

EN

*Case No IV/M.210 -  
M O N D I /  
FRANTSCHACH*

Only the English text is available and authentic.

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

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Article 6(1)(b) NON-OPPOSITION  
Date: 12.05.1992

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Brussels 12.05.1992

PUBLIC VERSION

MERGER PROCEDURE  
ARTICLE 6(1)b DECISION

Registered with advice of delivery

To the notifying parties

Dear Sirs,

Case No. IV/M.210 - Mondi/Frantschach  
Notification of 7.4.92 pursuant to Article 4  
of Council Regulation No 4064/89

1. The notified operation concerns the acquisition by Mondi Holding GmbH (MH) of 50% of the controlling interest in Frantschach AG (Frantschach) which is involved in the pulp, paper and packaging industry.
2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of Council Regulation No 4064/89 and does not raise serious doubts as to its compatibility with the common market.

I. THE NOTIFIED OPERATION

3. Frantschach heads a group of paper companies based mostly in Austria, and is controlled by a holding company called "Frapag" Papiererzeugungs- und Vertriebs - Aktien-gesellschaft, which in turn is controlled by members of the Hartmann/Kaufmann family. Under the proposed transaction, Frapag will transfer its holding of 88,8% of Frantschach's shares to a new holding company in which MH will have a 50% stake. The remainder of Frantschach's shares are held by members of the Hartmann/Kaufmann family.

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4. MH is an investment vehicle ultimately controlled by the Anglo American Corporation of South Africa Limited (AAC) although De Beers Centenary AG, Minorco and Central Holdings also have indirect shareholdings in MH. The interests of AAC in pulp, paper and packaging are held by the Mondi Paper Company Limited (Mondi), a South African company, which has acted on behalf of MH in negotiating this transaction. Papier Holding, another investment vehicle owned by the same consortium of companies and also ultimately controlled by AAC already has a 49% stake in Neusiedler AG, a member of the Frantschach group. This stake was acquired in 1990.

## II. JOINT CONTROL

5. Frantschach will be directly controlled by a new holding company called Frabet in which MH and Frapag will each hold 50% of the shares. Frantschach has a dual board structure ie Supervisory and Management Boards. There will be equal numbers of representatives of MH and Frapag respectively on the Supervisory Board (save that Mrs Hartmann, the senior member of the Hartmann/Kaufmann family, may under present circumstances be nominated to the Supervisory Board in addition to the other Frapag nominees, but will not have a casting vote). The Management Board which will continue to be comprised wholly of employees of the Frantschach group, is appointed by the Supervisory Board which determines its powers and formulates the guidelines within which it operates. With this structure, both parties will be obliged permanently to co-operate on decisions affecting Frantschach and therefore Frantschach will be jointly controlled and will become a joint venture within the meaning of Article 3 of the Merger Regulation.

## III. CONCENTRATIVE JOINT VENTURE

6. The Frantschach group is at present an autonomous and full function business entity, and it will remain so under the proposed arrangements. Mondi will not transfer any assets to the joint venture. However, the notifying parties see their common shareholding in Frantschach as the basis for their future activities in those sectors of the European pulp and paper industry in which Frantschach is involved and as a relevant base in other potential areas of the industry. The Shareholders' Agreement provides for communication between Frantschach and Mondi's South African businesses, of their technical and business expertise in relation to the pulp and paper industry.
7. The Hartmann/Kaufmann family has no business activities which compete with the business of Frantschach. They are in effect withdrawing from the pulp and paper industry by leaving all their interests in the joint venture. It is unlikely that they would seek to re-enter the industry other than through Frantschach. There are restrictions in the Shareholders' Agreement which oblige both notifying parties to give a first option to Frantschach to undertake any new investments which either of them wish to make in Europe related to certain fields of activity in which Frantschach is currently engaged. Investment plans in other areas of the pulp and paper industry are to be discussed between the parties.
8. In economic terms, it seems unlikely that either party to the joint venture will seek to enter the Community pulp and paper markets other than through Frantschach, even if they were not restricted by the non-competition clauses in the Shareholders' Agreement. The Hartmann/Kaufmann family's expertise in this

industry is concentrated in Frantschach and that position will not change with the formation of the joint venture. It follows that there will not be co-ordination of the competitive behaviour of the family and Mondi, and likewise there will not be such co-ordination between them and the joint venture since the family will not be operating independently in the same markets. So far as co-ordination between the joint venture and Mondi is concerned, it is necessary to take into account that there is very little product overlap between Frantschach and Mondi and they are operating in widely separated geographic markets. This is not to ignore the fact that some of the product markets concerned such as pulp could be considered to be worldwide markets, although Mondi's exports of pulp to the Community are very low - less than 2% of EC pulp sales. It is reasonable to suppose that Mondi will develop its future European operations through the joint venture. Indeed, the Shareholders' Agreement foresees an interaction of people and the exchange of business and technical expertise between Frantschach and Mondi. On the basis of these elements, it is not reasonable to assume, in the present case, that there will be coordination of competitive behaviour between Frantschach and Mondi. The notified operation is therefore a concentration within the meaning of Article 3 of the Merger Regulation.

#### IV. COMMUNITY DIMENSION

9. The aggregate worldwide turnover of the parties in 1991 exceeded 5000 million ECU. AAC views itself as an investment holding company without turnover as such. Four of its subsidiaries alone, however, (Anglo American Coal Corporation, Anglo American Industrial Corporation, Anglo American Properties and Elandsrand Gold Mining Company Limited) have a worldwide turnover which exceeds 5000 million ECU while the Frantschach group achieved 772 million ECU in 1991. Both parties have a Community-wide turnover of more than 250 million ECU and the parties did not achieve more than two-thirds of their Community-wide turnover in one and the same Member State. The operation therefore has a Community dimension within the meaning of Article 1 of the Merger Regulation.

#### V. COMPATIBILITY WITH THE COMMON MARKET

##### A. Product markets

10. There are a number of distinct product markets in the pulp, paper and packaging sectors.

##### **Pulp**

11. Pulp reveals different properties depending on:
- the sort of wood used: softwood pulp is stronger, hardwood more opaque;
  - whether or not the pulp is bleached: bleached pulp is used for fine paper while unbleached pulp is mostly used for packaging; and
  - whether chemical or mechanical processing is used. Chemical pulp is known as "wood-free" and 95% of it is made by the "kraft" process. Mechanical pulp contains wood, is less strong than chemical pulp and is used mainly for newsprint and as a filler in packaging paper.
12. The distinct characteristics of different sorts of pulp suits them to particular end uses, but there is a certain amount of

substitutability, and therefore pulp can be considered as a single product market.

13. Mondi produces bleached hardwood pulp in South Africa, some of which it supplies to Neusiedler for use in its paper production. It also produces bleached softwood kraft pulp which it uses internally in its integrated paper-making activities. Frantschach produces bleached and unbleached softwood kraft pulp. The unbleached pulp is used mainly for integrated paper manufacture within the Frantschach group, as is 20% of the bleached pulp, the balance being sold on the market.

#### **Paper**

14. The paper sectors affected by this concentration comprise three main markets: fine paper, newsprint and sackpaper. In its decision of 24.2.92 on Torras/Sarrio (Case N° IV/M166) the Commission identified four sub-markets in fine paper depending on whether the paper is coated or uncoated and is wood-containing or wood-free.
15. Both Mondi and Frantschach manufacture uncoated wood-free paper: Mondi in South Africa and Neusiedler (owned 49% by Mondi and 51% by Frantschach) in Austria. Mondi also produces newsprint and bleached sack kraft paper in South Africa while Frantschach produces both bleached and unbleached kraft paper (some of which is sold to other companies in the Frantschach group).

#### **Packaging**

16. Frantschach is the largest European producer of paper sacks. While there are potentially separate markets for single and multi-walled and bleached and unbleached sacks it is not necessary to define this market more precisely since neither Mondi, nor any other company controlled by AAC is active on this market.
17. Mondi manufactures two sorts of liner board used to make cardboard boxes: unbleached and white-top kraft liner board, and exports the latter to the Community. Frantschach does not make liner board.

#### **Other**

18. Both Mondi and Frantschach produce sawmill products: Mondi makes value-added products i.e. plywood, which it exports to the Community while Frantschach produces boards and planks. While there may be a degree of substitutability between these two products groups, it is not necessary to define the market further given that Mondi's market share does not exceed 10% in any Member State while [ ] Frantschach [ ]<sup>(1)</sup>. Mondi also owns forestry reserves.
19. Frantschach has a 55% stake in Europapier, a paper merchant, which is based in Austria and has start-up subsidiaries in Hungary and Czechoslovakia. Mondi has a 60% stake in a paper merchanting division (the remaining 40% is held by the VRG Group of the Netherlands) which distributes both Mondi's and other manufacturers' paper and board in southern Africa.

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<sup>(1)</sup> Deletion - business secret - has national market shares of less than 5%.

20. Frantschach is also active in a range of other plastic packaging, films and coatings, unrelated to Mondi's product range.

B. Relevant geographic markets

21. It is not necessary for the purposes of this decision to make a detailed analysis of the relevant geographic markets since the parties have a modest combined market share in all Member States in which they are active. However, as explained in the Torras/Sarrio case, pulp is an internationally traded product with the Community importing nearly half of its consumption, and consequently this is at least a Community-wide market. Likewise competition in fine paper, newsprint, sack paper and packaging takes place at least at Community level. The relevant geographic market for paper merchanting is limited by the geographic area covered by the paper merchants in question.

C. Competition assessment

22. Frantschach is a sizeable integrated group of companies with interests in pulp, paper and both paper-based and other forms of packaging. It is Europe's largest producer of paper sacks. Based in Austria, it also has a strong presence in Switzerland, exports to the Community (particularly to neighbouring Italy and Germany) and has some subsidiaries based in the Community. It also has a 33% stake in a Greek manufacturer of corrugated boxes (Cartonpack).

23. Mondi is based in South Africa but exports some of its pulp, paper and packaging products to the Community. It also has a minority (49%) stake in Neusiedler, a Frantschach subsidiary which is one of the market leaders in the production of woodfree uncoated paper.

24. Neither party has a substantial share approaching 25% of any of the Community markets in which they are active. Furthermore, the parties' activities overlap only in respect of the following products:

- pulp
- woodfree uncoated paper
- bleached kraft paper
- sawmill products

25. Both Frantschach and Mondi sell pulp on the Community market but have a combined EC market share of less than 5%.

26. Neusiedler produces woodfree uncoated paper and achieves an EC market share of just over [ ]<sup>(1)</sup>. Mondi produces this type of paper in South Africa but had no EC sales in 1991. Likewise Frantschach has a very similar share of the Community market for bleached kraft paper which is also produced by Mondi in South Africa but not exported.

27. As explained earlier, Frantschach and Mondi overlap in their production of sawmill products if plywood and sawn boards and planks are viewed as substitutable. Mondi's market share does not exceed 10% in any Member State. [ ] Frantschach [ ]<sup>(2)</sup>.

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(1) less than 5%

(2) has national market shares of less than 5%.

Vertical links

28. Mondi already supplies bleached hardwood chemical pulp to its associate Neusiedler. The concentration will not give rise to any change in the competitive situation in this respect. Frantschach could also source primary products such as liner board from Mondi. In the other direction, Mondi is a potential purchaser of pulp from Frantschach, although it argues that its existing sources of supply such as Swaziland are cheaper. There is also potential for Mondi to distribute its products in Europe through the Frantschach paper merchant, Europapier. It is highly unlikely that such vertical links could have any appreciable effect on competition in the Community, given the parties' small market presence.

Ancillary restrictions

29. The non-competition restrictions contained in the Shareholders' Agreement and referred to in paragraph 7 above express the parties' intention to concentrate their future activities in the joint venture. Consequently they are restrictions which are directly related and necessary to the implementation of the concentration and are to be considered an integral part of the concentration.

VI. CONCLUSION

30. Both the Frantschach group and Mondi are substantial companies in the pulp, paper and packaging sector but both are based outside the Community and their presence in the relevant Community markets is very limited. It follows that the proposed concentration will not create or strengthen a dominant position as a result of which effective competition will be significantly impeded in the common market or in a substantial part of it.

For the above reasons the Commission has decided not to oppose the notified concentration and to declare it compatible with the common market. This decision is adopted in application of Article 6(1)b of Council Regulation 4064/89.

For the Commission,