

***Case No COMP/M.2032 -
SCA PACKAGING /
METSÄ CORRUGATED***

Only the English text is available and authentic.

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

Article 6(2) NON-OPPOSITION
Date: 25/08/2000

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 25.08.2000
SG(2000)D/106409

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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 6.2 DECISION

To the notifying party

Dear Madam/Sir,

Subject: Case No COMP/M.2032 – SCA Packaging/ Metsä Corrugated

Notification of 11/7/2000 pursuant to Article 4 of Council Regulation No 4064/89

- 1) On 11/7/2000, the Commission received a notification of a proposed concentration whereby SCA Packaging International BV (“SCA”) will acquire sole control of the whole of Metsä Corrugated, the corrugated case division of Metsä-Serla Corp. (Finland).
- 2) After examination of the notification, the Commission has concluded that the notified operation falls within the scope of the Merger Regulation and, taking into account undertakings submitted by the parties, does not raise serious doubts as to its compatibility with the common market and with the EEA Agreement.

I. THE PARTIES

- 3) SCA is a wholly owned subsidiary of Svenska Cellulosa AB, a Swedish forest industry company specialising in the manufacture of hygiene products, transport packaging and graphic papers. SCA manufactures and distributes corrugated cases throughout the EU with production plants in several Member States.
- 4) Metsä-Serla Corp., also a forest industry company, has its main activities in the manufacture of hygiene products, transport packaging, paper and paperboard. Metsä Corrugated comprises several legal entities that operate production plants in Denmark (two box plants, one sheet plant), Finland (one box plant, one sheet plant) and Greece (three box plants) and supplies small volumes to other Member States. It also manufactures corrugated cases in Lithuania, Estonia and Russia.

II. THE OPERATION

- 5) The operation concerns the acquisition of sole control by SCA over Metsä Corrugated by means of purchase from Metsä-Serla of 100% of shares in the following companies:
- Neopac Oy (FIN)
 - Neopac A/S (DK)
 - Søren Berggreen & Co. A/S (DK)
 - Cartonpack S.A. (GR)
 - Cretan Papermill S.A. (GR)
 - a total of five companies in Russia, Estonia and Lithuania

III. CONCENTRATION

- 6) The transaction by which SCA intends to acquire sole control of the whole of Metsä Corrugated, is a concentration within the meaning of Article 3 (1)(b) of the Merger Regulation.

IV. COMMUNITY DIMENSION

- 7) The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 2.5 billion¹ (SCA € 7,400 million and Metsä Corrugated € 226 million). In each of Denmark, Finland and Greece the combined aggregate turnover of SCA and Metsä Corrugated exceeds € 100 million and the aggregate turnover of each of the two undertakings concerned is more than € 25 million in each of these countries. Each of SCA and Metsä Corrugated have a Community-wide turnover in excess of EUR 100 million (SCA € 6.2 billions and € [...] million), but they do not achieve more than two-thirds of their aggregate Community-wide turnover within one and the same Member State. The notified operation therefore has a Community dimension.

V. COMPETITIVE ASSESSMENT

A. Relevant Product Markets

Background

- 8) The parties to the proposed concentration are both manufacturers of corrugated cases for transport packaging. The production of corrugated cases is essentially a two-stage process involving
- a) production of corrugated sheet from corrugated case material and
 - b) conversion of sheets into cases

¹ 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.

- 9) In the first production stage, corrugated sheet is manufactured from carton board on a corrugator machine, which, according to the parties, is a set of machines in line, designed to bring together three, five or seven sheets of paper to form a single, double or triple wall board. As the reels of paper are fed into the corrugator, the paper is conditioned with heat and steam and fed between large corrugating rolls which give the paper its fluted shape, using starch and glue as adhesives. The conversion stage consists of printing and then slotting, die cutting, folding and gluing the corrugated board to complete the case. The different operations are performed depending on customer specifications.
- 10) The Commission has identified the following relevant product markets concerned by the operation:

Corrugated Cases

- 11) The parties submit that the relevant product market is for the supply of transport packaging, comprising all types of corrugated packaging along with packaging made from other materials, such as wood, plastic and solid board. In this view, customers could switch between different types of packaging depending on their relative prices and other considerations.
- 12) The Commission's investigation has not confirmed this wide product market definition. While it is true that, for many products, more than one packaging option exists, the choice is very much dominated by factors other than price, such as characteristics of the transported product (e.g. resistance to physical shock), legislation (e.g. regarding recycling and reusable packaging), logistics, distance etc. Moreover, a switch between different types of transport packaging typically requires significant investment in new packing and handling equipment on the customer's side, i.e. it involves significant switching costs and time. The Commission therefore concludes that substitution between different types of transport packaging does not materially affect prices and quantities in the market for corrugated cases.
- 13) As in previous cases², the Commission has also investigated whether the market for corrugated cases should be further segmented into different types of corrugated packaging, for example according to flute sizes (A, B, C, E –flute; heavy-duty versus non-heavy duty board), shape or intended use of the cases, some of which may require specific machinery. Similarly, the ability to apply different types of print (in particular offset print) limits the number of available suppliers for certain product types. However, the exact product market definition can be left open in this case as it does not materially alter the competitive assessment. Specifically, the question considered in M.1418 - SCA Packaging/ Rexam, whether there exist separate product markets for heavy-duty and non-heavy duty cases, can again be left open, because neither SCA Packaging nor Metsä Corrugated manufacture heavy-duty cases in Denmark (where the principal overlap of the parties' activities occurs).

² cf. case no. M.1418 - SCA Packaging/ Rexam, M.1208 – Jefferson Smurfit/ Stone Container, M.613 – Jefferson Smurfit Group PLC/ Munksjø AB, et al

Corrugated Sheet

- 14) Manufacture of corrugated cases takes place either in an integrated plant (“box plant”) or in a converter plant (“sheet plant”). The latter plant type only performs the final production stage, with corrugated sheet being supplied by third parties. SCA and Metsä Corrugated operate both box plants and sheet plants. However, the companies’ sheet plants are typically supplied with corrugated sheet from one or more of each group’s own box plants.
- 15) There exist a number of competitors that operate sheet plants only. These companies tend to be small, independently-owned and operate locally. They rely on third parties for the supply of corrugated sheet. Hence, corrugated sheet constitutes a relevant product market for purposes of this decision.

Carton Board

- 16) Both SCA and Metsä-Serla also manufacture case materials. However, SCA is not acquiring Metsä-Serla’s case materials business.

B. Relevant Geographic Market

Corrugated Cases

- 17) The parties argue that the relevant geographic market for corrugated cases is mainly defined by transportation costs, which limit the area within which products can be economically supplied to a radius of 200 – 300 kilometres around a production plant, regardless of national borders. The resulting regional areas, according to the parties, do not operate in isolation as many large customers with multiple locations seek to have their packaging requirements covered by a single supplier.
- 18) The market investigation has generally confirmed the economic supply distance of 200 – 300 km. Within this distance, transportation costs are normally below 10% of the sales price. Lower range products tend to be supplied over rather shorter distances, while high-value added corrugated cases may be supplied to more distant customers.
- 19) While it is true that the existence of large customers with multiple locations leads to some degree of linkage between the resulting regional markets, the general market characteristics enable corrugated case suppliers to price discriminate between individual customers and, hence, to exploit regional market power: Manufacturers negotiate prices and product specifications individually with each customer. Most corrugated cases are custom-made, so that even if prices were known by other customers, they would not be readily comparable.
- 20) Imports and exports of corrugated cases have generally increased between Member States over the past few years. Specifically, in Denmark, where the principal overlap between the parties’ activities occurs, imports have increased from 10.5% to 18% over last five years. Most of the imports originate from neighbouring Germany, where a number of corrugated case manufacturers have taken advantage of the higher price levels prevailing in Denmark. Price differences between Germany and Denmark, reportedly substantial in the early 1990’s, have since narrowed to approximately 10% today. The

remaining price differential, which is partly due to quality differences³, appears to enable German manufacturers to offset the increased transportation costs involved in serving the Danish market. Companies based in northern Germany are located within 200 – 300 km from southern parts of Denmark. The same applies in principle to manufacturers based on southern Sweden, but these firms are generally considered to be less price-competitive than their German counterparts. Most customers do not consider them as serious alternative supply sources. Despite the import competition, the Danish market for corrugated cases continues to be dominated by suppliers with domestic production capacity, who account for more than 80% of supply (by value and volume). The identity and relative market shares of the main suppliers equally differ significantly between Denmark, Germany and Sweden.

- 21) However, whether the relevant geographic market in the case of Denmark is regional, national or wider-than-national, can be left open, because the notified operation raises serious doubts as to its compatibility with the common market even under a wider-than-national (Denmark plus northern Germany) market definition.
- 22) In all other countries under consideration, the geographic market definition can be equally left open, because the operation does not raise serious doubts as to its compatibility with the common market even under the narrowest geographic market definition.

Corrugated Sheet

- 23) As for corrugated cases, transportation costs represent the main obstacle to supplying corrugated sheet over large distances. However, according to the parties, the distance over which corrugated sheet can be transported economically is likely to be larger than for corrugated cases. In particular, corrugated sheet is a more standardised product, facilitating assembly of full truck loads and use of local warehouses for efficient logistics.
- 24) However, the exact geographic market definition for corrugated sheet can be left open because the operation does not raise serious doubts that a dominant position may be created, even under the narrowest geographic market definition. In the case of Denmark, this would imply a national market definition (due the country's small overall size relative to the economic transportation distance).

C. Assessment

Corrugated Cases

- 25) Overlap between the parties' operations, either through sale of local production or imports, occurs in Denmark, Finland, Germany, the Netherlands, Sweden and the UK. However, SCA's market position in Finland is negligible (less than [0-5]% market share, 1999 figures provided by the parties), while Metsä Corrugated holds market shares of less than [0-5]% in Germany, the Netherlands and the UK. In Sweden, Metsä Corrugated's market share is similarly low at [0-5]%. The principal overlap therefore occurs in Denmark.

³ German suppliers predominantly use testliner, i.e. recycled pulp, while kraftliner, based on virgin pulp, is commonly used in Denmark.

Market share % (1999 volume)	SCA	Metsä Corr.	Combined
Denmark	[30-40]	[10-20]	[40-60]
Finland	[0-5]	[20-30]	[25-35]
Germany	[0-10]	[0-5]	[10-15]
Netherlands	[10-20]	[0-5]	[10-25]
Sweden	[20-30]	[0-5]	[20-35]
United Kingdom	[10-20]	[0-5]	[10-25]

26) In Denmark the parties and their main competitors achieve the following market shares by volume:

Denmark 1999	Market share %
<i>via domestic production:</i>	
SCA	[30-40]
Metsä Corrugated	[10-20]
Combined	[40-60]
Ässi Domän	[20-30]
<i>via imports:</i>	
Jefferson Smurfit/ Munksjö (from D, S)	[0-10]
Thimm (D)	[0-10]
Klinge (D)	[0-10]
Herzberger/ Kappa (D)	[0-10]

27) As shown, the Danish market for corrugated cases is highly concentrated with three firms covering [70-80]% of the market by volume. Measured by value, this figure rises to more than 80%.⁴

28) The parties combined volume market share in Denmark amounts to [50-60]%. Measured by value, SCA/ Metsä Corrugated's market share would amount to [50-60]% (SCA [30-40]%, Metsä Corrugated [10-20]%). The acquisition of Metsä Corrugated by SCA would combine the largest and the third largest supplier of corrugated cases in Denmark. The operation would leave only one competitor, Ässi Domän, with a comparable Danish plant network and sizeable market share. SCA/ Metsä Corrugated and Ässi Domän would together control approx. [70-80]% of the market (by volume and value).

29) Four additional manufacturers achieve significantly lower market shares by serving the Danish market via imports, mainly from northern Germany, combined with local warehouses. However, their ability to constrain the domestic suppliers' market power, while clearly non-negligible, is limited by a number of factors. Transportation costs reduce these companies' competitiveness vis a vis suppliers with local production capacity. The German manufacturers therefore tend to focus their marketing efforts on products in the upper price ranges. Some firms appear to use exports mainly to utilise production capacity that cannot be filled by local (German) orders. The German corrugated packaging industry currently operates at approx. 80-90% capacity utilisation. Given all the above factors, it is doubtful whether German-based firms could expand their supplies sufficiently to effectively constrain the competitive behaviour of the Danish market leaders.

⁴ Value market shares are difficult to obtain from official sources and are mainly based on parties' estimates.

- 30) As mentioned above, there exist, in addition to the large players, a number of competitors, such as SK Stok, Jessen Emballage and Byskov Emballage, that operate sheet plants only. These companies tend to be small, independently-owned and operate locally. They mainly serve small customers with small production runs or with specialised product requirements. As such, these firms possess neither the scale nor the scope to enter into effective price competition with the large, vertically-integrated manufacturers.
- 31) Setting up new efficient-scale production capacity in Denmark would require sunk investment of approx. €[25-45]m (parties' data) to construct a plant with 100m sqm annual production capacity. SCA estimates that total Danish consumption of corrugated cases was [500-650]m sqm in 1999. Hence, efficient-scale entry would have to take place at approx. [10-20]% of total domestic market volume. Given that the market, according to the parties, grows by only 2.5 – 3% per annum, such entry is unlikely to occur.
- 32) Small-scale entry, via imports or local production, is further complicated by the incumbents' ability to price discriminate between individual customers (as discussed above). As a result, any bids by potential entrants' can be matched or undercut by the incumbents without necessarily triggering a general decline in prices.
- 33) Given the combined entity's dominant domestic market share, its multi-plant network, combined with the existence of significant transportation costs faced by competitors and the ability to price discriminate between individual customers, the operation would be likely to create a dominant position of SCA/ Metsä Corrugated in the Danish market for corrugated cases. As such, it raises serious doubts as to its compatibility with the common market.
- 34) Extending the relevant geographic market to include an area of up to 200 kilometres into northern Germany does not materially alter the competitive assessment. There exist two to three potential German-based competitors, in addition to the companies already active in Denmark, which operate box plants in this area. However, these firms, essentially medium-sized enterprises, would face at least the same obstacles as those companies already active in Denmark in effectively constraining the leading multi-plant firms' market power. It is unlikely that they would have sufficient production capacity, product scope and logistical capability to provide effective competition to SCA/ Metsä Corrugated and Ässi Domän. Hence, the notified operation raises serious doubts as to its compatibility with the common market even under a wider-than-national (Denmark and northern Germany) geographic market definition.
- 35) Separate analysis of narrower product markets does equally not alter the competitive assessment: Both SCA and Metsä Corrugated cover a wide range of product types in terms of flute sizes, except for the heavy-duty segment, where neither of the parties is active. Across the different product specifications, the parties' market shares are broadly similar without any apparent emphasis on specific niche markets.
- 36) Metsä Corrugated's Søren Berggreen subsidiary operates an offset printing facility that enables it to supply high-definition colour-printed cases. However, SCA does not have any similar capabilities in Denmark, i.e. no overlap exists in this segment. Therefore, no competition concerns arise in this area.

Corrugated Sheet

- 37) As for corrugated cases, significant overlap of the parties sales of corrugated sheet to third parties occurs in Denmark. Both SCA and Metsä Corrugated predominantly produce corrugated sheet for internal use by their own production units.
- 38) As far as sales to third parties in Denmark are concerned, SCA/ Metsä Corrugated hold a combined market share of [20-30]% (parties' data). This market share, combined with the fact that the relevant geographical market for corrugated sheet is likely to be wider-than-national, does not appear to create or strengthen a dominant position.
- 39) In all other Member States, the parties' combined value market share for corrugated sheet is below [10-20]%.

VI. MODIFICATION TO THE ORIGINAL CONCENTRATION

- 40) In order to remove the competition concerns raised by the operation in relation to the market for corrugated cases in Denmark, SCA has submitted an undertaking to the Commission that will remove the serious doubts raised by the original transaction regarding its compatibility with the common market. The text of the undertaking is annexed and forms an integral part of this decision,
- 41) SCA has undertaken to divest Metsä Corrugated's Neopak A/S subsidiary (including the Randers and Naestved plants) as well as two additional SCA sheet plants, located in Haslev and Hørning, to an independent and viable competitor approved by the Commission. The purchaser will be a competitor of the parties and will be unconnected and independent from SCA. The proposed purchaser will also be expected to obtain all the necessary approvals for the purchase from the relevant competition authorities. The parties have identified Jefferson Smurfit Group plc. ("Smurfit") as a suitable buyer in this respect and have entered into negotiations with Smurfit. Should the business not be divested by the end of a given period of time, a trustee will be appointed to sell the business to a purchaser within a further period of time. The undertakings also contain a clause which will prevent SCA for a given period of time from approaching or hiring key personnel in the companies included in the divestment package who have or have had access to sensitive business, commercial, R&D or other proprietary information. It has also been set out that, at the option of the buyer, SCA will maintain the existing supply arrangements with the Haslev and Hørning sheet plants for a certain period of time after divestiture.
- 42) The Commission considers that once an effective competitor purchases the divestment package, competition in Denmark will be restored to the current levels. The divestiture will reduce SCA's market share by volume to slightly below the pre-merger level.
- 43) Measured by value, SCA's market share will increase slightly (by [0-5] percentage points) due to the fact that Søren Berggreen A/S with its high-value offset printing operation (in addition to its box-making activities) will be retained by SCA. However, the parties Danish activities do not overlap in this segment, as SCA does currently not have offset-printing equipment in Denmark. The divestiture will thus re-establish a third manufacturer with extensive domestic production capacity (two box plants and two sheet plants) to effectively compete in the Danish market. Based on current market data, the new entrant will acquire a market share of [10-20]% (by volume). Metsä Corrugated's

Danish market share at present amounts to [10-20]%. The divested assets will form the third largest competitor after SCA ([30-40]%) and Ässi Domän ([20-30]%).

- 44) The Commission thus concludes that the undertakings submitted by SCA are sufficient to remove the serious doubts raised by this concentration as far as the market for corrugated cases is concerned.

VII. ANCILLARY RESTRAINTS

- 45) The agreement under which SCA acquires Metsä Corrugated provides that the relevant subsidiaries of Metsä Corrugated enter into [...] supply agreements with Metsä-Botnia for the supply of white top liner, which forms an input for the production of corrugated sheet. These supply agreements protect the value of the transferred assets during a transitional period and can thus be considered as related to and necessary for the implementation of the concentration.
- 46) The parties have agreed to enter into similar supply agreements between the relevant subsidiaries of Metsä Corrugated and Metsä-Serla for the purchase of semi-chemical fluting for a [...] period. However, in the absence of evidence to the contrary, a period of [...], rather than [...], appears to constitute a sufficient term for the replacement of the relationship of dependency by autonomy in the market. Only a duration of [...] can, therefore, be considered a restriction that is related to and necessary for the implementation of the concentration.
- 47) The parties have further agreed that Metsä-Serla will ensure that it or one of its group companies will continue to provide all services (including IT) as are currently provided to a transferred company for a transitional period of [...] from closing of the acquisition. As so far as this clause contains restrictions on competition, they can be considered as related to and necessary for the implementation of the concentration.
- 48) A further agreement whereby Metsä-Serla refrains from using any brand and/ or company names associated with the transferred assets appears to form an integral part of the operation, rather than an ancillary restraint.

VIII. CONCLUSION

- 49) For the above reasons, the Commission has decided not to oppose the notified operation and, subject to full compliance with the undertakings described in section VI. above and annexed to the present decision, to declare it compatible with the common market and with the EEA Agreement. This decision is adopted in application of Article 6.2 of Council Regulation (EEC) No 4064/89, as amended by Regulation 1310/97, and of Article 57 of the EEA Agreement.

For the Commission,
Signed by Philippe BUSQUIN
Member of the Commission

UNDERTAKING

Whereas, on 11 July 2000 SCA Packaging International BV ("SCA Packaging") notified the proposed acquisition of Metsä Corrugated to the European Commission (the "Commission") pursuant to Council Regulation 4064/89 as amended (the "Merger Regulation");

Whereas, Metsä Corrugated manufactures corrugated cases in Denmark primarily through Neopac AS ("Neopac Denmark"), a wholly-owned subsidiary of Metsä Corrugated;

Whereas, Neopac Denmark is a stand alone company comprising two integrated box plants (Neopac Randers and Neopac Naestved) and has all necessary and usual legal title to all material and immaterial assets necessary for the conduct of its business;

Whereas SCA Packaging owns a sheet plant ("Haslev") located in Haslev, Denmark and a sheet plant ("Hørning") located in Hørning, Denmark, and whereas Haslev and Hørning are effective and transferable businesses in their own right and would include all assets necessary for the operation of their businesses including all buildings and land (owned or leased), machinery and equipment usual for a sheet plant, a full workforce, sales staff and an active customer list;

Whereas SCA Packaging will continue to supply Haslev and Hørning with corrugated sheet at market prices if required by the purchaser of the Divestment Package;

Whereas Neopac Denmark, Haslev and Hørning (together the "Divestment Package") represent a substantive business capable of being an active competitive force on the market.

Whereas, Smurfit International ("Smurfit"), a wholly owned subsidiary of the Jefferson Smurfit Group plc, has agreed to acquire Neopac Denmark and has expressed an interest in acquiring Haslev and Hørning, subject to Commission approval of SCA Packaging's acquisition of Metsä Corrugated;

Whereas, Smurfit is unconnected to and independent from SCA Packaging, the sale would allow the "Divestment Package" to continue to operate as an active competitive force, and Smurfit can reasonably be expected to obtain all necessary approvals for the purchase from the relevant competition authorities;

Whereas, SCA Packaging wishes to submit commitments pursuant to Article 6(2) of the Merger Regulation to form the basis for a decision pursuant to Article 6(1)b;

Whereas, the commitments will apply whether or not Smurfit is approved as a purchaser of the Divestment Package;

Therefore, SCA Packaging offers the following commitments (hereafter the "Undertaking") to allow the Commission to approve the transaction pursuant to Article 6(2) of the Merger Regulation.

This Undertaking shall take effect upon the date of the Commission Decision declaring the notified concentration compatible with the Common Market under Article 6(1)b of the Merger Regulation (the "Effective Date").

A. DIVESTITURE OF NEOPAC DENMARK, HASLEV AND HØRNING TO SMURFIT

1. Subject to paragraph 2 below, within [CONFIDENTIAL] of the completion of SCA Packaging's acquisition of Metsä Corrugated, SCA Packaging shall enter into a binding agreement to sell, subject to Commission approval, to Smurfit, all shares in Neopac Denmark and all assets comprising Haslev and Hørning including all buildings and land (owned or leased), machinery, staff, salesforce (see Confidential Annex), customer lists and existing customer contracts. The Divestment Package will be sold as a going concern. To this extent, SCA Packaging undertakes, for the period from submission of this undertaking until its completion, to take, or refrain from taking, any action, if such action or inaction could jeopardize the viability of the Divestment Package.
2. If the Commission has not within ten (10) working days following receipt of a fully documented and reasoned request rejected in writing the proposed divestment to Smurfit set out in paragraph 1, above, the proposal shall be deemed to be approved.
3. The provisions in paragraphs 4 to 15 and 18 to 19 below shall not apply in the event of satisfaction by SCA Packaging of the obligation in paragraph 1 above.

B. DIVESTITURE OF NEOPAC DENMARK, HASLEV AND HØRNING IN THE EVENT OF THE OBLIGATION IN PARAGRAPH 1 NOT BEING SATISFIED

4. Within [CONFIDENTIAL] from the Effective Date, unless extended by the Commission in accordance with paragraph 21 of this Undertaking, SCA Packaging shall enter into a binding agreement to sell to a purchaser approved by the Commission, all shares in Neopac Denmark and all assets of Haslev and Hørning, including all buildings and land (owned or leased), machinery, staff, salesforce (see Confidential Annex), customer lists and existing customer contracts. The Divestment Package will be sold as a going concern. To this extent, SCA Packaging undertakes, for the period from the submission of this Undertaking until its completion, to take, or refrain from taking, any action, if such action or inaction could jeopardize the viability of the Divestment Package.
5. To assist the Commission in determining whether any proposed purchaser of the business is suitable, the trustee, appointed in accordance with Section C below, shall submit a fully documented and reasoned proposal enabling the Commission to verify that: (i) the proposed purchaser is unconnected to and independent from SCA Packaging; (ii) the sale allows the Divestment Package to continue to operate as an active competitive force; and (iii) at the time of completion of the purchase, the proposed purchaser has, or can reasonably be expected to obtain, all necessary approvals for the purchase from the relevant competition authorities.
6. If SCA Packaging has not entered into a binding contract with a purchaser approved by the Commission within [CONFIDENTIAL] from the Effective Date, or has not completed the sale within a further period of [CONFIDENTIAL], the trustee, appointed in accordance with Section C below, shall have the power to effect the divestiture within [CONFIDENTIAL] from the Effective Date.

C. TRUSTEES

7. SCA Packaging shall propose the name of an independent and experienced institution that it considers appropriate to be appointed as trustee. Such proposal shall be made within fifteen (15) working days from the non-fulfillment of the obligation in paragraph 1. The Commission shall have the discretion to approve or reject the proposed institution in accordance with Section F. Upon rejection, SCA Packaging shall submit the names of at least two further

institutions, within fifteen (15) working days of being informed of the rejection. If more than one name is approved by the Commission, SCA Packaging shall be free to choose the trustee to be appointed from among the names approved.

8. SCA Packaging shall appoint the trustee within five (5) working days after the Commission's explicit or implicit approval in accordance with Section F.
9. Along with its request for approval of a proposed trustee, SCA Packaging shall submit for the Commission's approval a proposed draft mandate setting forth in detail the scope of the mandate and the responsibilities to be performed under the mandate. At the Commission's request, SCA Packaging shall modify the proposed mandate to ensure that it is in accordance with the provisions of this Undertaking. Once the trustee has been approved by the Commission, SCA Packaging shall not make any changes to the mandate without the Commission's approval.
10. The trustee shall:
 - (a) monitor the satisfactory discharge by SCA Packaging of the obligations entered into in this Undertaking;
 - (b) provide written reports to the Commission on the progress on the implementation of this Undertaking and on the discharge of its mandate. Such reports shall be provided within five (5) working days from the end of every two (2) month period from the Effective Date or at such other time as the Commission may specify;
 - (c) at any other time, provide to the Commission, at its request, a written or oral report on matters falling within the trustee's mandate.

SCA Packaging will receive a simultaneous copy of any such written reports and shall be informed promptly of the content of any such oral reports.

11. The trustee shall report immediately to the Commission any breach of the Undertaking which comes to its attention and shall not be required to inform SCA Packaging thereof.
12. The trustee's mandate as set out above shall not be extended or varied in any way by SCA Packaging, save with the express written consent of the Commission. Any instruction or request to the trustee from SCA Packaging which conflicts with the trustee's mandate will be considered null and void.
13. If the trustee, in accordance with this Undertaking, has to conduct negotiations with, and propose a purchaser, the trustee shall:
 - (a) notify the Commission as soon as practically possible concerning the identity of purchasers with whom it has initiated negotiations and advise the Commission why it believes such purchasers are suitable, in view of the criteria specified above;
 - (b) end negotiations with any prospective purchaser, if the Commission determines that the negotiations are being conducted with an unsuitable purchaser; and
 - (c) carry out the negotiations with the view to concluding a binding contract for the divestiture of the Divestment Package that takes into account the financial interest of SCA Packaging (*i.e.*, to obtain the best price and terms possible within the context of the trustee's mandate).

14. SCA Packaging shall provide the trustee with all such assistance and information, including copies of all relevant documents, in relation to the "Divestment Package" as the trustee may require in carrying out its mandate, and shall pay reasonable remuneration for its services.
15. As soon as this Undertaking has been implemented, the trustee shall request the Commission to be discharged. 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.

D. RING-FENCING OF KEY PERSONNEL

16. Prior to and for [CONFIDENTIAL] following divestiture, SCA Packaging undertakes to refrain from hiring, or approaching with a view to hiring, such personnel at the Divestment Package who have had (or currently have) access to sensitive business, commercial, R&D, or other proprietary information, due to his or her professional position or function with the Divestment Package.

E. ONGOING PAPER SUPPLY TO HASLEV AND HØRNING

17. SCA Packaging undertakes to continue to supply Haslev and Hørning with corrugated sheet at market prices if required by the purchaser of the Divestment Package.

F. COMMISSION APPROVALS

18. If the Commission has not within ten (10) working days following receipt of a fully documented and reasoned request rejected in writing any proposal submitted to it for approval pursuant to this Undertaking, the proposal shall be deemed to be approved.
19. Provided that the procedure for approval of potential purchasers has been complied with, SCA Packaging shall be free to accept any offer or to select the offer it considers best in the event of a plurality of approved purchasers for the Divestment Package.
20. Any requests or proposals requiring Commission approval shall be addressed to the Director of Directorate B of the Commission's Directorate General for Competition, 70 Rue Joseph II, 1000 Brussels. Any communications to SCA Packaging shall be addressed to persons to be determined and communicated to the Commission before the Effective Date.

G. GENERAL PROVISIONS

21. At SCA Packaging or the trustee's request, the Commission may, at its discretion, extend any period in this Undertaking allowed for the implementation of the divestiture of the Divestment Package. Such request shall specify the exceptional circumstances that in SCA Packaging or the trustee's opinion justify an extension. Such exceptional circumstances may include any unforeseen delay, which is unrelated to SCA Packaging, and which is preventing or delaying the divestiture. Any such delay shall not prevent SCA Packaging from taking the necessary preparatory steps with a view to completing the envisaged divestiture.
22. SCA Packaging shall provide the Commission with such information as the Commission may require in connection with this Undertaking within ten (10) working days from receipt of the Commission's reasoned request.
23. Nothing in this Undertaking shall require SCA Packaging to take, or refrain from taking, any action, if such action or inaction would violate any applicable laws and regulations, nor shall it

be interpreted so as to prevent SCA Packaging from gaining access to information which it needs to comply with its obligations under financial reporting, tax and securities laws.

IN WITNESS WHEREOF, the undersigned, who is duly authorised to act on behalf of SCA Packaging, has caused this Undertaking to be executed as of:

For SCA Packaging:

By:

CONFIDENTIAL ANNEX

Sales staff to be transferred with Hørning and Haslev

SCA Packaging will make best endeavours to transfer the following sales staff with Hørning and Haslev, who are currently covering sales at the Hørning and Haslev plants:

[CONFIDENTIAL]

