EN

Case No COMP/M.3935 - JEFFERSON SMURFIT / KAPPA

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REGULATION (EC) No 139/2004
MERGER PROCEDURE

Article 6(2) NON-OPPOSITION
Date: 10/11/2005

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 10.11.2005

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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 Where possible the information omitted has been replaced by ranges of figures or a general description.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) with 6(2)
DECISION

To the notifying party

Dear Sir/Madam,

Subject: Case No COMP/M.3935 - JEFFERSON SMURFIT/KAPPA
Notification of 19.09.2005 pursuant to Article 4 of Council Regulation No 139/2004[1]

1. On 19.09.2005, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 by which the undertaking Jefferson Smurfit Group ("JSG", Ireland) controlled by Madison Dearborn Partners ("MDP", US) acquires within the meaning of Article 3(1)(b) of the Council Regulation control of the whole of the undertaking Kappa Holding B.V. ("Kappa", Netherlands), hitherto controlled by CVC Capital Partners Limited ("CVC", US) and Cinven Limited ("Cinven", UK), by way of purchase of shares.

2. In the course of the proceedings, the notifying party submitted undertakings designed to eliminate competition concerns identified by the Commission, in accordance with Article 6(2) of the Merger Regulation. In light of these modifications, the Commission has concluded that the notified operation falls within the scope of the Merger Regulation and does not raise serious doubts as to its compatibility with the common market and with the functioning of the EEA Agreement.

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1 OJ L 24, 29.1.2004 p. 1.

I. THE PARTIES

3. Kappa is a Dutch company active in the manufacturing and sale of corrugated case materials, corrugated and solid board sheets, corrugated and solid board cases and graphic and specialty board and the recovery of recycled wastepaper. Its operations are situated mainly in Western and Eastern Europe. It is jointly owned by CVC, Cinven and by its own management.

4. JSG is an Irish based international packaging company with operations in Western Europe and Latin America, active in the manufacturing and sale of corrugated case materials, sheets, and cases and the recovery of recycled wastepaper. JSG is jointly owned by MDP and by its own management. JSG has financial interests in Duropack AG (Duropack), which is active in the corrugated sheets market, and a minority holding in Lecta (Lecta), which is active in a neighbouring market for coated fine paper and specialty paper mainly in Southern Europe. Duropack has packaging operations in Czech Republic, Hungary, Slovakia, Slovenia, Austria and Germany.

5. MDP is a private equity fund based in the USA, which invests in management buyout and other private equity transactions across a broad spectrum of industries. Apart from JSG, MDP's interests in the paper and packaging sectors are Boise Cascade Company (Boise), Graphic Packaging Corporation (GPC) and Packaging Corporation of America (PCA).

II. THE OPERATION

6. The proposed concentration consists in the acquisition of decisive influence on Kappa by MDP, which currently controls JSG. The operation will be carried out in different stages. JSG will acquire the totality of the shares of Kappa, from a special purpose investment partnership formed for the purposes of holding the shares in Kappa (with CVC, Cinven and Kappa management as partners) and for subsequent participation in JSG after the completion of the present transaction (the CVC/Cinven partnership). In consideration for the acquisition of Kappa, JSG will issue shares to the CVC/Cinven partnership. The CVC/Cinven partnership will hold 41.7% of the issued share capital of JSG. The remaining 58.3% of the shares of JSG will be held by MDP and its co-investors (including senior management of JSG).

7. Key strategic decisions concerning the commercial policy (including the approval of the budget and the business plan, the appointment and the removal of the senior management) of JSG will be implemented only with the affirmative vote of a majority of the MDP directors, and the affirmative vote of either the CVC directors or the Cinven directors. However MDP will be the only shareholder to enjoy veto rights. Therefore it will acquire decisive influence over JSG.

III. COMMUNITY DIMENSION

8. This transaction meets the thresholds set out in Art. 1(2) of the ECMR. Kappa, JSG and MDP have a combined aggregate world-wide turnover of more than EUR 5 billion (Kappa EUR 2.8 billion, JSG EUR 4.3 billion, MDP EUR 11.5 billion). Each of the undertakings has a Community-wide turnover in excess of EUR 250 million (Kappa EUR […], JSG EUR[…], MDP EUR […]), but they do not each achieve more than

two-thirds of their aggregate Community-wide turnover within one and the same Member State. The notified operation therefore has Community dimension.

IV. COMPETITIVE ASSESSMENT

9. The parties' activities overlap on several product markets: recovered paper, corrugated case materials (CCM), bag-in-box, carton board, folding cartons, corrugated sheets, corrugated cases, solid board sheets, solid board cases, graphic board and partitions.

10. Among these, the parties have identified the following affected markets: corrugated sheets, corrugated cases, solid board sheets, solid board cases, partitions and graphic and speciality board.

11. The Commission's investigation has indicated that the proposed transaction could raise competition concerns on the markets for solid board sheets, solid board cases, graphic board, corrugated cases, and partitions. The parties submitted commitments in order to remove these competition concerns.

(a) Recovered paper

12. Both parties use recovered paper in producing corrugated case materials and solid board packaging, buying it in bales and converting it to pulp in their own mills as part of the production process. They also sell on recovered paper to third parties for use in their mills. The parties consider that the purchase and supply of recovered paper constitutes a distinct product market. According to the Commission's findings this market may be further sub-divided into the market for purchase of recycled paper and the market for sales of recycled paper. Moreover, the latter may be subdivided according to the paper quality. The "European List of standard grades of recovered paper and board" published by the European Committee for standardisation EN 643, distinguishes between 5 different categories or grades of recovered paper, namely ordinary grades; medium grades; high grades; kraft grades and special grades, according to the quality of the paper obtained from the recycling process. Different qualities of paper do not have the same use and, therefore, the same price. However, as the operation does not raise competition concerns on any reasonable product market, the market definition may be left open.

13. The parties consider that the relevant geographic market for the purchase and supply of recovered paper is at least EEA-wide, due to trade flows across the EEA and beyond. However, as the parties noted, many EEA countries are net exporters of recovered paper. According to the Commission this might be also due to price differences in Europe and might be supportive of there being a national dimension to these markets. Although transport costs are relatively low, due to the density of recovered paper compared to its value, there is, particularly for low quality recycled paper, a certain transport sensitivity. However, as the operation does not raise competition concerns on any reasonable geographic market the market definition can be left open. Despite the above mentioned reasons the Commission has analysed the effects of the transaction at both EEA-wide and national level.

14. The parties estimate their combined share in volume[2] of purchases of recovered paper in the EEA to be [10-20]% (Kappa [0-10]%; JSG [0-10]%). On national bases, the parties combined shares exceed 15% in Germany, the Netherlands and the UK. Even in the Netherlands, where the parties' combined share of purchases is the highest on national bases ([30-40]%), the JSG increment is only [0-10]%. The parties' sales of recovered paper, due to captive use, are negligible as the parties' combined share of EEA sales of all recovered paper is less than [0-10]%. The only Member States in which both parties sell recovered paper are Germany and the Netherlands, where their combined share of sales are only [0-10]% and [0-10]% respectively.

15. If the market for sale of recovered paper was sub-divided according to the different qualities of paper, the parties' combined share of EEA sales of all ordinary grade recovered paper is just over [0-10]%[3]. The only Member States in which the parties both sell ordinary grade recovered paper are Germany and the Netherlands, where their combined share of sales is only [0-10]% (in each country). In 2004, Kappa did not make any sales of medium grade recovered paper. The parties' combined share of EEA sales of all high grade recovered paper is less than [0-10]%. The only Member State in which both parties sell high grade recovered paper is Germany, where their combined share of sales is just over [0-10]%.

16. The transaction does therefore not result in any competition concerns in these markets.

(b) Corrugated case materials (CCM)

17. CCM are the base papers used to manufacture corrugated board sheets, which are in turn converted into corrugated boxes. CCM may be made either from virgin wood fibres with some recovered paper fibre added (kraftliner), or entirely from recovered paper fibres (recycled liner i.e. testliner). In addition to flat inner and outer layers (the kraftliner or testliner), CCM includes undulated layers, also known as fluting (made mainly from recovered paper fibre). In the previous decisions the Commission identified a separate product market for CCM[4], but left open the question whether the market should be further subdivided.

18. From the supply side, some of the respondents to the Commission's market investigation have pointed out that there are significant differences in the production of testliner and kraft-liner, which do not speak in favour of the definition of a single market including these two products. Moreover, they have highlighted that the costs of switching from testliner to kraftliner might be significant. The existence of reciprocal substitutability between these two products on the demand side has not been confirmed by the results of the market investigation. However the definition of the relevant product market may be left open since this would not alter the conclusions of the competitive assessment in the present case.

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2 The other market shares used in the decision are also in volume. The packaging industry measures the market sizes and consumption, and companies' sales in million of square meters.

3 In the data provided, "ordinary grade" paper includes "special grade" and "kraft grade" paper.

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19. In the previous decisions the Commission has found that the scope of the geographic market for CCM is at least EEA-wide. The parties agree with this definition which has been also largely supported by the respondents to the Commission's market investigation.

20. Both parties produce corrugated case materials for their own use (to produce corrugated sheets and subsequently cases) and for sale on the open market. In addition, MDP's portfolio companies Boise and PCA supply some CCM to the EEA. However these supplies account for less than [0-10]% of the total CCM demand in the EEA. The parties estimate their combined share of deliveries of CCM (i.e. including kraft-liner, testliner and fluting) to third parties in the EEA to be [10-20]% (Kappa [0-10]%; JSG [0-10]%). The equivalent shares are estimated to be [20-30]% (Kappa [10-20]%; JSG [10-20]%) for kraftliner, [0-10]% for testliner and [0-10]% for fluting.

21. Therefore the only affected market is the market for the sale of kraft-liner. However, given the limited market shares of the parties and the presence of other integrated producers (e.g. SCA [0-10]%, Mondi [0-10]%, Peterson [0-10]%) the proposed merger does not create competition concerns in this market.

(c) Corrugated board sheets

22. Corrugated board sheets are made from corrugated case materials, and comprise an upper and lower layer of linerboard (either kraftliner or testliner) and a middle layer of wave-shaped fluting. Corrugated board sheets are an intermediate product. They are bought by converters who produce corrugated cases used mainly for transport packaging. In the previous Commission decisions[5], corrugated board sheets were considered to constitute a separate relevant product market.

23. In the previous decisions[6] the geographic market dimension was left open, but the Commission indicated that corrugated board sheets may be economically transported for a distance of up to 400 km from the corrugator. The market investigation has confirmed that the relevant geographic market may be defined as a radius of 300-400 km from the production site. The Commission has conducted its analysis on a national basis and considered also areas within a 300-400 km radius from relevant corrugators where the national shares have highlighted potential concerns. However for the purpose of the present transaction it is not necessary to conclude on the definition of the relevant geographic market.

24. Both parties are active in corrugated sheets market, and most of their plants are vertically integrated as they both manufacture corrugated sheets and then convert them into corrugated cases on the same site. The majority of their production (above [80-100]%) is for captive use, the rest is sold to third parties.

25. The parties estimate their combined share in the market for sale of corrugated sheets to third parties to be below [30-40]% in every Member State where they both make third party sheet sales. At national level, there are horizontally affected markets in Belgium ([20-30]%), the Netherlands ([10-20]%) and France ([20-30]%). The

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transaction does not appear likely to create any competition concerns in any of these areas, given the presence in all the above mentioned markets of a number of competitors (in particular Prowell with a market share of [30-40]% in Belgium, [30-40]% in the Netherlands, [10-20]% in France, Gondardennes with a market share of [10-20]% in Belgium, [40-50]% in France) and the fact that corrugated sheets are commodity products for which there is little customer loyalty.

(d) Corrugated cases

26. Corrugated cases are the cases manufactured from corrugated board sheets by the conversion process. Corrugated cases are principally used for transport packaging, as distinct from consumer packaging. Corrugated cases are manufactured in different sizes and with different strengths depending on the requirements of the customers. In the previous Commission decisions, corrugated cases were considered to constitute a separate relevant product market.[7] The current investigation has confirmed this view.

27. Previously, the Commission has found 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. The parties argue that due to relatively low average transport costs the market dimension can be extended up to 300 km from a plant. The majority of the respondents to the Commission's questionnaire support the previous Commission's findings and define the relevant geographic market as an area with a radius of 200-300 km from the production plants. Therefore, depending on the location of the plants and on the geographic characteristics of the countries involved, the relevant geographic market might be national or wider than national. However it does not appear necessary to ultimately conclude on the geographic market definition given that the remedies offered by the parties are able to address any competition concerns on any reasonable market definition.

28. Both parties are converting corrugated cases, using mainly own produced boards. The majority of their plants are vertically integrated. The parties estimate their market share to be [10-20]% at EEA-level. There are several national horizontally affected markets: the Netherlands – [50-60]% (Kappa [30-40]%; JSG [10-20]%); Ireland – [50-60]% (Kappa [0-10]%; JSG [40-50]%); Denmark – [40-50]% (Kappa [20-30]%; JSG [10-20]%); Sweden – [40-50]% (Kappa [20-30]%; JSG [10-20]%); Norway – [30-40]% (Kappa [0-10]%; JSG [30-40]%), Belgium - [20-30]% (Kappa [10-20]%; JSG [0-10]%), Germany- [20-30]% (Kappa [10-20]%, JSG [10-20]%), France – [20-30]% (Kappa [0-10]%; JSG [10-20]%) and Poland – [20-30]% (Kappa [10-20]%, JSG [0-10]%).

29. The transaction does not appear likely to create competition problems in Belgium, Germany, France and Poland, in light of the parties' limited market shares and of the presence on these markets of other competitors. The merger does not bring any change to the competitive scenario in Ireland either, in view of the minimal overlap ([0-10]%) in the parties' activities. In Norway, the parties submit that the presence of other competitors, such as Peterson, and Glomma, can be an efficient competitive constraint on the parties' behaviour. The respondents to the market investigation

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considered that the transaction would be unlikely to have anticompetitive effects in this market.

30. The respondents to the Commission's questionnaires expressed concerns mainly in relation to Denmark and Sweden. In Denmark, the concentration would remove JSG, as Kappa's closest competitor and would create a duopoly between the combined entity ([40-50]%) and SCA ([40-50]%). In Sweden, the concentration would reduce the number of players in the market from four to three and increase significantly the parties' position. The presence of barriers to entry, such as the need for major investments to enter the market and the geographic characteristics of these two countries which may limit the trade flows of corrugated cases from neighbouring countries, particularly Germany, underpin the complainants' view that in both countries the combined entity would enjoy significant market power.

31. In order to solve potential competition problems in Denmark and Sweden, the parties have offered commitments comprising the disposal of JSG's Neopac network[8] of factories, in Denmark and in Sweden, the plants in Norrköping and Backefors (Dalwell) and the corrugated headquarters in Jönköping. These disposals will significantly reduce the parties' combined share of corrugated cases deliveries from [40-50]% to [30-40]% in Denmark, removing the Danish production overlap completely and from [40-50]% to [30-40]% in Sweden. The Commission considers that the commitments offered resolve the competition concerns identified on this market.

32. Concerning the Netherlands, the results of the market investigation are consistent with the Commission's findings in previous cases and the parties' positions as to the definition of the relevant geographic market, that is, the "North West" region comprising Benelux, West Germany and half of Northern Germany. The majority of the respondents to the market investigation submitted that they either currently import cases from Germany or Belgium or could easily start to do so. The significant percentage of imports of corrugated cases from Germany to the Netherlands (around 30% of the total consumption of these products in the Dutch market) has been confirmed by the statistics of the trade associations. In the North West region the parties' combined market share would be [30-40]%. Given the presence in the area of other competitors, the concentration is not likely to create competition problems in this region.

(e) Corrugated sheets and cases in Czech Republic and Slovakia

33. Furthermore, some respondents have expressed concerns in relation to Czech Republic and Slovakia. Kappa is active in the production of corrugated sheets and cases in these countries whereas JSG is not. However, JSG has a non-controlling interest in Duropack, a competitor of Kappa in this area.

34. The combined market share of Kappa and Duropack would be [70-80]% and [40-50]% in Slovakia and the Czech Republic respectively in the market for the sale of corrugated sheets to third parties. In the market for the sale of corrugated cases, their

[8] The Neopac network of factories includes two integrated corrugated box plants in Randers and Naestved and one plant in Horning, comprising the entirety of JSG's corrugated operations in Denmark.

combined market share would be [40-50]% and [20-30]% in Slovakia and Czech Republic respectively.

35. JSG has only […]% shares in Duropack whereas the remaining […]% of the shares are held by Constantia Packaging plc. According to the parties, JSG does not have veto rights over the strategic decisions of Duropack, such as budget, business plan, major acquisitions and disposals or the appointment of senior executives. Thus, JSG may not be deemed to exercise control on Duropack under the terms of the Merger Regulation.

36. Furthermore, on the basis of the information supplied by the parties concerning gains and losses of business between JSG and Duropack, it appears that in the past JSG has not exercised control or decisive influence over Duropack's commercial behaviour. More particularly it appears that in the last two years JSG lost significant amounts of supplies to at least four large clients to Duropack. During the same period, Duropack lost a number of very important tenders to JSG.

37. Moreover it appears that the parties currently use different means, including the adoption of significant discount schemes, to fiercely compete on a daily basis in the areas in which both are active. There is no evidence that Duropack will cease to act as an effective competitive constraint over JSG and Kappa.

38. Therefore, as it can be excluded that JSG exercises control or decisive influence on Duropack, competition concerns are unlikely to arise in the post-merger scenario.

(f) Bag-in-box

39. Bag-in-box products are corrugated boxes containing a plastic bag with a plastic tap to allow liquid to be dispensed from the bag (e.g. wine or milk). The bag-in-box customers typically fill the bags with liquid and then on-sell them to retail food outlets or wholesalers/distributors. Since the operation does not raise competition concerns, the question of whether a separate product market exists for bag-in-box can be left open.

40. The parties consider that the relevant geographic market for the purchase and supply of bag-in-box products is at least EEA-wide, due to extensive trade flows across the EEA and beyond. Given the small size of the market for bag-in-box products, other producers, like the parties, typically have one or a small number of plants that serve demand across Europe and beyond. JSG makes bag-in-box products in its plant in France and Kappa in its plant in Eslov (servicing only the Swedish customers). As the operation does not raise competition concerns on any reasonable geographic market the market definition can be left open.

41. On the basis of an EEA-wide geographic dimension, the parties estimate their combined share of deliveries of bag-in-box products in the EEA to be [20-30]% (JSG [20-30]%; Kappa [0-10]%). At a national level, Kappa is only active in Sweden, where its sales of bag-in-box are however very limited. The transaction would therefore not result in any competition concerns in these markets.

(g) Solid board sheets

42. Solid board sheets are used for transport packaging applications. Like corrugated board sheets, solid board sheets comprise of an upper and lower liner sheet. However, whereas in corrugated board sheets the middle layer is undulating fluting, in solid

board sheets the middle layer is a solid layer or multiple layers of recycled fibre. Solid board sheets are consequently heavier than corrugated board sheets. In the previous cases[9] the Commission has found out that the inherent characteristic of solid board sheets are not comparable to corrugated board sheets due to both supply and demand side considerations, although the exact market definition was left open. These findings were largely confirmed in this case by both the parties' submissions and the market investigation. The Commission has concluded that solid board sheets constitute a separate product market from corrugated sheets.

43. Previously the Commission has not reached a conclusion on the exact geographic scope of the relevant market, although it has pointed towards a geographic area that was wider than national. In the current transaction, the parties consider that the geographic market for solid board sheets corresponds to the EEA, on account of significant trade flows, comparable conditions of competition across the EEA and relatively low transport costs. The market investigation tends to be supportive of the parties' EEA-wide market definition. A significant number of the respondents to our questionnaires have indicated that solid board sheets are mainly produced in the Netherlands and exported to other European states. These findings have been confirmed by the long delivery time (up to two weeks) for solid board sheets. The Commission tends to agree with the EEA-wide market definition.

44. Both parties are active in the solid board sheets market, and the majority of their plants are vertically integrated as they both manufacture sheets and then convert them into cases on the same site. More than 2/3 of their production is for captive use, the rest is sold to the third parties. The parties' combined share of third party sales of solid board sheets in 2004 in the EEA was approximately [10-20]% (Kappa [10-20]%; JSG [0-10]%). On the European market the parties face a number of competitors, including Varel (which will remain market leader). In addition, the overlap of the parties' activities is not significant on this market.

45. Some respondents from the Netherlands, the United Kingdom, France, Italy and Spain have expressed competition concerns. The parties' combined share of third party sales of solid board sheets exceeds 15% in some of these countries (Belgium, Spain and the Netherlands). However, in the light of the retained geographic market definition and the presence of competitors on the EEA-wide level, these concerns do not appear well grounded because, overall, the market investigation revealed that the merged entity will continue to face sufficient competitive constraints on the market such that there will be no significant impediment to effective competition.

46. Moreover, as the parties have offered to divest Loenen (Solidpack) in order to solve competition concerns on solid board cases market (para 51), the overlap of the parties' activities in the market for solid board sheets will also be reduced. The transaction would therefore not result in any competition concerns in these markets.

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(h) Solid board cases

47. Solid board sheets are converted into boxes. Solid board cases are used primarily for transporting fresh products like fruit, vegetables, fish, meat, poultry and dairy products. Moreover, there is low demand and supply side substitution between corrugated and solid board cases. The Commission in a previous decision[10] has noted that solid board cases are heavier and more expensive than corrugated cases but left open the question of whether solid board cases constitute separate market. These findings were largely confirmed in this case by both the parties' submissions and the market investigation. The Commission has concluded that solid board cases constitute a separate product market from corrugated cases.

48. Although previously the Commission has not reached a conclusion on the exact geographic scope of the relevant market, it has indicated that the suppliers sold solid board cases in a geographic area that was wider than national, comprising an area up to 500 km from the point of production. In the current transaction the parties consider that the geographic scope of the market for solid board cases corresponds to the EEA due to similar competitive conditions, low transport costs, and availability of supply across Europe. The parties submit that solid board cases are easily and economically transportable across the EEA (the parties submit that they export solid board cases up to 1000 km and on average 400-500 km). The majority of the respondents to the current market investigation indicated that the market for solid board cases is wider than national. The Commission tends to agree that the relevant geographic market is not national and covers a radius of 400-500 km, however as the competition concerns are addressed on any reasonable geographic market the exact market definition can be left open.

49. Kappa is a clear market leader in solid board cases in the EEA. Based on the parties' estimates in 2004, the parties' combined share of deliveries of solid board cases in the EEA was [40-50]% (Kappa [30-40]%; JSG [0-10]%). The parties argue that the addition of JSG will not have a competitive impact as its share is small ([0-10]%) and Kappa is facing competition from other competitors (e.g. Leopold ([0-10]%), Newark ([0-10]%), Cerrone ([0-10]%), VPK ([0-10]%) and R&F ([0-10]%)). According to the parties, the combined entity will not be in a position to exercise market power due to strong buyer power, suppliers' multi-sourcing strategy, competition constraints from other forms of transport packaging, and low barriers to entry and expansion.

50. According to the Commission's view the proposed transaction will significantly strengthen the parties' position in the market for solid board cases in the EEA. Moreover, some respondents from the Netherlands, France and Sweden have expressed competition concerns. Indeed, in some countries like Belgium ([40-50]%: Kappa [40-50]%; JSG [0-10]%), France ([60-70]%: Kappa [50-60]%: JSG [0-10]%), Netherlands ([60-70]%: Kappa [50-60]%; JSG [10-20]%), and Sweden ([70-80]%: Kappa [10-20]%; JSG [50-60]%), the parties' market share will exceed [30-40]%. Although in France and Belgium the overlap is less significant (respectively [0-10]% and [0-10]%), in the Netherlands, the overlap is much higher with JSG's share of [10-20]%. In Sweden, where JSG is the leader, Kappa adds [10-20]% to the combined

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market share with the third competitor (namely, Peterson representing [10-20]% of the Swedish sales).

51. JSG converts solid board cases at two locations in the EEA (namely, Solidpack in the Netherlands and Lagamill in Sweden). In order to reduce the parties' combined share on the market for the sale of solid board cases in the EEA the parties propose to divest JSG's Solidpack solidboard cases plant in Loenen in the Netherlands. This disposal would reduce the parties' combined share on the EEA-wide market from [40-50]% to [30-40]%, with an increment of less than [0-10]%. The disposal will solve the current overlap in the Netherlands and France as Solidpack accounts for all JSG's solidboard case sales in these two countries. The Commission considers that the commitments offered resolve the competition concerns identified on this market.

52. Concerning competition problems identified on the Swedish market, the 400-500km catchment area confirmed by the Commission's investigation would suggest including also Norway, giving thus a combined Sweden/Norway share of [30-40]% while several competitors (e.g. Westpack ([20-30]%), Peterson ([20-30]%) and Glomma ([10-20]%)) would exercise considerable constraints. In addition, Swedish demand is not only satisfied by JSG's Lagamill plant (the only plant in Sweden) but also by imports from Peterson's Sarpsborg plant in Norway, Kappa's GSF plant in the Netherlands and Herzberg plant in Germany. As a result, the disposal of Solidpack in the Netherlands (which is located as near to Sweden as Kappa's plants in the Netherlands and Germany which already serve Swedish customers) would also improve the competition situation in Scandinavia. The Commission considers that the commitments offered resolve the competition concerns identified on this market.

(i) Carton board

53. Carton board is a lightweight solid board, which is converted to folding cartons used mainly for consumer packaging rather than transport packaging applications. The parties consider that the supply of carton board constitutes a separate product market on account of the lack of demand-side substitutability. The Commission's market investigations tends to confirm that view but as the operation does not raise competition concerns the product market definition can be left open.

54. The parties consider the geographic scope of the market for carton board to be EEA-wide, given that carton board is light and can be economically transported over considerable distances and given the existing extensive trade flows across countries within the EEA. As the operation does not raise competition concerns the exact geographic market definition can be left open.

55. Both parties produce carton board in their plants in Germany with the parties estimated combined market share of [0-10]% (Kappa [0-10]%; JSG [0-10]%) at EEA level. As the combined market shares for carton board are below [0-10]% at EEA level and, according to the parties' estimate, would not exceed 15% on any national market in the EEA, the transaction does not result in any competition concerns.

(j) Folding boxes

56. Folding cartons are made from carton board, and are used for a wide range of consumer packaging applications. In the previous Commission decisions[11], the Commission has considered a distinct market for the conversion of folding carton packaging but left the definition open. The Commission's market investigations tends to confirm that view but as the operation does not raise competition concerns the product market definition can be left open.

57. The parties argue the geographic dimension of the market to be EEA-wide. In the previous decisions the Commission left it open although it noted that folding cartons could not economically be transported more than 500 km from the point of production, and that the parties in that case had emphasised the importance of local service, which suggested a narrower geographic market. As the operation does not raise competition concerns on any reasonable geographic market, the market definition can be left open.

58. Both parties are active on the market of conversion carton board to folding cartons, but their combined production is less then [0-10]% of the EEA-wide market. The transaction does therefore not result in any competition concerns on this market.

(k) Graphic and specialty board

59. In the previous Commission's decision[12], the Commission considered graphic board as a separate product market and described it as a heavy-weight solid board, with special properties, like rigidity and stability, which make it suitable for processing into different applications like book covers, lever arch files and other filing systems, games boards and jigsaw puzzles. According to the parties specialty board refers to board used for items such as luxury gift covers, games boxes, salmon boards and special stationery. They submit that there is no clear delineation between graphic board and specialty board, both of which cover a range of consumer-facing products, which distinguish them from other types of board (solid, corrugated and carton board).

60. However the majority of the respondents to the market investigation suggested that the market should be further sub-divided to account for the differences existing between graphic and specialty board, namely in relation to their use. However it does not appear necessary to ultimately conclude on the product market definition since the remedies offered by the parties address the competition concerns on any reasonable market definition.

61. The Commission has previously[13] considered the geographic dimension of the market for the sale of graphic board as EEA-wide, on the basis that customers buy readily outside their own Member State. The parties submit that the market conditions have changed and the geographic market might be wider, due to new capacity in the USA

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11 *Ahlstrom/Capman/Folding Carton Partners* Case M.1792.

12 *KNP/Bührmann-Tetterode and VRG* Case M.291

13 *KNP/Bührmann-Tetterode and VRG* Case M.291

that led to increased exports into the EEA. The investigation confirmed that the relevant product market geographic scope is EEA - wide.

62. The parties estimate their combined share of deliveries of graphic and specialty board in the EEA to be [40-50]% (Kappa [20-30]%; JSG [10-20]%), with Kappa being a clear market leader. If the market was to be further subdivided into two separate markets for graphic and speciality board, the parties' combined market share in the market for graphic board would be [50-60]% (Kappa [30-40]%, JSG [20-30]%). The parties' activities would not overlap in the market for specialty board, where only Kappa is active.

63. The parties argue that their strong position is constrained by strong buyer power, multi-sourcing strategy, low customer loyalty, and imports from outside the EEA.

64. The investigation has shown that, the merger will remove Kappa's main competitor for graphic board, namely, JSG, in the EEA market and will significantly strengthen the leading position of the new entity. This would result in a change in the conditions of competition on the market which could be expected to result in a significant impediment to effective competition. Furthermore, all the remaining competitors have market shares below [0-10]% with their great majority being below [0-10]%.

65. In order to address the competition concerns raised by the Commission, the parties have proposed to divest Kappa's Graphic Board graphic/specialty board plants in Hoogezand and Sappemeer in the Netherlands. This disposal would reduce the parties' combined market share of graphic board deliveries in the EEA from [50-60]% to [20-30]% and it will almost remove the overlap.

66. The Commission considers the above mentioned commitments sufficient to remove any competition concerns from this market.

(l) Partitions

67. Partitions are essentially dividers for keeping products in corrugated cases separate from each other, and thereby protecting them from damage during transit. In particular, they are used to protect fragile items such as glass containers, mirrors and certain food types (e.g. crabs). There are two types of partition: corrugated partitions and solid board partitions. Partitions are purchased mainly by glass container producers, glass tableware producers, alcoholic drinks bottlers, soft drinks bottlers, food packing companies, makers of ceramic items and general tableware and suppliers to the automotive industries.

68. The parties argue for one market for partitions as they claim that the corrugated partitions are increasingly viewed by customers as substitutable for solidboard partitions. The market investigation did not support the parties' view and tends that separate markets for corrugated and solid board partitions can be distinguished. However, in light of the following considerations, it does not appear necessary to ultimately conclude on the product market definition for the purpose of the analysis of the present case.

69. The parties support the EEA-wide dimension of this market due to substantial levels of cross-border trade of partitions and low transport costs (for a customer located 1,000 km from the plant the costs represents less than [0-10]% of the average selling

price). The majority of the respondents to the market investigate consider that partitions may be economically transported for 300-400 km from the production site.

70. The combined market shares of the parties on EEA-wide market for partitions, is [10-20]% (JSG – [0-10]%, Kappa- [0-10]%). If a separate market for corrugated partitions was established – the overlap would be insignificant as Kappa produces virtually no corrugated partitions and JSG makes corrugated partitions at a small minority of its corrugated sheet plants. On the separate market for solid board partitions the parties have combined market share of [30-40]% (JSG – [20-30]%, Kappa – [0-10]%). However, at a national level the parties have high combined market shares in the UK ([80-90]% with JSG representing [10-20]% and Kappa – [70-80]%) and Ireland ([90-100]% - [60-70]% JSG, [20-30]% - Kappa). The parties argue that due to low barriers to entry and expansion as well as strong buyer power, no competition problems arise.

71. In the UK, Kappa is by far the market leader with [70-80]% market share and JSG is the competitor with the second highest market share of [10-20]% while the remaining few competitors have a market share below [0-10]%. In Ireland, JSG is the market leader with [60-70]% market share and Kappa is the competitor with the second highest market share of [20-30]% while the remaining competitor has a market share of [0-10]%.

72. The investigation has shown that there are no production plants in Ireland and as a result, customers from Ireland purchase from the UK. Customers also emphasized that they do not purchase outside the UK and Ireland area. In this area, the proposed transaction will remove, Kappa's and JSG's main competitor, namely JSG and Kappa respectively.

73. In order to address the competition concerns, the parties have proposed to divest JSG's Interlok solidboard partitions business in Port Glasgow in Scotland.

74. The parties submit that the disposal would completely remove the solidboard partitions production and sales overlap in the UK and Ireland and thus, it will eliminate any competition concerns in this market. The Commission considers the above mentioned commitments sufficient to remove all competition concerns.

V. CONCLUSION ON COMMITMENTS SUBMITTED BY THE PARTIES

75. The Commission's investigation has indicated that the proposed transaction could raise competition concerns on the markets for solid board sheets, solid board cases, graphic board, corrugated cases, and partitions. The parties submitted commitments in order to remove these competition concerns. The Commission considers that the commitments offered resolve the competition concerns identified.

VI. CONCLUSION

76. 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, subject to the condition of full compliance with the commitments as described in paragraphs 31, 51, 65 and 73 and the related text in the Commitments annexed to this decision and to the obligation of full compliance with the other sections of the said Commitments. This decision is adopted in application of Article 6(1)(b) and Article 6(2) of Council Regulation (EC) No 139/2004.

For the Commission
signed
Neelie KROES
Member of the Commission

By fax and by email
European Commission
DG Competition
Rue Joseph II 70 Jozef-II straat
B-1000 BRUSSELS

Case M. 3935 – JSG Packaging Limited/Kappa Holding BV

COMMITMENTS TO THE EUROPEAN COMMISSION

Pursuant to Article 6(2) of Council Regulation (EC) No 139/2004 (the "***Merger Regulation***"), JSG Packaging Limited ("***JSG***") hereby provides the following commitments (the "***Commitments***") in order to remove any serious doubts that the European Commission (the "***Commission***") may have with regards to the compatibility of the Notified Concentration (as defined herein) with the common market, thereby enabling the Commission to adopt a decision declaring the Notified Concentration compatible with the common market and the functioning of the EEA Agreement by adopting a decision pursuant to Article 6(1)(b) of the Merger Regulation (the "***Decision***").

These Commitments are given by JSG without prejudice to their position that the Notified Concentration does not create or strengthen a dominant position within the common market or a substantial part of it and is therefore compatible with the common market and the functioning of the EEA Agreement.

The Commitments shall take effect upon the date of adoption of the Decision.

Any term used in these Commitments shall be interpreted in the light of the Commission Notice on remedies acceptable under the Merger Regulation and under Commission Regulation (EC) No 802/2004.

Section A. Definitions

In these Commitments, the following expressions shall have the following meaning:

Affiliated Undertakings: controlled by JSG and/or by the ultimate controllers of JSG, whereby the notion of control shall be interpreted pursuant to Article 3 of the Merger Regulation and in the light of the Commission Notice on the Concept of Concentration under the Merger Regulation.

Closing: the transfer of the legal title of each Divestment Business.

Completion Date: the date of implementation of the Notified Transaction.

Divestment: the disposal by JSG of its entire legal and beneficial interest in a Divestment Business, whether (a) by way of its sale to an unconnected third party Purchaser pursuant by a binding sale and purchase agreement or (b) by way of its distribution, transfer or sale by way of a dividend, distribution in kind, reduction of capital or other similar transaction, and/or by way of an initial public offering on one or more recognised securities exchanges; Divest, Divested and Divesting shall be interpreted accordingly.

Divestment Businesses: the businesses as defined in paragraph 5 of Section B, and as more particularly described in Schedules 1 – 5, that JSG commits to Divest (each a **Divestment Business**).

Divestment Trustee: one or more natural or legal person(s), independent from the Parties, who is approved by the Commission and appointed by JSG, and who has received from JSG the exclusive Mandate to sell the Divestment Businesses that have not been Divested by JSG during the First Divestment Period (including any extension thereto granted pursuant to paragraph 39) to a Purchaser or Purchasers at no minimum price.

Effective Date: the date of adoption of the Decision.

First Divestment Period: the period of […] months from the Completion Date (including any extension thereto granted pursuant to paragraph 39), within which JSG may Divest each of the Divestment Businesses.

Hold Separate Manager: a person appointed by JSG to manage the day-to-day business of each Divestment Business under the supervision of the Monitoring Trustee.

JSG: a limited liability company incorporated under the laws of Ireland with registered number 380620 and with its registered office at Beech Hill, Clonskeagh, Dublin 4.

Kappa: a limited liability company incorporated under the laws of The Netherlands with registered number 33303987 and with its registered office at Dr Holtroplaan 5, 5652 XR Eindhoven.

Key Personnel: all personnel of each Divestment Business who are identified by the Monitoring Trustee as being necessary to maintain the viability and competitiveness of the relevant Divestment Business, and as listed in respect of each Divestment Business in Schedules 1 – 5.

Mandate: the trustee mandate (or mandates) to be entered into between JSG and the Trustee.

Monitoring Trustee: one or more natural or legal person(s), independent from the Parties, approved by the Commission and appointed by JSG, and who has the duty to monitor JSG's compliance with these Commitments.

Notified Concentration: the proposed combination of JSG and Kappa which was notified to the Commission on Form CO on 19 September 2005.

Parties: JSG and Kappa

Personnel: all personnel who are currently employed and will be retained by each Divestment Business after Closing, including Key Personnel, following its Divestment pursuant to these Commitments.

Purchaser: an entity, including its Affiliated Undertakings, approved by the Commission as the acquirer of the Divestment Businesses in accordance with the criteria set out in paragraph 17 of Section D (provided that for the avoidance of doubt, there may be one or more Purchasers for one or more Divestment Businesses).

Trustee: the Monitoring Trustee and/or the Divestment Trustee.

Trustee Divestment Period: the period of […] months from the end of the First Divestment Period (and any extension thereto granted pursuant to paragraph 39) within which the Divestment Trustee shall have an exclusive Mandate from JSG to sell the Divestment Businesses (or any of them) that have not been Divested by JSG during the First Divestment Period (including any extension thereto granted pursuant to paragraph 39).

Section B. The Divestment Businesses

Commitment to Divest

1. In order to restore effective competition, JSG commits to ensure that the Divestment Businesses cease to be under its ownership and control, which will be accomplished by Divesting, or procuring the Divestment of, each Divestment Business as a going concern in accordance with these Commitments.

The First Divestment Period

2. JSG undertakes to use its reasonable efforts to fulfil the undertaking contained in paragraph 1 within the First Divestment Period. It shall be deemed to have complied with their undertaking in this paragraph 2 if, within the First Divestment Period (and any extension thereof granted pursuant to paragraph 39), it has finalised and entered into a binding sale and purchase agreement or any other necessary documentation for the Divestment of the relevant Divestment Business, provided that Closing takes place no later than […] months after the Commission's approval of the Divestment, the Purchaser and binding sale and purchase agreement or any other necessary documentation for the Divestment, or any longer such period as may be agreed by the Commission upon the making of a reasoned request by JSG.

The Extended Divestment Period

3. Should JSG be unable to fulfil its undertaking in paragraph 1 in the First Divestment Period (including any extension thereof pursuant to paragraph 39), the Extended Divestment Period shall apply from the date of the expiry of the First Divestment Period. JSG undertakes to give the Divestment Trustee an exclusive Mandate to sell within the Extended Divestment Period in accordance with the procedure described in paragraph 29 such of the Divestment Businesses that JSG has not Divested within the First Divestment Period (or any extension thereto granted pursuant to paragraph 39) in order to give effect to JSG's undertaking in paragraph 1.

4. In order to maintain the structural effect of these Commitments, JSG shall, for a period of […] years after the Effective Date, not acquire direct or indirect influence over the whole or part of any of the Divestment Businesses that are Divested to give effect to the undertaking in paragraph 1 without the prior consent of the Commission, which it shall give if the structure of the relevant markets has changed to such an extent that the absence of influence by JSG over the Divestment Businesses is no longer necessary to render the proposed concentration compatible with the common market.

Structure and definition of the Divestment Businesses

5. The Divestment Businesses consist of:

(a) three JSG corrugated plants located in Denmark (at Randers, Naestved and Horning), as described in further detail in Schedule 1;

(b) two JSG corrugated plants located in Sweden (at Norrköping and Dalwell), as described in further detail in Schedule 2;

(c) JSG's Solidpack solid board case conversion plant located at Loenen in the Netherlands, as described in further detail in Schedule 3;

(d) JSG's Interlok solid board partitions business, based in the UK, as described in further detail in Schedule 4; and

(e) Kappa's Graphic Board graphic/specialty board plants located at Hoogezand and Sappemeer in the Netherlands, as described in further detail in Schedule 5.

6. JSG shall use its best endeavours to ensure that each Divestment Business includes:

(a) all tangible and intangible assets (including intellectual property rights), which contribute to the current operation or are necessary to ensure the viability and competitiveness of the Divestment Business, except the ones exclusively dedicated to businesses unrelated to the Divestment Business;

(b) all licences, permits and authorisations issued by any governmental organisation exclusively for the benefit of the Divestment Business;

(c) all existing contracts, leases, commitments and customer orders of the Divestment Business except where exclusively dedicated to businesses unrelated to the Divestment Business; all customer, credit and other records of the Divestment Business, except where exclusively dedicated to businesses unrelated to the Divestment Business (items referred to under (a)-(c) hereinafter collectively referred to as the "***Assets***" of the Divestment Business);

(d) the Personnel; and

(e) the benefit, for a reasonable transitional period of up to […] months after Closing and on terms and conditions equivalent to those at present afforded to the Divestment Business, of all current arrangements under which the Parties or Affiliated Undertakings supply products or services to the Divestment Business, as detailed in each Schedule, unless otherwise agreed with the Purchaser.

Section C. Related commitments

Preservation of Viability, Marketability and Competitiveness

7. From the Completion Date until the Closing of the Divestment of a Divestment Business, JSG undertakes to use its reasonable efforts to preserve the economic viability, marketability and competitiveness of that Divestment Business, in accordance with good business practice, and shall minimise as far as reasonably possible any risk of loss of competitive potential of the Divestment Business, provided that JSG shall only be obliged to do so to the extent that it is within its control. In particular JSG undertakes:

(a) not to carry out any act upon its own authority that might have a significant adverse impact on the value, management or competitiveness of the Divestment Business or that might alter the nature and scope of activity, or the industrial or commercial strategy or the investment policy of the Divestment Business;

(b) to make available reasonably sufficient resources for the development of the Divestment Business, on the basis and continuation of the existing business plans;

(c) to take all reasonable steps, including appropriate incentive schemes (based on industry practice), to encourage all Key Personnel to remain with the Divestment Business.

Hold-separate obligations

8. Each of the obligations contained in the following paragraphs 9, 10 and 11 shall apply only as from the Completion Date until Closing for each relevant Divestment Business.

9. JSG commits to keep the relevant Divestment Business separate from the businesses it is retaining and to ensure that Key Personnel of the Divestment Business – including the Hold Separate Manager – have no involvement in any business retained and vice versa. JSG shall also use its best endeavours to ensure that the Personnel do not report to any individual outside the relevant Divestment Business.

10. JSG shall assist the Monitoring Trustee during the term of its Mandate in ensuring that the relevant Divestment Business is managed as a distinct and saleable entity separate from the businesses retained by JSG. JSG shall appoint Hold Separate Managers who shall be responsible for the management of each Divestment Business, under the supervision of the Monitoring Trustee. The Hold Separate Managers shall manage the Divestment Businesses independently and in the best interest of each business with a view to ensuring their continued economic viability, marketability and competitiveness and their independence from the businesses retained by JSG.

11. To ensure that the Divestment Businesses are held and managed as separate entities the Monitoring Trustee shall exercise JSG's rights as shareholders in each Divestment Business (except for their rights for dividends that are due before the Closing of the sale of the relevant Divestment Business), with the aim of acting in the best interest of the business, determined on a stand-alone basis, as an independent financial investor, and with a view to fulfilling JSG's obligations under the Commitments. Furthermore, the Monitoring Trustee shall have the power to replace members of the supervisory board or non-executive directors of the board of directors of each Divestment Business, who have been appointed on behalf of JSG. Upon request of the Monitoring Trustee, JSG shall resign as member of the boards or shall cause such members of the boards to resign.

Ring-fencing

12. JSG shall implement all necessary measures to ensure that it does not after the Completion Date obtain any business secrets, know-how, commercial information, or any other information of a confidential or proprietary nature relating to the Divestment Businesses. In particular, the participation of the Divestment Businesses in a central information technology network shall, where this is considered by the Monitoring Trustee to be reasonably necessary, be limited (whether by structural or logical separation or other means) to the extent reasonably possible within a reasonable time period, without compromising the viability of the Divestment Businesses. Notwithstanding the foregoing, JSG may obtain confidential or proprietary business secrets or commercial or similar information relating to the Divestment Businesses if it is reasonably necessary for it to do so for the purposes of fulfilling the obligations in these Commitments or if disclosure to JSG is reasonably necessary in order to enable it to comply with any statutory, tax, legal, regulatory or similar obligation.

Non-solicitation of employees

13. JSG undertakes, subject to customary limitations, not to solicit, and to procure, to the extent that it is lawfully able, that Affiliated Undertakings do not solicit, the Key Personnel transferred with each Divestment Business for a period of […] years after the Closing of the sale of the relevant Divestment Business, provided that this shall not apply to the recruitment of any such Key Personnel who were not employed during the last […] months by the relevant Divestment Business.

Due Diligence

14. In order to enable potential purchasers to carry out a reasonable due diligence of the Divestment Businesses, JSG shall, subject to customary confidentiality assurances and dependent on the stage of the divestment process, use its best endeavours to procure that the following is provided to potential purchasers:

(a) sufficient information as regards each Divestment Business;

(b) sufficient information relating to the Key Personnel of each Divestment Business and allow them reasonable access to such Key Personnel.

Reporting

15. No later than 10 days after the end of every calendar month following the Completion Date (or otherwise at the Commission's request), JSG shall submit to the Commission and the Monitoring Trustee written reports in English on developments on any negotiations with potential purchasers of each Divestment Business.

16. JSG shall inform the Commission and the Monitoring Trustee on the process for the Divestment of each Divestment Business, including the preparation of the data room documentation (if any) and the due diligence procedure (if any) in respect of each Divestment Business. If JSG produces an information memorandum, prospectus or similar document in respect of the Divestment Businesses (individually or collectively) to provide to potential purchasers and other third parties, it shall submit a copy of the relevant draft documents to the Commission and the Monitoring Trustee before sending the memorandum out to potential purchasers.

Section D. The Purchaser(s)

17. In order to ensure the immediate restoration of competition in the event of the Divestment of any or all of the Divestment Businesses, the Purchaser of each Divestment Business, in order to be approved by the Commission, must:

(a) be independent of and unconnected to JSG;

(b) have the financial resources, proven expertise and incentive to maintain and develop the Divestment Business as a viable and active competitive force in competition with JSG and other competitors;

(c) neither be likely to create, in the light of the information available to the Commission, *prima facie* competition concerns nor give rise to a risk that the implementation of the Commitments will be delayed, and, in particular, the Purchaser must reasonably be expected to obtain all necessary approvals from the relevant competition and other regulatory authorities for the acquisition of the Divestment Business (the before-mentioned criteria for the purchaser(s) hereafter the "***Purchaser Requirements***").

18. When JSG has entered into or are about to enter into, definitive documentation with respect to the Divestment of the Divestment Businesses (or any of them), it shall submit to the Commission and the Monitoring Trustee a fully documented and reasoned proposal, including either a copy of any sale and purchase agreement and any ancillary contractual documentation or other documentation that is necessary to effect the Divestment (the ***Proposal***). JSG must be able to demonstrate to the Commission that the purchaser or purchasers of the Divestment Businesses meet the Purchaser Requirements and that the Divestment Businesses are being sold in a manner consistent with these Commitments. The Proposal shall enable the Commission to verify that the purchaser fulfils the Purchaser Requirements and that the Divestment Business is being sold in a manner consistent with these Commitments. The Commission may approve the sale of the Divestment Businesses (or any of them) without one or more of the Assets and/or without some or all of the Personnel, if this does not affect the viability and competitiveness of the Divestment Business after the Closing, taking account of the proposed purchaser and the extent to which it already possesses equivalent assets, personnel and/or other resources that can be employed in the relevant Divestment Business.

Section E. Trustee

I. Appointment Procedure

19. JSG shall appoint a Monitoring Trustee to carry out the functions specified in these Commitments for a Monitoring Trustee.

20. If in respect of one or more Divestment Businesses JSG has not entered into a binding sale and purchase agreement (if any), other ancillary contractual documentation and other documentation necessary to effect the Divestment of the relevant Divestment Business or Divestment Businesses one month before the end of the First Divestment Period (including any extension thereto pursuant to paragraph 39, or if the Commission has rejected a purchaser or purchasers proposed by JSG at that time or thereafter, JSG shall appoint a Divestment Trustee to carry out the functions specified in the Commitments for a Divestment Trustee. The appointment of the Divestment Trustee shall take effect upon the commencement of the Extended Divestment Period.

21. The Trustee shall be independent of the Parties, possess the necessary qualifications to carry out its Mandate, for example as an investment bank or consultant or auditor, and shall neither have nor become exposed to a conflict of interest. The Trustee shall be remunerated by JSG in a way that does not impede the independent and effective fulfilment of its Mandate. In particular, where the remuneration package of a Divestment Trustee includes a success premium linked to the final sale value of the Divestment Business, the fee should also be linked to a divestment within the Trustee Divestment Period.

Proposal by JSG

22. No later than one week after the Completion Date, JSG shall submit a list of one or more persons whom it proposes to appoint as the Monitoring Trustee to the Commission for approval.

23. Should the circumstances set forth in paragraph 20 be applicable, no later than one month before the end of the First Divestment Period (including any extension thereto pursuant to paragraph 39), JSG shall submit a list of one or more persons whom it proposes to appoint as Divestment Trustee to the Commission for approval. The proposal shall contain sufficient information for the Commission to verify that the proposed Trustee fulfils the requirements set out in paragraph 21 and shall include:

(a) the full terms of the proposed Mandate, which shall include all provisions necessary to enable the Trustee to fulfil its duties under these Commitments;

(b) the outline of a work plan which describes how the Trustee intends to carry out its assigned tasks;

(c) an indication whether the proposed Trustee is to act as both Monitoring Trustee and Divestment Trustee or whether different persons are being proposed for the two functions; and

(d) an indication of the Divestment Business(es) in respect of which the appointment is to be made.

Approval or rejection by the Commission

24. The Commission shall have the discretion to approve or reject the proposed Trustee(s) and to approve the proposed Mandate subject to any modifications it reasonably deems necessary for the Trustee to fulfil its obligations. If only one proposed Trustee is approved, JSG shall appoint or cause to be appointed, the individual or institution concerned as Trustee, in accordance with the mandate approved by the Commission. If more than one proposed Trustee is approved, JSG shall be free to choose the Trustee to be appointed from among the individuals or institutions approved. The Trustee shall be appointed within one week of the Commission's approval, in accordance with the draft Mandate approved by the Commission.

New proposal by JSG

25. If all the proposed Trustees are rejected, JSG shall submit the names of at least two more individuals or institutions within one week of being informed of the rejection, in accordance with the requirements and the procedure set out in paragraphs 21 and 24.

Trustee nominated by the Commission

26. If all further proposed Trustees are rejected by the Commission, the Commission shall nominate a Trustee, whom JSG shall appoint, or cause to be appointed, in accordance with a trustee Mandate approved by the Commission.

II. Functions of the Trustee

27. The Trustee shall assume its specified duties in order to ensure compliance with the Commitments. The Commission may, on its own initiative or at the request of the Trustee or JSG, give any reasonable orders or instructions to the Trustee in order to ensure compliance with the conditions and obligations attached to the Decision.

Duties and obligations of the Monitoring Trustee

28. The Monitoring Trustee shall, taking account of the legitimate interests of JSG:

(a) propose in its first report to the Commission a detailed work plan describing how it intends to monitor compliance with these Commitments;

(b) oversee the on-going management of the Divestment Businesses with a view to ensuring their continued economic viability, marketability and competitiveness and monitor compliance by JSG with these Commitments. To that end the Monitoring Trustee shall:

(i) in consultation with JSG, monitor the preservation of the economic viability, marketability and competitiveness of the Divestment Businesses, and the keeping separate of the Divestment Businesses from the businesses retained by JSG, in accordance with paragraphs 7 and 9 of the Commitments;

(ii) supervise the management of the Divestment Businesses as distinct and saleable entities, in accordance with paragraph 10 of the Commitments;

(iii) (i) in consultation with JSG, determine appropriate measures to ensure that JSG does not after the Completion Date obtain any business secrets, know-how, commercial information, or any other information of a confidential or proprietary nature relating to the Divestment Businesses, and in particular the participation of the Divestment Businesses in a central information technology network being limited, where this is considered by the Monitoring Trustee to be reasonably necessary, (whether by structural or logical separation or other means) to the extent reasonably possible within a reasonable time period, without compromising the viability of the Divestment Businesses and (ii) decide whether confidential or proprietary business secrets or commercial or similar information relating to the Divestment Businesses may be disclosed to JSG, if this is reasonably necessary for the purposes of fulfilling the obligations in these Commitments or if disclosure to JSG is reasonably necessary in order to enable it to comply with any statutory, tax, legal, regulatory or similar obligation; and

(iv) to the extent required, monitor the splitting of Assets and the allocation of Personnel between the Divestment Businesses and JSG or Affiliated Undertakings;

(c) assume the other functions assigned to the Monitoring Trustee under these Commitments;

(d) propose to JSG such measures as the Monitoring Trustee reasonably considers necessary to ensure JSG's compliance with these Commitments, in particular the maintenance of the full economic viability, marketability or competitiveness of the Divestment Businesses, the holding separate of the Divestment Businesses and the non-disclosure of competitively sensitive information;

(e) review and assess potential purchasers as well as the progress of the divestment process and verify that, dependent on the stage of the divestment process, (a) potential purchasers receive sufficient information relating to the Divestment Business and the Personnel in particular by reviewing, if available, the data room documentation, the information memorandum and the due diligence process, and (b) potential purchasers are granted reasonable access to the Personnel.

(f) provide to the Commission, sending JSG a non-confidential copy at the same time, a written report within 15 days after the end of every month. The report shall cover the monitoring of the operation and management of the Divestment Businesses so that the Commission can assess whether each Divestment Business is being held in a manner consistent with the Commitments and the progress of the divestment process as well as potential purchasers. In addition to these reports, the Monitoring Trustee shall promptly report in writing to the Commission sending JSG a non-confidential copy at the same time, if it concludes on reasonable grounds that JSG is failing to comply with these Commitments;

(g) within one week after receipt of the Proposal submitted by JSG pursuant to paragraph 18, submit to the Commission a reasoned opinion as to the suitability and independence of the proposed purchaser(s) and the viability of the Divestment Business after the sale and as to whether the Divestment Business is sold in a manner consistent with the conditions and obligations attached to the Decision, in particular, if relevant, whether the sale of the Divestment Business without one or more Assets or not all of the Personnel affects the viability of the Divestment Business after the sale, taking account of the proposed purchaser.

Duties and obligations of the Divestment Trustee

29. Within the Trustee Divestment Period, the Divestment Trustee shall sell at no minimum price any Divestment Business which JSG has not Divested to a Purchaser during the First Divestment Period (including any extension thereto pursuant to paragraph 39), provided that the Commission has approved both the purchaser and the binding sale and purchase agreement (if any), other ancillary contractual documentation and other documentation necessary to effect the Divestment of the relevant Divestment Business or Divestment Businesses in accordance with the procedure laid down in paragraph 18. The Divestment Trustee shall include in the relevant Divestment documentation such terms and conditions as it considers are reasonably required for an expedient sale. In particular, the Divestment Trustee may include in the relevant Divestment documentation such customary representations and warranties and indemnities as are reasonably required to effect the sale. In doing so, the Divestment Trustee shall protect the legitimate financial interests of JSG, and in particular shall take all reasonable steps to avoid any unnecessary loss of value for JSG, subject to JSG's unconditional obligation to divest at no minimum price in the Trustee Divestment Period.

30. In the Trustee Divestment Period (or otherwise at the Commission's request), the Divestment Trustee shall provide the Commission with a comprehensive monthly report written in English on the progress of the divestment process. Such reports shall be submitted within 15 calendar days after the end of every month with a simultaneous copy to the Monitoring Trustee and a simultaneous non-confidential copy to JSG.

III. JSG's duties and obligations

31. JSG shall provide the Trustee with all such cooperation, assistance and information as the Trustee may reasonably require in performing its duties under its Mandate. The Trustee shall have full and complete access to any of the books, records, documents, management or other personnel, facilities, sites and technical information of the Divestment Businesses where this is necessary for fulfilling its duties under its Mandate. JSG and the Divestment Businesses shall make available to the Trustee one or more offices on their premises and shall be available for meetings with the Trustee in order to provide the Trustee with all information necessary for the performance of its tasks under its Mandate.

32. JSG shall provide the Monitoring Trustee with all managerial and administrative support that it may reasonably request on behalf of the management of the Divestment Businesses. This shall include all administrative support functions relating to the Divestment Businesses which are currently carried out at headquarters level. JSG shall use its best endeavours to procure that it and its advisors provide the Monitoring Trustee, on request, with the information submitted to potential purchasers, in particular the data room documentation and all other information granted to potential purchasers in the due diligence procedure. JSG shall inform the Monitoring Trustee of possible purchasers that it has identified, submit to it a list of potential purchasers, and keep the Monitoring Trustee informed of all developments in the divestment process.

33. JSG or one of its Affiliated Undertakings shall grant a comprehensive power of attorney, duly executed, to the Divestment Trustee for the Divestment of the relevant Divestment Business and Closing, and including the power to take all actions and declarations which the Divestment Trustee considers necessary or appropriate to achieve the Divestment and Closing, including the appointment of external professional advisors to assist with the Divestment process. This power of attorney shall take effect only at such time as the Divestment Trustee Mandate takes effect. Upon request of the Divestment Trustee, JSG or one of its Affiliated Undertakings shall cause the documents required for effecting the Divestment and Closing to be duly executed.

34. JSG shall indemnify the Trustee and its employees and agents (each an "Indemnified Party") and hold each Indemnified Party harmless against, and hereby agrees that an Indemnified Party shall have no liability to JSG for any liabilities arising out of the performance of the Trustee's duties under the Commitments, except to the extent that such liabilities result from the wilful default, recklessness, gross negligence or bad faith of the Trustee, its employees, agents or advisors.

35. At the expense of JSG, the Trustee may appoint advisors (in particular for corporate finance or legal advice), subject to JSG's approval (this approval not to be unreasonably withheld or delayed) if the Trustee considers the appointment of such advisors necessary or appropriate for the performance of its duties and obligations under the Mandate, provided that any fees and other expenses incurred by the Trustee are reasonable and reasonably incurred. Should JSG refuse to approve the advisors proposed by the Trustee the Commission may approve the appointment of such advisors instead, after having heard JSG. Only the Trustee shall be entitled to issue instructions to the advisors. In the Trustee Divestment Period, the Divestment Trustee may, subject to any conflict of interest or other applicable rule or obligation that would prevent this, use advisors who served JSG during the Divestment Period if the Divestment Trustee considers this in the best interest of an expedient Divestment.

IV. Replacement, discharge and reappointment of the Trustee

36. If the Trustee ceases to perform its functions under the Commitments or for any other good cause, including the exposure of the Trustee to a conflict of interest:

(a) the Commission may, after hearing the Trustee, require JSG to replace the Trustee; or

(b) JSG, with the prior approval of the Commission, may replace the Trustee.

37. If the Trustee is removed according to paragraph 36, the Trustee may be required to continue in its function until a new Trustee has been appointed in accordance with the procedure referred to in paragraphs 22 to 26, to whom the outgoing Trustee has effected a full delivery of all relevant information.

38. Beside the removal according to paragraph 36, the Trustee shall cease to act as Trustee only after the Commission has discharged it from its duties after all the Commitments with which the Trustee has been entrusted have been implemented. However, the Commission may at any time require the reappointment of the Monitoring Trustee if it subsequently appears that the relevant remedies might not have been fully and properly implemented.

Section F. The Review Clause

39. The Commission may, where appropriate, in response to a request from JSG showing good cause and accompanied by a report from the Monitoring Trustee:

(a) grant an extension of the time periods foreseen in the Commitments. Where JSG seeks an extension of a time period, it shall submit a request to the Commission no later than one month before the expiry of that period, showing good cause. Only in exceptional circumstances shall JSG be entitled to request an extension within the last month of any period;

(b) allow the Divestment of a Divestment Business, at the request of the proposed Purchaser and in accordance with paragraph 18, without some or all of:

  (i) the Assets; and/or

  (ii) the Personnel; and/or

  (iii) the other arrangements referred to in paragraph 6(e).

(c) waive, modify or substitute, in exceptional circumstances, one or more of the undertakings in these Commitments, in particular (but without limitation) if events subsequent to the Effective Date should render the Divestment of one or more of the Divestment Businesses unnecessary.

……………………………………
B.F. Marshall
General Counsel
duly authorised for and on behalf of
JSG Packaging Limited

……………………………………
Date

SCHEDULE 1

Randers, Naestved and Hørning

1. Smurfit Neopac a/s (***Neopac***) operates two integrated corrugated box plants (in Randers and Næstved) and one corrugated sheet plant (in Hørning) in Denmark, comprising the entirety of JSG's corrugated operations in Denmark. Neopac is currently part of JSG's European Corrugated Packaging Division, as illustrated by the current organisational structure in the diagram below:

[…]

2. Following paragraph 5 of these Commitments, the Divestment Business includes, but is not limited to:

(a) the following main tangible assets: the plants located at (1) **Randers plant**: Mirabellevej 16, 8900 Randers, (2) **Næstved plan**t: Grimstrupvej 185, 4700 Næstved, (3) **Hørning sheet plant**: Agerskovvej 16, 8362 Hørning (the Hørning sheet plant is located in a leased building), 4) **Haslev sheet plant (closed down and empty)**: Finlandsgade 1, 4690 Haslev. The real estate on which these plants are located and all tangible assets on that real estate and within these plants at the Closing of the sale of Neopac, including those set out immediately below:

RANDERS

Buildings: the properties located at the Randers address listed above, in particular (1) factory/workshop/warehouse/office 27,057 m2, (2) garage 160 m2, (3) land 62,025 m2.

Machines: One corrugating machine with installed converting capacity of […] million square metres per annum, three flexo folder glue cutters, one off-line printer, two flat-bed die cutters, two rotary die-cutters and ancillary equipment.

Vehicles: 8 cars owned by Smurfit Neopac a/s, 9 leased cars and 1 van owned by Smurfit Neopac a/s.

Administrative equipment: all IT equipment used exclusively in carrying on the Neopac business. The principal administrative equipment is the IT system AS/400, on which most applications are run. Except for finance applications most applications are tailor made by in-house programmers. Six Windows servers.

Other tangible assets: None

NÆSTVED

Buildings: the properties located at the Næstved address listed above, in particular (1) Factory/workshop/office/canteen 10,974 m2, (2) warehouse 1,088 m2, (3) pallet storage etc. 198 m2 (4) land 43,213 m2.

Machines: One corrugating machine with installed converting capacity of […] million square metres per annum, two flexo folder glue cutters, two flat-bed die cutters, one rotary die-cutter and ancillary equipment.

Vehicles: 1 van owned by Smurfit Neopac a/s.

Administrative equipment: The principal administrative equipment used is the IT system which is located at the Randers Plant. One Windows server.

Other tangible assets: None

HØRNING

Buildings: the properties located at the Hørning address listed above, in particular a leased building comprising factory/workshop 5,105 m2 and office/canteen 582 m2. Notice has been given by Neopac on the lease to end on November 30, 2006. An area of the building is sublet until September 30, 2006 to a logistics company.

Machines: One printer slotter and ancillary equipment

Vehicles: 1 van owned by Smurfit Neopac a/s

Administrative equipment: The principal administrative equipment used is the IT system which is located at the Randers Plant. One Windows server.

Other tangible assets: None

(b) the following main intangible assets: the Neopac trademark/brand.

(c) the following main governmental licences, permits and authorisations: no material authorisations required to carry on the business.

(d) the following main contracts, agreements, leases, commitments and understandings:

All customer contracts. Contracts for freight and warehousing. Leases for fork lift trucks.

(e) the following customer, credit and other records:

customer lists with contact details, overdue lists with details per customer, credit terms, credit limits and inventory.

(f) the following Personnel: all the Neopac management and employees, sales team, production team and financial team, excluding Bo Thörn

(g) the following Key Personnel: Dan Johannessen (Sales Director), Johan Thunholm (Production Director), Sven Grove Jørgensen (Financial Director), Dorrit Danielsen (HR Director) and Jesper Thomsen (ex. Sheet Plant Manager, now part of the management team).

(h) the arrangements for the supply of the following products or services by the Parties or Affiliated Undertakings for a transitional period of up to […] months after Closing:

Insurance and paper purchases until arrangements for spot-market or other purchase arrangements can be set up.

3. The Divestment Business shall not include:

(a) Any assets or personnel used or employed at the date of the Closing of the sale of Neopac and exclusively dedicated to the operations of any other operating company or business unit of JSG, including in particular Bo Thörn (CEO), who has management responsibilities elsewhere in the group. An interim or permanent replacement will be appointed as required.

SCHEDULE 2

Norrköping, Dalwell and Jönköping

1. JSG's Norrköping and Dalwell (in Backefors) integrated corrugated box plants and the Jönköping Swedish headquarters (the ***Swedish Business***) comprise the bulk of JSG's corrugated operations in Sweden, as illustrated by the current organisational structure in the diagram below. JSG's other plants in Sweden are Smurfit Nybro (integrated box plants), Smurfit Packaging Pegewell AB, Smurfit Packaging Johnson Emballage AB, (sheet plants), Smurfit Packaging Display AB, Smurfit Packaging Börjesson Offset AB, Smurfit Packaging OnWell AB and Smurfit Lagamill AB.

[…]

2. Following paragraph 5 of these Commitments, the Divestment Business includes, but is not limited to:

(a) the following main tangible assets: (1) **Swedish headquarter** located at Barnarpsgatan, 551 15 Jönköping; (2) **Norrköping plant**: Box 693, 551 15 Norrköping; and (3) **Dalwell plant**: Gamla Bruksgatan 70, 668 40 Bäckefors, The real estate on which these plants are located and all tangible assets on that real estate and within these plants at the Closing of the sale of the Swedish Business, including those set out immediately below:

JÖNKÖPING

Buildings: Office from Munksjö AB located at the address listed above currently leased until 2009.

Vehicles: For sales people and management: 8 cars leased.

Administrative equipment: The principal administrative equipment is the IT system AS/400, on which most applications run. The IT centre is located in Norrköping.

Other tangible assets: None

NORRKÖPING

Buildings: the properties located at the Norrköping address listed above, in particular (1) Factory/workshop/office, (2) warehouse (leased until October 2006) and (3) associated land.

Machines: One corrugating machine with installed converting capacity of […] million square metres per annum, one flexo folder gluer (leased), one off-line printer, two flat-bed die cutters, two rotary die-cutters and ancillary equipment.

Vehicles: 3 cars owned by Smurfit Packaging AB/Norrköping plant and 6 cars leased.

Administrative equipment: all IT equipment used exclusively in carrying on the Swedish Business, in particular one iSeries (AS/400) (used by all Smurfit Packaging, Jönköping, Nybro, Norrköping, Dalwell and Smurfit Lagamill, Timsfors), with eleven Windows servers.

Other tangible assets: None

DALWELL

Buildings: the properties located at the Dalwell address listed above, in particular (1) Factory/workshop/warehouse/office and (2) associated land.

Machines: One corrugating machine with installed converting capacity of […] million square metres per annum, one flexo folder gluer, one off-line printer and two flat-bed die cutters.

Vehicles: 1 car owned by Smurfit Packaging AB/Dalwell plant and 4 cars leased.

Administrative equipment: all IT equipment used exclusively in carrying on the Swedish Business, including hardware and five Windows servers.

Other tangible assets: None

(b) the following main intangible assets: None

(c) the following main governmental licences, permits and authorisations: no material authorisations required to carry on the business.

(d) the following main contracts, agreements, leases, commitments and understandings

All customer contracts, and the site-specific contracts set out below.

Norrköping

Lease until May 2009 for the flexo folder gluer (EMBA) machine.

Leases for 6 fork lift trucks.

Contract with haulage company for distribution until May 2006.

Dalwell:

Leases for 3 fork lift trucks

Contract with haulage company for distribution on a rolling basis.

(e) the following customer, credit and other records:

customer lists, overdue lists with all details per customer, contact name, credit terms, credit limits and inventory;

(f) the following Personnel: all the design team staff based at Norrköping and Dalwell; all the sales support team based at Norrköping, Dalwell and Jönköping; 2 accounts staff, 6 members of the district sales team, 2 members of the project sales team, the technical sales support team; the Financial/Admin/IT team; and the Technical team;

(g) the following Key Personnel: Gösta Claesson, CEO; Rolf Andersson, (Marketing and Sales), Johan Thunholm (Production Director), Kurt Höglin (Design), Monika Andersson (Sales Support), Per Lindbom (Sales), B. Hermansson (Financial/Admin/IT), and Åke Spåhr (Technical).

(h) the arrangements for the supply of the following products or services by the Parties or Affiliated Undertakings for a reasonable transitional period of up to […] months after Closing:

Insurance;
Supply of paper from current sources if required.

3. The Divestment Business shall not include:

(a) any assets or personnel used or employed at the date of the Closing of the sale of the Swedish Business and exclusively dedicated to the operations of any other operating company or business unit of JSG, including in particular JSG's other plants in Sweden;

(b) the following members of staff who are dedicated to aspects of the retained Nybro business:

(i) 4 members of the accounts team;

(ii) 4 members of the district sales team; and

(iii) 2 members of the project sales team.

<u>SCHEDULE 3</u>

Smurfit Solidpack B.V.

1. Smurfit Solidpack B.V. (***Smurfit Solidpack***) operates a plant dedicated to the production of solid board sheets and cases, and is currently part of the Corrugated Division of the JSG group. The operations of Smurfit Solidpack are situated at Loenen in the Netherlands.

2. JSG's Corrugated Division also includes many corrugated plants and one other solid board cases plant - Lagamill in Sweden. The diagram below indicates where Smurfit Solidpack BV sits among JSG's Dutch operations:

[…]

3. Following paragraph 5 of these Commitments, Smurfit Solidpack includes, but is not limited to:

(a) the following main tangible assets: the plant located at Kanaal Zuid 492 – Loenen, P.O. Box 43, 7370 AA, Loenen (Gld), the Netherlands, the real estate on which this plant is located and all tangible assets on that real estate and within this plant at the Closing of the sale of Smurfit Solidpack, including those set out immediately below:

Buildings: The buildings and offices situated at address listed above, and a warehouse leased on a yearly basis from a haulage company (Thomassen BV, Kanaal Zuid 496 – Loenen).

Machines: 1 Board Machine capacity […] T annual, 4 Multipoint folder gluers (1987, 1990, 1991 and 2000), 1 Bobst 162 CER (1991), 1 Bobst 142 CER (1990), 1 Bobst 142E (1997) and Bobst 142 CER (1999), 1 Rapidex.

Vehicles: 8 leased cars.

Administrative equipment: all IT equipment used exclusively in carrying on the Smurfit Solidpack business. This currently includes: a legacy system for sales administration; SAP for other purposes (Modules FI, CO, MM and PM for finance, controlling, material management and plant maintenance); OMP for planning/scheduling. However, further implementation of SAP SD/PP is ongoing. All computers and servers are owned by the Smurfit Shared Service Centre, which charges a fee to Solidpack for the use of these systems. This may be made available to the purchaser on a sale or leased basis, for a transitional period or as may be required by the purchaser.

(b) The following main intangible assets:

None.

(c) the following main governmental licences, permits and authorisations: all required user-environmental licences, permits and authorisation, including certification for water treatment from local authorities.

(d) the following main contracts, agreements, leases, commitments and understandings: all customer contracts; company car and fork lift leases; short term (approximately 1 year) contracts for waste paper supplies, energy, inks and other raw materials.

(e) the following customer, credit and other records: customer lists with contact details; overdue customer lists; credit terms; credit limits; and inventory.

(f) the following Personnel: all the Smurfit Solidpack management and employees, including the sales team, the logistics team, the production team and, as required, accounting staff.

(g) the following Key Personnel: Dirk Schut (Managing Director), Douwe Loodewijk (Finance Manager), Bert van Ommeren (Sales Manager), Bart van Gerwen (Logistics Manager), Rob Broere (Production Manager) and Annelies Du Pree (HR).

(h) the arrangements for the supply of the following products or services by the Parties or Affiliated Undertakings for a reasonable transitional period of up to […] months after the Closing of the sale of Smurfit Solidpack:

Accounting, IT, purchasing and payroll services are currently supplied by JSG on a centralised basis.

4. The Divestment Business shall not include any assets or personnel used or employed at the date of the Closing of the sale of Smurfit Solidpack and exclusively dedicated to the operations of any other operating company or business unit of JSG.

<u>SCHEDULE 4</u>

Smurfit Interlok

1. Smurfit Interlok is active in the production of solid board partitions. Smurfit Interlok is a trading unit of Smurfit UK Limited, and is part of the partitions business of the JSG group. The operations of Smurfit Interlok are situated at Port Glasgow in the UK.

2. The partitions activities of the JSG group also comprise the operations of Smurfit Europa Karton GmbH, located at Heppenheim in Germany, which produces both solid board and corrugated board partitions. Smurfit Europa Karton GmbH does not form part of the JSG partitions business to be divested.

3. The chart below indicates how the Interlok trading unit fits into the management structure of JSG. Interlok and the other trading units of Smurfit UK Limited are shown in light blue.

[…]

4. Following paragraph 5 of these Commitments, Smurfit Interlok includes, but is not limited to:

(a) the following main tangible assets: the plant located at Block 16 Dubbs Road, Gareloch Industrial Estate, Port Glasgow, Renfrewshire, PA14 5UG Scotland, the real estate on which this plant is located and all tangible assets on that real estate and within this plant at the Closing of the sale of Smurfit Interlok, including those set out immediately below:

Buildings:

Leasehold factory including offices at the address listed above. The property is held under a 25 year lease from 23/7/96, with break option after 15 years.

Machines:

Five partitions slotters (2 reel fed machine built in 1985 and 3 reel fed machine built in 1996) with capacities of […] M each and […] pieces per hour.

Two auto partition assemblers, one built in 1987 and one built in 1996, with capacities of […] M each and […] pieces per hour.

Vehicles:

1 fork lift truck and 1 clamp truck, both on 1 year leases.

Administrative equipment:

All IT equipment used exclusively in carrying on the Smurfit Interlok business, currently comprising an off the shelf SOP system, but a replacement with Navision is being contemplated. A licence for the Smurfit Group SAP accounting system may be available for a transitional period should it be required by a purchaser.

Other tangible assets:

None.

(b) the following main intangible assets:

The “Interlok” registered trademark.

(c) the following main governmental licences, permits and authorisations:

All such permits required to operate the business, in particular relating to fire regulations and health and safety.

(d) the following main contracts, agreements, leases, commitments and understandings;

All customer contracts.

(e) the following customer, credit and other records;

Records relating to customer lists with contact details, the aging of the customer debt, credit facilities (or limits), credit terms and open/overdue items, and inventory.

(f) the following Personnel: all the Smurfit Interlok management (excluding John McEwan) and employees, including the following:

1 designer; 29 production operatives; 2 maintenance operatives; and 1 internal sales administrator. During high volume periods, it has been practice to supplement the workforce with temporary staff as required.

(g) the following Key Personnel: Janice Wohlgemuth (General Manager); David Shearer (Financial Controller); John Northey (Technical Sales Manager); and Willie McLean (Production Manager).

(h) the arrangements for the supply of the following products or services by the Parties or Affiliated Undertakings for a reasonable transitional period of up to […] months after the Closing of the sale of Smurfit Interlok:

Accounting services.

5. The Divestment Business shall not include any assets or personnel used or employed at the date of the Closing of the sale of Smurfit Interlok and exclusively dedicated to the operations of any other operating company or business unit of JSG, including in particular, John McEwan (sales manager), who currently devotes only 20% of his time to Interlok. The existing plant sales force will take over his responsibilities.

SCHEDULE 5

Kappa Graphic Board B.V.

1. Kappa Graphic Board B.V. (***Kappa Graphic Board***) operates a plant dedicated to the production of graphic/specialty board, currently part of the Paper and Board Division of the Kappa Packaging group. The operations of Kappa Graphic Board are situated at Hoogezand and Sappemeer in the Netherlands.

2. Kappa's Paper and Board Division also comprises eight mills for the production of corrugated case materials, and two further business units, namely Kappa Attica (also dedicated to the production of graphic/specialty board), and Kappa Solid Board Packaging (dedicated to the production of solid board cases through the conversion of solid board sheets). The diagram below illustrates Kappa Graphic Board's position in the Kappa corporate structure.

[…]

3. Following paragraph 5 of these Commitments, Kappa Graphic Board includes, but is not limited to:

(a) the following main tangible assets: the plant located at M. Veningastraat 114-116, 9601 KJ Hoogezand and the plant located at Noorderstraat 394, 9611 AW Sappemeer, the real estate on which these plants are located and all tangible assets on that real estate and within this plant at the Closing of the sale of Kappa Graphic Board, including those set out immediately below:

Buildings: the properties located at the addresses listed above, as well as 5 private houses.

Machines: four board machines with respective capacities of approximately […] MT per year, […] MT per year, […] MT per year and […] MT per year, and two paper machines with respective capacities of […] MT per year and […] MT per year. Besides the board machines both mills have water treatment facilities and cutting machines, and the Hoogezand mill has a power plant.

Vehicles: 20 leased forklift trucks, 1 leased shovel, 30 leased pallet trucks and 12 leased cars. Distribution is facilitated by contracts with haulage companies.

Administrative equipment:

All IT equipment used exclusively in carrying on the Kappa Graphic Board business, including:

Order To Cash system;

Logistic Info System;

AFAS (HRM system);

Financial system;

Maintenance system;

Production Process Control system; and

Recovered Paper system (PIPS) combined within GSV (a combined purchase department for Kappa Graphic Board, Kappa Attica and Kappa Triton).

Other tangible assets: None.

(b) the following main intangible assets:

The “Graphic Board” trademark/brand (ESKA) in the paper and board markets and the frog image which is registered as the Kappa Graphic Board logo.

The use of the following Kappa Graphic Board marketlines: Eska Board, Eska File, Eska Puzzle, Eska Mount, Eska Print and Eska Screen.

(c) The following main governmental licence, permits and authorisations: All necessary permits which are needed to run both sites 24 hours a day, 365 days a year.

(d) the following main contracts, agreements, leases, commitments and understandings: all customer contracts, lease for the pulper installation in Hoogezand, 20 leases for fork lift trucks, 1 lease for a shovel, 30 leases for pallet trucks, 1 lease for a compressor installation, 1 lease for a telephone exchange and 12 leases for cars, and contracts with haulage companies (packaging contracts with Vos, Penske and Damco, and Kappa Graphic Board contracts for the USA with MSC and P&O/Nedlloyd).

(e) the following customer, credit and other records:

customer lists, overdue lists with all details per customer, contact name, credit terms, credit limits and inventory. Currently Kappa Graphic Board has approximately […] “active” customers and approximately […] “passive” customers.

(f) The following Personnel: all the Kappa Graphic Board management and employees, including the Managing Director, the sales team, the finance and ICT team, the production team, the technical support and development team, and the quality control and environmental compliance team.

(g) the following Key Personnel: Kees van Zijderveld (Managing Director), vacant position (Director Marketing and Sales), Bert Bodewes (Quality, Environment Manager), Frank Brand (Health and Safety, Care Manager), Femmie Slomp (Human Resources Manager), Henk Steenwijk (Financial Controller), Peter Leeuwerik (Manager Operations), Isaak Schaddé van Dooren (Production Manager Hoogezand), Bert Boddé (Production Manager Sappemeer), René Zwaan (Technical Operations Manager), Gert van der Wenden (Manager Logistics), Jan Zuiderveen (ICT manager), Roel Cuperi (manager distribution and warehouse) and Simeiko Misker (manager GSV purchase department for Kappa Graphic Board, Kappa Attica and Kappa Triton), as well as the managers of the Kappa Graphic Board Service Centres.

(h) the arrangements for the supply of the following products or services by the Parties or Affiliated Undertakings for a reasonable transitional period of up to […] months after the Closing of the sale of Kappa Graphic Board:

<u>Purchase:</u> continued arrangements for Kappa Graphic Board’s purchasing, which is done via Kappa Packaging and GSV for supplies (e.g. recovered paper, freight, gas, electricity, liners, insurance, etc). For distribution, Kappa Graphic Board may continue to participate in Kappa Packaging contracts with the companies Vos Logistics B.V. and Penske Logistics Europe B.V.

<u>IT infrastructure:</u> Use of the Kappa Packaging network for internet, intranet and e-mail facilities and the Hyperion system for financial reporting.

<u>Contract production</u>: Kappa Graphic Board’s current arrangement for […] tons on an annual basis of contract production to be undertaken by Kappa Attica to continue at the current margin level.

Use of Kappa Packaging credit pooling, Fiscal Affairs, Legal Affairs and HRM (for Expat contracts) and Kappa Packaging's PPT (Pulp and Paper Technology) department services.

No market limitations: Within Kappa Packaging there are internal agreements about the solid board market approach per operating company. After the sale of Kappa Graphic Board there will be no market limitations for Kappa Graphic Board.

4. Kappa Graphic Board currently acts as a sales agent for Kappa Attica, and will continue to do so on an arm's length basis for a transitional period of up to […] months after the Closing of the sale of Kappa Graphic Board. Kappa Attica will continue to invoice customers for sales of its products during this time.

5. The Divestment Business shall not include any assets or personnel used or employed at the date of the Closing of the sale of Kappa Graphic Board and exclusively dedicated to the operations of any other operating company or business unit of Kappa, including in particular Kappa's retained graphic/specialty board division, Kappa Attica.