

***Case No COMP/M.6871 - MOHAWK  
INDUSTRIES/ SPANO INVEST***

Only the English text is available and authentic.

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

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Article 6(1)(b) NON-OPPOSITION

Date: 23/04/2013

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## EUROPEAN COMMISSION

Brussels, 23.04.2013  
C(2013) 2442 final

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 Where possible the information omitted has been replaced by ranges of figures or a general description.

PUBLIC VERSION

MERGER PROCEDURE  
ARTICLE 6(1)(b) DECISION

### **To the notifying party**

Dear Sirs,

**Subject: Case No COMP/M.6871 - MOHAWK INDUSTRIES/ SPANO INVEST  
Commission decision pursuant to Article 6(1)(b) of Council Regulation  
No 139/2004<sup>1</sup>**

- (1) On 14 March 2013, the European Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 by which the undertaking Mohawk Industries, Inc ('Mohawk', United States) acquires within the meaning of Article 3 (1) (b) of the Merger Regulation sole control of certain parts of Spano Invest NV ('Spano', Belgium), by way of purchase of shares. Mohawk is hereinafter designated as the 'Notifying Party' while Mohawk and Spano together are hereinafter designated as the 'Parties'.<sup>2</sup>

#### **1. THE PARTIES**

- (2) Mohawk is a company listed in the New York Stock Exchange. The company is organised in three business segments: Mohawk Flooring, Dal-Tile and the Unilin

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<sup>1</sup> OJ L 24, 29.1.2004, p. 1 ('the Merger Regulation'). With effect from 1 December 2009, the Treaty on the Functioning of the European Union ('TFEU') has introduced certain changes, such as the replacement of 'Community' by 'Union' and 'common market' by 'internal market'. The terminology of the TFEU will be used throughout this decision.

<sup>2</sup> Publication in the Official Journal of the European Union No C 82, 21.3.2013, p. 8.

division. In Europe, Mohawk is present through its Unilin division that itself has three business divisions: panels, flooring and insulation.

- (3) Spano is a Belgium-based group of companies supplying wood-based panels and related products.

## **2. THE OPERATION AND CONCENTRATION**

- (4) The proposed transaction will be concluded in two stages: First, Mohawk will acquire 100% of the shares in Spano. Second, Mohawk will sell Spano's 50% stake in an existing joint venture, Trinterio NV, to a third party, Balta Industries NV. The two transactions are interdependent so that in the event that the second transaction does not take place on the same day as the first, the first transaction will automatically dissolve. Moreover, Locatank NV will also be carved-out from Spano (at the latest) on the day when Mohawk acquires the shares in Spano. Locatank NV will be acquired by Vandena NV.<sup>3</sup>
- (5) The proposed transaction results in Mohawk acquiring sole control of Spano's particle board, industrial glue and green energy activities without any of the activities carried out by Trinterio NV or Locatank NV. Consequently, the proposed transaction constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

## **3. EU DIMENSION**

- (6) The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 2 500 million.<sup>4</sup> In Belgium, France, Germany and the Netherlands, the Parties achieve a combined aggregate turnover of more than EUR 100 million and an individual aggregate turnover of more than EUR 25 million. Each of the Parties has an EU-wide turnover in excess of EUR 100 million.<sup>5</sup> Neither of the Parties achieved two thirds of its EU-wide turnover within one and the same Member State.
- (7) The notified operation therefore has an EU dimension under Article 1(3) of the Merger Regulation.

## **4. COMPETITIVE ASSESSMENT**

- (8) The Parties' activities overlap in the supply of raw and coated particle board, coated MDF, industrial flooring, components and insulation materials.
- (9) There are vertical relationships between Spano's UF resins business and the Parties' raw particle board and Mohawk's MDF/HDF businesses. Vertical relationships also

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<sup>3</sup> Vandena NV is owned by Mr Ide who is the current CEO of Spano. Mr Ide will, however, leave Spano after completion of the transaction. Vandena NV does not presently have any operational activities or investments.

<sup>4</sup> Mohawk: EUR 4 912 million; Spano: EUR [...] million.

<sup>5</sup> Mohawk: EUR [...] million; Spano: EUR [...] million.

arise between the Parties' raw and coated particle board businesses and further between the Parties' particle board businesses and their industrial flooring, insulation and components businesses. In addition, vertical relationships arise between Mohawk's MDF/HDF business and the Parties' coated MDF businesses as well as between the latter and the Parties' component businesses.

#### **A. Relevant market definition**

##### **Relevant product markets**

###### *(i) Raw particle board*

- (10) Raw particle board is an engineered wood product made from wood particles (such as wood flakes, chips, savings and sawdust) and/or other lignocellulosic material in particle form (such as flax shives) which are pressed and bonded together with resin or another binder. Raw particle board is mainly an input in the production of coated particle board and components. However, it may also serve some low-end uses and applications, for instance in the construction industry.
- (11) The Notifying Party submits that raw particle board constitutes a separate product market. This is in line with previous Commission decisions.<sup>6</sup> The Notifying Party further submits that OSB ('oriented strand board') should be included in raw particle boards. The replies to the market investigation did not generally support this view. However, as no competition concerns arise under any reasonable product market definition of raw particle board, the question of whether OSB should be included in raw particle board can be left open for the purposes of this decision.<sup>7</sup>

###### *(ii) Coated particle board*

- (12) Coated particle board is raw particle board that has been further refined through coating. Hence, it is a higher value product compared to raw particle board. The Notifying Party submits that coated particle board constitutes a separate product market. This is in line with a previous Commission decision.<sup>8</sup>
- (13) Various different coating materials and techniques can be used in the production of coated particle board. The Notifying Party submits that such materials and techniques include (i) melaminizing; (ii) lacquering; (iii) paper foiling; (iv) laminating with HPL (high pressure laminate) or CPL (continuous pressure laminate); and (v) veneering. The Parties are only active in the production of melaminized and lacquered particle boards.
- (14) The Commission has not previously segmented the production of coated particle board on the basis of the coatings used.<sup>9</sup> The Notifying Party submits that it is not

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<sup>6</sup> Cases COMP / M.4525, *Kronospan / Constantia*, paragraph 16, and COMP / M.4165, *Sonae Industria / Hornitex*, paragraphs 7 and 11. In the latter case, the exact market definition was however left open.

<sup>7</sup> The Parties are not active in the production of OSB. The market share figures provided by the Notifying Party also assume that OSB is not part of the relevant product market. Form CO, paragraphs 143–4.

<sup>8</sup> Case COMP / M.4525, *Kronospan / Constantia*, paragraph 17.

<sup>9</sup> Case COMP / M.4525, *Kronospan / Constantia*, paragraph 17.

necessary to make such a subdivision as the different coatings overlap significantly in their applications.

- (15) According to the replies to the market investigation, there are indications that further segmentation of the coated particle board market could be warranted. Nevertheless, as the proposed transaction does not give rise to competition concerns under any reasonable product market definition, the Commission considers the exact market definition can be left open for the purposes of this decision.

*(iii) MDF/HDF*

- (16) MDF (Medium Density Fibreboard) and HDF (High Density Fibreboard) are engineered wood products made from compressed wood fibres. Whereas MDF is mainly used as an input product in the production of coated MDF and in the furniture industry, HDF is employed as a raw material for laminate flooring.
- (17) The Commission has previously left open the question of whether MDF and HDF belong to the same relevant product market.<sup>10</sup> As the proposed transaction does not give rise to competition concerns under any reasonable product market definition, the Commission considers that the exact market definition can be left open for the purposes of this decision.<sup>11</sup>

*(iv) Coated MDF*

- (18) Coated MDF is (raw) MDF that has been further refined through coating and is thus a higher value product compared to (raw) MDF. Coated MDF and (raw) MDF have mainly the same applications.
- (19) Coated MDF can be produced using the same coating materials and techniques that are used for coating raw particle board.<sup>12</sup> The Parties are only active in the production of melaminated and lacquered MDF.
- (20) The Notifying Party submits that coated MDF should constitute a separate relevant market distinct from (raw) MDF for the same reasons that coated particle board is distinguished from raw particle board. This is in line with the results of the market investigation.<sup>13</sup>

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<sup>10</sup> Case COMP / M.4165, *Sonae Indústria / Hornitex*, paragraphs 8 and 11.

<sup>11</sup> Of the Parties, only Mohawk is active in the production of MDF and HDF and there is no affected market.

<sup>12</sup> See above paragraph (13).

<sup>13</sup> Replies to the Commission's Questionnaire to Customers of 14 March (Questions 5 and 6) and replies to the Commission's Questionnaire to Competitors of 14 March (Questions 5 and 6).

- (21) However, as the proposed transaction does not give rise to competition concerns under any reasonable product market definition, Commission considers that the exact market definition, including the possible sub-segmentation by coating material, can be left open for the purposes of this decision.

*(v) Components*

- (22) Components consist of coated particle board or coated MDF that has been shaped to a required profile. Components are thus coated particle board or MDF processed into more sophisticated products which are used for furniture and wall systems or sold via DIY (Do-It-Yourself) shops.
- (23) The Notifying Party submits that components constitute a separate product market. This is in line with previous Commission decisions; however, previous Commission decisions have left open the question of whether the market of components should be further divided into subsegments according to the end-use of the component, e.g. into furniture components and building construction components.<sup>14</sup>
- (24) As the proposed transaction does not give rise to competition concerns under any reasonable product market definition, the Commission considers that the exact market definition, including the question of possible sub-segmentation by end-use of the component, can be left open for the purposes of this decision.<sup>15</sup>

*(vi) Industrial flooring*

- (25) Products for industrial flooring consist of raw or coated particle boards that are profiled for use as floors in industrial buildings, warehouse platforms or as industrial tracks. The products may have tongue and groove profiles on some of their sides for the panels to fit well so that they form a smooth surface.
- (26) The Notifying Party submits that industrial flooring constitutes a separate product market, distinct from wooden and laminate flooring because of differences in production and range of usability, prices and end-customers. This is in line with a previous Commission decision.<sup>16</sup>
- (27) The market investigation has largely confirmed the market definition proposed by the Notifying Party.<sup>17</sup> However, as the proposed transaction does not give rise to competition concerns under any reasonable product market definition, the Commission considers that the exact market definition can be left open for the purposes of this decision.

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<sup>14</sup> COMP / M.4165, *Sonae Indústria / Hornitex*, paragraph 11.

<sup>15</sup> The Parties are only active in the production of furniture components and there is no affected market.

<sup>16</sup> Case COMP / M.2051, *Nordic Capital / HIAG / Nybron / Bauwerk*, paragraphs 11 and 13.

<sup>17</sup> Replies to the Commission's Questionnaire to Customers of 14 March (Questions 5 and 6) and replies to the Commission's Questionnaire to Competitors of 14 March (Questions 5 and 6).

*(vii) Insulation materials*

- (28) Insulation materials (or panels) are composed of foam and mineral wools which reduce thermal and acoustic exchange between different elements of construction. The Commission has previously found that insulation products constitute a separate market from other building products.<sup>18</sup> The Commission has left open the question of whether insulation materials could be subdivided into further subcategories.<sup>19</sup>
- (29) As the proposed transaction does not give rise to competition concerns under any reasonable product market definition, the Commission considers that the exact market definition can be left open for the purposes of this decision.<sup>20</sup>

*(viii) UF resins*

- (30) UF resins (urea-formaldehyde resins) are used as glue in the panel industry in the production of, e.g. raw particle board and MDF. They also have usages outside the panel industry, including, for example, in textiles and paper. In previous decisions, the Commission has found that UF resins constitute a separate relevant product market, distinct from PF resins (phenol-formaldehyde resins).<sup>21</sup> The question of whether the market should be further subdivided based on the end-usage of the product was left open.<sup>22</sup>
- (31) As the proposed transaction does not give rise to competition concerns under any reasonable product market definition, the Commission considers that the exact market definition can be left open for the purposes of this decision.<sup>23</sup>

**Relevant geographic markets**

*(i) Raw particle board*

- (32) The Commission has previously considered the relevant geographic market to be wider than national with a reach of circa 500 km, although the exact scope has been

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18 Cases COMP / M.3407, *Saint Gobain / Dahl*, paragraphs 8–9, COMP / M.1974, *Compagnie de Saint-Gobain / Raab Karcher*, paragraph 9, and COMP / M.1873, *Compagnie de Saint-Gobain / Meyer International*, paragraphs 9–10.

19 Cases COMP / M.3943, *Saint-Gobain / BPB*, para 28, COMP / M.3407, *Saint Gobain / Dahl*, para 10, COMP / M.1974, *Compagnie de Saint-Gobain / Raab Karcher*, para 9, and COMP / M.1873, *Compagnie de Saint-Gobain / Meyer International*, para 10. Insulation materials may be sold, e.g. as rigid panels for walls or elastic mats for the insulation of pipes. The actual insulation material may be made of, e.g. foams or fibres of different materials such as polyurethane ('PUR'), polyisocyanurate ('PIR'), wood fibres or cellulose.

20 The Parties' activities overlap only if the supply of insulation materials for building applications was considered in general, not in respect to specific insulation materials: Mohawk's insulation materials are made of polyurethane and polyisocyanurate foams whereas Spano's products are made of wood fibres or cellulose. Moreover, Spano does not actually manufacture the insulation products itself, but resells products manufactured by other producers.

21 Cases COMP / M.2396, *Industri Kapital / Perstorp (II)*, paragraph 26, and COMP / M.1813, *Industri Kapital / Nordkem / Dyno*, paragraph 30.

22 Case COMP / M.1813, *Industri Kapital / Nordkem / Dyno*, paragraph 30.

23 Of the Parties, only Spano is active in the production of UF resins (for wood applications) and there is no affected market.

left open.<sup>24</sup> The Notifying Party submits that the relevant geographic market is a 500 km radius from the Parties' production plants in South West Belgium.

- (33) During the market investigation, the Commission sought to determine the geographic market based on actual sourcing and supply behaviour of customers and suppliers respectively. To this end, the geographic range that raw particle board can travel is limited by transport costs.<sup>25</sup> The data collected nonetheless shows that the vast majority of the customers who replied typically source their raw particle boards from up to 500 km with nearly half of respondents sourcing from an even further distance.<sup>26</sup> Competitors similarly confirmed that raw particle board producers supply their products across national borders up to a range of 500 km, some supplying even further.<sup>27</sup>
- (34) The vast majority of customers and competitors concluded there to be no barriers to imports into Belgium, the Netherlands or Luxembourg.<sup>28</sup> Approximately half of the customers who replied to the market investigation indicated that either no physical presence of the supplier is required in the country where the customer is located or that only a sales force or similar presence is required. Moreover, a clear majority of the customers that had indicated that domestic presence was required nonetheless confirmed that they source within up to 500 km or even further.<sup>29</sup> A majority of the competitors that replied to the market investigation considered that no presence or only a sales force was required in the national territory of the country where they wanted to sell their products.<sup>30</sup>

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24 Cases COMP / M.4525 – *Kronospan / Constantia*, paragraphs 24–6 and 29–30, and COMP / M.4165, *Sonae Indústria / Hornitex*, paragraphs 13–4.

25 On the basis of replies to the Commission's market investigation, transport costs are quite substantial compared to the overall value of the product – a clear majority of replies vary in the range of 5–15% of the purchase and sales price while one competitor and three customers put the figure as high as 20–35%. Replies to the Commissions Questionnaires to Customers and Competitors, both of 14 March, (Questions 14 and 16 respectively).

26 Replies to the Commission's Questionnaire to Customers of 14 March (Question 15).

27 Replies to the Commission's Questionnaire to Competitors of 14 March (Question 17).

28 Replies to the Commission's Questionnaires to Customers and Competitors, both of 14 March, (Questions 10 and 12 respectively).

29 Replies to the Commission's Questionnaire to Customers of 14 March (Questions 8 and 15).

30 Replies to the Commission's Questionnaire to Competitors of 14 March (Question 10).



- (35) It is possible that for historical reasons local manufacturers have higher market shares in their home territories.<sup>31</sup> It is however apparent that cross-border trade flows are significant: concerning imports into the Benelux, it follows from the fact that the Parties are the only manufacturers located there that the demand for raw particle board not supplied by the Parties must be satisfied by competing production located in other countries. As to exports, the majority of raw particle board manufactured by the Parties is exported out of the Benelux countries.<sup>32</sup>
- (36) On the basis of replies to the Commission's market investigation, the pricing levels of raw particle board in Belgium, the Netherlands, France and Germany appear to be similar. Prices quoted by suppliers operating in these territories showed that the difference in prices charged by a given supplier varied by a maximum of 5–10% between deliveries to the above-mentioned national territories.<sup>33</sup> Concerning those customers who provided figures for deliveries to numerous national territories, some individual customers reported having acquired the same price in all territories, and the majority reported either the same prices or price differences of a maximum of 5% between the lowest and the highest priced territory.<sup>34</sup>
- (37) In light of the above, the Commission considers that the relevant geographic market for the purposes of this decision is at least cross-border regional with a range of 500 km from the Parties' production plants in South West Belgium.

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31 Paragraph 29 of the Commission Notice on the definition of relevant market for the purposes of Community competition law (97/C 372/03) highlights the fact that companies might enjoy high market shares in their domestic markets just because of the weight of the past. Hence, high market shares as such do not necessarily mean the markets would be national.

32 In 2011, circa [50-60]% of Spano's EEA-supplies of raw particle board in volume were to non-Benelux countries. For Mohawk, the figure was [60-70]% and Mohawk supplied more to France and Germany than to Belgium where their production facilities were. Form CO paragraph 153 and Annex 9 to the Form CO, table 5.

33 The assessment was based on the prices of standard P2 E1 18 mm raw particle board. The figure given is the difference between the highest and lowest prices quoted by each supplier. The Commission also calculated the average prices quoted by all suppliers in a given territory. The difference was approximately 3% between the lowest price average (France) and highest (Germany), Belgium and the Netherlands falling between these two ends. For the purposes of calculations, price ranges given by some respondents were replaced by the average of the lower and upper limits given (e.g. 100–110 would result in 105). The calculation did not allow for consideration of the amounts sold by different suppliers. Replies to the Commission's Questionnaire to Competitors of 14 March (Question 19) and, for Mohawk, Form CO paragraph 373.

34 The assessment was based on the prices of standard P2 E1 18 mm raw particle board. The figure given is the difference between the lowest and the highest prices quoted by each customer. The Commission also calculated the average prices quoted by all customers in a given territory. The difference was approximately 23% between the lowest price average, France, and highest, the Netherlands. There were, however, a significantly smaller number of replies to prices in the Netherlands and the omission of the highest one of them would have brought the difference down to circa 13% with Germany now being the highest and France the lowest, the Netherlands and Belgium falling in between. For the purposes of calculations, price ranges given by some respondents were replaced by the average of the lower and upper limits given (e.g. 100–110 would result in 105). Abnormally low quotes (less than 5% of the average) were omitted. Quotes for other qualities or thicknesses were also omitted unless the respondent had given an indication on how the price they gave compares to that of the requested example board. The calculation did not allow for consideration of the amounts sold by different suppliers. Replies to the Commission's Questionnaire to Customers of 14 March (Question 17).

(ii) *Coated particle board*

- (38) The Commission has previously considered the relevant geographic market to be at least a radius of 1000 km, although the exact scope has been left open.<sup>35</sup> The Notifying Party submits that the relevant geographic market is a radius of 1000 km from their production plants in South West Belgium.
- (39) During the market investigation, the Commission sought to determine the geographic market based on actual supply and sourcing behaviour of suppliers and customers respectively. To this end, the range coated particle board can travel is limited by transport costs.<sup>36</sup> The replies to the Commission's market investigation show that the vast majority of customers typically source their coated particle boards from a range wider than national and up to 500 km with nearly half of customers sourcing from up to 1000 km or even further.<sup>37</sup> As to competitors, a clear majority of them indicated that they supplied their coated particle boards up to a 1000 km range or even further.<sup>38</sup>
- (40) The replies the Commission's market investigation also confirmed that there are no barriers to imports into Belgium, the Netherlands or Luxembourg.<sup>39</sup> A majority of the customers who replied to the market investigation indicated that either no physical presence of the supplier is required in the country where the customer is located or that only a sales force or similar presence is required. Moreover, a clear majority of those customers that had indicated that domestic presence was required nonetheless indicated that they sourced up to 500 km or further.<sup>40</sup> A majority of the competitors who replied to the market investigation considered that no presence or only a sales force was required in the national territory of the country where they wanted to sell their products.<sup>41</sup>
- (41) It is possible that for historical reasons local manufacturers have higher market shares in their home territories.<sup>42</sup> It is however apparent that cross-border trade flows are significant. For instance, Mohawk exports [70-80]% of its production out of

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35 Cases Comp- M.4525, *Kronospan / Constantia*, paragraphs 34–5, and COMP / M.4165, *Sonae Indústria / Hornitex*, paragraphs 13–4.

36 Customers and competitors informed the Commission during the market investigation that transport costs are quite substantial compared to the overall value of the product – a clear majority of replies vary in the range of 5–15% of the purchase and sales price while two customers put the figure as high as 20–35%. Replies to the Commission's Questionnaires to Customers and Competitors, both of 14 March, (Questions 14 and 16 respectively).

37 Replies to the Commission's Questionnaire to Customers of 14 March (Question 15).

38 Replies to the Commission's Questionnaire to Competitors of 14 March (Question 17).

39 Replies to the Commission's Questionnaires to Customers and Competitors, both of 14 March, (Questions 10 and 12 respectively).

40 Replies to the Commission's Questionnaire to Customers of 14 March (Questions 8 and 15).

41 Replies to the Commission's Questionnaire to Competitors of 14 March (Question 10).

42 Paragraph 29 of the Commission Notice on the definition of relevant market for the purposes of Community competition law (97/C 372/03) highlights the fact that companies might enjoy high market shares in their domestic markets just because of the weight of the past. Hence, high market shares as such do not necessarily mean the markets would be national.

Belgium and [50-60]% out of the Benelux.<sup>43</sup> Moreover, customer and competitors indicated that a number of manufacturers based in other countries were amongst the main competitors in the Benelux.<sup>44</sup>

- (42) In light of the above, the Commission considers that the relevant geographic market for the purposes of this decision is at least cross-border regional with a range of 500 km from the Parties' production plants in South West Belgium. The Commission considers that the question of whether the relevant geographic is wider, possibly up to a radius of 1000 km range, can be left open since the proposed transaction will not give rise to competition concerns even on the basis of the narrower market definition.

*(iii) MDF/HDF*

- (43) The Commission has previously considered the relevant geographic market to be wider than national and at least regional, although the exact scope was left open.<sup>45</sup> The Notifying Party submits that the relevant geographic market is a range of 500 km from their production plants in South West Belgium.
- (44) Replies to the Commission's market investigation indicate that the relevant geographic market is at least cross-border regional.<sup>46</sup> However, the Commission considers that the exact market definition can be left open for the purposes of this decision since the proposed transaction will not give rise to competition concerns even on the basis of the narrower market definition.

*(iv) Coated MDF*

- (45) In line with that of coated particle board, the Notifying Party submits that the relevant geographic market is a radius of 1000 km from their production plants in South West Belgium.
- (46) The Commission observes that the replies to the market investigation confirm that the relevant geographic market is at least cross-border regional.<sup>47</sup> However, the Commission considers that the exact market definition can be left open for the purposes of this decision since the proposed transaction will not give rise to competition concerns even on the basis of the narrower market definition.

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43 Form CO paragraph 184.

44 Replies to the Commission's Questionnaire to Competitors of 14 March (Question 25).

45 Cases COMP / M.4165, *Sonae Indústria / Hornitex*, paragraphs 13–4, and COMP / M.4048, *Sonae Indústria / Tarkett / JV*, paragraphs 20–1.

46 Replies to the Commission's Questionnaires to Customers and Competitors, both of 14 March, (Questions 9 and 11 respectively).

47 Replies to the Commission's Questionnaires to Customers and Competitors, both of 14 March, (Questions 9 and 11 respectively).

(v) *Components*

- (47) The Commission has previously found the relevant geographic market to be EEA-wide.<sup>48</sup> The Notifying Party agrees with the Commission's precedents.
- (48) The Commission observes that the replies to the market investigation confirm that the relevant geographic market for components is at least cross-border regional, if not EEA-wide.<sup>49</sup> However, the Commission considers that the exact market definition can be left open for the purposes of this decision since the proposed transaction will not give rise to competition concerns even on the basis of the narrower market definition.

(vi) *Industrial flooring*

- (49) The Commission has previously found the relevant geographic market to be EEA-wide.<sup>50</sup> The Notifying Party agrees with the Commission's precedents.
- (50) The Commission observes that the replies to the market investigation appear to confirm that the relevant geographic market for industrial flooring is EEA-wide.<sup>51</sup> However, the Commission considers that exact market definition can be left open for the purposes of this decision.

(vii) *Insulation materials*

- (51) The Commission has previously considered the relevant geographic market to be at least national,<sup>52</sup> wider than national,<sup>53</sup> and possibly European-wide or even wider.<sup>54</sup>
- (52) Replies to the Commission's market investigation in this case have indicated that the relevant geographic market in the Benelux countries is at least cross-border regional.<sup>55</sup> However, the Commission considers that the exact market definition can be left open for the purposes of this decision since the proposed transaction will not give rise to competition concerns on the basis of the narrowest market definition.

(viii) *UF resins*

- (53) The Commission has previously discussed whether the relevant geographic markets in continental Europe may be wider than national, although no final position to that

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48 Case COMP / M.4525, *Kronospan / Constantia*, paragraph 37.

49 Replies to the Commission's Questionnaires to Customers and Competitors, both of 14 March, (Questions 9 and 11 respectively).

50 Case COMP / M.2051, *Nordic Capital / HIAG / Nybron / Bauwerk*, paragraph 12.

51 A clear majority of competitors indicated that they supplied even globally. Replies to the Commission's Questionnaires to Customers and Competitors, both of 14 March, (Questions 9 and 11 respectively).

52 Case COMP / M.3943, *Saint-Gobain / BPB*, paragraph 30.

53 Case COMP / M.3142, *CVC / Danske Traelast*, paragraph 14–6.

54 Case COMP / M.3407, *Saint Gobain / Dahl*, paragraphs 17–8.

55 Replies to the Commission's Questionnaires to Customers and Competitors, both of 14 March, (Questions 9 and 11 respectively).

effect has been taken.<sup>56</sup> Commission has further noted that UF resins may be transported to a distance of 400 – 700 km.<sup>57</sup> The Notifying Party submits that the relevant geographic market is wider than national.

- (54) The Commission observes that the replies to the market investigation confirm that the relevant geographic market is at least cross-border regional.<sup>58</sup> However, the Commission considers that exact market definition can be left open for the purposes of this decision since the proposed transaction will not give rise to competition concerns even on the basis of the narrower market definition.

### **B. Competitive assessment**

- (55) Although the Parties' activities overlap in the supply of raw and coated particle board, coated MDF, industrial flooring, components and insulation materials, the proposed transaction only gives rise to one affected market, namely the supply of raw particle board within a radius of 500 km from the Parties' production plants in South West Belgium.
- (56) While the proposed transaction gives rise to various vertical relationships, these relationships do not lead to affected markets.<sup>59</sup>

#### **Raw particle board**

- (57) In relation to the supply of raw particle board, within a 500-km radius from their production plants in South West Belgium, the Parties' achieve a combined market share of [10-20]%, both Parties having a [5-10]% market share.<sup>60</sup> The Parties' market shares have remained relatively constant during 2009–11.<sup>61</sup>
- (58) The Notifying Party maintains that the Parties face competition from producers located in the neighbouring countries, including players such as Swiss Krono Group (France, market share 15–20%<sup>62</sup>), Pflleiderer (Germany, market share 15–20%), Sonae (Germany and France, market share 15–20%), Linex Panneaux (France, market share 5–10%), Kronospan (Germany and the UK, market share 1–5%), CFP

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<sup>56</sup> Case COMP / M.1813, *Industri Kapital / Nordkem / Dyno*, paragraphs 56, 65 and 68.

<sup>57</sup> Case COMP / M.1813, *Industri Kapital / Nordkem / Dyno*, paragraphs 56, 65 and 68.

<sup>58</sup> Replies to the Commission's Questionnaires to Customers and Competitors, both of 14 March, (Questions 9 and 11 respectively).

<sup>59</sup> Vertical relationships exist between Spano's UF resins business and the Parties' raw particle board and Mohawk's MDF/HDF businesses. Vertical relationships are also found between the Parties' raw and coated particle board businesses and further between the Parties' particle board businesses and their industrial flooring, insulation and components businesses. In addition, vertical relationships are found between Mohawk's MDF/HDF business and the Parties' coated MDF businesses as well as between the latter and the Parties' component businesses.

<sup>60</sup> The market shares are the Parties' best estimates based on, inter alia, the annual reports of European Panel Foundation. Form CO paragraph 135 and Annex 9 to the Form CO, table 4.

<sup>61</sup> There is an increment of [0-5] percentage points over the period. Annex 9 to the Form CO, tables 4, 4A and 4B.

<sup>62</sup> The market shares provided herein are the Parties' best estimates within a 500 km radius from their production plants in South West Belgium.

(France, market share 1–5%), Norbord (the UK, market share 1–5%) and Egger (Germany and the UK, market share 1–5%).<sup>63</sup>

- (59) The majority of all customers and competitors who replied to the Commission's market investigation did not consider that the proposed transaction would affect their own businesses.<sup>64</sup> The majority of competitors were also not concerned about wider effects on the market.<sup>65</sup> Moreover, although the majority of responding Belgian and Dutch raw particle board customers raised concerns with the proposed transaction, given that the Parties' are the only manufacturers based in the Benelux, the vast majority of the same customers nonetheless indicated that they typically source from suppliers within a 500 km range, including outside of the Benelux countries.<sup>66</sup> Some of these customers even indicated sourcing from further afield, up to 1000 km range.<sup>67</sup>
- (60) According to customers and competitors, the Parties' closest competitors included, *inter alia*, companies such as Egger, Kronospan, Norbord, Pfleiderer and Sonae, despite the fact that none of them have production facilities in the Benelux countries.<sup>68</sup> Further, Belgian and Dutch customers also confirmed that these companies as well as others, such as Elka (Germany) and Linex Panneaux (France), could supply them.<sup>69</sup>
- (61) The Notifying Party also submits that there is significant spare capacity in the production of raw particle board. This has generally been confirmed by respondents to the Commission's market investigation. Hence, the Commission considers that other manufacturers have capacity to increase their supplies and would be in a position to put competitive pressure on the merged entity were it to attempt to raise prices.
- (62) Therefore, in addition to the moderate combined market shares of the Parties' in the relevant geographic market, the Commission considers that the merged entity would continue to face significant competition from multiple other suppliers of raw particle board. This finding is also supported by the already high cross-border trade flows going in and out of Belgium.
- (63) In view of the above and the other evidence available, the Commission considers that the proposed transaction does not raise serious doubts with regard to the supply of raw particle board.

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<sup>63</sup> All of the companies mentioned have production within an approximately 500-km radius from the Parties' production plants in South West Belgium.

<sup>64</sup> Replies to Commission's Questionnaires to Customers and Competitors, both of 14 March (Question 35 on both).

<sup>65</sup> Replies to Commission's Questionnaires to Competitors of 14 March (Questions 33 and 34).

<sup>66</sup> Replies to Commission's Questionnaire to Customers of 14 March (Question 15).

<sup>67</sup> Replies to Commission's Questionnaire to Customers of 14 March (Question 15).

<sup>68</sup> Replies to Commission's Questionnaires to Customers and Competitors, both of 14 March (Questions 31 and 30 respectively).

<sup>69</sup> Minutes of conference calls with a number of customers.

## 5. CONCLUSION

- (64) For the above reasons, the European Commission has decided not to oppose the notified operation and to declare it compatible with the internal market and with the functioning of the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of the Merger Regulation.

*For the Commission*  
*(signed)*  
*Joaquín ALMUNIA*  
*Vice-President*