

***Case No COMP/M.3746 -  
TETRA LAVAL / SIG***

Only the English text is available and authentic.

**REGULATION (EC) No 139/2004  
MERGER PROCEDURE**

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Article 6(1)(b) NON-OPPOSITION  
Date: 25/07/2005

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 25.07.2005

SG-Greffe(2005) D/203848

In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EC) No 139/2004 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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

For the notifying parties

Dear Sir/Madam,

**Subject: Case No COMP/M.3746 – Tetra Laval/SIG Simonazzi  
Notification of 17/06/2005 pursuant to Article 4(5) of Council Regulation  
No 139/2004<sup>1</sup>**

- (1) On 17.06.2005, the Commission received a notification of a proposed concentration pursuant to Article 4, and following a referral pursuant to Article 4(5) of Council Regulation (EC) No 139/2004, by which Tetra Laval Nederland B.V. (“Tetra Laval”, The Netherlands), acquires within the meaning of Article 3(1)(b) of the Council Regulation control of certain undertakings belonging to SIG Holding AG.

## **I. THE PARTIES**

- (2) Tetra Laval, a privately held group of companies, offers processing, packaging and distribution systems for food in carton packaging material (“Tetra Pak”), equipment and systems for milk production and animal husbandry (“DeLaval”) and packaging equipment and systems, in particular stretch blow moulding machinery (SBM), barrier technology and filling machines for plastic bottles (“Sidel”).

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<sup>1</sup> OJ L 24, 29.1.2004 p. 1.

- (3) SIG Target develops, manufactures, markets and services machines for processing, aseptic and non-aseptic filling and final packaging of beverages in plastic (PET, HDPE<sup>2</sup>), glass and can containers as well as labelling machines.

## **II. THE OPERATION AND THE CONCENTRATION**

- (4) Through the transaction, Tetra Laval will acquire control SIG Simonazzi [...] (hereinafter referred to as SIG target).
- (5) This transaction constitutes a concentration pursuant to Article 3(1)(b) of Council Regulation 139/2004.

## **III. COMMUNITY DIMENSION**

- (6) The operation does not have a Community dimension within the meaning of Article 1 of the EC Merger Regulation. However on 22 March 2005 Tetra Laval informed the Commission in a reasoned submission that the concentration was capable of being reviewed under the national competition laws of at least three Member States and requested the Commission to examine it. None of the Member States competent to examine the concentration indicated its disagreement with the request for referral within the period laid down by the EC Merger Regulation. The case is therefore deemed to have a Community dimension pursuant to Article 4(5) of the EC Merger Regulation.

## **IV. COMPETITIVE ASSESSMENT**

- (7) The concentration concerns the sectors of processing and filling of liquid foods in plastic, glass and can containers, as well as related equipment including secondary packaging. The liquid food packaging industry includes a number of steps determined by the liquid characteristics and the material used. For instance, in plastic packaging, the path to follow starts with shaping the container (with a blower), then filling (in aseptic or non-aseptic environment), usually including a cap-applicator, labelling, dating, wrapping and palletizing the product. Between these different steps, the container is driving from machine to machine by conveyors.
- (8) Through the transaction, Tetra broadens its offer by adding equipment to its portfolio such as of labelling and by entering the glass and can beer market. SIG remaining part will refocus on the business of cartons for beverage but will keep some interests in stretch blow moulding machines.
- (9) The transaction will have an impact mostly on three markets: aseptic PET fillers, aseptic HDPE fillers and non-aseptic PET fillers on which the combined market share of the parties may exceed 15%.

### *I Horizontal effects*

#### *A) Aseptic PET fillers*

##### *i) product and geographic market definition*

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<sup>2</sup> PET stands for polyethylene terephthalate, HDPE for high density polyethylene.

- (10) Aseptic PET filling machines are used to fill pre-sterilised beverages into PET sterile bottles that are capped with sterile closures. Those machines are used for liquid dairy products (LDPs), fruit juices, ice teas, isotonic, sport drinks and tea/coffee drinks (known as sensitive products). They use either rotary (rotating carousel) or linear (linear sequence) technology, which implies different output capacity (8,000 to 50,000 bottles per hour (bph) for rotary, 4,000 to 20,000 bph for linear technology). Both rotary and linear aseptic PET filling machines perform the same functions and can be used to fill various types of beverages with the same level of sterility required to fill under aseptic conditions. Some aseptic PET filling machines allow customers to switch between PET and HDPE containers. These customers are usually small companies which produce both dairy products mainly filled in HDPE containers and other beverages to be filled in PET containers; larger customers tend to buy 2 separate filling machines respectively for filling PET and HDPE containers.
- (11) The Commission found in its decision of 30 October 2001 (M2416 Tetra Laval/Sidel) that aseptic and non-aseptic PET filling machines were not substitutable and belonged to different product markets. Aseptic filling machines ensure a longer shelf-life because of the sterilised conditions. This implies the use of a more complex technology than that for non aseptic PET. Finally such machines are used for sensitive products.
- (12) In the view of the parties, these product market definitions still hold and the market for aseptic filling machines should not be further segmented. As regards the linear or rotary technology, the actual output capacity range of both filling machines overlaps in a substantial way: actual output capacities ranging from around 8,000 to 20,000 bph can be performed by both types of filling machines. Most of the European suppliers offer rotary-type (and some offer both types). A linear filling machine is typically 20% to 30% less expensive than a rotary filling machine with the same level of actual output capacity because of different bottle sterilisation techniques. But the higher cost of rotary machine is compensated by allowing the use of thinner plastic bottles, ensuring the substitutability of both technologies. It was explained that customer's preference for linear or rotary was mostly driven by the industry's habits at stake.
- (13) As regards the "combi-machines", which combine blowing, filling and capping in a single machine, the parties further argue that there is no need to define a separate market since combi-machines and aseptic PET filling machines offered together with SBM are substitutable from the customer's perspective. The parties add that combi-machines would not bring any distinct advantage since any technical break-up in the SBM machine or filling machine would put an end to the sterile environment and would require sterilisation of the two machines before they can function safely again. It is worth noting that SIG Target is not present on this segment.
- (14) The market investigation has not revealed any new development since the previous case. Therefore, the relevant market assessed will be the aseptic PET filling machines market without a further distinction needed by liquid concerned, by technology used or by speed as the competitive assessment will remain unchanged under any of these distinctions.
- (15) Given that suppliers provide their filling equipment in response to request for proposals on a cross-border basis, the parties consider that the geographic market for aseptic PET filling machines is at least EEA-wide (price level for comparable

machines are largely the same worldwide and transport costs are low) but provide market shares on an EEA-wide basis. This later delineation was the one considered by the Commission in its previous case M2416 for PET packaging equipment. This view has been confirmed by the market investigation. However, it is worth noting that a number of customers pointed to the need of a local presence from supplier for servicing their machines.

*ii) competitive assessment*

- (16) Sidel offers rotary aseptic PET filling machines (with an output capacity ranging from around 12,000 to 50,000 bph), machines allowing customers to switch between aseptic filling of PET and HDPE containers, and combi-machines (SBM machine with a filler and a capping machine). These machines are sold on a stand-alone basis or together with other equipment (SBM, secondary line, distribution packaging equipment).
- (17) SIG Target offers rotary aseptic PET filling machines (with an output capacity ranging from around 16,000 to 50,000 bph) and machines allowing customers to switch between aseptic filling of PET and HDPE containers. These machines are also sold on a stand-alone basis or with other equipment (such as SBM machine which are not part of the transaction). SIG owns the Asbofill technology (sterilisation method for linear PET or HDPE filling machines) [...]. The SIG remaining part will retain its SBM business as well as filling machines that use the Asbofill technology [...].
- (18) A fully operational aseptic PET filling machine costs between 1.2 to 5.5 M€, depending on the speed, the included equipment (cap-applicator) and the technology used (rotary/linear).
- (19) Given the value of machines, the long sales cycles and the relative small market at stake (according to the parties, [55-75] aseptic PET filling machines have been sold by 10 different companies in the last 3 years), market positions can be assessed by looking at longer periods than 1 year. Also given that the market has some bidding characteristics, a market share analysis must be complemented by an assessment of the ability of each of the players to win bids in the future.
- (20) Based on fillers ordered, the market shares of the parties and their main competitors would be the following (parties best estimate on EEA-wide-basis<sup>3</sup>):

	Minimum number of fillers ordered	Tetra/Sidel %	SIG target %	Tetra/Sidel/SIG %	SIG Remaining part %	Procomac %	KHS %	Krones %	Other competitor %
2002	[10-20]	[25-35]	[10-20]	40-50]	[0-10]	[10-20]	[5-15]	[10-20]	Hamba [0-10]
2003	[30-40]	[10-20]	[0-10]	[20-30]	[0-10]	[0-10]	[10-20]	[0-10]	Ampack [10-20]
2004	[10-20]	[10-20]	[0-10]	[5-15]	[0-10]	[15-25]	[15-25]	[25-35]	Stork [0-

<sup>3</sup> The parties are unable to estimate the market size in terms of value since filling equipment is typically custom made so that the value of a filling machine varies e.g. depending on whether and what kind of add-ons are included.

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2002/04	[55-75]	[15-25]	[0-10]	[25-35]	[0-10]	[10-20]	[10-20]	[15-25]	

(21) Based on installed fillers, the market shares would be:

	Total number of installed fillers	Tetra/Sidel	SIG target	Tetra/Sidel/SIG	SIG Remaining part	Procomac	KHS	Krones	Other competitor
2003	[90-110]	[25-35]	[5-15]	[30-40]	[0-10]	[15-25]	[5-15]	[5-15]	Serac [5-15]
2004	[100-120]	[20-30]	[5-15]	[30-40]	[0-10]	[15-25]	[5-15]	[5-15]	Serac [5-15]

- (22) Excluding corresponding market shares of combi-machines (where SIG Target is not active) and fillers that can switch between PET and HDPE would not lead to add market shares to the position of the parties on the market for aseptic PET filling machines.
- (23) The parties would be leader, with more than [30-40]% market share (installed base), more than [...] the market share of their main competitor (Procomac) and [...] times higher than other 3 competitors.
- (24) The potential harm brought about by the transaction would be the disappearance of SIG (which roughly represents [0-10]% of market shares) as a strong competitor and rival of Sidel. When asked, most customers replied that Sidel and SIG Simonazzi were not close competitors.
- (25) Procomac, KHS and Krones were seen as the closest competitors of SIG Simonazzi by customers, and even seen as market leaders on the aseptic PET filling market. With a comparable size to the target, the broad range of their product offering and their ability to service their machines, they will allow customers to keep on buying their aseptic PET fillers from different suppliers. Customers believed that this would be enough to constrain the behaviour of the combined entity.
- (26) It can be concluded from the above that the transaction will not lead to a significant impediment of effective competition in the aseptic PET filling market.

*B) Aseptic HDPE fillers*

*i) product and geographic market definition*

- (27) As the aseptic PET filling, the aseptic HDPE process takes place in a sterile environment within the filling machine. The actual output capacity of rotary aseptic HDPE machines varies between 4,000 and 36,000 bph when it is not higher than 12,000 bph with linear machines. Both rotary and linear aseptic HDPE filling machines perform the same functions and can be used to fill beverages under comparable aseptic conditions. Those machines are principally used in Europe to fill UHT (ultra high temperature) milk and flavoured milk drinks. Aseptically filled HDPE bottles are sealed by heat sealed alufoil closures (and rarely by screw caps).
- (28) The Commission found in its decision of 30 October 2001 (M2416 Tetra Laval/Sidel) that HDPE machines have significant technical differences distinguishing them from aseptic PET filling machines but that these distinctions may blur in the future as suppliers are developing machines switching between HDPE and PET aseptic filling.
- (29) The parties submit that a further segmentation between linear and rotary is neither justified as both machines perform the same functions. The market investigation has not revealed any new development since the previous case. Therefore, and as the competitive assessment will remain unchanged under any segmentation, the relevant market assessed will be the aseptic HDPE filling machines market.
- (30) From a geographic point of view, the parties consider the relevant market to be at least EEA-wide (transportation cost below 3% of the final price, same worldwide price level). The Commission did not conclude on this aspect in the past. For reasons similar to those exposed for PET leading to an EEA-wide geographic market, it appears that the same conclusion as for the PET filling machines may be reached here.

*ii) competitive assessment*

- (31) Sidel offers aseptic HDPE filling machines based upon rotary technology (output capacity from 8,000 to 36,000 bph) and machines allowing customers to switch between aseptic filling of PET and HDPE containers (as stated above in A). These machines are sold on a stand-alone basis or together with other equipment (extrusion blow moulding machines EBM, secondary line, distribution packaging equipment).
- (32) SIG Target's presence on the market is rather limited as it only sold [...] in the EEA over the past 3 years ([...] could switch between PET and HDPE containers).
- (33) A fully operational aseptic HDPE filling machine costs between 1.5 to 3.5 M€, depending on the speed, the included equipment (cap-applicator) and the technology used (rotary/linear).
- (34) Based on fillers ordered, the market shares of the parties and their main competitors would be the following (parties best estimate on EEA-wide-basis):

	Minimum number of fillers ordered	Tetra/Sidel	SIG target	Tetra/Sidel/SIG	SIG Remaining part	Serac	Ampack	Competitor
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	Minimum number of fillers ordered	Tetra/Sidel	SIG target	Tetra/Sidel/SIG	SIG Remaining part	Serac	Ampack	Competitor
2002	[5-15]	[10-20]	0	[10-20]	na	[20-30]	[10-20]	Hamba [35-45]
2003	[5-15]	[15-25]	[5-15]	[25-35]	na	[20-30]	[35-45]	
2004	[0-10]	0	0	0	na	[65-75]	0	Stork [30-40]
2002/04	[15-25]	[5-15]	[0-10]	[10-20]		[35-45]	[20-30]	

(35) Based on installed fillers, the market shares would be:

	Total number of installed fillers	Tetra/Sidel	SIG target	Tetra/Sidel/SIG	SIG Remaining part	Serac	Ampack	Stork	Bosch
2003	[40-50]	[10-20]	[0-10]	[10-20]	0	[40-50]	[10-20]	[5-15]	[0-10]
2004	[40-50]	[10-20]	[0-10]	[10-20]	0	[40-50]	[10-20]	[5-15]	[0-10]

(36) Excluding fillers that can switch between PET and HDPE would not lead to add market shares to the position of the parties on the market for aseptic HDPE filling machines.

(37) The market for aseptic HDPE filling machines is smaller than the PET one (according to the parties, [15-25] aseptic HDPE filling machines have been sold by 7 different companies in the last 3 years).

(38) It follows from the installed base figures that the parties would be [...] market player with less than half market shares of the leader, and with two other competitors around [5-20]%. Competitive alternatives exist, which is confirmed when considering the limited recent orders data. As for aseptic PET filling machines, the customers' evaluation and past bidding behaviour assessed in the course of the market investigation lead to not consider the parties as close competitors. They will face here again credible competitors in terms of product's range and ability to service machines (among whom Serac and Ampack) allowing customers to keep on buying their aseptic HDPE fillers from different suppliers.

(39) It can be concluded from the above that the transaction will not lead to a significant impediment of effective competition in the aseptic HDPE filling market.

*C) Non-aseptic PET fillers*



*i) product and geographic market definition*

- (40) All non-aseptic PET filling machines are based on a rotary system (with an output capacity ranging from 3,000 bph to 80,000 bph). These machines can be used to fill non-carbonated and carbonated beverages and include a cap-applicator. Some non-aseptic PET filling machines are designed to switch between PET and glass containers but the demand is quite limited. A number of suppliers (Sidel, Krones, Procomac) offer integrated non-aseptic PET filling machines which combine blowing, filling and capping (“combi-machines”).
- (41) The Commission found in its decision of 30 October 2001 (M2416 Tetra Laval/Sidel) that aseptic and non-aseptic PET filling machines were not substitutable either from a demand-side and supply-side perspective. The Commission did not define a separate product market for combi-machines (it was at that time a relatively recent innovation) but noticed indications towards such a delineation (advantages as regards savings on floor space, sterilising and rinsing solutions savings, reduced labour costs, improved filling hygiene, less expensive than a combination of separate SBM and filling machine).
- (42) In the view of the parties, the market for non-aseptic PET filling machines should not be further segmented, even as regards combi-machines since combi-machines are substitutable from the customer’s perspective with SBM machines offered together with non-aseptic filling machines. Moreover, SIG Target is not present on this segment and the transaction is without impact on the combi-segment. The market investigation has not revealed any new development since the previous case. Therefore, the relevant market assessed will be the non-aseptic PET filling machines market.
- (43) For the same reasons as given above in the aseptic PET and HDPE filling machines markets, the Commission considers the relevant market is of EEA dimension.

*ii) competitive assessment*

- (44) Sidel offers rotary non-aseptic PET filling machines with an actual output capacity ranging from 9,000 to 80,000 bph and combi-machines for non aseptic PET filling. These machines are sold on a stand-alone basis or together with other equipment.
- (45) SIG Target offers rotary non-aseptic PET filling machines with an actual output capacity ranging from 3,000 to 72,000 bph and machines that can switch between PET and glass containers.
- (46) The majority of non-aseptic PET filling machines cost between 300,000 and 2 M€, depending on the speed and the included equipment (cap-applicator).
- (47) Based on fillers ordered, the position of the parties and their main competitors would be the following (parties best estimate on EEA-wide-basis):

	Number of fillers ordered	<b>Tetra/Sidel</b>	<b>SIG target</b>	<b>Tetra/Sidel/SIG</b>	Krones	KHS	Procomac	AVE
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2003/04	[230-255]	[20-30]	[5-15]	[35-45] [10-20]%	[45-55] [20-30]%	[15-25] [5-15]%	[15-25] [5-15]%	[10-20] [5-15]%
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(48) Based on installed fillers, the situation would be:

	Number of installed fillers	Tetra/Sidel	SIG target	Tetra/Sidel/SIG	Krones	KHS	Procomac	AVE
2004	[1750-2400]	[95-125]	[230-300]	[330-430] [10-20]%	[400-500] [15-25]%	[300-700] [10-20]%	[250-350] [10-20]%	[0-100] [0-10]%

- (49) Identifying the non-aseptic combi-segment, based on order intakes in 2003/2004, Sidel holds a market share of around [40-50]%, Procomac and Krones having around [25-35]%. SIG Target is not active on this market. Excluding those machines from the non-aseptic PET filling market would lead to the same ranking of market players with lower market shares for most of them.
- (50) The market investigation has assessed whether the parties' offering were particularly close and distinct from that of their competitors. Respondents explained that they do not consider the parties as close competitors and that there will remain credible competitors.
- (51) The market witnesses many more transactions than the aseptic markets: there were [230-255] non-aseptic PET filling machines sold by more than 20 companies over the last 2 years. Leading player is Krones with around [20-30]% market shares.
- (52) It can be concluded from the above that the transaction will not lead to a significant impediment of effective competition in the non-aseptic PET filling market.

*D) Other markets where the transaction may have an impact*

- (53) The transaction leads to some overlap in the following product areas.
- (54) Hot-fillers for PET are designed to fill beverages which have been heated to approximately 80°C. As affecting the taste of the product filled, they represent a small share of the market in Europe that is unlikely to increase. Sidel and SIG Target had [...] sales of such machine in the EEA in 2002 and 2003; SIG Target has [...] installed machines in the EEA.
- (55) Barrier technology enhances the gas barrier properties of PET packaging in order to prevent oxygen and aldehydes from entering into packaging and degrading its content. Tetra/Sidel is active in this market. SIG Target used to be but its technology has fallen into public domain (other technologies are not part of the transaction and will remain within the SIG remaining part).
- (56) Conveyors are used to transport containers (carton, plastic, glass, and cans), packs, pallets between the different stations of the filling and packaging circuit. Both parties are active on this market. In a market for conveyor in the field of beverage

and packaging line, the parties combined market share would amount to [0-10]% (sales 2004). They would face other players such as Kronos with [10-20]%. Even if national markets were retained, the combined share of the parties would be of less than [5-15]%.

- (57) Palletizers for carton cases and shrink-wrapped packs put items in layers or pallets. The combined market share of the parties would be hardly above [0-10]% within the EEA (sales 2004). The highest overlap at the Member State level would be [5-15]% in UK ([...] sold by each Sidel and SIG Target). The main competitors are Kronos and KHS, followed by Ocme and Acmi.
- (58) For palletizers for plastic crates, Sidel did sell [...] within the EEA in the last 2 years; SIG Target sold [...] in 2004 ([0-10]% market share sales 2004, behind Kronos [15-25]% and KHS [5-15]).
- (59) Case-packers for bottles put plastic or glass bottles into plastic crates or carton cases. The combined market share of the parties would be around [0-10]% sales 2004 in EU.
- (60) Case-unpackers for bottles pick up bottles from a carton case or plastic crate to put them onto a conveyor line in order to proceed to the next step of the filling or packaging process. Sidel did sell [...] in the EEA in 2003 and 2004; SIG Target sold [...] in 2004 ([0-10]% market share).
- (61) For robots, used for palletizing/depalletizing and packaging, the combined market share would be under [0-5]% in 2003.
- (62) Mixers are used to mix two or more components into one stream. Mixing machines are used in the manufacture of liquid food products (blended beverages like cola-flavoured soft drinks, edible oils), pharmaceutical products and cosmetic products. Considering only the beverages segment of the market, Tetra held a market share of between [0-10] and [20-30]% (volume) in the EEA in 2003 and [5-15] to [20-30]% in 2004 (volume corresponding to [...] sold); SIG did sell [...] in 2003 and 2004.
- (63) Carbonators are designed to carbonate beverages. The combined market share of the parties in the EEA would be between [0-10] and [5-15]% in 2003 and [5-15] and [15-25]% in 2004 (in volume: [...] sold).
- (64) For combined mixers/carbonators, the transaction leads to a combined EEA market share (volume) of around [0-10]% in 2003 and [15-25]% in 2004 ([...] sold).
- (65) None of these overlapping product areas raises serious doubt because of the market shares' level resulting from the operation and because the new entity will face strong competitors.

## *II Non horizontal effects*

- (66) According to the parties, SIG Target does not have more than around [10-20]% market shares in any of the following products: hot-fillers for glass ([...] over the last 3 years, [...] installed machines), labellers ([0-10]% sales in 2004; Kronos [45-55]%), bottle washing machines ([5-15]% sales 2004; Kronos [25-35]%, KHS [20-30]%), rinsing machines ([0-10]% sales 2004; Kronos [20-30]%, KHS [15-25]%), coolers and warmers ([...] over the last 2 years, [...] sold since 2003; market share

below [0-10]%), and depalletizers ([0-10]% sales 2004; Kronos [15-25]%, KHS [5-15]%).

- (67) The product markets where SIG Target has around [10-20]% are non-aseptic glass fillers ([10-20]% in the EEA installed base; Kronos [20-30]%, KHS [35-45]%), non-aseptic can fillers ([10-20]% market share in the EEA installed base; Kronos [35-45]%, KHS [25-35]%) and tunnel pasteurizers (EEA market share of around [10-20]% in 2004; Kronos [25-35]%, KHS [15-25]%). These markets have no link with the markets where Tetra may have significant position above [20-30]% (aseptic and non-aseptic carton packaging equipment, aseptic and non-aseptic carton packaging material, SBM machines, separators, homogenisers and heat exchangers to process dairy and juice products, milk production equipment and animal husbandry) in terms of machine equipment, or between the products to be filled, or between the customers who buy the various products.

*Competitive assessment*

- (68) Most of the products listed above address similar customers as filling machines. It may therefore be argued that the parties would gain through the transaction some additional power vis-à-vis customers through their capacity to propose complete machine lines. Such effect could be viewed in two ways. First, some products are complementary to fillers as they take place in a filling line. The second category of products have no direct link in terms of production process but may be viewed as loose substitutes as for instance PET vs carton packaging.

As to the first category of products complementary to fillers,

- (69) The parties have relatively small market shares in most of the markets for the machines concerned (between 5-20%), well below market strength of the leading competitors such as Kronos, KHS or Procomac. In addition, the transaction brings either little increment of market shares or no overlap at all.
- (70) It is worth noting that other competitors such as Kronos, KHS and Procomac hold as breadth of machines' portfolio as the new entity. As a consequence, even if supplying complete lines of machines would better satisfy customers' needs and meet a demand emanating from customers, the transaction would only reinforce the parties as a credible competitor being able to better compete vis-à-vis strong competitors.
- (71) In any case, it remains that the market investigation does not reveal a clear trend towards in-line sales (sales encompassing several machines are called in-line sales or complete or turnkey sales) as opposed to sales of stand-alone machines which are then combined by the customer into a line. Also, it appears that the number and type of machines included in a line vary from deal to deal. This is evidenced by:
- 1) The data provided by the parties indicating that the proportion of in-line fillers' (or combi for Tetra Laval) sales over the total fillers market during the last 3 years has been erratic and as such meaningless to conclude on such a trend.
  - 2) The market investigation has shown that for a majority of customers the fact that the manufacturer is able to provide a complete range of all the machines types that need to be replaced is not important. Most of these customers have bought machine types separately from different machine manufacturers (despite the fact that most of

these manufacturers see their customers using machines from the same supplier). And the capacity of the manufacturer to provide a complete range is not an important element when buying machines for most of the customers.

3) It remains for some competitors that their sales are equally split between in-line and stand-alone machines.

- (72) Therefore the current customer choice between individual or complete line purchases does not seem to be modified by the transaction and would not lead to competition concerns.
- (73) If one looks for example at the market which has the closest relationship with fillers, i.e. the market for PET stretch blow moulding (SBM) machines and where Tetra/Sidel holds a significant position (with [15-25]% in low capacity and [45-55]% in high capacity market shares in the EU in 2004), it is unlikely to see a strengthening of the respective position of the parties on the SBM market and on the filling market through an hypothetical “full line forcing” effect<sup>4</sup>.
- (74) According to the parties, the limited market share of SIG Simonazzi in the market for aseptic PET filling machines would not result in any significant strengthening of the position of Tetra/Sidel in the SBM market. It is first worth recalling that the transaction only affects the filler market as SIG Simonazzi is not producing SBM machines (activity kept by SIG remaining part). Moreover, it appears from Tetra/Sidel data that out of the [...] SBM machines sold between 2002 and 2004, around [15-25]% [...] machines) were sold together with a filler (the percentage is still around [15-25]% when considering each year from 2000 to 2004); and it appears from the SIG Simonazzi data that out of [...] fillers sold during 2002 to 2004 only in [...] cases a SBM machine was sold together with the PET filler ([20-30]%). Therefore it can be concluded that there is no direct link between sales of SBM machines and of fillers. This renders inoperative a full line forcing hypothesis.
- (75) It results from the above that while it is true that thanks to the transaction Tetra/Sidel will broaden its presence on various equipments and complete its product offering, it seems implausible that this may lead to foreclosure of competition. Indeed, competitors with a portfolio of products as broad as that of Tetra’s post-merger will remain with significant positions in those markets.

As to the second category of product (loose substitutes),

- (76) It has to be assessed 1) whether the acquisition of part of SIG activities related to PET fillers could result in affecting the carton market (where Tetra is the leading market player), or alternatively 2) whether Tetra’s market strength in the carton market could spill over to the PET market through the modified machine offering structure in PET brought in by the transaction.

1) The first hypothesis can be envisaged despite the existence of distinct product markets according to the material used (carton, glass, plastic and cans), as there could be a trend towards PET growing at the expense of carton and ultimately of Tetra’s position in that latter market. Any attempt by Tetra to protect its position on

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<sup>4</sup> i.e. capacity for the parties to increase overall market position by offering a complete line of products

carton market by acting on the PET or HDPE filler market can however be excluded as the parties will not hold position of market power as a result of the concentration in either of the PET or HDPE markets. At worst it could be argued that Tetra would be using its market power in carton to limit the switch to PET. However its increased exposure to PET with the notified transaction would rather weaken such incentives than increase them. Finally, the incentives of the parties are doubtful as the growth in PET remains low for a majority of sensitive products or happened at the expense of another material than carton while the use of carton has been growing practically for all end uses during the last 5 years.

2) Regarding the second hypothesis, a third party raised the concern that Tetra could use its leading position in the carton equipment and packaging markets to cross-subsidise Sidel/SIG on the PET market in order to exert a predatory pricing strategy. Similarly Tetra could offer “twin guarantees” in order to convince former carton’s customers to adopt Sidel/SIG PET technology in guaranteeing an exchange with a carton line if the switch was not satisfactory. It must be recalled first that the transaction brings only marginal changes to the incentives for Tetra: it was already active in the filling market and there is only a small accretion of market shares. As regards the markets where there is no overlap, the new offering structure of the parties does not seem crucial when considering the trend in sales (stand-alone/in-line). Finally, the ability of the new entity to cross-subsidise in order to exert a predatory pricing strategy could be put in doubt as Sidel’s position has not materially varied over the last 2 years, since its integration within Tetra Laval.

## V. CONCLUSION

- (77) 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 (EC) No 139/2004.

For the Commission

(Signed)

Member of the Commission