

*Case No COMP/M.2391 -
CVC / CINVEN /
ASSIDOMÄN*

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 10/05/2001

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 10/5/2001

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SG (2001) D/288466

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying parties

Dear Sir/Madam,

**Subject: Case No COMP/M. 2391-CVC/Cinven/AssiDomän
Notification of 2.4.2001 pursuant to Article 4 of Council Regulation
No 4064/89¹**

1. On 2/4/2001, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89 by which the undertakings CVC European Equity II Limited, belonging to the group CVC Capital Partners ("CVC"), and Cinven Limited, belonging to the Cinven Group Limited ("Cinven"), acquire within the meaning of Article 3(1)(b) of the Council Regulation joint control of AssiDomän AB's ("AssiDomän") container board and corrugated business units("Alpha").
2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of Council Regulation (EEC) No 4064/89 and does not raise serious doubts as to its compatibility with the common market and with the EEA Agreement.

I. THE PARTIES

3. CVC and Cinven are both investment companies. CVC and Cinven control jointly Kappa Holding BV ("Kappa"), which is involved in the manufacture and sale of paper and packaging products. Moreover, Kappa is active in the collection and sale of recovered (recycled) paper and board in the Netherlands, Belgium and Germany.

¹ OJ L 395, 30.12.1989 p. 1; corrigendum OJ L 257 of 21.9.1990, p. 13; Regulation as last amended by Regulation (EC) No 1310/97 (OJ L 180, 9. 7. 1997, p. 1, corrigendum OJ L 40, 13.2.1998, p. 17).

4. Alpha, like Kappa, manufacture and sell corrugated case materials, corrugated board (sheets), corrugated cases, solid board sheets and packaging.

II. THE OPERATION

5. CVC and Cinven will acquire joint control of AssiDomän's container board and corrugated business units. These business units will be merged with Kappa, which is already jointly controlled by CVC and Cinven.

III. CONCENTRATION

6. The operation is a concentration within a 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 5 billion² (CVC: EUR [...] million, Cinven: [...] million, Alpha EUR [...] million). Each of them have a Community-wide turnover in excess of EUR 250 million (CVC: EUR [...] million, Cinven: EUR [...] million, Alpha EUR [...] 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. THE RELEVANT MARKETS

A. Relevant product markets

8. In the present case, the product areas affected by the proposed concentration are corrugated case materials, corrugated board sheets, corrugated cases, solid board sheets and solid board cases.
9. The parties consider that the relevant product market should be defined on the basis that there is one single market for transport packaging in general. The Commission has, however, rebutted a wider market definition in earlier decisions³ and concluded that the substitution between different types of transport packaging does not materially affect prices and quantities in the market for corrugated cases. This conclusion has been confirmed by the Commission's market investigation in the present case.
10. In earlier decisions, the Commission has identified separate markets for corrugated case materials, corrugated board (sheets) and corrugated cases.

² 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.

³ Most recently in COMP/M.2032-SCA Packaging/Metsä Corrugated.

Corrugated case materials

11. Corrugated case materials are the base papers used to manufacture corrugated board sheets, which are in turn converted into corrugated boxes and containers. Corrugated board is made by combining two layers of liner board with a layer of fluting in between (the wave shaped middle layers characteristic of corrugated board). The liner board layers and the fluting are together referred to as corrugated case materials. Corrugated case materials can be made from virgin fibre (“kraftliner”) or from waste-based (recycled) fibre (“testliner”).
12. As in previous Commission decisions⁴, the question whether the market should be subdivided into virgin based products and recycled fibre based products can be left open as the operation will not create or strengthen a dominant position in any of the alternative product market definitions considered.

Corrugated board sheets

13. Corrugated board sheets are made from corrugated case materials. As explained above, the corrugated board comprises an upper and lower layer of linerboard (either kraftliner or testliner) and a middle layer of wave-shaped fluting. As in previous Commission decisions, corrugated board sheets are considered to constitute a separate relevant product market for the purposes of this decision.

Corrugated cases

14. Corrugated cases are the cases manufactured from corrugated board sheets. Corrugated cases are principally used for transport packaging, as distinct from consumer packaging. As in previous Commission decisions, corrugated cases are considered to constitute a separate relevant product market for the purposes of this decision.

Solid board sheets

15. Like corrugated board, solid board comprises of an upper and lower liner sheet. However, whereas in corrugated board the middle layer is undulating fluting, in solid board the middle layer is a solid layer or multiple layers of recycled fibre. Solid board is consequently heavier than corrugated board. According to the parties, board with a weight of 600/700 g/m² upwards is typically referred to as solid board. According to the parties, because solid board is heavier it is also more expensive per m² than corrugated board.
16. There are two main types of solid board: transport packaging board and graphic board/speciality board. As Alpha manufactures solid board sheets used for transport, only this kind of solid board sheets will be considered in this decision.
17. Third parties in their replies to the Commission’s questionnaires have indicated that the inherent characteristic of solid board are not comparable to corrugated board sheets. From the supply-side, it has been indicated that it is not feasible to switch from

⁴ IV/M.291 – KNP/BT/VRG; IV/M.499 – Jefferson Smurfit/St. Gobain; IV/M.549 – SCA/PWA; IV/M.613 – Jefferson Smurfit/Munksjö; IV/M.1208 – Jefferson Smurfit/Stone Container; COMP/M.2020 – Metsä-Serla/MODO.

manufacturing from one type of board readily to another type of board, including solid board. It has also been indicated that converting machines using corrugated board sheets could not be directly used to convert solid board sheets.

18. The question whether or not solid board sheets constitute a separate relevant product market can, however, be left open for the purposes of this decision, because even in the narrower market concerning solid board sheet, the operation as notified would not lead to the creation or strengthening of a dominant position.

Solid board cases

19. Solid board sheets are converted into boxes in a process that is comparable to the process under which corrugated board is converted into corrugated cases. Solid board cases are used primarily for transporting fresh products like fruit, vegetables, fish, meat, poultry and dairy products. According to the parties, solid board cases are heavier and more expensive than corrugated cases.
20. The Commission's market investigation confirmed that solid board cases are more expensive than corrugated cases. The investigation also confirmed that the technical properties are different from those of corrugated cases, rendering them particularly suitable for certain specific end uses (as in the fishing industry) where corrugated cases are typically not used.
21. The question whether or not solid board cases constitute a separate relevant product market can, however, be left open for the purposes of this decision, because even in the narrower market concerning solid board cases, the operation as notified would not lead to the creation or strengthening of a dominant position.

B. Relevant geographic markets

22. The parties have submitted that they consider that the markets for corrugated case materials, solid board sheets and solid board cases are at least EEA-wide. As regards the markets for corrugated board (sheets) and cases, the parties consider these to be wider than national.

Corrugated case materials

23. The geographic market for corrugated case materials has been previously defined by the Commission as at least EEA-wide⁵. The Commission's market investigation in this case showed that there is no reason to deviate from the previous Commission practice.

Corrugated board sheets

24. As regards corrugated board sheets, the Commission noted in case COMP/M.2032 – *SCA Packaging/ Metsä Corrugated* that the transportation costs represent the main obstacle to supplying corrugated board sheets over large distances. However, the exact geographic market definition for corrugated board sheets was left open.

⁵ IV/M.499 – Jefferson Smurfit/St. Gobain; IV/M.549 – SCA/PWA; IV/M.613 – Jefferson Smurfit/Munksjö; IV/M.1208 – Jefferson Smurfit/Stone Container.

25. In the present case, the parties have submitted that the relevant geographic market is a radius of up to 400 km from the corrugator. The parties have submitted further that even if a smaller radius of 300 km is applied, the relevant geographic market for corrugated board sheets in this case would cover at least Benelux, the western part of Germany and also part of northern Germany, evidenced by cross border sales. The exact market definition can, however, be left open in the present case, because in all alternative market definitions considered, the operation as notified would not lead to the creation or strengthening of a dominant position.

Corrugated cases

26. As concerns corrugated cases, the Commission has found in a number of earlier decisions that the economic supply distance of corrugated cases is between 200 and 300 km. However, the exact geographic market definition for corrugated cases was left open in previous Commission's decisions.
27. As regards the Netherlands, the parties argue that the relevant geographic market is wider than the Netherlands and includes also Belgium and the western part of Germany and some half of the northern part of Germany. Third parties in their replies to the Commission's questionnaires have indeed confirmed that they either are already sourcing or they could start sourcing corrugated cases outside the Netherlands, particularly from Germany.
28. The question whether or not the relevant geographic market comprises the Netherlands, Belgium and/or Germany can be left open, because in either alternative market definitions considered, the operation as notified would not lead to the creation or strengthening of a dominant position.

Solid board sheets

29. The parties have submitted that solid board sheets have a high density and are relatively expensive. The parties submit, nevertheless, that the relevant geographic market is at least northern Europe, including Scandinavia, Benelux, Germany and the UK as evidenced by significant cross border sales.
30. A number of competitors in their replies to the Commission's questionnaires have indicated that they sell solid board sheets in a geographic market, which they consider is wider than national.
31. However, for the purposes of this decision, it is not necessary to exactly define the relevant geographic market because, in all alternative market definitions considered, effective competition would not be significantly impeded in the EEA or any substantial part of that area.

Solid board cases

32. The parties submit that over 70% of the total demand for solid board cases in the EU comes from the Netherlands, Belgium, France and Germany. According to the parties, this is the area in which most producers and most customers are located. The parties have further submitted that, due to transport costs, it is possible to sell solid board cases up to distances of over 500 km.

33. A number of competitors in their replies to the Commission's questionnaires have indicated that they sell solid board cases in a geographic market, which they consider is wider than national.
34. However, for the purposes of this decision, it is not necessary to exactly define the relevant geographic market because, in all alternative market definitions considered, effective competition would not be significantly impeded in the EEA or any substantial part of that area.

VI. COMPETITIVE ASSESSMENT

35. By way of overview, the Parties' activities in the markets for corrugated case materials, corrugated board and corrugated cases are largely complementary from a geographical point of view. Assidomän is mainly active in countries where Kappa Packaging is not, or little, represented, such as Sweden, Denmark, Spain, Italy, UK and France. The proposed transaction will complete the European presence of Kappa and will extend as well its product mix (virgin and recycled materials). After the transaction, SCA and Smurfit will still be the two market leaders together with the new combined entity.
36. The notified transaction gives rise to four horizontally affected markets, namely *corrugated cases materials, corrugated cases, solid board sheets and solid board cases*.

Corrugated Case Materials

37. The combined Kappa/Alpha market share in the EEA will be about [<10]% (both including and excluding intra-group deliveries). SCA and Smurfit will have an EEA market share of [5-15]% and [10-20]% respectively. The combined Kappa/Alpha market share would not exceed 15% in respect of either total EEA consumption or EEA open market consumption (excluding intra-group deliveries) for kraftliner, testliner or fluting individually.
38. The combined Kappa/Alpha market share will account for more than 15% of total demand for corrugated case materials in a number of EEA countries, namely Denmark ([15-25]%), Netherlands ([35-45]%) and Sweden ([15-25]%). If we consider the open market for corrugated case materials in each EEA country, there are four affected markets, which are Austria ([10-20]%), Netherlands ([10-20]%), Sweden ([15-25]%) and Finland ([15-25]%). The assessment of the case would not be materially affected by considering virgin fibre and recycled fibre case materials separately and liner and fluting separately. Even if the Commission should revisit its previous decisions and therefore define the geographic market in a narrower basis, these market shares would not lead to a dominant position of the Parties considering that there are numerous competitors serving these countries.

Corrugated Cases

39. The combined Kappa/Alpha market share in the EEA market for corrugated cases will be about [5-15]%. SCA and Smurfit will have an EEA market share of [10-20]% and [10-20]% respectively.
40. If the relevant geographic market is considered to be national, there are two countries in which the combined Kappa/Alpha market share would be more than 15%, these are

Belgium and the Netherlands ([10-20]% and [35-45]% respectively). In Belgium, Kappa has already a market share of [<10]% and the additional market share will be [<10]% (Alpha business). In the Netherlands, Kappa has already a market share of [25-35]% and the additional market share will be [<10]% (Alpha business). These market shares would not confer dominance to the Parties considering that both SCA ([10-20]% in Belgium and [10-20]% in the Netherlands) and Smurfit ([10-20]% in Belgium and [5-15]% in the Netherlands) are significant competitors in Belgium and in the Netherlands and that there numerous other competitors serving these countries.

41. The Parties submit that the relevant geographic market is regional, wider than national. In this case, the parties' combined market share in the region covering Netherlands, Belgium and part of Germany is equivalent to [20-30]%. Within the Benelux region the Parties' combined market share will be [25-35]%. For the same above-mentioned reasons, a market share of this magnitude would not confer dominance to the Parties.
42. Furthermore, a number of customers of Kappa and Alpha located in the Netherlands have indicated in their replies to the Commission's questionnaires that they also purchase corrugated cases from a significant number of independent suppliers located in the Western part of Germany close to the Dutch border. These Dutch customers have also underlined that if the new combined entity Alpha/Kappa should increase the prices following the merger, they would be able to switch to other producers of corrugated cases located in the Western part of Germany, which are seen as realistic alternatives.

Solid Board Sheets

43. Pre-merger, Kappa has a market share of [35-45]% in the EEA market for solid board sheets. In the EEA open market for solid board sheets, Kappa has already a market share of [20-30]%. In the EEA wide market, the addition of Alpha's market share is very small ([<5]% in the market including internal deliveries and [<5]% in the open market) and does not have any material effect on Kappa's competitive position.
44. If the relevant geographic market is considered to be national, there are two countries in which the combined Kappa/Alpha market share would be more than 15%. These countries are Austria and Denmark ([80-100]% and [35-45]% respectively).
45. In Austria, the addition of Alpha's market share is relatively small ([<5 %). Furthermore, there are a number of solid board manufacturers located in Germany (within a distance of 400km), which have the necessary capacity in order to supply the Austrian market at a competitive price. This argument is further supported by the evidence that the Parties also supply the Austrian market from solid board mills located outside Austria. Kappa produces the solid board to be sold in Austria at mills which are located in Herzberg (approximately 450km from Austria) and Gernsbach (approximately 170km). Some sales are also made from the Attica mill in the Netherlands. AssiDomän solid board is manufactured in Slovakia and transported nearly 400km to their customers in Austria. Finally, the Parties submits that the relevant geographic market for solid board sheets is at least EEA wide and that within the EEA there are a number of other solid board manufactures capable of exporting their product economically throughout the EEA.
46. In Denmark, the addition of Alpha's market share is significant ([20-30]%). However, SCA will still be post-merger the leading supplier in Denmark with a market share of [55-65]%. Furthermore, the market investigation has shown that, within the EEA, there

are a number of solid board manufactures capable of exporting their product economically in geographically neighbouring countries.

Solid Board Cases

47. Kappa already has a market share of [35-45]% in the EEA market for solid board cases. Alpha's additional market share is less than [<5]% at an EEA level. Furthermore, Alpha only produces solid board cases in Denmark and the UK. The solid board cases produced by Alpha in Denmark are mainly sold in Denmark, Norway and Iceland. The sales in other EEA countries are negligible. In the UK, Alpha only produces "lockfast", which are used as dividers in boxes for transportation of bottles of beverages and cosmetics. Kappa only produces corrugated dividers in negligible quantities (none of which are sold in the UK). Therefore, Kappa's acquisition of Alpha's solid board cases will not therefore appreciably strengthen the market position of Kappa in the EEA market.
48. At national level, the two affected markets are Denmark and the UK. In Denmark, the Kappa/Alpha combined market share will be relatively small ([15-25]%) and there are at least six other significant suppliers of solid board cases active in Denmark. In particular, SCA Danapak will still be post-merger the leading supplier in Denmark with a market share of [35-45]%. In the UK, Kappa already has a market share of [35-45]%. However, Alpha does not sell any solid board cases and only sells "lockfast" (dividers for boxes) products, which it manufactures from solid board bought in from third parties. Taking into account that Alpha does not sell any packaging products in the UK, there would not be any significant reduction in competition as a consequence of the present transaction.

Kappa's alliance with DS Smith and SAICA in the market for corrugated cases

49. Kappa, DS Smith and SAICA have a loose co-operation agreement for a duration of three years (until the 31 March 2002) to work together to win orders from customers who require pan-European supply of corrugated cases, which none of the three producers individually is currently able to provide.
50. If we consider the EEA countries where DS Smith and SAICA are active, there are only two countries where the combined entity Kappa/Alpha together with DS Smith and SAICA will have a market share above 15%. In both of the countries the combined market share will be relatively small ([20-30]% in Spain and [10-20]% in the UK). Furthermore, a number of manufacturers of corrugated cases, such as SCA, Smurfit and International Paper are active in these markets. Moreover, the described alliance has currently a relatively minor impact on Kappa's sales (i.e. just over [<5]% of all corrugated cases sold by Kappa in the year 2000). For the above-mentioned reasons, the Commission considers that Kappa's alliance with SAICA and DS Smith does not modify the Commission's conclusion regarding the proposed concentration.

VII. CONCLUSION

51. 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

Signed,
Mario MONTI
Member of the Commission