

***Case No COMP/M.5890 -  
HEINZEL/  
EUROPAPIER***

Only the English text is available and authentic.

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

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Article 6(1)(b) NON-OPPOSITION  
Date: 07/10/2010

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## EUROPEAN COMMISSION

Brussels, 7.10.2010  
SG-Greffe(2010) D/15690  
C(2010) 7091

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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 Sir/Madam,

**Subject: Case No COMP/M.5890 - HEINZEL/ EUROPAPIER  
Notification of 2 September 2010 pursuant to Article 4 of Council  
Regulation No 139/2004<sup>1</sup>**

1. On 2 September 2010, following a referral request under Article 4(5) of the Merger Regulation on 29 June 2010, the European Commission received a notification of a proposed concentration by which Heinzl Holding GmbH ("Heinzl"<sup>2</sup>, Austria), will acquire 99.99% of the shares in and thus control over Europapier AG ("Europapier", Austria).

#### **I. THE PARTIES AND THE OPERATION**

2. Heinzl is a producer of pulp and, to a very limited extent, kraft paper in Central and Eastern Europe and a global trading company for pulp and paper. It has sales offices worldwide and production facilities in Austria and Estonia.
3. Europapier, currently controlled by Mondi Group, a producer of uncoated fine and packaging paper, is a leading paper merchant in Central and Eastern Europe and Russia. It offers its customers a wide range of graphical, standard and creative papers, office papers and packaging solutions. With its warehouses and sales representatives, it is active in 12 countries and covers the main area of Central Eastern Europe and Russia.

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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> The "notifying Party".

4. The proposed transaction will be accomplished by way of a share purchase agreement between Heinzl and Mondi Group, by which Heinzl will acquire 99.99% in and thus sole control over Europapier. Therefore, the proposed transaction constitutes a concentration within the meaning of Art. 3(1)(b) Merger Regulation.

## **II. EU DIMENSION**

5. Heinzl and Europapier generated a worldwide turnover of [...] and [...] respectively in 2009.<sup>3</sup> Therefore, the transaction does not have an EU dimension within the meaning of Article 1 of the Merger Regulation.
6. On 29 June 2010, the Commission received by means of a reasoned submission from Heinzl a referral request pursuant to Article 4(5) of the Merger Regulation. According to Heinzl, the transaction was capable of being reviewed under the national competition law of five Member States: Austria, Czech Republic, Poland, Romania and Slovenia. On 1 July 2010, the Commission transmitted this submission to the Member States. None of the Member States objected to the referral request. Therefore, the concentration is deemed to have an EU dimension.

## **III. COMPETITIVE ASSESSMENT**

7. The Parties submit that their activities do not lead to horizontally affected markets, since there are no or only negligible overlaps. Europapier is a paper merchant, whereas Heinzl is a manufacturer of pulp and – to a very limited extent – kraft paper. In addition, Heinzl is active in the EU as a paper trader for several paper mills, trading different kinds of paper (for example fine paper, newsprint, tissue), corrugated case material, solid and carton board, as well as pulp and kaolin

### *1. Relevant product markets: Paper trading vs. paper merchanting*

8. According to the notifying Party and in line with previous Commission decisions<sup>4</sup>, the market for paper trading has to be distinguished from the market for the sale and distribution of paper through merchants, in this case fine paper. Fine papers are mainly printing and writing papers of high quality. They are made out of pulp and can be either coated with a special surface or uncoated.
9. Heinzl is a paper trader focusing on the so-called drop shipment business. Drop shipping is used in supply chains where the company does not have an item on stock, but instead transfers customer orders directly to the manufacturer who then ships the item directly to the customer. A paper trader acting by drop shipping does not participate in the market as buyer and seller and does not maintain own warehouse facilities nor any own transportation means. Such trader usually acts as an agent on commission basis.
10. The activity of Europapier as a paper merchant is different. It buys large quantities of paper from different mills around the world, stores and then sells them to in particular medium-sized and small customers. Agreements with customers also include additional support and other services.

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<sup>3</sup> Turnover calculated in accordance with Article 5(1) of the Merger Regulation.

<sup>4</sup> See, e.g., COMP/M.4753 *Antalis / MAP*, paras. 7-13.

11. In previous decisions, the European Commission has found that (i) the distribution of (in particular fine) paper through merchants is a distinct market because of the service standard which a merchant is able to provide owing to the professional sales team, networks of local warehouses or large fleets of trucks and (ii) is an activity downstream to the production and (bulk) sale of (fine) paper.<sup>5</sup> Thus trading can be regarded as upstream market to merchanting, and accordingly, Heinzl's activities are upstream to the activities of Europapier. The market investigation carried out by the Commission has confirmed these findings.
12. The Parties submit that this is not altered by the fact that Europapier, in addition to stock sales, is also active to some extent in "indent sales" in some countries. While such indent sales are directly shipped from the paper mill to the customer, such sales are different from Heinzl's agency sales in particular since the products are invoiced by Europapier and Europapier adds a margin to the price against which the customer is charged. Such indent sales are offered to customers as a complement to the stock business as part of the overall customer relationship. For example fine paper is sold via indent sales by Europapier when a customer has a particular project for which sufficient paper is not on stock. Within the market investigation, market participants have confirmed that the average volume of an indent order in the case of a merchant such as Europapier is much smaller (according to the Parties [...]) than the average order in the case of a trader such as Heinzl (according to the Parties over [...]).

### *2. Geographic scope of the markets*

13. The Commission has previously considered the downstream market for fine paper merchanting to be national in scope because of the need of a local presence<sup>6</sup>, while the geographic scope for the markets for the production and (bulk) sale of different paper types has been defined in previous decisions as at least EEA-wide.<sup>7</sup> While the latter has been confirmed in the Commission's market investigation, some market participants have stated that the geographic scope of the merchanting market may be wider than national in the case of smaller Member States like Austria and Slovenia.<sup>8</sup> Since the transaction does not raise concerns on the basis of the most narrow market definition, the question can be left open for the purposes of this decision.

### *3. Horizontal overlaps*

14. On the basis of the market definitions discussed above, no horizontal overlaps between the Parties' activities exist.
15. Such overlaps would only arise (i) if Heinzl's trading activities for different paper types were included in the downstream paper merchanting market or, vice versa, (ii) if Europapier's merchanting activities were included in the respective upstream markets

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<sup>5</sup> See, e.g., COMP/M.4753 *Antalis / MAP*.

<sup>6</sup> See, e.g., COMP/M.3227 *Paperlinx / Buhmann Paper Merchanting division*.

<sup>7</sup> See, e.g., COMP/M.3822 *Stora Enso / Schneidersöhne Papier*, para. 14.

<sup>8</sup> See also COMP/M.3822 *Stora Enso / Schneidersöhne Papier* where it was considered if the market is narrower than national, local or regional, or wider than national depending on the size of the countries concerned.

for the bulk sale of the different paper types by producers and traders, both activities thus constituting an overall distribution market. If Heinzl's trading activities were included in the downstream paper merchanting markets, its market share would be de minimis (less than 1%). If Europapier's merchanting activities were included in the respective upstream markets, reportable markets would exist in the markets for the bulk sale (by producers and traders) of fine paper, newsprint paper and kraft paper respectively.<sup>9</sup> On an EEA-wide level, the combined market shares of the Parties would be 1% or less on any of the relevant markets. Therefore, even on the assumptions of such overlaps, the concentration does not give rise to any competition concerns.

#### 4. Vertical relationship

16. As regards vertical links, the proposed transaction gives rise to two affected national markets in the EEA in relation to the market for paper merchanting (where Europapier is active), which is downstream market of the markets for the production and bulk sale of fine paper (where Heinzl is active). On the market for fine paper merchanting, Europapier's market share exceeds 25% in Austria and Slovenia:

**Table 3: Europapier's shares on the merchant markets in 2009**

Total merchant market volume		Europapier	
Sales in tons		Market share	
EEA	[...]	[...]	[0-5]%
<b>Austria</b>	[...]	[...]	<b>[30-40] %</b>
Bulgaria	[...]	[...]	[10-20] %
Czech Republic	[...]	[...]	[10-20] %
Hungary	[...]	[...]	[10-20] %
Poland	[...]	[...]	[20-30] %
Romania	[...]	[...]	[10-20] %
Slovakia	[...]	[...]	[10-20] %
<b>Slovenia</b>	[...]	[...]	<b>[30-40] %</b>

Source: Form CO, p. 28

17. On the upstream market, Heinzl traded approximately [...] of fine paper in the EEA which gives it a market share of less than 1% in the EEA.
18. In addition to fine paper, Europapier also sells newsprint paper and kraft paper through its merchandising network, but only to a negligible extent. Even if these sales were included in a downstream merchanting market, Heinzl's shares on the upstream markets for the bulk sales of newsprint paper and kraft paper would be negligible.
19. Giving these moderate market shares on the national downstream merchant markets of Europapier and the negligible market shares of Heinzl on the upstream markets, the proposed transaction is unlikely to lead to any input or customer foreclosure. In the

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<sup>9</sup> In solid board, carton board and tissue paper, the activities of both Parties are de minimis.

Commission's market investigation, no concerns have been raised by market participants.

#### **IV. CONCLUSION**

20. 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 EEA Agreement. This decision is adopted in application of Article 6(1)(b) of the Merger Regulation.

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