

***Case No IV/M.1208 -
JEFFERSON
SMURFIT / STONE
CONTAINERS***

Only the English text is available and authentic.

**REGULATION (EEC) No 4064/89
MERGER PROCEDURE**

Article 6(1)(b) NON-OPPOSITION
Date: 08/07/1998

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 08.07.1998

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying party

Dear Sirs,

Subject : Case No IV/M.1208 - JEFFERSON SMURFIT / STONE CONTAINER
Notification of 5.6.1998 pursuant to Article 4 of Council Regulation No 4064/898

1. On 5.6.1998, the Commission received the notification of a proposed operation through which Jefferson Smurfit Group, plc ("Jefferson Smurfit") acquires sole control of a new entity which will result from the merger of the activities of Jefferson Smurfit Corporation ("JSCorp") and Stone Container Corporation ("Stone"), both of which are based in the U.S.
2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of the Council Regulation No 4064/89 and does not raise serious doubts as to its compatibility with the common market and the functioning of the EEA Agreement.

I. THE PARTIES

3. Jefferson Smurfit, a company incorporated in Ireland, is an internationally diversified producer of paper, paperboard and paper-based packaging. Its main operations are located in Europe, the U.S. and Latin America.
4. JSCorp is an associated company of Jefferson Smurfit which is active in the same sector, and in which Jefferson Smurfit has a controlling interest. The world-wide volume of production of JSCorp, which has no operations in Europe, represents approximately 80% of the aggregate total volume of production of Jefferson Smurfit's associated companies world-wide and is equivalent in size to approximately 80% of Jefferson Smurfit's own total production.

5. Stone is active internationally in unbleached paper and paper-based products, principally in North America, but also in Europe, Central and Latin America, Australia and Asia.

II. THE OPERATION

6. Through the transaction which will bring about the concentration, Stone will become a wholly-owned subsidiary of JSCorp in whose business it will be merged. The merged entity will be renamed Smurfit Stone Container Corporation (“Smurfit Stone”). Following the transaction, Jefferson Smurfit, through its wholly-owned subsidiary, Smurfit International, B.V., will hold 34% of the shares of Smurfit Stone, 9% will be held by Morgan Stanley Leveraged Equity Fund II, L.P. and associated persons (“Morgan Stanley”), and the remaining 57% will be held by the general public.

Sole Control

7. Jefferson Smurfit has contended that it will exercise sole control over the merged entity, Smurfit Stone, notwithstanding its minority shareholding and despite certain provisions for arrangements which will govern the entity during an initial period, lasting until February 2001 at the latest, which arrangements Jefferson Smurfit has described as being designed to enable an orderly transition.
8. Under the terms of the merger agreement among Jefferson Smurfit, JSCorp and Stone, during the said initial period Jefferson Smurfit will be able to nominate 6 of the 12 members of the Board of Directors, 5 members will be Stone nominees (designated prior to the merger by Stone’s shareholders), and 1 will be a Morgan Stanley nominee. (All the parties to the merger have agreed to vote in support of each other’s designees to the Board during the transition period.) Furthermore, the post of Chairman of the new entity will be occupied by a Jefferson Smurfit nominee (in the person of the Chairman and Chief Executive Officer of Jefferson Smurfit), while that of Chief Executive Officer will be held by a Stone nominee. The Deputy Chief Executive Officer will, however, be a Jefferson Smurfit nominee, as also will be the Chief Financial Officer. While there will be annual Shareholders meetings at which the nominees to the Board will be approved, during the transition period, the composition presented to the Shareholders will be limited to the above-described.
9. However, once the transition period has expired, Jefferson Smurfit will be in a position, in accordance with the provisions governing the new entity, to present the Shareholders with an entirely new slate of Board members, whether on the occasion of the annual election of the Board by Shareholders, or through the calling of a special Shareholders’ Meeting by virtue of its 34% shareholding. Furthermore, given the relative size of its shareholding, Jefferson Smurfit can be expected to achieve a majority in the Shareholders’ Meetings.
10. Given all the above factors, Jefferson Smurfit has contended that, even during the transition period, it will be in a position to exercise sole control of the new entity, due to its substantial presence on the Board of Directors (half the members), its condition of (sole) large minority shareholder (34%) and the short-term nature of the transition arrangements (maximum approximately two and a half years).
11. Moreover, a further element weighing in favour of Jefferson Smurfit exercising sole control over Smurfit Stone is its condition of sole industrial shareholder, given the

investment nature of Morgan Stanley's 9% shareholding. This condition can be expected to determine strongly the possibility for Jefferson Smurfit to exercise decisive influence over the new entity, not only under the structure post transition period but even under the initial arrangements described further above.

12. In any case, the period of less than three years during which the said arrangements will be in place can be considered as a "starting-up" period and, given the legal provisions for the governance of the new entity after the expiry of this period, the said arrangements are not considered to constitute an obstacle to considering the whole operation as the acquisition of sole control by Jefferson Smurfit.
13. Thus, taken as a whole, the above-described factors are deemed sufficient to consider that the present operation will result in Jefferson Smurfit acquiring sole control over the new merged entity, Smurfit Stone.

III. CONCENTRATION OF COMMUNITY DIMENSION

14. The undertakings concerned have a combined aggregate world-wide turnover in excess of 5000 million ECU (Jefferson Smurfit 6,293 million ECU, Stone 5,499 million ECU). The aggregate Community-wide turnover of both undertakings is in excess of 250 million ECU (Jefferson Smurfit 2,642 million ECU, Stone 476 million ECU). They do not achieve more than two-thirds of their respective aggregate Community-wide turnovers within one and the same Member State. The operation, therefore, has a Community dimension within the meaning of Article 1(2) of the Regulation.

IV. COMPATIBILITY WITH THE COMMON MARKET

A. RELEVANT PRODUCT MARKETS

15. Jefferson Smurfit has identified two affected product markets: Corrugated Case Materials and Corrugated cases.

Corrugated Case Materials

16. Corrugated Case Materials ("CCM") are paper products used in the production of corrugated board. Corrugated board takes the form of sheets composed of an undulating middle, called fluting, which has paper outer layers on both sides, called linerboard.
17. The most important distinction within CCM is between those products made from virgin fibre, known as Kraftliner, and those made from waste-based fibre, known as Testliner. In previous decisions¹, the Commission concluded, with regard to the said products, that there was a high degree of cross-substitutability both on the supply and demand sides and that there was a similar pattern in their respective price trends.
18. In the context of the present case, Jefferson Smurfit has confirmed that CCM is made out of virgin fibre and/or waste-based fibre, while also indicating that the use of virgin fibre has been declining gradually as a share of the total CCM market over a

¹ Cases Nos IV/M. 499 Jefferson Smurfit/Saint Gobain, IV/M. 549 Svenska Cellulosa/PWA and IV/M. 613 Jefferson Smurfit/Munskjo

number of years, e.g. from 20.1% in 1989 to 18.5% in 1996. Furthermore, Jefferson Smurfit has indicated that in the EU the huge increase in recent years, due to a policy of recycling, in the volume of collected waste paper, with no ready outlet, has forced down the price of waste paper and thus broadened the price gap between Kraftliner and Testliner. However, Jefferson Smurfit has also indicated that it considers that the switch from virgin fibre to waste-based paper has stabilised at the current level as Kraftliner is required for applications requiring wet strength, such as fruit and vegetable markets (produce) and meat industries.

19. However, as in the case of the previous decisions mentioned above, in the present case it is not necessary to define the market for CCM more precisely, given that the operation does not lead to any problem of dominance in any of the alternative markets considered above.

Corrugated Cases

20. Corrugated cases are finished packaging products manufactured from sheets of corrugated board. They have an infinite number of configurations determined by the nature of the goods being transported, ranging from agricultural products to manufactured products.
21. Corrugated case producers range from those which are integrated to the level of supplying their own CCM and/or corrugated board, to those who purchase corrugated sheets from third parties and simply convert these materials into corrugated cases. Jefferson Smurfit has indicated that producers of corrugated cases are generally differentiated by the degree of sophistication and specialisation of their production and that most integrated companies characterise their operations as providing packaging solutions for their customers, as opposed to simply producing standard boxes.
22. Jefferson Smurfit has indicated that corrugated cases have experienced strong growth in Europe during the last decade, largely as a result of the increasing share of this product in transit packaging, i.e. from 47% in 1986 to 60% in 1996. It has described the evolution of corrugated cases as a transport medium, indicating that due to technical advances, particularly in terms of strength, durability and recyclability, corrugated cases have made significant inroads into markets which have been traditionally served by wood, as well as by plastic containers.
23. However, as in the case of the previous Commission decisions mentioned above, in the present case it is not necessary to define the market more precisely, given that the operations does not lead to any problem of dominance in any of the alternative markets considered above.

B. RELEVANT GEOGRAPHIC MARKETS

Corrugated Cases Materials

24. CCM are characterised by high density and easy transportability. Most of the virgin fibre-based CCM consumed in the EU is supplied by the Scandinavian countries, particularly Sweden. However, due to the limited amount of suitable timber resources within the EU, there are also substantial imports from outside the EEA, including the U.S., Canada, Brazil, South Africa and Poland, amounting to approximately 35%, in 1996, of the virgin fibre-based CCM consumed in the EU, though Jefferson Smurfit describes trade flows as quite volatile, depending on

currency movements and supply conditions in local markets. In the case of waste-based fibre CCM, a smaller proportion is imported from outside the EU as Europe has been an extensive collector and recycler of paper grades, as already mentioned further above. However, in 1996, about 20% of the waste-based CCM consumed in the EU was traded across EU national boundaries.

25. Given the above factors, the geographic market for CCM, can be considered to be at least EEA-wide, as was the case in three previous Commission decisions⁽²⁾.

Corrugated Cases

26. Corrugated cases are characterised by low density and relatively high transport costs. Jefferson Smurfit contends that these characteristics result in largely regional markets, determined by a distance radius of from 200 to 300 kilometres between the corrugator plant and its customers, regardless of the presence of national borders. However, Jefferson Smurfit has also pointed out that such regional markets do not operate in isolation due to the fact that, increasingly, a small number of multinational customers seek to have their packaging problems solved by a single provider and therefore seek suppliers with operations that have at least a pan-European reach.
27. However, the Commission, as in the case of the three previous decisions² involving corrugated cases, can leave the question of geographic market definition open, given that the operation does not give rise to any problems of dominance on any of the alternative markets considered above.

V. ASSESSMENT

Corrugated Case Materials

28. The operation will lead to aggregate shares of 16% in the overall CCM market in the EU (Jefferson Smurfit 14% and Stone 2%) and the merged entity's share is of a similar size at the level of both virgin-based and waste paper-based CCM. The rest of the market is fractionated among several other players, with Svenska Cellulosa holding the next largest share with [...] ³ and all others having less than 10%. Thus, given the small increment in market share and the size of the aggregate share itself, together with the general conditions in the market in terms of the number of competitors at EU level, it is considered that the concentration does not raise any concerns with regard to its competitive impact on the market for CCM.

Corrugated Cases

29. At a national level, the operation leads to an overlap in corrugated cases in France, Belgium, Germany and Spain, where the aggregate shares will reach 22%, 18,5%, 14% and 12% respectively, but with a small addition of shares in all cases. The aggregated EU market share will be 16%.
30. In France, there are several other players such as OTOR and International Paper, who have market shares of [...] ⁴ and [...] ⁵ respectively, and a Spanish company,

² Cases Nos IV/M. 499, IV/M. 549 and IV/M. 613

³ Confidential information, between 10-15%

⁴ Confidential information, between 5-10%

SAICA, which has recently entered the market in France and holds a share of approximately [...]⁶. In Belgium, there are, likewise, other strong players in corrugated cases, e.g. Svenska Cellulosa, Assi Domän and VPK, with market shares of [...]⁷, [...]⁸ and [...]⁹, respectively. Similarly there are several players in the market for this product in Germany and Spain.

31. Given the size of the aggregate market shares resulting from the operation, together with the conditions on the market in the countries concerned by the operation, as discussed above, the operation is not considered to raise competition concerns at a national level. In the circumstances, it ensues that it would not raise concerns either at the level of possible regional markets which might extend across the corresponding national borders.

Conclusion

32. In the light of all the above-described factors, it is considered that there is neither creation nor strengthening of a dominant position as a result of the present operation.

VI. CONCLUSION

For the above reasons the Commission decides not to oppose the notified operation and to declare it compatible with the common market and with the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of Council Regulation (EEC) No 4064/89.

For the Commission,

⁵ Confidential information, between 5-10%
⁶ Confidential information, between 5-10%
⁷ Confidential information, between 20-30%
⁸ Confidential information, between 10-15%
⁹ Confidential information, between 10-15%