

***Case No COMP/M.4054 -
KOCH INDUSTRIES /
GEORGIA-PACIFIC***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 19/12/2005

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 19.12.2005

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

To the notifying party:

Dear Sir/Madam,

**Subject: Case No COMP/M.4054 – Koch Industries/Georgia-Pacific
Notification of 18/11/2005 pursuant to Article 4 of Council Regulation
No 139/2004¹**

1. On 18 November 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 Koch Industries (“Koch”, United States) acquires within the meaning of Article 3(1)(b) of the Council Regulation control of the whole of Georgia-Pacific Corporation (“Georgia-Pacific”, United States) by way of a public bid announced on 13/11/2005.

I. THE PARTIES

2. Koch is a privately held U.S. corporation. Through its subsidiaries, it is active worldwide in refined petroleum products, fibers, chemicals, gas liquids, crude oil services, mineral services, energy services, capital services, road and construction materials and chemical technology.

¹ OJ L 24, 29.1.2004 p. 1.

3. Georgia-Pacific is listed on the New-York Stock Exchange. It is active worldwide in paper and packaging products, building products and related materials and tissue paper products.

II. THE OPERATION

4. The transaction concerns the absorption of Georgia-Pacific by Koch. Under the terms of the Merger Agreement and following the tender offer, Koch Forest Products (hereafter “KFP”), a wholly-owned indirect subsidiary of Koch, is expected to acquire all of the shares of Georgia-Pacific, with 50% being the minimum condition. KFP will then merge with and into Georgia-Pacific, which will continue as the surviving entity and will, thus, become wholly-owned indirect subsidiary of Koch upon completion of the merger.

III. CONCENTRATION

5. As a result of the proposed transaction Koch will exercise sole control over Georgia-Pacific. Therefore this transaction constitutes a concentration pursuant to Article 3 (1) (b) of the Merger Regulation.

IV. COMMUNITY DIMENSION

6. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion² (Koch: € [...] million in year ending 31 December 2004; Georgia-Pacific: € 15,801 million in year ending 31 December 2004). Both have a Community-wide turnover in excess of EUR 250 million (Koch: € [...] million; Georgia Pacific: € [...] million) but they do not achieve more than two-thirds of their aggregate Community-wide turnover within one and the same Member State. The notified operation therefore has a Community dimension.

V. RELEVANT MARKETS

7. Both Koch and Georgia-Pacific produce pulp. Moreover, in the EEA³, Georgia Pacific produces and sells tissue paper which is a downstream activity of pulp production.

Pulp

The relevant product market

8. Pulp is a fibrous material produced by mechanically or chemically reducing woody plants into their component parts, from which pulp, paper and paperboard sheets are formed after proper slushing and treatment.
9. In line with the Commission’s view in earlier decisions, the parties submit that there is an overall product market comprising all types of pulp. As in a number of earlier

² Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Notice on the calculation of turnover (OJ C66, 2.3.1998, p25).

³ Georgia-Pacific is also active in the paper and packaging products but exclusively in the United States.

Commission decisions, pulp will be treated as a single product market for the purposes of this decision⁴.

The relevant geographic market

10. In line with precedent⁵, the parties submit that, in geographic scope, the pulp market is at least EU-wide, and is in their view global in scope. Indeed, competitors primarily compete on prices, as the product is considered as a commodity with standard grades of production. Europe and North America are the largest consumers and China is becoming an important importer.
11. For the purpose of this notification, given the minimal nature of geographical overlaps between the parties, the precise geographic market definition can be left open.

Tissue paper products

The relevant product markets

12. As defined in past decisions, the parties submit that two different kinds of products should be considered: (i) the consumer tissue paper products and (ii) “away from home” (hereafter “AFH”) tissue paper products markets. This delineation is due to the differences in customers, distribution methods, product quality, relative prices and the relative importance of branded products⁶. Moreover, in line with the Commission’s view in several decisions, those two categories of products can be further segmented in several product markets⁷.
13. For the purpose of this notification, as only Georgia-Pacific operates in these markets and given the limited vertical relationships between the parties, the precise product market definition can be left open.

The relevant geographic market

14. For the purpose of this notification, given that the transaction would not result in a significant impediment of competition in relation to any market, the precise geographic market definition can be left open.

⁴ See for instance: case COMP/M.646 – Repola/Kymmene, 30 October 1995, para. 30; case COMP/M2243 – Stora Enso/Assidomän/JV, 22 December 2000, para. 19.

⁵ See for instance: case COMP/M.646 – Repola/Kymmene, 30 October 1995, para. 43; case COMP/M2243 – Stora Enso/Assidomän/JV, 22 December 2000, para. 21.

⁶ See *inter alia*: COMP/M.623 Kimberley-Clark/Scott, 16 January 1996, paras 29-33.

⁷ See *inter alia* COMP/M.2097 SCA/Metsä Tissue, 31 January 2001, paras 17-34.

VI. COMPETITIVE ASSESSMENT

Horizontal aspects

15. Koch is active in pulp market through KoCell that competes in the pulp business since its acquisition of two non-integrated pulp mills in 2004 from Georgia-Pacific. KoCell's share in the pulp market was approximately [<5]% worldwide and around 1% at EEA level in 2004.
16. To the extent Georgia-Pacific sells pulp to the free market, its merchant sales are limited to a small quantity to the United States, indeed none of its pulp customers is located in the European Union. Georgia-Pacific shipped pulp to the EEA in 2004, but only for captive use. According to the parties, Georgia-Pacific's sole pulp producing plant, located in the United States, accounted for less than [<5]% of the world pulp production.
17. Given the absence of horizontal overlap in an EEA wide market pulp and the small combined market share on the pulp market, the concentration is unlikely to raise any competition concerns in relation to the pulp market.

Vertical aspects

18. Vertically, Koch's pulp activity will give rise to a downstream relationship to Georgia-Pacific's tissue paper activities in the EEA.
19. However, this vertical relationship between Koch and Georgia-Pacific will have no significant effect on competition. Although Georgia-Pacific has market shares in individual Member States of up to [40-50]% for certain tissue products the operation will have no adverse effects. First there is no aggregation of market share for tissue products. Second, as mentioned above, Koch has a very small market share in the pulp market both EEA and worldwide and would not be therefore able to foreclose the pulp market to Georgia-Pacific's competitors, as there are many alternative pulp suppliers able of replacing Koch's EEA sales.
20. Moreover, no risk of foreclosure effects would arise given that there are several competitors in downstream markets, including five strong global competitors (Kimberly-Clark, SCA, Metsä Tissue, Procter & Gamble, Sofidel) and some regional actors which exert a significant competitive constraint. In conclusion, the transaction would not impede effective competition.

VII. CONCLUSION

21. For the above reasons, the Commission has decided not to oppose the notified operation and to declare it compatible with the common market and with the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of Council Regulation (EC) No 139/2004.

For the Commission
signed
Neelie KROES
Member of the Commission