

***Case No IV/M.1418 -
SCA PACKAGING /
REXAM***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 11/02/1999

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 11.02.1999

In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EEC) No 4064/89 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 Where possible the information omitted has been replaced by ranges of figures or a general description.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 IV/M.1418 – SCA Packaging / Rexam

Notification of 23/12/1998 pursuant to Article 4 of Council Regulation No 4064/89

Date of notification : 23/12/1998

Notification declared incomplete on : 06/01/1999

Notification declared complete on : 08/01/1999

Legal Deadline : 11/02/1999

I. THE PARTIES AND THE OPERATION

1. **SCA Packaging International BV** is a wholly owned subsidiary of Svenska Cellulosa Aktiebolaget SCA (“SCA”) which specialises in the manufacture of hygiene products, transport packaging and graphic papers.
2. **Rexam Plc** is a UK-based holding company active in the following sectors: (i) packaging for speciality food, healthcare, beauty and industrial products, (ii) printing, (iii) coated films and papers and (iv) building and engineering. The object of this operation is Rexam’s corrugated packaging business excluding bulk¹ (“Rexam Packaging”) whose activities are corrugated cases, carton and print.

¹ The bulk division comprises plastic drums, fibre drums and flexible intermediate bulk containers.

3. On 19/12/1998 SCA and Rexam Plc signed an agreement whereby SCA will acquire 100% of the shares in Rexam Packaging Ltd. (UK), Rexam Packaging Heavy Duty SA (B), Rexam Packaging Emballage Technique SA (F) and 70% of the shares in Tecnicarton SA (Spain)².

II. CONCENTRATION

4. The transaction, involving SCA's acquisition of sole control of Rexam Packaging by way of an acquisition of shares is a concentration within the meaning of article 3(1) (b) of the Merger Regulation.

III. COMMUNITY DIMENSION

5. The combined aggregate world-wide turnover of the undertakings concerned exceeds EUR 5 000 million³. (SCA 6773 Mio, Rexam Packaging [...] Mio). The aggregate Community wide turnover of each party exceeds EUR 250 million (SCA [...] Mio, Rexam Packaging [...] Mio). They do not achieve more than two-thirds of their turnover in one and the same Member State. The operation has therefore a Community dimension.

IV. THE RELEVANT MARKETS

A. Relevant product markets

6. SCA claims that the main overlap between the parties is the manufacture and supply of corrugated cases in the UK. Corrugated cases are finished packaging products manufactured from sheets of corrugated board. Corrugated board consists of liner board with a corrugated fluting (or multiples thereof in case of double and triple wall board). Corrugated case producers range from those which are fully integrated supplying their own corrugated case materials (as SCA does) and/or corrugated board (as Rexam Packaging does) to those who purchase corrugated board from third parties and convert the board into cases (converters). The market investigation has shown that there is also an overlap with regard to the supply of corrugated board.
7. SCA is also a manufacturer of corrugated case materials (CCM), the paper products used to create corrugated board, but Rexam Packaging is not. Given the fact that SCA's EEA-wide⁴ market share is estimated to be less than 15%, the CCM market does not constitute an affected market.

² This will give SCA sole control to this entity. The remaining 30% shares are held by individual shareholders and [...].

³ Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Notice on the calculation of turnover (OJ C66, 2.3.1998, p25). To the extent that figures include turnover for the period before 1.1.1999, they are calculated on the basis of average ECU exchange rates and translated into EUR on a one-for-one basis.

⁴ In previous decisions it has been concluded that the CCM market was at least EEA wide.

Corrugated cases

8. In previous decisions⁵ the Commission has considered the market for corrugated cases and the extent to which they compete with other forms of transport packaging, such as wood and plastic, but the Commission has not reached a definitive view on this matter.
9. SCA considers that the relevant market is the market for the provision of transport packaging materials, but also considers that there may be a relevant product market for corrugated cases. SCA estimates that corrugated cases account for just over 60% of all transport packaging. SCA does not consider it appropriate or meaningful to further segment the market for corrugated cases and to distinguish between heavy duty corrugated cases and the other corrugated cases. According to SCA a heavy duty case has thick walls (two or more layers of corrugated board), tends to be heavier than other corrugated cases and allows more limited printability. SCA considers heavy duty cases to form part of a seamless range of corrugated cases available to customers and therefore not part of a separate relevant product market. Moreover, there is not a uniform definition of heavy duty corrugated cases in the industry and heavy duty cases represent less than [5%] of the overall market for corrugated cases.
10. The market investigation has shown that corrugated cases can be manufactured using a wide range of different grades of board. These different grades form a spectrum with microflute at one end and heavy duty at the other end. The grades in between microflute and heavy duty are the conventional grades. The market investigation has shown a strong indication that heavy duty corrugated cases are to be distinguished from the other corrugated cases⁶. Heavy duty corrugated cases are supplied to meet particular customer needs, they are generally not interchangeable with other types of corrugated cases and do not compete with them (but with products such as wood and bulk bags). Heavy duty cases are used to transport heavy goods such as chemicals, automotive parts, office equipment, etc... Heavy duty corrugated cases require separate production facilities as the machines converting the board must be able to handle heavier board.
According to the market investigation, the most common definition of heavy duty cases includes cases made of triple wall and double wall board insofar as the board contains at least one A flute (i. e. AA, CA and BA board) and weights more than 800g/sqm, although some would only categorise triple wall cases as heavy duty.
11. With regard to a further segmentation within the heavy duty cases, the market investigation has shown that there is a trend to substitute triple wall cases by heavy duty double wall cases and that triple wall corrugated cases face competition from other grades of corrugated cases (heavy double wall cases and laminated double-double wall cases as those produced by AssiDomän) and from other forms of transport packaging (plastic, wood, ...). Most customers have a number of transport packaging options and can and do switch between these. The demand for triple wall cases and heavy duty

⁵ Cases Nos IV/M. 499 – Jefferson Smurfit/St. Gobain, IV/M.549 – SCA/PWA, IV/M. 613 – Jefferson Smurfit/Munskjo and IV/M. 1208 - Jefferson Smurfit/Stone Container.

⁶ For the purpose of the present decision it is not necessary to examine whether conventional cases and microflute cases are to be considered as separate product segments.

double wall cases is entirely due to substitution of those products for other materials, especially for wooden crates. Faced with an attempt to increase prices, customers are likely to consider alternative forms of transport packaging. Customers might also seek a lower (and cheaper) grade of corrugated which would meet their specifications. There is also a trend towards customers requiring lower weights of cases. This trend reflects the fact that lighter products have, as a general rule, a lower price, and are preferred due to environmental considerations (lower recycling costs for lighter cases).

12. However, for the purpose of the present case, the definition of the relevant product market can be left open given that the operation does not lead to any problem of dominance in any of the alternative markets considered above.

Corrugated board

13. The market investigation has shown a strong indication that with regard to corrugated board a distinction has to be made between heavy duty corrugated board and the other grades of board just as with corrugated cases and for the same reasons. Within the heavy duty board range a further segmentation between triple wall board and heavy duty double wall board (i.e. double wall board containing at least one A flute and weighing more than 800g/sqm) could be envisaged, as from the supply-side, different equipment is needed to manufacture triple wall board.
14. However, for the purpose of the present case, the definition of the relevant product market can be left open given that the operation does not lead to any problem of dominance in any of the alternative markets considered above.

B. Relevant geographic market

Corrugated cases

15. The Commission has not yet taken a definitive view on the definition of the geographic market in previous decisions. It was stated that corrugated cases are characterised by low density and relatively high transport costs which results in largely regional markets (radius of 200 to 300 km between the corrugator plant and its customers) crossing national borders. These regional markets do not operate in isolation as a number of multinational customers seek to have their packaging problems solved by a single supplier. The parties support this view.
16. The market investigation has confirmed that the markets are largely regional for non heavy duty cases.
17. Heavy duty cases can be economically transported over longer distances than the other corrugated cases because they are higher value products. For instance, Rexam Packaging exports heavy duty cases from the UK to France, Germany, the Netherlands and Spain. There are also imports in the UK from the continent (e. g. from Europa Carton (Germany), Kaysersberg (France) and Seyfert (Germany)).
18. It can thus be concluded that the geographic market is broader than national. It is not necessary to define the geographic market precisely since on any market definition broader than national the operation does not lead to any problem of dominance.

Corrugated board

19. In the KNP/BT/VRG decision it was suggested that the geographic market is regional and crosses national borders (e.g. with the Benelux countries, northern France and central Germany forming a separate geographic market from southern Germany, eastern France, Austria and Switzerland). As with corrugated cases, the geographic market for non heavy duty corrugated board will consist of largely regional markets, whereas heavy duty board can be economically transported over longer distances than the non heavy duty corrugated board and the heavy duty corrugated cases. Manufacturers in the UK have been buying heavy duty corrugated board from the continent on a regular basis without encountering any disadvantage relative to supply within the UK. It can thus be concluded that the geographic market is broader than national.
20. However, for the purpose of the present case, the precise definition of the relevant geographic market can be left open since on any market definition broader than national the operation does not lead to any problem of dominance.

V. ASSESSMENT

CASES

Corrugated cases

21. After the operation the parties will have a combined share of sales in the EU of [10-15%] (in value) on the overall market for corrugated cases (SCA [10-15] and Rexam Packaging [<5%]). This will make SCA market leader in the EU together with Jefferson Smurfit [10-15%]. On a national level, the only geographic area where there is a substantial overlap is the UK where the combined share of sales will be [20-25%] (SCA [10-15%], Rexam Packaging [<10%]). This will make SCA market leader in the UK where its main competitors are Jefferson Smurfit [5-15%], David S Smith [5-15%], AssiDomän [5-15%], Danisco [5-15%], and Amcor [5-15%]. The shares of sales in the other Member States where there is an overlap are [25-30%] for Belgium and Luxemburg (SCA [25-30%], Rexam Packaging [<5%]), [20-25%] for the Netherlands (SCA [20-25%], Rexam Packaging [<5%]), [10-15%] for Germany (SCA [10-15%] Rexam Packaging [<5%]) and [5-10%] for France (SCA [5-10%], Rexam Packaging [<5%]).
22. Moreover, the market investigation has confirmed the statement of the parties that the industry is characterised by over-capacity.
23. On an overall market for corrugated cases (whatever its geographic dimension) the operation would not give rise to the creation or strengthening of a dominant position.

Heavy duty corrugated cases

24. According to the information provided by the parties their combined share of sales for heavy duty corrugated cases on a national level would amount to [30-40%] (SCA [20-25%] and Rexam Packaging [10-15%]) in the UK. The other main competitors being David S Smith [20-30%], Kaysersberg (owned by David S Smith), Jefferson Smurfit (directly and via Europa Carton), Seyfert, Ely-Smith and many other local converters. The parties estimate the volume of the UK market to be [<50] Mio sqm and to account for [<100] Mio EUR whereas the overall market for corrugated cases in the UK is estimated to be [4000-4500] Mio sqm and to be worth [2000-2500 Mio] EUR.

25. On a national level the combined market share of the parties for heavy duty cases will be [35-45%] (SCA [10-20%] and Rexam Packaging [20-30%]) in Belgium and Luxembourg. In the Netherlands the combined market share will be <[35-45%] with an increment of [0-5%]. In France the parties will have a combined market share of <[5-15%] and in Germany <[1-10%]. The parties will face strong competition from Catala, Jefferson Smurfit (Europa Carton), David S Smith, Kunert, Ansbach, Kaysersberg, Seyfert, Celta and Bruchsal.
26. As transport cost are not a barrier to the cross-border supply of heavy duty corrugated cases and as there are numerous competitors the operation will not give rise to the creation or strengthening of a dominant position on the market for heavy duty corrugated cases.

Non-heavy duty corrugated cases

27. With regard to non-heavy duty cases the only geographic area of overlap occurs in the UK. The combined market share of the parties will be [20-30%] (SCA [15-20%] and Rexam Packaging [5-10%]). Competition will be faced from David S Smith [10-15%], Jefferson Smurfit [10-15%] AssiDomän [5-10%], Linpac [5-10%], Amcor [5-10%], Danisco [5-10%] and local converters.
28. For these reasons the operation will not give rise to the creation or strengthening of a dominant position on the market for non-heavy duty corrugated cases.

BOARD

Heavy duty board

29. According to the information provided by the parties their combined share of sales for heavy duty board on a national level will amount to [25-35%] (SCA [10-15%], Rexam Packaging [15-20%]) in the UK. The remaining competitors being David S Smith [25-35%], Amcor [10-15%], Kaysersberg, Seyfert and Europa Carton. The parties estimate that the volume of this market is [<25] Mio sqm and is worth [<50] Mio EUR.
30. In the UK the triple wall board segment represents [<5] Mio sqm with a value of [<5] Mio EUR. In this segment the parties' combined share of sales would be higher. However, the merged entity will face competition from strong existing suppliers in the UK. As the corrugated industry is characterised by over-capacity, David S Smith could expand production of triple wall board - without any detriment to the production of other heavy duty board and without any additional investment - if prices were to be increased. The fact that capacity can be expanded without any additional costs can be illustrated by the parties' situation : SCA produces triple wall board and cases at only one plant in the UK and [...]. Only [<25%] of its output is triple wall, the rest being double wall [...] and single wall [...]. Rexam Packaging produces triple wall board in one plant in the UK, where it also manufactures triple wall cases (i. e. box plant). Rexam Packaging also converts triple wall board into cases in 3 other plants (i. e. sheet plants) in the UK. Rexam Packaging's sales of triple wall cases accounted for [5-15%] of the cases produced in each sheet plant whereas triple wall board and cases represent [30-40%] of the output of its box plant. Jefferson Smurfit has, through its merger with Stone Container, triple wall board production facilities in Germany (through Europa Carton). Manufacturers in the UK have been buying triple wall corrugated board from

the continent on a regular basis without encountering any disadvantage relative to supply within the UK (e. g. Kaysersberg (France) and Seyfert (Germany)).

31. The market investigation also made it clear that the conversion cost of a machine producing heavy duty double wall into a machine producing triple wall is high, but not prohibitive if there was sufficient demand for triple wall board.
32. In Belgium and Luxembourg, the Netherlands, France and Germany the parties realise only very small sales of heavy duty board except for triple wall board. Their market shares for heavy duty board are thus smaller than the ones in the segment for triple wall board, for which the market share data are more readily available. In this narrow market segment of triple wall board, the only geographic area where the overlap is significant is the Netherlands, where the combined market share of the parties will be [15-20%] (SCA [5-15%], Rexam Packaging [5-15%]). In Belgium and Luxembourg, France and Germany the combined market share is <[10%].
33. For these reasons, the operation will not lead to the creation or strengthening of a dominant position on the market for heavy duty board.

Non heavy duty board

34. The only geographic overlap with regard to the supply of non heavy duty board is the UK. However, given the parties' combined market share (<[5%]), this market does not constitute an affected market.

VI. ANCILLARY RESTRICTIONS

35. The parties have identified the following ancillary restraints :
 - clause 14 of their agreement provides that Rexam Plc :
 - (a) within [...] of completion, shall not be engaged or directly interested in a business carried on by Rexam Packaging at completion;
 - (b) shall not disclose confidential information relating to the business of Rexam Packaging;
 - (c) within [...] of completion, shall not solicit or entice away employees of Rexam Packaging.
 - clause 18(9) and Schedule 12 provide that the speciality foods division of Rexam Plc shall give Rexam Packaging for a period of [...] a right of last refusal entitling it to match any other terms (including price) that are offered by other suppliers in respect of products currently supplied by Rexam Packaging.
36. The restrictions of clause 14 can be considered as being directly related and necessary to the concentration since they protect the value of the business being acquired in so far as the geographic scope of clause 14 is limited to the geographic area where Rexam Packaging has established its products. As to the provisions contained in clause 18(9) and Schedule 12, the Commission is not in a position to declare them as directly related and necessary to the concentration because no sufficient reasons are given for the request. Therefore these provisions are not covered by this decision.

VII. CONCLUSION

37. For the above reasons, the Commission has decided 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,