

VERSION FOR THE PUBLIC

MERGER PROCEDURE -
ARTICLE 6(1)a DECISION

Registered letter with advice of delivery

1. Notifying party
2. Notifying party

Dear Sirs,

Subject: Case no IV/M025 - Arjomari-Prioux SA / Wiggins Teape
Appleton plc

1. The notification of 8 November 1990 under Council Regulation No 4064/89 concerns the combination of the existing businesses of Arjomari-Prioux SA ("Arjomari") and Wiggins Teape Appleton plc ("WTA"). Both companies are involved in the manufacture of paper and its wholesale supply through paper merchants. In addition WTA is engaged in the manufacture and sale of pulp.
2. The transaction will be carried out in two steps. Firstly, Arjomari will transfer to one of its wholly owned subsidiaries (Arjomari Decor SA which is to be renamed Arjomari Europe) most of its assets, liabilities and undertakings. Secondly Arjomari will transfer to WTA almost its entire shareholding in Arjomari Decor in exchange for 39% of WTA's ordinary shares. The remainder of WTA's shares are widely dispersed.
3. Following an examination of the notification the Commission has come to the conclusion that the notified operation does not fall within the scope of the Regulation.

Concentration

4. The situation after the merger has been completed will be that Arjomari will hold 39% of the shares in WTA which in turn will hold 99% of the shares in Arjomari's operating company. Arjomari will be able to exercise decisive influence on WTA because the remainder of WTA's shares are held by about 107.000 other shareholders none of whom own more than 4%, with only three shareholders having over 3% of the issued share capital. Hence Arjomari will acquire control of the undertaking within the meaning of Article 3 of the Regulation. It follows that the transaction constitutes a concentration.

Community dimension

5. The worldwide turnover of WTA in 1989 was ECU 2.256 million and its turnover in the Community was ECU 1.307 million. It did not achieve more than two thirds of its Community-wide turnover in any one Member State. The worldwide turnover of Arjomari was ECU 1.431 million with a Community-wide turnover of ECU 1.210 million. In order to calculate the aggregate turnover of the undertakings concerned it is also necessary to include the turnover of any undertakings which fall within the terms of Article 5(4). The parties have submitted that the turnover of Groupe Saint Louis which is the largest shareholder in Arjomari (without having an absolute majority of the voting rights) and Pechelbronn which in turn is the largest shareholder in Groupe Saint Louis, should be taken into account since they fall within the terms of Article 5(4)(c) and (b), third indent.
6. These provisions refer to undertakings which have in the undertakings concerned, directly or indirectly, the power to appoint more than half the members of the supervisory board, the administrative board or bodies legally representing the undertakings. Such power exists not only where an undertaking has a contractual right to make these appointments, but it may also exist where an undertaking, although not having an absolute majority of the voting rights in an undertaking, holds the largest share and the remaining voting rights are dispersed. Where it can be proved that the undertaking holding such a share has actually been able to make these appointments by controlling more than 50% of the voting rights in the general meeting due to the absence of other voting rights, it is reasonable to assume that the power referred to under Article 5(4)b third indent exists.
7. At the last general meeting of Arjomari, Groupe Saint Louis exercised 45,19% of the voting rights present or represented.

The fact that its shareholding has subsequently increased to 45,12% of the total voting rights is not sufficient in itself to establish that it has the power referred to in article 5(4)b third indent of the Regulation. In view of this conclusion there is no need to consider the position of Pechelbronn in relation to Groupe Saint Louis. Since the turnover of these undertakings is not to be taken into account, the combined aggregate worldwide turnover of the undertakings concerned amounts to ECU 3.687 million and is below the threshold in Article 1(2)(b). It follows that the concentration does not have a Community dimension.

Comments from Third Parties

The notification of the proposed operation was published in the Official Journal of the European Communities on 13 November 1990. No comments from third parties were received following that publication.

For the above reasons, the Commission has decided that the notified concentration does not fall within the scope of Council Regulation No 4064/89. This decision is adopted under Article 6 paragraph 1(a) of the Regulation.

For the Commission