
- (762) The Parties submit that a purchaser, or two purchasers, would be able to operate the Abrasives and PRIP Business in Osnabrück as a viable business competing effectively with NewCo on a lasting basis.<sup>647</sup>
- (763) Moreover, according to the Parties, the future structural links between Ahlstrom and NewCo, who will continue Munksjö’s operations in paper backings and PRIP, would not affect Ahlstrom’s behaviour towards the purchaser. As described in Recital (7), in consideration for ALP, Ahlstrom and its shareholders would receive shares in NewCo. Following completion of a series of transactions, Ahlstrom would hold a shareholding of 15% while its shareholders would in aggregate hold 50% of the shares in NewCo.

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<sup>646</sup> Form RM of 19 March 2013, paragraph 7.

<sup>647</sup> Ibid.

### *11.2.2. The Commission's assessment*

- (764) The Commission raised a number of concerns with regard to the Commitments of 19 March.
- (765) The Commission's key concern related to the ability of the purchaser(s) to operate the Abrasives and PRIP Business independently in a viable and effective manner. Given that the purchaser would be dependent on Ahlstrom for a number of strategic inputs and core functions, Ahlstrom would appear to have the ability to hinder the purchaser's operations.
- (766) Furthermore, the existence of structural links between Ahlstrom and NewCo would also provide Ahlstrom with economic incentives to interfere with the buyer of the Abrasives and PRIP Business, who would be NewCo's main competitor post-transaction. Those incentives could derive from the fact that Ahlstrom and its shareholders would participate overall in 65% of the profits coming from any volume lost by the purchaser's Abrasive and PRIP Business to NewCo.
- (767) However, the Commitments of 19 March did not contain enough detail to allow the Commission to assess the potential issues raised by the proposed structure and to obtain meaningful replies from market participants in a market test. In particular, the lack of detail made it impossible for the Commission to assess whether the agreements envisaged between Ahlstrom and the purchaser or purchasers would remove Ahlstrom's ability to hinder the purchaser or purchaser's operations.
- (768) For instance, [...] are among the key cost factors in paper production, [...]\*. However, the wording of the commitments, that is to say the provision of [...] "on commercially viable terms", would not allow the Commission, as well as other market participants, to carry out a meaningful evaluation of the cost evolution of that strategic input. Moreover, the extent to which shared facilities would be separated or jointly used by Ahlstrom and the purchaser or purchasers was unclear, further complicating the overall assessment.
- (769) Therefore, the Commission found that the Commitments of 19 March were not sufficiently detailed and transparent regarding a number of important issues. The Commission, as well as market participants, would therefore not have sufficient information to assess the substantive problems raised by the structure advocated by the Parties.

### *11.2.3. The Commission's conclusion*

- (770) The Commission therefore concluded that the Commitments of 19 March were insufficient to remove the significant impediment to effective competition identified in the markets for paper backings and PRIP. Based on this assessment, the Commission did not market test the Commitments of 19 March and informed the Parties accordingly.

## **11.3. Description of the Commitments of 22 March**

- (771) The Parties subsequently submitted modified Commitments on 22 March 2013 (the "Commitments of 22 March").
- (772) The Commitments of 22 March provided for the same carve-out as already contained in the Commitments of 19 March, that is to say the divestment of the Abrasives and PRIP Businesses operated on paper machines OSN03 and OSN04 in Ahlstrom's Osnabrück plant.

- (773) The differences between Commitments of 19 March and the Commitments of 22 March relate primarily to the following:
- the types and scope of agreements to be concluded between Ahlstrom and the purchasers;
  - the level of detail of the terms of those agreements (for example price formulas and duration);
  - the more detailed description of tangible assets to be transferred with the Abrasives and PRIP Business;
  - the introduction of a Hold-Separate-Manager;
  - additional ring-fencing obligations on Ahlstrom to ensure that NewCo does not obtain any business secrets or other information of a confidential or proprietary nature
  - a longer non-solicitation clause regarding the Abrasives and PRIP Business' personnel; and
  - further details on regulatory approvals and permits.
- (774) In particular, the Commitments of 22 March contained an updated list of the agreements to be entered into between Ahlstrom and the purchaser or purchasers and explained that those agreements would be entered into at the option of the purchaser or purchasers. The agreements are as follows:
- a [...] year lease agreement for production and administration of buildings;
  - a [...] year shared facility and lease agreement for the use of the R&D facilities, equipment and pilot lines (including maintenance and security services);
  - a [...] year master cooperation agreement which would act as an umbrella agreement for all ancillary agreements and would cover operational cooperation at the plant;
  - a number of ancillary agreements for a [...] year duration relating to supply of energy, steam, gas, pressurised air and heating, supply of fresh water and waste water handling, and two [...] year ancillary agreements relating to sharing of central laboratory functions and services and site services, including quality control, maintenance and security services;
  - transitional agreements for a maximum duration of [...] for services currently provided by Ahlstrom of the Abrasives and PRIP Business; such agreements might relate to the supply of raw materials such as pulp, titanium dioxide and colour pigments, and the supply of services such as customer, HR, distribution and financial services.
- (775) According to the Commitments of 22 March, Ahlstrom would offer the lease agreement for production and administration buildings based on “[...]” in relation to [...]. The pricing of the remaining agreements would be “[...]”.
- (776) The Commitments of 22 March further provided that only the personnel exclusively dedicated to the production of paper backings and PRIP would be transferred with the Abrasives and PRIP Business. Shared personnel and the personnel exclusively dedicated to the production of non-overlap products would remain with Ahlstrom.

(777) Like the Commitments of 19 March, the Commitments of 22 March also did not contain any specific obligations on Ahlstrom to separate shared facilities relating to strategic functions such as R&D, quality control and pulp preparation.

#### **11.4. Assessment of the Commitments of 22 March**

##### *11.4.1. The Parties' arguments*

(778) The Parties essentially reiterated the arguments that they had already put forward in relation to the Commitments of 19 March. They stressed that the Abrasives and PRIP Business would be viable and that Ahlstrom would not have the ability and incentives to hinder the Abrasives and PRIP Business' operations.

(779) Furthermore, the Parties argued that shared production plants are common in the paper industry and made reference to several examples. [...]\*.<sup>648</sup>

(780) [...]\*:

- [...]\*.<sup>649</sup> [...]\*
- [...]\*.<sup>650</sup> [...]\*
- [...]\*.<sup>651</sup> [...]\*
- [...]\*

(781) [...]\*.<sup>652</sup> [...]\*

(782) The Parties also provided a list of additional shared production plants in different segments of the paper industry located in Finland, France, Germany, Poland and Russia.<sup>653</sup>

##### *11.4.2. Results of the market test*

(783) On 25 March 2013, the Commission launched a market test regarding the Commitments of 22 March.

(784) The market test aimed at assessing: (i) if the Abrasives and PRIP Business constituted a viable business able to compete effectively with NewCo on a lasting basis, and (ii) if Ahlstrom had the ability and incentives to negatively affect the purchaser's operations due to the existing structural links with NewCo.

(785) The market test showed that there were significant doubts about the effectiveness of the Commitments of 22 March, particularly among the Parties' customers.

(786) The majority of market participants believed that the proposed carve-out would not offer a viable solution by which the purchaser could effectively compete with NewCo on a lasting basis.<sup>654</sup> Furthermore, only a limited number of market

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<sup>648</sup> See the Parties' response to the Commission's Request for Information of 26 March 2013, question 4, submitted by the Parties on 2 April 2013.

<sup>649</sup> [...]\*

<sup>650</sup> [...]\*

<sup>651</sup> [...]\*

<sup>652</sup> [...]\*

<sup>653</sup> See Annex 4.1 to the Parties' response to the Commission's Request for Information of 26 March 2013, question 4, submitted by the Parties on 2 April 2013. [...]\*

<sup>654</sup> Replies to question 41 – Market test questionnaires to customers and competitors.

participants believed that the Abrasives and PRIP Business would be likely to attract a suitable purchaser and even fewer market participants expressed an interest in acquiring the Abrasives and PRIP Business.<sup>655</sup>

(787) In particular, market participants raised the following most important concerns on the Commitments of 22 March:

- the Abrasives and PRIP Business is too dependent on Ahlstrom in terms of strategy and operations;
- it is difficult for the Abrasives and PRIP Business to control costs due to the necessity to purchase strategic inputs from Ahlstrom under vague pricing terms;
- if the Abrasives and PRIP Business does not benefit from the same business conditions previously enjoyed by Ahlstrom's operations in paper backings and PRIP it would lead to loss of cost efficiencies and synergies;
- there is a likelihood of conflicts over investments in shared facilities;
- there is a risk of sharing confidential information, in particular because of the absence of an obligation on Ahlstrom to separate R&D and product testing facilities;
- there is a likelihood of loyalty issues toward the Abrasives and PRIP Business, because the "shared" personnel, namely, the personnel providing services to the Abrasives and PRIP Business would continue to be employed by Ahlstrom;
- costs would increase in the event Ahlstrom were to decide to reduce, sell or close down its operations in Osnabrück.

(788) The results of the market test will be presented in greater detail in the Sections 11.4.2.1 and 11.4.2.2.

#### 11.4.2.1. Viability of the Abrasives and PRIP Business

(789) A clear majority of the market participants were sceptical about the ability of three companies to operate within the same paper plant in a viable and effective manner.<sup>656</sup>

(790) However, the market participants were of a different opinion regarding the ability of only two companies to operate within the same paper plant. Competitors and customers had differing views and there was no clear majority among market participants regarding that question. While the majority of paper producers considered it possible for two companies to operate in the same paper plant in a viable and effective manner, a majority of customers considered that to be very problematic.<sup>657</sup>

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<sup>655</sup> Customers were not interested in integrating upstream and many paper manufacturers state that entering PRIP or paper backings was not part of their business strategy, replies to questions 32-35 – Market test questionnaires to customers and competitors.

<sup>656</sup> Replies to question 2.3 – Market test questionnaires to customers and competitors.

<sup>657</sup> Replies to question 2.1 – Market test questionnaires to customers and competitors; moreover, paper manufacturer BillerudKorsnäs specifically points to its own positive experience of jointly operating a paper plant in Finland together with UPM and provides a list of six additional paper plants currently jointly operated by paper producers in the EEA and Russia, see BillerudKorsnäs' reply to question 2.2 – Market test questionnaires to competitors and BillerudKorsnäs' email to the Commission of 3 April 2013.

- (791) Furthermore, a slight majority of the market participants considered that sharing production facilities within the same building and on the same premises could affect the ability of the Abrasives and PRIP Business to compete effectively on a lasting basis.<sup>658</sup> In particular, many market participants voiced concerns with respect to the sharing of R&D and central laboratory facilities.<sup>659</sup>
- (792) In addition, market participants raised the issue that shared personnel could prioritise Ahlstrom's interests over the purchasers' interests and that upgrade and investments in shared infrastructure would be highly problematic in the light of Ahlstrom's ownership of the plant and assets.
- (793) While the responses regarding the duration of the ancillary arrangements were generally positive, a few market participants suggested including the possibility to extend their duration in order to avoid having to duplicate equipment and infrastructure upon their expiry.<sup>660</sup>
- (794) In addition, a number of market participants demanded the pricing of inputs and services to be established with more clarity and transparency. The [...] model envisaged by the Parties was perceived to be too vague and ambiguous to give a definitive view of the effectiveness of future pricing.<sup>661</sup>
- (795) In contrast, a number of issues appeared to be less problematic subject to certain suggested modifications. First, a majority of the market participants considered that the commitments appeared to be sufficient in terms of transfer of assets and personnel.<sup>662</sup> Moreover, a majority of market participants did not see any difficulty or risk attached to the transfer of prior customer relationships.<sup>663</sup>

#### 11.4.2.2. Effects of the structural links between Ahlstrom and NewCo on the viability of the Abrasives and PRIP Business

- (796) The clear majority of market participants were concerned that Ahlstrom would have the ability and incentive to hinder the operations of the Abrasives and PRIP Business.
- (797) The majority of the market participants believed that Ahlstrom would be able to raise costs or degrade inputs to the detriment of the purchaser<sup>664</sup>, because the purchaser would depend on Ahlstrom for a number of strategic inputs such as energy and water. Furthermore, the majority of the market participants considered the inputs to be provided by Ahlstrom as indispensable and stressed that shifting to other sources of supply was unrealistic.<sup>665</sup>

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<sup>658</sup> Replies to questions 4 to 7 – Market test questionnaires to customers and competitors.

<sup>659</sup> Replies to questions 19 and 22 – Market test questionnaires to customers and competitors.

<sup>660</sup> Replies to questions 10.1, 10.2, 19.3, 19.4, 20.3, 20.4, 21.3, 21.4, 22.3, 22.4, 23.3, 23.4, 24.1, 24.2 – Market test questionnaires to customers and competitors.

<sup>661</sup> Replies to questions 10.3, 10.4, 19.5, 19.6, 20.5, 20.6, 21.5, 21.6, 22.5, 22.6, 23.5, 23.6, 24.3, 24.4, 25.1, 25.2, 26.3, 26.4 – Market test questionnaires to customers and competitors.

<sup>662</sup> Replies to questions 8, 9, 11, 16 and 18 – Market test questionnaires to customers and competitors.

<sup>663</sup> Replies to question 14 – Market test questionnaires to customers and competitors.

<sup>664</sup> Replies to question 29 – Market test questionnaires to customers and competitors.

<sup>665</sup> Replies to questions 27 and 28 – Market test questionnaires to customers and competitors.

- (798) With regard to incentives, the majority of the market participants, mainly customers, considered that the stake held by Ahlstrom and its shareholders in NewCo could entice Ahlstrom to act to the detriment of the purchaser or at least to not cooperate fully.<sup>666</sup> During conference calls, market participants explained that those financial interests in NewCo were significant enough to have an impact on the relationship between Ahlstrom and the purchaser or purchasers.<sup>667</sup>
- (799) Finally, the clear majority of the market participants, mainly consisting of customers, were concerned that the proposed arrangement would possibly allow the flow of confidential information from Ahlstrom to NewCo. This conclusion essentially followed from the degree of control that Ahlstrom would keep over the plant and the inputs provided to the purchaser(s).<sup>668</sup> In particular, R&D, stock preparation and quality control activities were considered to be highly confidential core functions. Protection of confidential information, for example through the use of so-called “Chinese walls“ between the companies, that is to say any measures to prevent the flow of information, was perceived to be unrealistic under this scenario.
- (800) However, paper manufacturers had a less clear view. For instance, a number of paper manufacturers stressed that (i) as regards know-how, non-use and non-disclosure agreements would minimize risks; and (ii) as regards inputs, risks should not be overstated, given that cost levels are generally not difficult to gauge in the specialty paper industry.<sup>669</sup>

#### 11.4.3. *The Commission’s assessment*

- (801) The Commission found that the results of the market test highlighted a variety of risks associated with the carve-out as envisaged under the Commitments of 22 March.
- (802) Furthermore, the Commission’s Notice on remedies acceptable under Council Regulation (EC) No 139/2004 and under Commission Regulation (EC) No 802/2004<sup>670</sup> stresses that, in cases of proposed carve-out commitments, there needs to be a particular emphasis on ensuring the viability of the Abrasives and PRIP Business on a stand-alone basis.<sup>671</sup>
- (803) In that context, the Commission took into account that under the Commitments of 22 March, a number of core and strategic business functions would be shared between Ahlstrom and the purchaser. These functions relate, in particular, to stock preparation, quality control and R&D. The Commission found that the market test supported the Commission’s concern that the lack of separation of those core functions together with the lack of provisions on future investments in those shared facilities would likely call into question the Abrasives and PRIP Business’ viability and stand-alone capacity.

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<sup>666</sup> Replies to question 30 – Market test questionnaires to customers and competitors.

<sup>667</sup> Minutes of the conference call with Krempel of 4 April 2013 and with Delfortgroup of 9 April 2013.

<sup>668</sup> Replies to question 31 – Market test questionnaires to customers and competitors.

<sup>669</sup> Replies of Koehler, Wausau and Stora Enso to the market test questionnaires to competitors.

<sup>670</sup> OJ C 267, 22.10.2008, p. 1.

<sup>671</sup> See the Commission Notice on Remedies, paragraph 36.

- (804) Moreover, the Commission considered that the market test confirmed the Commission's concerns that the purchaser's dependence on Ahlstrom would give Ahlstrom the ability to endanger the viability of the Abrasives and PRIP Business. That ability derives from Ahlstrom's envisaged provision of strategic inputs and a large number of core services, including quality control, maintenance and central laboratory services relating to R&D to the Abrasives and PRIP Business.<sup>672</sup> The Commission concurs with the market participants that the contractual terms under which those inputs and services would be provided are still not specific enough. They contain only high level principles and, thus, it would be difficult to determine beforehand the contractual details in order to remove the concerns.
- (805) Furthermore, the Commission also found that the market test confirmed the Commission's concerns that the structural links between Ahlstrom and NewCo could result in incentives for Ahlstrom to use its ability to hinder the operations of the Abrasives and PRIP Business.
- (806) Given the shared use of core functions foreseen under the Commitments of 22 March, and the ability and incentives of Ahlstrom to hinder the purchaser's operations, the Commission considered that the Commitments of 22 March would not be sufficient to guarantee the presence of an effective competitor to NewCo in the markets for paper backings and PRIP.

#### 11.4.4. *Commission's conclusion*

- (807) On the basis of its assessment and taking account of the results of the market test, the Commission concluded that the Commitments of 22 March were insufficient to remove the significant impediment to effective competition identified in the markets for paper backings and PRIP.<sup>673</sup>

### 11.5. **Description of the Final Commitments of 17 April**

- (808) The Parties subsequently submitted modified Commitments on 17 April (the "Final Commitments of 17 April") which consist of the sale of the entire Osnabrück plant to a third party ("the purchaser").
- (809) The divestment will not include the non-overlap product business of Ahlstrom on paper machine OSN06 relating to the production of wall cover papers, poster paper, and silco ("the Carve-Out Business") which Ahlstrom will keep.

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<sup>672</sup> The inputs to be provided by Ahlstrom account for around [...] % of the production costs of the PRIP business and around [...] % of the production costs of the paper backings business (excluding costs related to the transitional agreements) according to the Parties' response to the Commission's Request for Information of 26 March 2013, question 10, submitted by email on 2 April 2013.

<sup>673</sup> It should be noted that a carve-out solution might be accepted where other solutions would be disproportionate to the competition problem and the carve-out solution entirely eliminates it. Every carve-out remedy is assessed on its own merits, because the Commission's assessment rests upon a number of factual elements that substantially vary from one case to another. Those elements include, among other things, the magnitude of the competition problem at issue, the size of the business to be carved out, the type of industry involved in the transaction and the feedback received from the market. The Commission will carry out an analysis of such elements and only accept a carve-out solution if it effectively remedies the competition problem identified and allows for a stand-alone business that can be viable and compete effectively.



- (810) The divestment will also not include the Osnabrück plant's energy and water facilities. Instead, the Final Commitments of 17 April foresee that Ahlstrom and the purchaser will enter into a jointly controlled, non-profit joint venture ("the JV") with regard to the ownership and operation of the power plant and water facilities on the Osnabrück site.
- (811) The business acquired by the purchaser (the "Divestment Business") would therefore include all tangible and intangible assets, personnel, rights and liabilities held by Ahlstrom Osnabrück GmbH excluding only the assets of the JV and the Carve-Out Business .
- (812) The divestment will be carried out in three steps:
- immediately after the notified transaction, Ahlstrom will buy back the Osnabrück plant from NewCo.
  - Ahlstrom will separate the Carve-Out Business and the JV from the Divestment Business.
  - Ahlstrom will subsequently sell the Osnabrück plant - excluding the business of the JV and the Carve-Out Business - as well as half of the shares in the JV to the purchaser.
- (813) Further details of the separation obligations and the businesses will be described in Sections 11.5.1 to 11.5.4.

#### *11.5.1. The Divestment Business*

- (814) The Divestment Business consists of Ahlstrom's current operations in Osnabrück, excluding the JV business and the Carve-Out Business.
- (815) In particular, the Divestment Business includes the Osnabrück premises as well as paper machines OSN03 and OSN04 and related tangible and intangible assets. The Divestment Business further includes the transfer of key personnel for the operation of the paper backing and PRIP businesses as well as the personnel currently shared for the operations of the different paper machines (at the option of the purchaser), including the personnel operating the energy and water facilities.
- (816) The purchaser will have the option to enter into two transitional agreements of a [...] duration with Ahlstrom. Those agreements concern the supply of certain IT services and the supply of certain raw materials required for the continued operation of the paper backings and PRIP business after the divestment. Compensation will be [...]\*.

#### *11.5.2. The JV*

- (817) The JV will be jointly owned and controlled by the purchaser and Ahlstrom in order to ensure long-term, non-discriminatory access to the assets of the JV to both the Divestment Business and the Carve-Out Business. The JV will own the power plant, the waste water treatment facilities and certain fresh water supply assets of the Osnabrück plant.
- (818) The JV will be operated on a non-profit basis and will be initially set up for a period of [...] years. It will conduct the required operations through personnel employed by the Divestment Business and the Carve-Out Business cooperating in good faith.
- (819) The Divestment Business and the Carve-Out Business will have the right to [...] % of the electricity, steam and pressurised air generated by the power plant as well as to

[...]\*% of the fresh water capacity, and will have access to the waste water treatment facilities. The exact terms of the agreements concerning the JV and its operations will be negotiated between the purchaser and Ahlstrom.

#### 11.5.3. *The Carve-Out Business*

- (820) The Carve-Out Business will consist of Ahlstrom's current OSN06 business concerning wallcover paper, poster paper and silco. In particular, the Carve-out Business includes the paper machine OSN06, related tangible and intangible assets as well as certain key individuals and personnel exclusively dedicated for the operation of the OSN06 business.
- (821) The Carve-Out Business will enter into long-term agreements with the purchaser. Under the terms of a lease agreement, the Divestment Business will lease to the Carve-Out Business parts of the production and administrative buildings. Under the terms of a site services agreement, the Divestment Business will be allowed to use certain shared facilities such as the [...]\*<sup>674</sup> and the [...]\*, and use certain services such as [...]\*. The exact terms of those agreements will be negotiated between the purchaser and Ahlstrom.
- (822) If Ahlstrom decides to shut down its operations on OSN06, the purchaser would [...]\*.

#### 11.5.4. *The separation obligations*

- (823) As regards the separation of the joint facilities, Ahlstrom commits to separate the following functions of the businesses:
- stock preparation: the preparation and mixture of pulp will be fully separated. In particular, the process control systems for OSN03 (PRIP) and OSN04 (Paper backings) will be located in different premises from the process control system for OSN06 (non-overlap products). Furthermore, Ahlstrom will build a separate [...]\*
  - quality control: most quality control functions are already carried out separately at the paper machines but for the [...]\*. The Carve-Out Business will retain the [...]\*<sup>675</sup> used for [...]\* and currently mostly used for OSN06. However, Ahlstrom will acquire the laboratory equipment necessary to separately run all tests in respect of OSN03 and OSN04.
  - R&D: Ahlstrom will separate the R&D facilities by creating a separate R&D space for OSN06. The only shared R&D equipment will be [...]\*<sup>676</sup> located in the R&D space for OSN03 and OSN04. [...]\* The purchaser will grant the Carve-Out Business access to [...]\* under the terms of a site services agreement.
  - storage: Ahlstrom will create a separate storage space for the raw materials used by OSN06. However, as it is not possible to physically separate the storage space for chemicals, which are mostly stored in tanks, due to the space available, the purchaser will give the Carve-Out Business access to joint storage facilities for chemicals.

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<sup>674</sup> [...]\*.

<sup>675</sup> [...]\*.

<sup>676</sup> [...]\*.

- (824) Ahlstrom commits that the quality level of the separated functions and facilities for OSN03 and OSN04 will be at least equal to the quality level of the current functions and facilities used for those machines. Ahlstrom also confirmed that the works on separation of these core functions have already started and that further progress will be made during the interim period of the sales process.

## **11.6. Assessment of the Final Commitments of 17 April**

### *11.6.1. The Commission's assessment*

- (825) The Commission finds that the Final Commitments of 17 April will entirely remove of the overlap between the Parties as Ahlstrom does not have any paper backings or PRIP activities outside of the Osnabrück plant.
- (826) The Commission has taken into account the fact that, in many respects, the Osnabrück plant has already been operated as a stand-alone business by Ahlstrom already before the transaction. The Osnabrück plant has been mainly operated and managed independently within Ahlstrom meaning, *inter alia*, that functions related to the management, production, supply, sales, technical services and product management were all located at the Osnabrück plant.
- (827) The Commission considers that the Final Commitments of 17 April address the issues raised by the Commission as well as by market participants with regard to the Commitments of 19 and the Commitments of 22 March. In particular, the main concerns expressed by other paper manufacturers, who are most able to assess the viability of a business within a shared plant, are addressed.
- (828) The improvements of the commitments relate in particular to a reduced dependence of the purchaser on Ahlstrom, a reduced complexity of operations at the shared plant and additional safeguards against Ahlstrom's access to the purchaser's confidential information.

#### **11.6.1.1. Reduced dependence of the Divestment Business on Ahlstrom**

- (829) Most importantly, the Final Commitments of 17 April reduce the Divestment Business' dependence on Ahlstrom in the operation of the paper backings and PRIP business in Osnabrück.
- (830) The purchaser will be the owner of the Osnabrück premises and facilities with the exception of the energy and water facilities. Moreover, the purchaser will have the possibility to retain the previously shared personnel. This will diminish the ability of Ahlstrom to hinder the operations of the purchaser in the Osnabrück plant. In contrast to the situation under the Commitments of 19 and 22 March, it will be for the purchaser to provide the Carve-Out Business with access to the premises as well as certain joint facilities (for example part of the common buildings and storage space) and services (for example [...]\*) of the Osnabrück plant.
- (831) Furthermore, the purchaser and Ahlstrom will have to cooperate in the non-profit JV for the access to energy, water and waste water treatment.
- (832) The purchaser's ownership of the Osnabrück plant as well as the purchaser's [...] rights in the jointly controlled JV will make it impossible for Ahlstrom to raise costs or lower the quality of inputs to the detriment of the purchaser.
- (833) The provisions of the Final Commitments of 17 April will also allow the Divestment Business to make independent decisions in terms of strategy and operations. In

particular, there will be no restrictions with respect to investments in the paper backings and PRIP business. Regarding investments in the energy and water facilities, the Commission acknowledges that the purchaser will have to come to an understanding with Ahlstrom. However, any backlog in investments will equally affect the Carve-Out Business' operations. Moreover, any decisions on investments in the energy and water facilities will be subject to commercial negotiations between the purchaser and Ahlstrom on an equal footing.

- (834) The fact that in principle the entire Osnabrück operations will be divested to a purchaser results in a high probability that the paper backings and PRIP business in Osnabrück will continue to benefit from the same conditions previously enjoyed by Ahlstrom, thus minimizing potential losses of cost efficiencies and synergies.
- (835) The retention of previously shared personnel at the option of the purchaser resolves any issues concerning the loyalty of shared personnel towards the purchaser under the Commitments of 19 and the Commitments of 22 March.
- (836) Finally, the purchaser will also be protected in the event that Ahlstrom were to decide to sell or close down its operations on OSN06 in Osnabrück, because such decision will [...]\*

#### 11.6.1.2.Reduced complexity of operations at the shared plant

- (837) The complexity of operations at the shared plant has been reduced significantly under the Commitments of 17 April, in particular because the number of possible purchasers has been reduced to one under the Final Commitments of 17 April. Therefore, the site in Osnabrück will only be shared by two companies, that is to say Ahlstrom operating the OSN06 machine and the purchaser operating the rest of the plant, instead of possibly three companies as foreseen in the Commitments of 19 and 22 March. Furthermore, the Final Commitments of 17 April contain substantial obligations on Ahlstrom to separate core and strategic functions of the two businesses operated in the Osnabrück plant. The functions to be separated relate, in particular, to stock preparation, quality control and R&D. That separation will allow the businesses to develop in the future without the need for coordination in those core areas which could result in impediments to business growth.
- (838) The possibility of efficiently sharing a paper plant is also demonstrated by the examples of joint paper companies in the paper industry as listed in Recitals (779) to (782). Those examples show that paper manufacturers can overcome the complexity of having two paper manufacturers operate in the same plant. The Commission also considers that the scope of the joint facilities and services in Osnabrück is smaller than in some of the examples provided by the Parties. For example, under the Final Commitments of 17 April, the Divestment Business and the Carve-Out Business will [...]\*

#### 11.6.1.3.Additional safeguards against NewCo's access to the purchaser's confidential information

- (839) The risk of Ahlstrom – and therefore potentially NewCo – obtaining access to the Divestment Business' information of a confidential or proprietary nature will be significantly reduced under the Final Commitments of 17 April.
- (840) The Final Commitments of 17 April provide for ring-fencing obligations for Ahlstrom to implement all necessary measures to ensure that NewCo does not obtain any business secrets, know-how, commercial information, or any other information

of a confidential or proprietary nature relating to the Divestment Business' operations in Osnabrück.

- (841) Furthermore, as described in Recital (837), there will be separation of sensitive business functions relating in particular to stock preparation, quality control and R&D which were the primary areas of concerns highlighted by market participants in the market test. The Divestment Business and the Carve-Out Business will therefore have minimum contacts with respect to those core functions which will minimize the risks of information leaks to NewCo.

#### *11.6.2. The Commission's conclusion*

- (842) The Commission considers that the risks for the viability and competitiveness of the Divestment Business will be reduced to a minimum under the Final Commitments of 17 April.<sup>677</sup> In view of the improvements which remedied the concerns raised by market participants in the market test of the Commitments of 22 March, the Commission did not market test the Final Commitments of 17 April.
- (843) In particular, the Commission considers that Ahlstrom will have sufficient time to separate the core functions and thus establish a viable stand-alone business to be divested under the Final Commitments.<sup>678</sup>
- (844) Therefore the Commission concludes that the Final Commitments of 17 April will constitute the divestment of a viable and competitive business that, if operated by a suitable purchaser, will be able to compete effectively with NewCo in the markets for heavy weight paper backings and PRIP.

#### **11.7. Conclusion on the modifications of the transaction**

- (845) The modifications of the transaction through the Final Commitments of 17 April are adequate and sufficient to eliminate the significant impediment to effective competition in the markets for heavy weight paper backings and PRIP.

### **12. CONDITIONS AND OBLIGATIONS**

- (846) Pursuant to the second subparagraph of Article 8(2) of Regulation (EC) No 139/2004, the Commission can attach to its decision conditions and obligations intended to ensure that the undertakings concerned comply with the commitments they have entered into vis-à-vis the Commission with a view to rendering the concentration compatible with the internal market.

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<sup>677</sup> Commission Notice on Remedies, paragraph 36.

<sup>678</sup> Commission Notice on Remedies, paragraphs 36 and 113.

- (847) The fulfilment of the measure that gives rise to the structural change of the market is a condition, whereas the implementing steps which are necessary to achieve that result are generally obligations on the Parties. Where a condition is not fulfilled, the Commission's decision declaring the concentration compatible with the internal market is no longer applicable. Where the undertakings concerned commit a breach of an obligation, the Commission can revoke the clearance decision in accordance with Article 8(6) of Regulation (EC) No 139/2004. The undertakings concerned can also be subject to fines and periodic penalty payments under Article 14(2) and Article 15(1) of Regulation (EC) No 139/2004.
- (848) In accordance with the basic distinction described in the previous Recital between conditions and obligations, this Decision should be made conditional on the full compliance by the Parties with Section B (including the Schedule) of the commitments submitted by the Parties on 17 April 2013 and all other Sections of those commitments should be obligations within the meaning of Article 8(2) of Regulation (EC) No 139/2004. The full text of the commitments is in the Annex to this Decision and forms an integral part thereof.

HAS ADOPTED THIS DECISION:

*Article 1*

The notified operation whereby NewCo, which will be named Munksjö Oyj, will acquire sole control over Munksjö AB and Ahlstrom Corporation's Label and Processing Business within the meaning of Article 3(1)(b) of Regulation (EC) No 139/2004 is hereby declared compatible with the internal market and the EEA Agreement.

*Article 2*

Article 1 is subject to compliance with the conditions set out in Section B of the Annex.

*Article 3*

Munksjö AB, Ahlstrom Corporation and Munksjö Oyj shall comply with the obligations set out in Sections A, C, D, E and F of the Annex.

*Article 4*

This Decision is addressed to:

Munksjö AB  
Klarabergsviadukten 70 D 5  
Sweden- 107 24 Stockholm

And  
Ahlstrom Corporation  
Alvar Aallon katu 3 C  
Finland - 00100 Helsinki

And  
Munksjö Oyj  
c/o Hannes Snellman As.ajotsto Oy  
Eteläranta 8  
Finland - 00130 Helsinki  
Done at Brussels, 24.5.2013

*For the Commission  
(Signed)  
Joaquín ALMUNIA  
Vice-President*

## Case No COMP/M.6576 - MUNKSJÖ / AHLSTROM

### COMMITMENTS TO THE EUROPEAN COMMISSION

Pursuant to Article 8(2) of Council Regulation (EC) No. 139/2004 as amended (the “**Merger Regulation**”), Ahlstrom Corporation (“**Ahlstrom**”) and Munksjö AB (“**Munksjö**”) (together the “**Parties**”) hereby provide the following Commitments (the “**Commitments**”) in order to enable the European Commission (the “**Commission**”) to declare the notified contemplated concentration (the “**Concentration**”), where Munksjö and Ahlstrom’s Label and Processing Business (“**Ahlstrom LP Business**”) shall be transferred to a newly established (combined) entity (“**NewCo**”), compatible with the common market and the EEA Agreement by its decision pursuant to Article 8(2) of the Merger Regulation (the “**Decision**”).

The Commitments shall take effect upon the date of adoption of the Decision.

This text shall be interpreted in the light of the Decision to the extent that the Commitments are attached as conditions and obligations, in the general framework of Community law, in particular in the light of the Merger Regulation, and by reference to the Commission notice on remedies acceptable under Council Regulation (EC) No 139/2004 and under Commission Regulation (EC) No 802/2004.



## Section A. Definitions

For the purpose of the Commitments, the following terms shall have the following meaning:

**Affiliated Undertakings:** undertakings controlled by the Parties and/or NewCo and/or by the ultimate parents of the Parties or NewCo, whereby the notion of control shall be interpreted pursuant to Article 3 of the Merger Regulation and in the light of the Commission Consolidated Jurisdictional Notice under Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings.

**Ahlstrom:** Ahlstrom Corporation, incorporated under the laws of Finland, with its registered office in Helsinki, at Alvar Aallon katu 3 C, 00100, Helsinki, Finland, and registered with the National Board of Patents and Registration of Finland under number 1670043-1.

**Carve-Out Business:** the business relating to the OSN06 machine that will be kept by Ahlstrom (*i.e.* the wallcover, poster and silco businesses), including all tangible and intangible assets, personnel, rights and liabilities exclusively related to OSN06, as further described in the Schedule.

**Closing:** the transfer of the legal title of the Divestment Business and/or the JV Divestment Shares, as the case may be, to the Purchaser.

**Divestment Business:** all tangible and intangible assets, personnel, rights and liabilities held by Ahlstrom Osnabrück GmbH, excluding only the JV Assets and the Carve-Out Business, as further described in Section B and the Schedule.

**Divestiture Trustee:** one or more natural or legal person(s), independent from the Parties, who is approved by the Commission and appointed by Ahlstrom and who has received from Ahlstrom the exclusive mandate to sell the Divestment Business and the JV Divestment Shares to the Purchaser at no minimum price.

**Effective Date:** the date of adoption of the Decision.

**Electrotechnical Business:** the electrotechnical paper (cable paper) production currently carried out on the OSN04 machine at Ahlstrom's Osnabrück plant by Ahlstrom LP Business.

**First Divestiture Period:** the period of [...] from the Effective Date.

**Hold Separate Manager:** the person appointed by Ahlstrom for the Divestment Business to manage the day-to-day business and separation of the Divestment Business and the JV Assets under the supervision of the Monitoring Trustee.

**Implementation Date:** the date of completion of the Concentration, *i.e.* when Munksjö and Ahlstrom LP Business are transferred to NewCo.

**JV Agreement:** agreement governing access to the JV Assets to be entered into between the Divestment Business, the Carve-Out Business (through Ahlstrom or one of its Affiliated Undertakings) and the JV Company in connection with the divestment of the Divestment Business and the JV Divestment Shares to the Purchaser.

**JV Assets:** all assets, rights and liabilities exclusively related to the Power Plant, the waste water treatment/handling facilities and certain fresh water supply assets located at the Osnabrück plant, as further described in the Schedule.

**JV Company:** the joint venture company to which Ahlstrom will transfer the JV Assets and which, up until the divestment of the JV Divestment Shares, will be wholly owned by Ahlstrom or one of its Affiliated Undertakings.

**JV Divestment Shares:** the 50% shareholding in the JV Company that Ahlstrom will divest to the Purchaser under the Commitments.

**Key Personnel:** all personnel necessary to maintain the viability and competitiveness of the Divestment Business, as listed in the Schedule.

**Monitoring Trustee:** one or more natural or legal person(s), independent from the Parties, who is approved by the Commission and appointed by Ahlstrom, and who has the duty to monitor Ahlstrom's compliance with the conditions and obligations attached to the Decision.

**Munksjö:** Munksjö AB, incorporated under the laws of Sweden, with its registered office in Jönköping, Box 14, 551 12, Jönköping, Sweden, and registered with the Swedish Companies Registration Office under number 556669-9731.

**Personnel:** all personnel currently employed by Ahlstrom Osnabrück GmbH, including Key Personnel, shared personnel and the additional personnel listed in the Schedule, excluding personnel exclusively related to OSN06 and the key employees indispensable for the Carve-Out Business (but not for the Divestment Business) listed under Section 3.2.9.

**Power Plant:** the power plant located at Ahlstrom's Osnabrück plant.

**Purchaser:** the entity approved by the Commission as acquirer of the Divestment Business and the JV Divestment Shares, in accordance with the criteria set out in Section D.

**Trustee Divestiture Period:** the period of [...] \* from the end of the First Divestiture Period.

**Trustee(s):** the Monitoring Trustee and the Divestiture Trustee.

## Section B. The Divestment Business

### Purpose of the Commitments

1. The purpose of the Commitments submitted by the Parties, which consist of the divestment of the Divestment Business and the JV Divestment Shares from Ahlstrom to the Purchaser (as further described in paragraph 2 below), is to remove the Commission's concerns in respect of the horizontal overlaps in the segments of pre-impregnated decor paper ("**PRIP**") and abrasive paper backings ("**Abrasives**"). The Commitments have therefore been structured in a way that completely removes the competitive overlaps identified by the Commission as a cause of concern and that restores the competitive situation prevailing prior to the notified Concentration. More specifically, the Commitments are structured in a way to ensure that the Purchaser can operate the Divestment Business and the paper machines OSN03 and OSN04 included therein on a stand-alone basis and in a viable manner, effectively competing with NewCo on a lasting basis (while the Carve-Out Business will be retained by Ahlstrom). In this respect, the purpose of the structure of the Commitments is to ensure that:
  - all sensitive functions currently shared between OSN03 and OSN04 (included in the Divestment Business) and OSN06 (included in the Carve-Out Business) are separated;
  - certain essential infrastructure and utilities located at Ahlstrom's Osnabrück plant used by both the Divestment Business and the Carve-Out Business (the Power Plant, the waste water treatment/handling facilities and certain fresh water supply assets) will be jointly owned (50/50) by the Divestment Business and the Carve-Out Business through the JV Company in order to ensure long-term, non-discriminatory access to the JV Assets (the specific terms and conditions will be governed by the JV Agreement);
  - any ancillary and similar agreements that need to be entered into in respect of functions included in the Divestment Business that are currently shared between OSN03 and OSN04 (included in the Divestment Business) and OSN06 (included in the Carve-Out Business) shall be offered by the Purchaser of the Divestment Business to Ahlstrom in order to ensure that such functions can also be used by the Carve-Out Business;

Furthermore, in order to ensure effective implementation of the divestiture of the Divestment Business and the JV Divestment Shares from Ahlstrom to the Purchaser in case of the appointment of a Divestiture Trustee, the Commitments lay down certain key parameters for the terms of a divestiture, as described below.

Nothing in the Commitments would limit the ability of the Purchaser to expand the current levels of output of the Divestment Business up to the current maximum capacity of the Divestment Business.

## Commitment to divest

2. In order to restore effective competition, the Parties commit to divest, or procure the divestiture of the Divestment Business and the JV Divestment Shares by the end of the Trustee Divestiture Period as a going concern to the Purchaser and on terms of sale approved by the Commission in accordance with the procedure described in paragraph 22 below. To carry out the divestiture, Ahlstrom commits to find such Purchaser and to ensure the entering into of a final binding sale and purchase agreement for the sale of the Divestment Business and the JV Divestment Shares within the First Divestiture Period. If Ahlstrom has not entered into such agreement at the end of the First Divestiture Period, Ahlstrom shall grant the Divestiture Trustee an exclusive mandate to sell the Divestment Business and the JV Divestment Shares and enter into any ancillary agreements that the Divestiture Trustee deems necessary in accordance with the procedure described in paragraph 31 in the Trustee Divestiture Period.
3. The Parties shall be deemed to have complied with the Commitments if, by the end of the Trustee Divestiture Period, Ahlstrom has entered into a final binding sale and purchase agreement with the Purchaser, if the Commission approves the Purchaser and the terms in accordance with the procedure described in paragraph 22 and if the Closing of the sale of the Divestment Business and the JV Divestment Shares takes place within a period not exceeding [...] after the approval of the Purchaser and the terms of sale by the Commission.
4. The main assets related to the Divestment Business, including *e.g.* paper machines and personnel, are located at the Osnabrück plant, which is currently owned and operated by Ahlstrom (through Ahlstrom Osnabrück GmbH). Ahlstrom Osnabrück GmbH maintains, in particular, three paper machines (OSN03, which mainly produces PRIP (“**OSN03**”), OSN04, which mainly produces Abrasives (“**OSN04**”) and OSN06, which mainly produces wallcover papers, posters and silco (“**OSN06**”). OSN04 also produces limited volumes of electrotechnical (cable) paper (the Electrotechnical Business, as defined above). The Osnabrück plant is part of the Ahlstrom LP Business and included in the originally notified transaction (as part of the originally notified transaction the shares in Ahlstrom Osnabrück GmbH will be transferred to NewCo). However, the Osnabrück plant also produces wallcover papers on behalf of the Ahlstrom Business Area Building and Energy. Consequently, wallcover products are not marketed by Ahlstrom LP Business and this business is not part of the notified Concentration.
5. Now, as regards the Divestment Business and the JV Divestment Shares, the Parties commit as follows. First, the originally notified Concentration will be completed on the Implementation Date. Directly after the Implementation Date, NewCo will sell the shares in Ahlstrom Osnabrück GmbH, including the Divestment Business, back to Ahlstrom. Ahlstrom will thereafter separate the Divestment Business, the Carve-Out Business and the JV Assets. In this respect and as described in more detail in the Schedule, sensitive functions currently shared between OSN03 and OSN04 (included in the Divestment Business) and OSN06 (included in the Carve-Out Business) will be separated so that those functions remain with the Divestment Business (meaning that the Divestment Business will not be dependent on Ahlstrom as regards such sensitive functions). Following the separation of the Divestment Business, the Carve-Out Business and the JV Assets as described above, Ahlstrom will, by way of a share or asset transfer or demerger (as the case may be), (i) transfer the JV Assets to the JV Company, (ii) divest, or procure the divestiture of the Divestment Business and the JV

Divestment Shares to the Purchaser to be approved by the Commission and (iii) retain the Carve-Out Business. The JV Company, which will be operated on a non-profit basis, will following the divestiture of the JV Divestment Shares be jointly owned and controlled by the Divestment Business and by Ahlstrom (or one of its Affiliated Undertakings). The specific terms and conditions will be governed by the JV Agreement to be negotiated between the Divestment Business and the Carve-Out Business (through Ahlstrom or one of its Affiliated Undertakings), but will include the following key parameters (please refer to the Schedule for a more detailed description);

- (i) the Divestment Business and the Carve-Out Business will each have the right to [...] % of the electricity, steam and pressurised air generated by the Power Plant;
  - (ii) the Divestment Business and the Carve-Out Business will each have the right to [...] % of the fresh water capacity reservation available within the current permit described in the Schedule; the costs for fresh water supply shall be allocated to and borne by the Divestment Business and the Carve-Out Business according to consumption; and
  - (iii) the costs for waste water treatment/handling shall be allocated to and borne by the Divestment Business and the Carve-Out Business according to usage.
6. Any ancillary and similar agreements that need to be entered into in respect of functions included in the Divestment Business that are currently shared between OSN03 and OSN04 (included in the Divestment Business) and OSN06 (included in the Carve-Out Business), *e.g.* [...] etc., shall be offered by the Purchaser of the Divestment Business to Ahlstrom in order to ensure that such functions can also be used by the Carve-Out Business, and entered into on terms to be negotiated between the Purchaser and Ahlstrom. A comprehensive list of all such agreements is included in the Schedule.
7. If a binding sale and purchase agreement for the sale of the Divestment Business and the JV Divestment Shares has not been signed within [...] from the Effective Date, Ahlstrom shall appoint a Divestiture Trustee with the exclusive mandate to sell the Divestment Business and the JV Divestment Shares at no minimum price and in accordance with the procedure described in paragraph 31 and who is also approved by the Commission. In order to ensure the Divestiture Trustee's effective implementation of the divestiture of the Divestment Business and the JV Divestment Shares from Ahlstrom to the Purchaser, the Divestiture Trustee shall include the following key parameters in the JV Agreement (in addition to the parameters listed in paragraph 5 above) and in the ancillary and similar agreements respectively.
- **JV Agreement:** any costs for future investments shall be split [...] between the Divestment Business and the Carve-Out Business.
  - **Ancillary agreements and similar agreements:** (i) all services shall be provided at cost, adjusted for cost of capital, and (ii) the rent in lease agreements shall be based on general market standards for square metres leased.

In respect of all other parameters of the JV Agreement and ancillary agreements and similar agreements, the Divestiture Trustee has discretion.

8. [...]\*.
9. During the First Divestiture Period, the Divestment Business will be carried out and the JV Assets will be maintained and operated by Ahlstrom independently and as per Section C below.
10. In order to maintain the structural effect of the Commitments, neither NewCo or Ahlstrom nor any company within the same group of companies as NewCo or Ahlstrom shall, for a period of 10 years after the Closing of the sale of the Divestment Business, acquire direct or indirect influence, over the whole or part of the Divestment Business or the JV Divestment Shares, unless the Commission has previously found that the structure of the market has changed to such an extent that the absence of influence over the Divestment Business is no longer necessary to render the proposed Concentration compatible with the common market. However, in the event that the Purchaser of the Divestment Business and the JV Divestment Shares [...]\*.

#### Structure and definition of the Divestment Business

11. The Divestment Business consists of all tangible and intangible assets, personnel, rights and liabilities held by Ahlstrom Osnabrück GmbH (including, *inter alia*, OSN03 and OSN04 on which PRIP and Abrasives are produced), excluding only the JV Assets and the Carve-Out Business. The present legal and functional structure of the Divestment Business as operated to date is described in the Schedule. The Divestment Business, described in more detail in the Schedule, includes:
  - (a) all tangible and intangible assets (including intellectual property rights), excluding the JV Assets and the Carve-Out Business, which contribute to the current operation or are necessary to ensure the viability and competitiveness of the Divestment Business;
  - (b) all licences, permits and authorisations issued by any governmental organisation for the benefit of the Divestment Business that are not transferred to the JV Company (or to the Carve-Out Business in the situation described in paragraph 14 of the Schedule);
  - (c) all contracts, leases, commitments and customer orders of the Divestment Business; all customer, credit and other records of the Divestment Business (items referred to under (a)-(c) hereinafter collectively referred to as “**Assets**”);
  - (d) the Personnel; and
  - (e) the benefit, for a transitional period of up to [...]\* after Closing and on terms and conditions equivalent to those at present afforded to the Divestment Business, of all current arrangements under which Ahlstrom or Affiliated

Undertakings supply products or services to the Divestment Business, as detailed in the Schedule, unless otherwise agreed with the Purchaser.

## **Section C. Related commitments**

### Preservation of Viability, Marketability and Competitiveness

12. From the Effective Date until Closing, Ahlstrom shall preserve the economic viability, marketability and competitiveness of the Divestment Business, in accordance with good business practice, and shall minimise as far as possible any risk of loss of competitive potential of the Divestment Business. In particular Ahlstrom undertakes:
- (a) not to carry out any act upon its own authority that might have a significant adverse impact on the value, management or competitiveness of the Divestment Business or that might alter the nature and scope of activity, or the industrial or commercial strategy or the investment policy of the Divestment Business;
  - (b) to make available sufficient resources for the development of the Divestment Business, on the basis and continuation of the existing business plans;
  - (c) to take all reasonable steps, including appropriate incentive schemes (based on industry practice), to encourage all Key Personnel to remain with the Divestment Business.

### Hold-separate obligations of Ahlstrom

13. Until Closing, Ahlstrom shall assist the Monitoring Trustee in ensuring that the Divestment Business is managed as a distinct and saleable entity separate from Ahlstrom's other businesses and the businesses retained by NewCo. Following the Effective Date, Ahlstrom shall appoint a Hold Separate Manager who shall be responsible for the management and separation of the Divestment Business, under the supervision of the Monitoring Trustee.
14. The Hold Separate Manager shall manage the Divestment Business independently and in the best interest of the business with a view to ensuring its continued economic viability, marketability and competitiveness and its independence from Ahlstrom's other businesses and the businesses retained by NewCo. The Hold Separate Manager shall also ensure that the separation and carve-out of the Divestment Business is conducted in order to facilitate the divestiture of the Divestment Business.
15. Ahlstrom commits, from the Effective Date until Closing, to ensure that Key Personnel of the Divestment Business – including the Hold Separate Manager – have no involvement in any other Ahlstrom business and vice versa. Ahlstrom shall also ensure that the Personnel does not report to any individual outside the Divestment Business.



### Ring-fencing

16. Ahlstrom shall implement all necessary measures to ensure that NewCo does not after the Effective Date obtain any business secrets, know-how, commercial information, or any other information of a confidential or proprietary nature relating to the Divestment Business. In particular, the participation of the Divestment Business in a central information technology network shall be severed to the extent possible, without compromising the viability of the Divestment Business.

### Non-solicitation clause

17. Ahlstrom and NewCo undertake, subject to customary limitations, not to solicit, and to procure that Affiliated Undertakings do not solicit, the Key Personnel transferred with the Divestment Business for a period of 36 months after Closing.

### Due Diligence

18. In order to enable potential purchasers to carry out a reasonable due diligence of the Divestment Business and the JV Company, Ahlstrom shall, subject to customary confidentiality assurances and dependent on the stage of the divestiture process:

- (a) provide to potential purchasers sufficient information as regards the Divestment Business and the JV Company;
- (b) provide to potential purchasers sufficient information relating to the Personnel and allow them reasonable access to the Personnel.

### Reporting

19. Ahlstrom shall submit written reports in English on potential purchasers of the Divestment Business and the JV Divestment Shares and developments in the negotiations with such potential purchasers to the Commission and the Monitoring Trustee no later than 10 days after the end of every month following the Effective Date (or otherwise at the Commission's request).

20. Ahlstrom shall inform the Commission and the Monitoring Trustee on the preparation of the data room documentation and the due diligence procedure and shall submit a copy of an information memorandum to the Commission and the Monitoring Trustee before sending the memorandum out to potential purchasers.

## Section D. The Purchaser

21. In order to ensure the immediate restoration of effective competition, the third party Purchaser, in order to be approved by the Commission, must:

- (a) be independent of and unconnected to the Parties;
- (b) have the financial resources, proven expertise and incentive to maintain and develop the Divestment Business as a viable and active competitive force in competition with the Parties and other competitors;
- (c) be active in paper manufacturing or have experience in the paper industry;
- (d) neither be likely to create, in the light of the information available to the Commission, *prima facie* competition concerns nor give rise to a risk that the implementation of the Commitments will be delayed, and must, in particular, reasonably be expected to obtain all necessary approvals from the relevant regulatory authorities for the acquisition of the Divestment Business (the before-mentioned criteria for the purchaser hereafter the “**Purchaser Requirements**”).

22. The final binding sale and purchase agreement shall be conditional on the Commission's approval. When Ahlstrom has reached an agreement with a purchaser, it shall submit a fully documented and reasoned proposal, including a copy of the final agreement, to the Commission and the Monitoring Trustee. Ahlstrom must be able to demonstrate to the Commission that the purchaser meets the Purchaser Requirements and that the Divestment Business and the JV Divestment Shares are being sold in a manner consistent with the Commitments. For the approval, the Commission shall verify that the purchaser fulfils the Purchaser Requirements and that the Divestment Business and the JV Divestment Shares are being sold in a manner consistent with the Commitments. The Commission may approve the sale of the Divestment Business without one or more Assets or parts of the Personnel, if this does not affect the viability and competitiveness of the Divestment Business after the sale, taking account of the proposed purchaser.

## Section E. Trustee

### I. Appointment Procedure

23. Ahlstrom shall appoint a Monitoring Trustee to carry out the functions specified in the Commitments for a Monitoring Trustee. If Ahlstrom has not entered into a binding sale and purchase agreement one month before the end of the First Divestiture Period or if the Commission has rejected a purchaser proposed by Ahlstrom at that time or thereafter, Ahlstrom shall appoint a Divestiture Trustee to carry out the functions specified in the Commitments for a Divestiture Trustee. The appointment of the Divestiture Trustee shall take effect upon the commencement of the Trustee Divestiture Period.

24. The Trustee shall be independent of the Parties, possess the necessary qualifications to carry out its mandate, for example as an investment bank or consultant or auditor, and shall neither have nor become exposed to a conflict of interest. The Trustee shall be remunerated

by Ahlstrom in a way that does not impede the independent and effective fulfilment of its mandate. In particular, where the remuneration package of a Divestiture Trustee includes a success premium linked to the final sale value of the Divestment Business and the JV Divestment Shares, the fee shall also be linked to a divestiture within the Trustee Divestiture Period.

*Proposal by Ahlstrom*

25. As soon as possible, but no later than the day following the Effective Date, Ahlstrom shall submit a list of one or more persons whom Ahlstrom proposes to appoint as the Monitoring Trustee to the Commission for approval. No later than one month before the end of the First Divestiture Period, Ahlstrom shall submit a list of one or more persons whom Ahlstrom proposes to appoint as Divestiture Trustee to the Commission for approval. The proposal shall contain sufficient information for the Commission to verify that the proposed Trustee fulfils the requirements set out in paragraph 24 and shall include:
- (a) the full terms of the proposed mandate, which shall include all provisions necessary to enable the Trustee to fulfil its duties under these Commitments;
  - (b) the outline of a work plan which describes how the Trustee intends to carry out its assigned tasks; and
  - (c) an indication whether the proposed Trustee is to act as both Monitoring Trustee and Divestiture Trustee or whether different trustees are proposed for the two functions.

*Approval or rejection by the Commission*

26. The Commission shall have the discretion to approve or reject the proposed Trustee(s) and to approve the proposed mandate subject to any modifications it deems necessary for the Trustee to fulfil its obligations. If only one name is approved, Ahlstrom shall appoint or cause to be appointed, the individual or institution concerned as Trustee, in accordance with the mandate approved by the Commission. If more than one name is approved, Ahlstrom shall be free to choose the Trustee to be appointed from among the names approved. The Trustee shall be appointed within one week of the Commission's approval, in accordance with the mandate approved by the Commission.

*New proposal by Ahlstrom*

27. If all the proposed Trustees are rejected, Ahlstrom shall submit the names of at least two more individuals or institutions within one week of being informed of the rejection, in accordance with the requirements and the procedure set out in paragraphs 23 and 26.

*Trustee nominated by the Commission*

28. If all further proposed Trustees are rejected by the Commission, the Commission shall nominate a Trustee, whom Ahlstrom shall appoint, or cause to be appointed, in accordance with a trustee mandate approved by the Commission.

II. Functions of the Trustee

29. The Trustee shall assume its specified duties in order to ensure compliance with the Commitments. The Commission may, on its own initiative or at the request of the Trustee or Ahlstrom, give any orders or instructions to the Trustee in order to ensure compliance with the conditions and obligations attached to the Decision.

*Duties and obligations of the Monitoring Trustee*

30. The Monitoring Trustee shall:

- (i) propose in its first report to the Commission a detailed work plan describing how it intends to monitor compliance with the obligations and conditions attached to the Decision.
- (ii) oversee the on-going management of the Divestment Business with a view to ensuring its continued economic viability, marketability and competitiveness and monitor compliance by Ahlstrom with the conditions and obligations attached to the Decision. To that end the Monitoring Trustee shall:
  - (a) monitor the preservation of the economic viability, marketability and competitiveness of the Divestment Business, and the separation of the Divestment Business from Ahlstrom's other businesses, in accordance with paragraphs 12 and 15 of the Commitments;
  - (b) supervise the management of the Divestment Business as a distinct and saleable entity, in accordance with paragraph 13 of the Commitments;
  - (c) (i) in consultation with Ahlstrom, determine all necessary measures to ensure that NewCo does not after the Effective Date obtain any business secrets, know-how, commercial information, or any other information of a confidential or proprietary nature relating to the Divestment Business, in particular strive for the severing of the Divestment Business' participation in a central information technology network to the extent possible, without compromising the viability of the Divestment Business, and (ii) decide whether such information may be disclosed to NewCo as the disclosure is reasonably necessary to allow Ahlstrom to carry out the divestiture or as the disclosure is required by law;

- (d) monitor the splitting of assets and the allocation of personnel between the Divestment Business and Ahlstrom or Affiliated Undertakings;
- (iii) assume the other functions assigned to the Monitoring Trustee under the conditions and obligations attached to the Decision;
- (iv) propose to Ahlstrom such measures as the Monitoring Trustee considers necessary to ensure the compliance with the conditions and obligations attached to the Decision, in particular the maintenance of the full economic viability, marketability or competitiveness of the Divestment Business, the separation of currently integrated functions, the holding separate of the Divestment Business and the non-disclosure of competitively sensitive information;
- (v) review and assess potential purchasers as well as the progress of the divestiture process and verify that, dependent on the stage of the divestiture process, (a) potential purchasers receive sufficient information relating to the Divestment Business, the Personnel and the JV Company in particular by reviewing, if available, the data room documentation, the information memorandum and the due diligence process, and (b) potential purchasers are granted reasonable access to the Personnel;
- (vi) provide to the Commission, sending Ahlstrom a non-confidential copy at the same time, a written report within 15 days after the end of every month. The report shall cover the operation and management of the Divestment Business so that the Commission can assess whether the business is held in a manner consistent with the Commitments and the progress of the divestiture process as well as potential purchasers. In addition to these reports, the Monitoring Trustee shall promptly report in writing to the Commission, sending Ahlstrom a non-confidential copy at the same time, if it concludes on reasonable grounds that Ahlstrom is failing to comply with these Commitments;
- (vii) within one week after receipt of the documented proposal referred to in paragraph 22, submit to the Commission a reasoned opinion as to the suitability and independence of the proposed purchaser and the viability of the Divestment Business after the sale and as to whether the Divestment Business and the JV Divestment Shares are sold in a manner consistent with the conditions and obligations attached to the Decision, in particular, if relevant, whether the sale of the Divestment Business without one or more Assets or not all of the Personnel affects the viability of the Divestment Business after the sale, taking account of the proposed purchaser.

### *Duties and obligations of the Divestiture Trustee*

31. Within the Trustee Divestiture Period, the Divestiture Trustee shall sell at no minimum price the Divestment Business and the JV Divestment Shares to a purchaser, provided that the Commission has approved both the purchaser and the final binding sale and purchase agreement in accordance with the procedure laid down in paragraph 22. The Divestiture Trustee shall include in the sale and purchase agreement such terms and conditions as it considers appropriate for an expedient sale in the Trustee Divestiture Period. In particular, the Divestiture Trustee may include in the sale and purchase agreement such customary representations and warranties and indemnities as are reasonably required to effect the sale. The Divestiture Trustee also has mandate to negotiate and offer guarantees as regards environmental and pension liabilities related to the Divestment Business according to which any such liability shall be borne by Ahlstrom. In order to ensure the Divestiture Trustee's effective implementation of the divestiture of the Divestment Business and the JV Divestment Shares from Ahlstrom to the Purchaser, the Divestiture Trustee shall include certain key parameters in the JV Agreement and in the ancillary and similar agreements respectively as set out in paragraph 8 above. The Divestiture Trustee shall protect the legitimate financial interests of Ahlstrom, subject to Ahlstrom's unconditional obligation to divest at no minimum price in the Trustee Divestiture Period.
32. In the Trustee Divestiture Period (or otherwise at the Commission's request), the Divestiture Trustee shall provide the Commission with a comprehensive monthly report written in English on the progress of the divestiture process. Such reports shall be submitted within 15 days after the end of every month with a simultaneous copy to the Monitoring Trustee and a non-confidential copy to Ahlstrom.

### III. Duties and obligations of Ahlstrom

33. Ahlstrom shall provide and shall cause its advisors to provide the Trustee with all such co-operation, assistance and information as the Trustee may reasonably require to perform its tasks. The Trustee shall have full and complete access to any of Ahlstrom's, the Divestment Business' or the JV Company's books, records, documents, management or other personnel, facilities, sites and technical information necessary for fulfilling its duties under the Commitments and Ahlstrom and the Divestment Business shall provide the Trustee upon request with copies of any document. Ahlstrom and the Divestment Business shall make available to the Trustee one or more offices on their premises and shall be available for meetings in order to provide the Trustee with all information necessary for the performance of its tasks.
34. Ahlstrom shall provide the Monitoring Trustee with all managerial and administrative support that it may reasonably request on behalf of the management of the Divestment Business. This shall include all administrative support functions relating to the Divestment Business which are currently carried out at headquarters level. Ahlstrom shall provide and shall cause its advisors to provide the Monitoring Trustee, on request, with the information submitted to potential purchasers, in particular give the Monitoring Trustee access to the data room documentation

and all other information granted to potential purchasers in the due diligence procedure. Ahlstrom shall inform the Monitoring Trustee on possible purchasers, submit a list of potential purchasers, and keep the Monitoring Trustee informed of all developments in the divestiture process.

35. Ahlstrom shall grant or procure Affiliated Undertakings to grant comprehensive powers of attorney, duly executed, to the Divestiture Trustee to effect the sale, the Closing and all actions and declarations which the Divestiture Trustee considers necessary or appropriate to achieve the sale and the Closing, including the appointment of advisors to assist with the sale process. Upon request of the Divestiture Trustee, Ahlstrom shall cause the documents required for effecting the sale and the Closing to be duly executed.
36. Ahlstrom shall indemnify the Trustee and its employees and agents (each an "**Indemnified Party**") and hold each Indemnified Party harmless against, and hereby agrees that an Indemnified Party shall have no liability to Ahlstrom for any liabilities arising out of the performance of the Trustee's duties under the Commitments, except to the extent that such liabilities result from the wilful default, recklessness, gross negligence or bad faith of the Trustee, its employees, agents or advisors.
37. At the expense of Ahlstrom, the Trustee may appoint advisors (in particular for corporate finance or legal advice), subject to Ahlstrom's approval (this approval not to be unreasonably withheld or delayed) if the Trustee considers the appointment of such advisors necessary or appropriate for the performance of its duties and obligations under the mandate, provided that any fees and other expenses incurred by the Trustee are reasonable. Should Ahlstrom refuse to approve the advisors proposed by the Trustee the Commission may approve the appointment of such advisors instead, after having heard Ahlstrom. Only the Trustee shall be entitled to issue instructions to the advisors. Paragraph 36 shall apply mutatis mutandis. In the Trustee Divestiture Period, the Divestiture Trustee may use advisors who served Ahlstrom during the Divestiture Period if the Divestiture Trustee considers this in the best interest of an expedient sale.

#### IV. Replacement, discharge and reappointment of the Trustee

38. If the Trustee ceases to perform its functions under the Commitments or for any other good cause, including the exposure of the Trustee to a conflict of interest:
- (a) the Commission may, after hearing the Trustee, require Ahlstrom to replace the Trustee; or
  - (b) Ahlstrom, with the prior approval of the Commission, may replace the Trustee.
39. If the Trustee is removed according to paragraph 38, the Trustee may be required to continue in its function until a new Trustee is in place to whom the Trustee has effected a full hand over of all relevant information. The new Trustee shall be appointed in accordance with the procedure referred to in paragraphs 23-28.
40. Beside the removal according to paragraph 38, the Trustee shall cease to act as Trustee only after the Commission has discharged it from its duties after all the Commitments with which the Trustee has been entrusted have been implemented. However, the Commission may at any time require the reappointment of the Trustee if it subsequently appears that the relevant remedies might not have been fully and properly implemented.

**Section F. The Review Clause**

41. The Commission may, where appropriate, in response to a request from the Parties showing good cause and accompanied by a report from the Monitoring Trustee:

- (i) Grant an extension of the time periods foreseen in the Commitments, or
- (ii) Waive, modify or substitute, in exceptional circumstances, one or more of the undertakings in these Commitments.

Where the Parties seek an extension of a time period, they shall submit a request to the Commission no later than one month before the expiry of that period, showing good cause. Only in exceptional circumstances shall the Parties be entitled to request an extension within the last month of any period.

Place and date..... Place and date.....

*[Signed]* ..... *[Signed]* .....

duly authorised for and on behalf of ..... duly authorised for and on behalf of  
**Ahlstrom Corporation**                      **Munksjö AB**

Place and date.....

*[Signed]* .....

duly authorised for and on behalf of  
**NewCo**



## SCHEDULE

### **LEGAL AND FUNCTIONAL STRUCTURE OF THE DIVESTMENT BUSINESS**

1. As described below in Section 2, the Divestment Business consists of all tangible and intangible assets, personnel, rights and liabilities held by Ahlstrom Osnabrück GmbH (including, *inter alia*, OSN03 and OSN04 on which PRIP and Abrasives are produced), excluding only the JV Assets and the Carve-Out Business. The Divestment Business is mainly operated and managed independently within Ahlstrom meaning, *inter alia*, that all functions required for the business operations such as management, production, supply, sales, technical services and product management are all located at the plant in Osnabrück. In addition to the production of PRIP and Abrasives (and Electrotechnical papers), Ahlstrom Osnabrück GmbH also produces wallcover papers, posters and silco. The production of these products is conducted on the paper machine OSN06 which is also located at the Osnabrück plant. The wallcover paper, poster and silco businesses related to OSN06 will form part of the Carve-Out Business (and not the Divestment Business).<sup>1</sup>
2. For an organisational chart illustrating the business conducted at the Osnabrück plant (including the Divestment Business, the Carve-Out Business and the JV Assets), please refer to confidential Annex 1.
3. Certain essential infrastructure and utilities located at Ahlstrom's Osnabrück plant used by both the Divestment Business and the Carve-Out Business (the JV Assets, *i.e.* the Power Plant, the waste water treatment/handling facilities and certain fresh water supply assets, as further described in Section 3.1 below) will be transferred to a newly established JV Company which will be owned and controlled to 50% by the Divestment Business and to 50% by Ahlstrom Corporation (or one of its Affiliated Undertakings). The Divestment Business and Ahlstrom Corporation (or one of its Affiliated Undertakings) will enter into a shareholders' agreement governing the joint ownership and control over the JV Company on equal terms, *i.e.* meaning that each party will have equal board representation without any discretionary veto rights over strategic and/or operational decisions. The Divestment Business' and the Carve-Out Business' access to the JV Assets (including, *inter alia*, the JV Company's supply of energy and fresh water and waste water treatment/handling services to the Divestment Business and the Carve-Out Business on equal, non-discriminatory terms) as well as the Divestment Business' and/or the Carve-Out Business' provision of services to the JV Company will be governed by a long-term **JV Agreement** (as described in Section 3.1 below).

### **SCOPE OF THE DIVESTMENT BUSINESS**

4. Pursuant to Section B of these Commitments, the Divestment Business includes all tangible and intangible assets, personnel, rights and liabilities held by Ahlstrom Osnabrück GmbH, excluding only (i) the JV Assets and (ii) the Carve-Out Business.

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<sup>1</sup> For the sake of completeness, please note that the silco business will be transferred to NewCo.

## Main tangible assets

5. In particular, the Divestment Business includes (but is not limited to) the following main movable tangible assets held by Ahlstrom Osnabrück GmbH:
- a) the paper machines OSN03 (PRIP) and OSN04 (Abrasives);
  - b) [...]\*
  - c) [...]\*
  - d) [...]\*
  - e) [...]\*
  - f) [...]\*
  - g) [...]\*; and
  - h) [...]\*
6. In particular, the Divestment Business includes (but is not limited to) the following main immovable tangible assets held by Ahlstrom Osnabrück GmbH:
- a) [...]\*
  - b) [...]\*:
    - (i) [...]\*
    - (ii) [...]\*; and
    - (iii) [...]\*
7. In addition to paragraphs 5 and 6 above, the Divestment Business also includes (but is not limited to) the following tangible assets held by Ahlstrom Osnabrück GmbH:
- a) [...]\*, such as:
    - (i) [...]\*,
    - (ii) [...]\*,
    - (iii) [...]\*,
    - (iv) [...]\*,
    - (v) [...]\*, and
    - (vi) [...]\*
  - b) all books and records and all other documents and data (whether in hard copy or electronic format) dedicated to the production and distribution of PRIP, Abrasives and electrotechnical paper, such as drawings, samples, manuals, sales and promotional material, correspondence and lists of customers.
8. The Osnabrück plant contains certain facilities which are predominantly used for OSN06 (which forms part of the Carve-Out Business), but which are also to some extent utilised by OSN03 and/or OSN04 (which form part of the Divestment Business). With respect to the coating kitchen, stock preparation and the Autoline, Ahlstrom commits as follows:
- a) **Coating kitchen:** [...]\*
  - b) **Stock preparation:** [...]\*
  - c) **Autoline:** [...]\*
  - d) **R&D space:** [...]\*

e) **Storage space:** [...]\*.

9. Ahlstrom commits that the quality level of the separated functions/facilities for the Divestment Business will be at least equal to the quality level of the current functions/facilities used by the Divestment Business.

### **Main intangible assets**

10. The Divestment Business includes the following registered patents held by Ahlstrom Osnabrück GmbH (exhaustive list):

- i.P4014 – One side impregnated printing paper support; and
- ii.P4163 – Vorimprägnat und Verfahren zu seiner Herstellung (Eng. *Pre-impregnation and process for its preparation*).

11. The following registered patents held by Ahlstrom will be licensed at no cost to the Divestment Business:

Patent ID No. 149 – Process for improved pigment retention in papermaking (Medusa).

12. The trademarks held by Ahlstrom Osnabrück GmbH relating to the production of PRIP will be included in the Divestment Business. These trademarks are the following (exhaustive list):

- a) Kaefoflex (registered as a community trademark and British national trademark);
- b) Kaefodur (registered as a community trademark and a German national trademark);  
and
- c) Kaefomold (registered as a community trademark).

### **Main licences, permits and authorisations**

13. The Divestment Business will include the following main permits and regulatory authorisations:

- (i) P4014 – the main operation permit according to the German Federal Emission Control Act (BImSchG) last amended 5 February 2013, currently covering, in particular, the operation of paper machines OSN03, OSN04, and OSN06; boiler house; and the wastewater treatment (including required amendments thereof);  
and
- (ii) permit for the direct discharge of wastewater into river Hase (last amended 28 February 2008).

14. The following permit will depending on the final structuring of the transfer of the Divestment Business, be held by either the Divestment Business or the Carve-Out Business, in each case together with the remaining fresh water abstraction assets. Regardless, the **JV**

**Agreement** will ensure equal and non-discriminatory access to fresh water supply for both the Divestment Business and the Carve-Out Business.

- (i) permit (historic water right, linked to the site near OSN03) to retain the Nette/Hase-water and to abstract 900 cbm/h of river water at the weir.

- 15. Moreover, approximately [...] carbon dioxide emission certificates are needed for operating OSN03 and OSN04 (the vast majority relates to OSN03). All such emission certificates will be included in the Divestment Business.

### **Customer agreements**

- 16. As regards customer agreements in relation to the Divestment Business, [...]\*. Production and sales of the Divestment Business' products (notably PRIP and Abrasives) are [...]\*. However, the Divestment Business and its recurrent customers [...]\*. All such customer arrangements will be included in the Divestment Business. Please refer to confidential Annex 2 for a list of the Divestment Business' current customers.

### **Supply agreements**

- 17. As regards supply agreements, supply framework agreements for pulp and various chemicals are entered into [...]\*, and the Divestment Business purchases the relevant raw materials on an order basis [...]\*. Certain supplies of chemicals needed specifically for the production relating to the Divestment Business are, however, handled [...]\*. Such [...]\* will be included in the Divestment Business.
- 18. In order to procure that the Divestment Business may continue to be supplied with necessary raw materials, and thereby maintain the production as currently conducted, Ahlstrom [...]\* will, at the option of the third party purchaser, enter into a **Transitional Sourcing and Supply Agreement** in respect of the continuation of supplies of raw materials following the divestment of the Divestment Business (as further described in Section 2.10 below).

### **Distribution and other service agreements**

- 19. As regards other main contracts and agreements relevant for the operations of the Divestment Business, *e.g.* service and distribution agreements, such agreements will be included in the Divestment Business.

## Customer, credit and other records

20. All customer lists and all other relevant data relating to customers of the Divestment Business, including but not limited to, agreed discounts, volume commitments, credit records, order and invoice history will be included in the Divestment Business.

## Key Personnel

21. All Key Personnel will, at the option of the third party purchaser, remain with the Divestment Business (subject to German TUPE-regulation).

### Key Personnel of the Divestment Business

Product CAT	Surname	Name	Function	White Collars
-	[...]*	[...]*	General Plant Manager	X
PRIP	[...]*	[...]*	Product/Sales Manager PRIP	X
PRIP	[...]*	[...]*	Technical Customer Service Manager PRIP	X
PRIP	[...]*	[...]*	Customer Service PRIP	X
PRIP	[...]*	[...]*	Customer Service PRIP	X
PRIP	[...]*	[...]*	Production Manager	X
PRIP	[...]*	[...]*	Deputy Production Manager	X
PRIP	[...]*	[...]*	Quality Specialist/Laboratorian	X
PRIP	[...]*	[...]*	Quality Specialist/Laboratorian	X
ABRASIVES	[...]*	[...]*	Product/Sales Manager ABR	X
ABRASIVES	[...]*	[...]*	Customer Service ABR	X
ABRASIVES	[...]*	[...]*	Customer Service ABR/Cable	X
ABRASIVES	[...]*	[...]*	Deputy Plant Manager	X
ABRASIVES	[...]*	[...]*	Deputy Production Manager	X
ABRASIVES	[...]*	[...]*	Quality Specialist/Laboratorian	X
-	[...]*	[...]*	Key Financial Manager	X
PRIP ABRASIVES	[...]*	[...]*	Machine planning and sales coordination	X

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## Personnel

22. All Personnel (including employees being currently partly dedicated to the Carve-Out Business) will, at the option of the third party purchaser and subject to German TUPE-regulation, remain with the Divestment Business following the divestment. As described in Sections 3.2.9-3.2.10 below, the Personnel do not include employees who are exclusively dedicated to the Carve-Out Business or the key employees indispensable for the Carve-Out Business (but not for the Divestment Business) listed under Sections 3.2.9-3.2.10 below.

23. The total headcount of the Divestment Business amounts to [...] employees (including the Key Personnel listed under 20 above). Please refer to the attached confidential Annex 3 for an exhaustive list of all employees employed at the Osnabrück plant as per 31 March 2013 (including their names and functions). The enclosed list includes information on “shared personnel” (*i.e.* employees who are listed under the section “central activity” operating at various central functions at the Osnabrück plant and who are currently allocated both to the Divestment Business and the Carve-Out Business). Such “shared personnel” will, at the option of the third party purchaser and subject to German TUPE-regulation remain with the Divestment Business following the divestment to a third party purchaser. In addition, the enclosed list indicates the employees exclusively dedicated to the Carve-Out Business and who will not remain with the Divestment Business following the divestment to a third party purchaser.
24. The Divestment Business will, at the option of the Carve-Out Business, offer the Carve-Out Business a **Site Services Agreement** enabling the Carve-Out Business to maintain the use of required central functions and services (including employees dedicated to such central functions and services) following a divestment of the Divestment Business (as further described in Section 3.2.11 below).
25. No employees are currently seconded to the Divestment Business from other business areas or business units within Ahlstrom.

**Arrangements for the supply with the following services and products by Ahlstrom to the Divestment Business after Closing**

26. The following ancillary and transitional agreements will, at the option of the third party purchaser, be entered into by Ahlstrom and offered on the following main terms:

a) Transitional IT Services Agreement

**Scope:** For a transitional period Ahlstrom will offer the following transitional IT services on the following main terms to a third party purchaser of the Divestment Business:

- (i) [...]\*;
- (ii) [...]\*;
- (iii) [...]\*; and
- (iv) [...]\*.

The transitional services will include commitments and obligations of Ahlstrom to procure that the third party purchaser can migrate all required data and receive all support required in order to successfully establish and incorporate its own systems and functions required for the Divestment Business.

**Term:** [...]\*, with an option to be prolonged by the Trustee.

**Notice period for the third party purchaser:** [...]\* (with the possibility for the third party purchaser to partly terminate services provided under the agreement).

**Cost model for compensation to be paid by third party purchaser:** The price for the services will be [...]\* and the third party purchaser will not be offered less favourable terms than is afforded the Divestment Business today. [...]\*.

**Enforcement:** In case of a party’s breach of contract, the other party has a claim for damages or specific performance under German law.

The service level shall be no lower than the current service level for Ahlstrom intra-group services.

b) Transitional Sourcing and Supply Agreement

**Scope:** At the option of the third party purchaser, Ahlstrom commits to procure to supply the Divestment Business with all or specific raw materials (such as pulp and chemicals) required for the current production of PRIP and Abrasives at the Osnabrück plant, subject to competition law requirements and third party consents.

The agreement will include an undertaking for the Divestment Business to on a regular basis inform Ahlstrom about its upcoming need for raw materials to be used exclusively by the Divestment Business. Ahlstrom shall then place the actual purchase orders based on the information received from the Divestment Business.

**Term:** [...]\*, with an option to be prolonged by the Trustee.

**Notice period for the third party purchaser:** [...]\* (with the possibility for the third party purchaser to partly terminate services provided under the agreement).

**Cost model for compensation to be paid by third party purchaser:** The price for the services will be [...]\* and the third party purchaser will not be offered less favourable terms than is afforded the Divestment Business today. [...]\*.

**Enforcement:** Enforcement provisions will be back-to-back with underlying supply agreement with external third party suppliers.

**ASSETS EXCLUDED FROM THE SCOPE OF THE DIVESTMENT BUSINESS**

27. As described in Section 1 and 2 above, the Divestment Business includes all tangible and intangible assets, personnel, rights and liabilities held by Ahlstrom Osnabrück GmbH, excluding only (i) the JV Assets and (ii) the Carve-Out Business. The scope of the JV Company (including the JV Assets) and the Carve-Out Business, respectively, is further defined in Sections 3.1 and 3.2 below.

**Scope of the JV Company and the JV Assets**

28. Pursuant to Section B of these Commitments, the JV Company (including the JV Assets) consists of the following assets:

*Main tangible assets*

29. The following main tangible assets will be included in the JV Company:
- a) the Power Plant (including *inter alia* steamboiler 5 and 6 and turbine 4 and 6) and the property on which the Power Plant is located; and
  - b) the waste water handling system and certain fresh water supply assets.

For a more detailed list of the assets which will be transferred to the JV Company, please see confidential Annex 4.

*Main licences, permits and authorisations*

30. The following main permits and regulatory authorisations will be separated and then transferred to the JV Company:

- (i) the permit for the operation of the boiler house will be separated from the main operation permit according to the German Federal Emission Control Act (BImSchG) in which it is currently included and be transferred together with the boiler house to the JV Company;
- (ii) the permit for the operation of the wastewater treatment will be separated from the main operation permit according to the German Federal Emission Control Act (BImSchG) in which it is currently included and be transferred together with the wastewater treatment assets to the JV Company; and
- (iii) the permit for the direct discharge of wastewater into river Hase will have to be reissued to the JV Company.

31. Moreover, all carbon dioxide emission certificates needed for operating the Power Plant will be transferred to the JV Company.

#### *Third party agreements*

32. As regards energy and gas supply agreements between Ahlstrom Osnabrück GmbH and [...]\*, all such electricity and gas supply agreements will be assigned from Ahlstrom Osnabrück GmbH to the JV Company. As regards the third party lease agreement concerning the lease of machinery for the production of pressurised air currently held by Ahlstrom Osnabrück GmbH, such agreement will also be assigned from Ahlstrom Osnabrück GmbH to the JV Company.

#### *Personnel*

33. Ahlstrom and the third party purchaser will ensure that the JV Company will not employ any personnel from either the Divestment Business or the Carve-Out Business. Personnel currently dedicated to the JV Assets will remain with the Divestment Business. The Divestment Business and the Carve-Out Business will conduct the required operations of the JV Company by use of personnel employed by the Divestment Business and/or the Carve-Out Business. Such services and operations will be governed by the provisions under the JV Agreement. The Divestment Business and the Carve-Out Business respectively shall also cooperate in good faith and assist each other and/or the JV Company in matters in the joint interest of the parties and the Osnabrück plant as a whole.

#### *Arrangements for the supply with the following services and products by the JV Company to the Divestment Business and to the Carve-Out Business after Closing*

34. The Divestment Business' and the Carve-Out Business' access to the JV Assets as well as the Divestment Business' and/or the Carve-Out Business' provision of services to the JV Company will be governed by a long-term JV Agreement, which will have a term of [...]\* with a notice period for each of the Divestment Business and the Carve-Out Business of [...]\*. The following services will be provided under the JV Agreement:

##### (i) Energy supply

**Scope:** The JV Company will provide each of the Divestment Business and the Carve-Out Business with its respective requirement of electricity, steam, gas and pressurised air (including heating and electricity for premises) within the capacity levels of the Power Plant.



Currently, Ahlstrom Osnabrück GmbH's own Power Plant produces [...] % of the steam and pressurised air consumption and [...] % of the electricity required for the current production at all three paper machines at the Osnabrück plant. The remaining [...] % of the electricity required is purchased from external third party suppliers.

The supply obligation hereunder to the Divestment Business and the Carve-Out Business will be performed by a mix of (i) supply of electricity, steam and pressurised air generated by the Power Plant, and (ii) supply of electricity and gas purchased by the JV Company from external third party suppliers.

The Divestment Business and the Carve-Out Business will each have the right to [...] % of the electricity, steam and pressurised air generated by the Power Plant. The exact terms and conditions relating to the supply referred to in (i) and (ii) above will be negotiated between the Divestment Business and the Carve-Out Business (through Ahlstrom or one of its Affiliated Undertakings) and set out in the JV Agreement.

Disturbances in the supply of electricity, steam and pressurised air will affect the Divestment Business and the Carve-Out Business in the same way. In order to secure the continued and uninterrupted supply for both the Carve-Out Business and the Divestment Business, the JV Company undertakes to maintain backup boilers for the production of electricity and steam.

Ahlstrom Osnabrück GmbH has recently entered into a [...] with [...] for the requirement of supply of electricity from external third parties. Ahlstrom Osnabrück GmbH currently has agreed with [...] concerning the external supply of energy for the period [...]. As described above, all third party agreements relating to the energy supply for the Divestment Business and the Carve-Out Business will be assigned to the JV Company.

**Cost model for compensation to be paid by the Divestment Business and the Carve-Out Business.** The price for the services will be [...] and the Divestment Business and the Carve-Out Business will not be offered less favourable terms than is afforded the Divestment Business and the Carve-Out Business today. [...].

**Enforcement:**

*Power Plant*

In case of a party's breach of contract, the other party has a claim for damages or specific performance under German law.

*Electricity and gas supply by external third parties*

Enforcement provisions according to contract with external third party. The Divestment Business and the Carve-Out Business will have an equal right to claim compensation from third parties.

(ii) Fresh water supply and waste water treatment/handling

**Scope:**

*Fresh water supply*

The JV Company will supply the Divestment Business and the Carve-Out Business, within the fresh water capacity reservation available for Ahlstrom Osnabrück GmbH, with its requirement for freshwater for the production of paper, including services such as fresh water treatment. The fresh water supply is limited by current permitted volumes under the fresh water retainment and abstraction permit currently held by Ahlstrom Osnabrück GmbH. With current normal production levels, the Osnabrück plant uses approx. [...] \*% of permitted volumes of fresh water meaning that there is ample room for increased use of fresh water within the current permit. The Divestment Business will allow the JV Company to use and rely on the fresh water retainment and abstraction permit and the assets related thereto.

The Divestment Business and the Carve-Out Business will each have the right to [...] \*% of the fresh water capacity reservation available within the current permit.

*Waste water handling*

The JV Company will provide the Divestment Business and the Carve-Out Business, within the waste water capacity reservation available for Ahlstrom Osnabrück GmbH, with handling of 100 per cent of the current and future volumes of waste water generated by the production on OSN03, OSN04 and OSN06, including services such as incineration of sludge, incineration of landfill waste and waste water treatment.

The agreement will include provisions concerning a limited level of coordination of production schedules between the Divestment Business and the Carve-Out Business. This is restricted to coordination of the production of black coloured products in order to avoid that the limit for permitted waste water is exceeded. The coordination planning program shall not involve exchange of sensitive information in relation to e.g. the respective party's products and volumes to be produced and/or details on specific customers and customer orders.

**Cost model for compensation to be paid by the Divestment Business and the Carve-Out Business.** The price for the services will be [...] \* and the Divestment Business and the Carve-Out Business will not be offered less favourable terms than is afforded the Divestment Business and the Carve-Out Business today. [...] \*.

**Enforcement:** In case of a party's breach of contract, the other party has a claim for damages or specific performance under German law.

**Scope of the Carve-Out Business**

35. Pursuant to Section B of these Commitments, the Carve-Out Business consists of the following assets:

*Main tangible assets*

36. The following main movable tangible assets dedicated to the production and distribution of wallcover, poster and silco will be included in Carve-Out Business:

- a) The paper machine OSN06;
- b) [...]\*
- c) [...]\*
- d) [...]\*
- e) [...]\*
- f) [...]\*
- g) [...]\*
- h) [...]\*; and
- i) [...]\*

For a more detailed list of the assets which will be included in the Carve-Out Business, please see confidential Annex 5.

37. The following main immovable tangible assets dedicated to the production and distribution of wallcover, poster and silco will be leased to the Carve-Out Business:

- a) [...]\*
- b) [...]\*
- c) [...]\*
- d) [...]\*
- e) [...]\*
- f) [...]\*; and
- g) [...]\*

38. The lease agreement will also include the right for the Carve-Out Business to use other areas at the Osnabrück plant as required to efficiently operate the Carve-Out Business as a standalone business, *e.g.* parking lots, cafeteria, and other facilities not dedicated only to the Divestment Business. Premises and facilities will be leased as is.

The lease agreement referred to in paragraphs 37 and 38 above will be offered by the Divestment Business to the Carve-Out Business on terms and conditions negotiated between the third party purchaser and the Carve-Out Business (through Ahlstrom or one of its Affiliated Undertakings).

39. In addition to paragraphs 36 and 37 above, the following tangible assets will be included in the Carve-Out Business:

- a) [...]\* such as:
  - (i) [...]\*,
  - (ii) [...]\*,
  - (iii) [...]\*,
  - (iv) [...]\*,
  - (v) [...]\*, and
  - (vi) [...]\*

- b) all books and records and all other documents and data (whether in hard copy or electronic format) dedicated to the production and distribution of wallcover, poster and silco such as drawings, samples, manuals, sales and promotional material, correspondence and lists of customers.

#### *Main intangible assets*

40. The following registered patents will be included in the Carve-Out Business:
- a) P4355 ID: 130 – A new method to improve the dimensional stability of the papers (wallcover).
41. All trademarks relating to the production of wallcover, poster and silco will be included in the Carve-Out Business. The following main trademarks will be included in the Carve-Out Business:
- a) Kaemsol;
  - b) Kaemplex; and
  - c) Chantaffiche.

#### *Main licences, permits and authorisations*

42. The following main permits and regulatory authorisations will be separated and then be included in the Carve-Out Business:
- (i) the permit for the operation of the OSN06 paper machine will be separated from the main operation permit according to the German Federal Emission Control Act (BImSchG) in which it is currently included and transfer together with OSN06 with the Carve-Out Business.
43. The following permit will depending on the final structuring of the transfer of the Divestment Business, be held by either the Divestment Business or the Carve-Out Business, in each case together with the remaining fresh water abstraction assets. Regardless, the **JV Agreement** will ensure equal and non-discriminatory access to fresh water supply for both the Divestment Business and the Carve-Out Business.
- (i) permit (historic water right, linked to the site near OSN03) to retain the Nette/Hase-water and to abstract 900 cbm/h of river water at the weir.
44. Moreover, approximately [...] carbon dioxide emission certificates are needed for operating OSN06. All such emission certificates will be included in the Carve-Out Business. The unit for one emission right is normally one tonne of carbon dioxide emission.

#### *Customer agreements*

45. As regards customer agreements in relation to purchases of wallcover, poster and silco, [...]\*. Production and sales of wallcover, poster and silco [...]\*. However, the Carve-Out Business and its recurrent customers [...]\*. All such customer arrangements for wallcover, poster and silco will be included in the Carve-Out Business.

### *Supply agreements*

46. As regards supply agreements, supply framework agreements for pulp and various chemicals [...]\*, and the Carve-Out Business purchases the relevant raw materials [...]\*. Following the separation of the Carve-Out Business, the Carve-Out Business will continue to purchase raw materials [...]\*.

### *Distribution and storage of finished goods*

47. As regards other main contracts and agreements relevant for the operations of the Carve-Out Business, e.g. service and distribution agreements, such agreements are currently entered into and held by Ahlstrom Osnabruck GmbH. They will transfer with the Divestment Business to a third party purchaser. As regards distribution and handling of finished goods, the Carve-Out Business will enter into new agreements with [...] for logistics and transportation relating to the distribution of the Carve-Out Business' products to customers and storage of finished goods.

### *Service agreements*

48. In order to maintain the current supply of services following a separation of the Carve-Out Business, the Divestment Business will, at the option of the Carve-Out Business, enter into an ancillary **Site Services Agreement** in conjunction with the divestment (as further described in Section 3.2.11 below). As regards services in relation to the sheeting, such services are currently handled under a service and leasing agreement with the external supplier [...]. As the sheeting services only relates to the production at OSN06, the service agreement with [...] will be included in the Carve-Out Business.

### *Customer, credit and other records*

49. All customer lists and all other relevant data relating to customers of the Carve-Out Business, including but not limited to, agreed discounts, volume commitments, credit records, order and invoice history will be included in the Carve-Out Business.

*Key personnel exclusively dedicated to the Carve-Out Business*

50. The following key employees are exclusively dedicated to the Carve-Out Business and will thus not remain with the Divestment Business following the divestment to a third party purchaser (subject to German TUPE-regulation):

Product CAT	Surname	Name	Function	WC/BC
ALL THREE	[...]*	[...]*	Plant Manager	WC
ALL THREE	[...]*	[...]*	Financial Manager	WC
POSTER	[...]*	[...]*	Product Manager Poster	WC
POSTER	[...]*	[...]*	Sales Service Manager Poster	WC
POSTER/ WALLCOVER	[...]*	[...]*	Customer Service Poster/Wallpaper	WC
POSTER	[...]*	[...]*	Customer Service Poster	WC
ALL THREE	[...]*	[...]*	Laboratory Technician, TCS Specialist Poster	WC
WALLCOVER	[...]*	[...]*	Product Manager Wallcover	WC
WALLCOVER	[...]*	[...]*	TCS Wallcover	WC
SILCO	[...]*	[...]*	Sales Service Manager SILCO	WC
SILCO	[...]*	[...]*	Product Development Manager SILCO	WC
ALL THREE	[...]*	[...]*	Quality Specialist	WC
ALL THREE	[...]*	[...]*	Planning Specialist OSN06	WC
ALL THREE	[...]*	[...]*	Production Manager OSN06	WC
ALL THREE	[...]*	[...]*	Deputy Production Manager OSN06	WC
ALL THREE	[...]*	[...]*	Machine Tender OSN06	BC
ALL THREE	[...]*	[...]*	Machine Tender OSN06	BC
ALL THREE	[...]*	[...]*	Machine Tender OSN06	BC
ALL THREE	[...]*	[...]*	Machine Tender OSN06	BC
ALL THREE	[...]*	[...]*	Reserve Machine Tender OSN06	BC

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*Other personnel exclusively dedicated to the Carve-Out Business*

51. The total headcount of the Carve-Out Business amounts to [...]\*employees (including the key personnel listed above under paragraph 50 above). Please refer to confidential Annex 2 for an exhaustive list of all employees being exclusively dedicated to the Carve-Out Business and who will thus not remain with the Divestment Business following the divestment to a third party purchaser.

52. Due to the application of the German TUPE-regulation, and if required in order to avoid legal uncertainties regarding the transfer of employment, employees exclusively dedicated to the Carve-Out Business, Ahlstrom Osnabrück GmbH and the Carve-Out Business will enter into a tripartite agreement for the purpose of agreeing on the TUPE application, *i.e.* that the relevant employees (including key employees under Sections 3.2.9-3.2.10) shall transfer to the Carve-Out Business.

*Arrangements for the supply with the following services and products by the Divestment Business to the Carve-Out Business after Closing*

53. In addition to the lease agreement described in Section 3.2.1 above, the following ancillary and transitional agreement will, at the option of the Carve-Out Business, be entered into by the Divestment Business and the Carve-Out Business on terms negotiated between the third party purchaser and the Carve-Out Business (through Ahlstrom or one of its Affiliated Undertakings).

a) Site Services Agreement

**Scope:** At the option of the Carve-Out Business, the Divestment Business will supply the Carve-Out Business use of [...]\*.

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