

***Case No COMP/M.4057 -
KORSNÄS /
ASSIDOMÄN
CARTONBOARD***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 12/05/2006

***In electronic form on the EUR-Lex website under document
number 32006M4057***



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 12.05.2006

SG-Greffe(2006) D/202581

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PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying party

Dear Sir/Madam,

**Subject : Case No COMP/M.4057 – Korsnäs/ AD Cartonboard
Notification of 31 March 2006 pursuant to Article 4 of Council Regulation
No 139/2004**

1. On 31.03.2006, the Commission received a notification of a proposed concentration pursuant to Article 4 and following a referral pursuant to Article 4(5) of Council Regulation (EC) No 139/2004¹ by which the undertaking Korsnäs AB (“Korsnäs”, Sweden) controlled by Investment AB Kinnevik (“Kinnevik”, Sweden) acquires within the meaning of Article 3(1)(b) of the Council Regulation control of the whole of the undertaking AssiDomän Cartonboard Holding AB (“AD Cartonboard”, Sweden) by way of purchase of shares.

I. THE PARTIES

2. Korsnäs is a wholly-owned subsidiary of Kinnevik, a Swedish holding company with equity interests in various companies, none of which being active in the economic sector concerned by the proposed transaction. Korsnäs is a producer of paper board, with a strong focus on liquid packaging board (“LPB”), which accounts for roughly [65-75]% of its output². It operates three paper board machines which are located at its integrated pulp and paper board mill in Gävle (Sweden). Korsnäs’ main customer is by far Tetra Pak. According to the notifying party, Tetra Pak accounted for more than [90-100]% of its world-wide LPB deliveries in 2005.

¹ OJ L 24, 29.1.2004 p. 1

² The remaining [25-35]% consists almost exclusively of White Top Kraft Liner (“WTKL”), a type of container board

3. AD Cartonboard is wholly-owned by Sveaskog, Sweden's largest forest owner. Sveaskog in turn is controlled by the Swedish State. AD Cartonboard is also a producer of paper board, with operation in both LPB and non-LPB products. LPB accounts for roughly [65-75]% of AD Cartonboard's output³. All of AD Cartonboard's production takes place in one facility located in Frövi (Sweden), which comprises an integrated pulp and paper board mill and one paper machine. As is the case with Korsnäs, AD Cartonboard's main customer is by far Tetra Pak. According to the notifying party, Tetra Pak accounted for more than [90-100]% of AD Cartonboard's LPB deliveries in 2005.

II. THE OPERATION

4. On 15.11.2006, Korsnäs and Sveaskog entered into a share transfer agreement under which Korsnäs is to acquire from Sveaskog 100% of the shares in AD Cartonboard. The operation is therefore a concentration within the meaning of Article 3(1) of the Merger Regulation.

III. COMMUNITY DIMENSION

5. The notified concentration does not meet the turnover thresholds of Article 1(2) and 1(3) of the Merger Regulation.
6. On 5.12.2005, the Commission received from Korsnäs a referral request pursuant to Article 4(5) of the Merger Regulation which has been transmitted to all Member States. Since no Member States has expressed its disagreement as regards the request to refer the case to the Commission, the concentration shall be deemed to have a Community dimension.

IV. COMPETITIVE ASSESSMENT

A. Market Definition

7. The notifying party has identified the EEA market for liquid packaging boards ("LPB") as the only market affected by the proposed transaction.
8. The transaction might also result in one additional horizontally affected market: the (hypothetical) EEA market for coated unbleached kraft ("CUK")⁴. The notifying party strongly contests that CUK constitutes a distinct product market as it claims that it belongs to a wider product market which includes other types of consumer packaging board products made from purely virgin fibres (notably Solid Bleached Board ("SBB") and Folding Box Board ("FBB")). In previous Commission decisions⁵, the question whether each category of non liquid packaging boards constitutes a distinct relevant product market has been left open. The relevant geographic market for non liquid packaging boards (or any sub-markets thereof) has been defined as at least EEA-wide in

³ The remaining [25-35]% consists of Coated Unbleached Kraft ("CUK"), which is a non-liquid consumer packaging board

⁴ AD Cartonboard does not produce WTKL which is therefore not a market affected by the proposed transaction

⁵ See in particular Case No IV/M.1225 – Enso / Stora

previous Commission decisions⁶. AD Cartonboard's share of a hypothetical EEA market for CUK is limited to [10-20]% and Korsnäs has a negligible share of it (less than [0-5]% at the EEA level). In addition, the merged entity will only be the fourth largest CUK supplier in the EEA, behind two US companies supplying from the US⁷ and StoraEnso⁸. In light of these elements, the impact of the transaction on the hypothetical market for CUK will not be discussed further.

A.1 Relevant Product Market

9. The notifying party identifies the production and sale of LPB as the relevant product market. LPB is a paper board made from purely virgin fibres which is used as an input for the production of packaging containers for liquid and semi-liquid foodstuffs. LPB is sold to converters (such as Tetra Pak, Combibloc or Elopak for instance) who convert it into liquid packaging containers. The liquid packaging containers are then sold by converters to end-users (i.e. liquid or semi-liquid food companies, often called "fillers", such as Nestlé, Danone or Unilever for instance). Liquid packaging containers are primarily used to pack milk and fruit juice.
10. The notifying party explains that, albeit production is sometimes possible on the same board machines, LPB is distinct from non liquid consumer packaging boards. This is in particular due to different product characteristics (e.g. stiffness, printability, resistance to water, low off-taste and smell), different supply structures (required high specialisation leading to a limited number of qualified suppliers) and customer structures (LPB customers and non-LPB customers are different, the latter being also more fragmented). The differences in product characteristics as well as differences in market and supply structures have been confirmed by the market investigation⁹.
11. However, LPB producers actually use some of their machines to produce both LPB and certain non liquid consumer packaging boards or container boards (notably CUK and WTKL), and the allocation of capacities depends i.a. on demand and on the relevant profit margins (whereby LPB margins tend to be higher than that for non liquid consumer packaging board). In consequence there is a high degree of supply side substitutability between LPB and certain non liquid packaging boards only as far as LPB producers are concerned. By contrast, the market investigation confirmed that there is a limited degree of supply side substitutability between LPB and non liquid packaging board as well as container board as far as producers of non liquid packaging board and/or container board are concerned¹⁰.
12. The notifying party's statement that the relevant product market does not include non-liquid packaging boards is in line with the conclusion reached in the Enso / Stora

⁶ See in particular Case No IV/M.1225 – Enso / Stora

⁷ Mead Westvaco and Graphic Packaging which hold EEA market share in the range of [30-40]% and [15-25]% respectively

⁸ StoraEnso's share of the EEA market is in the range of [15-25]%

⁹ [*Results of the market investigation*]

¹⁰ [*Results of the market investigation*]

decision¹¹ where the Commission found that “[o]wing to the limited demand-side substitutability between liquid and non liquid packaging board as well as other packaging materials and the limited supply-side substitutability between liquid and non liquid packaging board, the relevant product market for the purpose of this case is considered to be the market for liquid packaging board.”

13. The market investigation has widely confirmed that LPB constitutes a relevant product market which should not encompass non liquid packaging boards¹².
14. The notifying party also recognises the possibility of segmentation within LPB resulting notably from pulp bleaching (White/White LPB opposed to White/Brown LPB), LPB asepticity (septic LPB for fresh liquid foods as opposed to aseptic LPBs for long-life liquid foods) and package sizes (whereby board grammage determines the required machinery). However, in view of supply side factors the notifying party submits that these LPB segments do not constitute narrower relevant product markets.
15. As regards first pulp bleaching, it should be noted that LPB is white (100% bleached pulp) on the top (or printable) side and may be brown (unbleached pulp) or white on the back side. Whereas White/White (“WW”) LPB is almost exclusively used in the US and Japan, White/Brown (“WB”) is prevailing in Europe. None of the merging parties produces WW LPB.
16. The notifying party submits that due to supply-side substitutability, WW and WB LPB do not form distinct product markets. The market investigation indicated that there are certain limits to supply-side substitutability due e.g. to bottlenecks in existing pulp bleaching capacities¹³. While it has been confirmed that the same board machines can be used for the production of both WW and WB LPB, swinging the board machines from WB LPB to WW LPB can be quite costly and only few producers actually produce both LPB types on the same machines.
17. Concerning the demand side, the notifying party submits that LPB used in septic (or fresh) filling processes tends to be WW, whilst WB LPB would usually be used in aseptic filling processes. From the converters’ and fillers’ perspective, the use of WW LPB is limited to cartons for fresh products (milk etc.), where consumers favour a white interior, whilst WB LPB sales are more important and foremost used for the production of aseptic packages (where the brown inside is coated, usually with aluminium foil, and thus invisible). This distinction is, however, diminishing owing to new opening technologies (screw-caps) of packages for fresh products where the brown interior is no longer visible. In addition to this, the slight trend towards WB LPB is also driven by lower cost and environmental considerations. Evidence gathered in the market investigation largely confirms this¹⁴. Fillers have indicated a preparedness to switch at least some of their consumption from WB to WW LPB if WB LPB prices were to increase by 5-10% compared to WW LPB prices. As a consequence, converters, who are the fillers’ suppliers, would under such a scenario also switch part of their procurements from WB to WW LPB.

11 Case COMP/M.1225 – Enso / Stora, para 41

12 See footnote 9

13 [Results of the market investigation]

14 [Results of the market investigation]

18. Depending on the filling process, converters produce septic cartons (most often gable-top cartons for fresh milk, yoghurt and juices) and aseptic cartons (e.g. brick-shaped cartons for long-life UHT milk). However, the notifying party contends that the distinction between aseptic and septic LPB is closely linked to that of WW and WB LPB and that they, for the same reason, do not form separate product markets. The investigation has shown that, while there are certain differences in LPB recipes due to different end-product characteristics (e.g. resistance to substances used for sterilisation), suppliers and converters generally do not distinguish between aseptic and septic LPB beyond the usual WW and WB LPB distinction. This is due to the fact that although WW LPB can technically be used in both septic and aseptic filling processes (and actually is in the USA and Japan), it is currently not economically rational to use it in septic filling processes because of the current relative prices of WW and WB LPB in the EEA. For this reason, should WB LPB prices increase by 5-10% compared to WW LPB, part of the current demand for WB LPB would shift to WW LPB.
19. With respect to LPB grammages linked to different package sizes, the notifying party recognises that on the demand-side, converters are unlikely to move large volumes from one category of LPB to another in response to a small change in relative prices. However, the notifying party also explains that there is a high degree of supply-side substitutability across the different LPB grammages. In particular, while the merging parties' product ranges overlap mainly with respect to 1 litre LPB, certain competitors including StoraEnso are active across all grammages and stiffness levels and can easily increase LPB production of a particular grammage in response to an increased demand. The notifying party therefore contends that LPB should not be further segmented into narrower product markets related to grammages for the purposes of the competitive assessment of the proposed transaction.
20. The investigation confirmed that different board machines are required to produce LPB for different package sizes¹⁵. Board machines used for medium and high grammages (e.g. for 1 litre and above) differ from those used for low and medium grammages (e.g. 1 litre and below). Notwithstanding, the capacity of a board machine usually covers wide grammage ranges including several market segments and most board machines produce the best selling 1 litre LPB (to which around a half of production capacity is devoted). By consequence, the supply-side segmentation is not evident. Moreover, a combination of different board machine types is a pre-requisite to compete with the full product portfolio. The market investigation confirmed that market segmentation by package size would not reflect the competitive structure of the industry¹⁶. This is supported by the fact that certain converters perceive full LPB range as an advantage (for example, converters need full LPB grammage range in order to launch a product family).
21. Finally, the issue of possible competitive constraints arising from alternative liquid packaging solutions such as plastic bottles is considered in the assessment part, as it concerns product substitutability at the level of the fillers, that is to say downstream of converters. This follows the approach of the Commission decision in the Tetra Laval / SIG case¹⁷.

¹⁵ [Results of the market investigation]

¹⁶ [Results of the market investigation]

¹⁷ Case COMP/M.3746 – Tetra Laval / SIG, paras 68 and 76

22. In conclusion, the market investigation confirmed that the relevant product market is not wider than LPB. Nevertheless, supply-side substitutability from neighbouring markets (e.g. non liquid consumer packaging board) might constrain LPB producers. On the other hand, the market investigation brought about no conclusive evidence as to the possible existence of narrower markets. However, for the purpose of this case, it is not necessary to reach a definitive position as to the question of possible narrower product markets as the proposed transaction does not raise competition concerns under any conceivable product market definitions. In this respect, it should be stressed that only Korsnäs produces very limited quantities of WW LPB and that the product portfolios of the merging parties only overlap as regards 1 litre LPB.

A.2 Relevant Geographic Market

23. The notifying party submits the LPB market to be EEA-wide in line with the conclusion reached in the Enso / Stora decision¹⁸. However, the notifying party also puts forward a number of arguments to be taken into account in the competitive assessment, which indicate that EEA LPB production faces competitive constraints from outside EEA, notably South America and China.

24. The evidence gathered in the market investigation suggests retaining the EEA as the relevant geographic market¹⁹. Low volumes of imports into the EEA (less than 5%) were confirmed by the market investigation. This could be due to the fact that EEA production by far exceeds EEA demand. Furthermore, reliability of supply and just-in-time deliveries are important for EEA converters, albeit transport costs are not in themselves prohibitive. Furthermore, according to the market investigation, there are regional differences in the required product characteristics (e.g. heavier, lower quality board outside EEA).

25. However, there are also certain elements pointing towards a world-wide market. Roughly 30% of the LPB production in the EEA is exported to countries outside the EEA. Furthermore, contracts with globally active converters are typically concluded in a centralized way including world-wide pricing schemes and volumes. There are also indications that the likely entry of notably South American producers could affect the EEA market either directly by increasing imports into the EEA or indirectly by decreasing exports by EEA producers. Converters moreover confirmed they would switch to non-EEA producers in case of price increases by EEA producers.

26. Although there are some indications that the LPB market has become more global since the Enso / Stora decision, it appears premature to conclude that the relevant geographic market is wider than EEA. This conclusion is shared by a majority of respondents in the market investigation²⁰. However, future competitive constraints from non-EEA-competitors would need to be taken into account in the competitive assessment in view of a growing trend towards competitive LPB production outside the EEA²¹.

18 Case COMP/M.1225 – Enso / Stora, para 59

19 [*Results of the market investigation*]

20 There has also been no contention that the LPB market is narrower than EEA by respondents in the market investigation

21 Likewise, world-wide constraints were considered in the competitive assessment of potential competition in the above-quoted Enso / Stora decision

B. Competitive Analysis

27. As noted in the Enso/ Stora decision, the LPB market in the EEA is characterised by a rather exceptional market structure with one large (StoraEnso) and two smaller suppliers (Korsnäs and AD Cartonboard) facing one large (Tetra Pak) and two smaller buyers (Combibloc and Elopak). It should however be stressed that there are also other LPB producers active in Europe, notably Billerud, Klabin and Blue Ridge, as well as three other smaller converters: Italpack, IPI and Adampack.
28. By contrast with the Enso / Stora transaction, which was a merger between the two leading European LPB suppliers, therefore resulting in a strengthening of the leading supplier, the present case concerns a merger between the 2nd and 3rd largest European LPB suppliers where the new merged entity will remain the second largest supplier in the EEA. Although the gap between the merged entity and StoraEnso will be reduced by the proposed merger, the latter will remain the clear leading LPB supplier in the EEA.
29. Having said that, it should be stressed that the proposed transaction would result in the creation of a near-duopoly in the EEA market, whereas on the demand-side one single customer (Tetra Pak) accounts for more than [50-70]% of the total LPB demand in the EEA.

B.1 Non-Coordinated Effects

The proposed transaction will not result in the creation of a single dominant firm, as evidenced by market share levels

30. The table below presents the market shares held by the parties and their main competitors at EEA-level in 2005. The figures in this table have been provided by the notifying parties. The Commission has verified the parties' estimates of the market shares with confidential figures provided by third.

EEA Market for LPB - 2005	All LPB by capacity ²²	All LPB by Volume sold in the EEA	All LPB by Value sold in the EEA (€ million)	White/Brown LPB by Volume sold in the EEA
Korsnas (Swe ²³)	[20-30]% [...] kt	[10-20]% [...] kt	[10-20]% [...] kt	[15-25]% [...] kt
AD Cartonboard (Swe)	[10-20]% [...] kt	[20-30]% [...] kt	[10-20]% [...] kt	[25-35]% [...] kt
Merged entity	[40-50]% [...] kt	[30-40]% [...] kt	[30-40]% [...] kt	[45-55]% [...] kt
StoraEnso	[50-60]%	[55-65]%	[60-70]%	[40-50]%

²² Capacity estimates refer to the total production capacity of the board machines operated by the suppliers. It should be noted that only a (fluctuating) fraction of the total production capacity of these machines is allocated to LPB, as these machines produce other types of boards, notably WTKL and CUK

²³ The initials after the companies' names refer to the country where their LPB production facilities are located

(Swe/Fin)	([...] kt)	[...] kt	[...] kt	[...] kt
Merged entity + StoraEnso	[90-100] % [...] kt	[90-100] % [...] kt	[90-100] % [...] kt	[90-100] % [...] kt
Blue Ridge (US)	[...] kt	[0-5] %	[0-5] %	[0-5] %
Klabin (Bra)	[...] kt	[0-5] %	[0-5] %	[0-5] %
International Paper (US)	[...] kt	[0-5] %	[0-5] %	[0-5] %
Billerud (Swe)	[0-5] %	[0-5] %	[0-5] %	[0-5] %
TOTAL EEA	100% [2000- 3000] kt	100% [500-1500] kt	100% [500-1500] kt	100% [500-1500] kt

31. As indicated in the table above, the merged entity would roughly account for [30-40]% of total LPB sales (White/White + White/Brown) in the EEA. It would rank second, behind StoraEnso which roughly accounts for the remaining [55-70]%. The same conclusion applies to production capacities. The situation is slightly different in the White/Brown segment of the LPB market as the merged entity would account for [45-55]% of the EEA sales, StoraEnso accounting roughly for [40-50]% of the EEA sales. The merged entity and StoraEnso would therefore collectively achieve more than [90-100]% of the total EEA sales of LPB (White/White + White/Brown). Both companies will face a limited number of fringe competitors (four), three of them supplying from outside the EEA. The situation is similar as regards the EEA sales of White/Brown LPB, except that there are only two fringe suppliers, one of them (Klabin) supplying from Brazil.
32. Furthermore, on the basis of the information provided by the merging parties which has been cross-checked with confidential figures provided by third parties, it appears that the merged entity's share of a (hypothetical) EEA 1 litre LPB market would be in the range of [30-40]%, as opposed to approximately [60-70]% for StoraEnso. These figures slightly overestimate StoraEnso's and the parties' respective market shares as they do not take into account imports of White/White LPB from outside the EEA.

The merger will not remove an important competitive constraint on the remaining suppliers

33. Even without creating a dominant firm, one could argue that the proposed transaction could lead to price increases (or other deteriorated conditions) as a result of reduced competition in the EEA among the two main remaining LPB suppliers in Europe (i.e. StoraEnso and the merged entity). There are however several elements which allow the Commission to conclude that the merger will not entail a significant impediment to effective competition in the EEA as a result of non-coordinated effects.

The merging parties are not each other's closest competitors

34. The proposed transaction is a merger between two companies with complementary rather than overlapping product portfolios. Although Korsnäs and AD Cartonboard both produce LPB for the best selling 1 litre container (with grammage in the range of 250-300 g/m²), Korsnäs produces also low grammage LPB (120-250 g/m²), which AD does not supply, whereas AD Cartonboard is specialized in high grammage LPB (300-425 g/m²), which Korsnäs does not supply. The market investigation confirmed that the merging parties do not compete with each other as regards low and high grammage LPB²⁴.
35. By contrast, the market investigation has confirmed that StoraEnso supplies the full range of LPB grammages and that the merging parties compete only with parts of StoraEnso's portfolio²⁵. StoraEnso therefore appears to be the main competitor of each of the merging parties, as evidenced by the fact that no LPB customer is exclusively supplied by the merging parties (see below). In practice, it appears that LPB customers choose between being nearly exclusively ([...]) or mainly supplied by StoraEnso ([...]) and to more or less complement StoraEnso's supplies with deliveries from the merging parties. As regards the three other smaller customers, two of them ([...]) who purchase only White/White LPB are exclusively supplied by US producers. Only one of them, [...] is almost exclusively supplied by the merging parties (Korsnäs supplying [...] with low grammage LPB, whereas AD Cartonboard supplies it with high grammage LPB).
36. The merger will therefore result in the creation of a company which will be able to supply customers with a full range of LPB grammages. Respondents in the market investigation indicated that this extended product portfolio will allow the merged entity to compete more effectively with StoraEnso than Korsnäs and AD Cartonboard separately.

LPB suppliers are not capacity constrained due to supply side substitutability

37. The notifying party contends that there is a significant degree of supply side substitutability between LPB and certain non liquid consumer packaging boards made from purely virgin fibres, such as Coated Unbleached Kraft ("CUK"), Solid Bleached Board ("SBB") and container boards such as White Top Kraft Liner ("WTKL"). In particular, Korsnäs explains that these packaging boards are produced on the same board machines as LPB. The notifying party also contends that LPB suppliers generally achieve higher margins with LPB than with the other packaging boards which are produced on the same board machines. Korsnäs infers from this that LPB suppliers are able and likely to increase their respective production if LPB prices were to increase by 5-10%.
38. The market investigation confirmed²⁶ that there is a significant degree of supply side substitutability between LPB and other consumer packaging boards made from purely virgin fibres, notably Coated Unbleached Kraft ("CUK"), and container boards such as White Top Kraft Liner ("WTKL") as far as LPB producers are concerned. Respondents also confirmed that these products are produced on the same board machines as LPB.

24 [Results of the market investigation]

25 [Results of the market investigation]

26 [Results of the market investigation]

LPB suppliers furthermore confirmed²⁷ that they currently achieve higher margins with LPB than with the other packaging boards (with the exception of SBB). Historically, Korsnäs has increased its LPB production by switching capacity away from other products.

39. The merging parties indicated that they currently allocate a significant share of the production capacity of their respective board machines to WTKL (Korsnäs: [150-250]kt) and CUK (AD Cartonboard: [100-200]kt). Other LPB suppliers indicated that they currently allocate a significant share of the production capacity of their board machines that are used for the production of LPB to (relatively) low margins CUK and WTKL.
40. Based on the figure provided by the merging parties, the merged entity would be able to increase its LPB output by [250-450]kt per year²⁸. Other LPB suppliers confirmed²⁹ that they would be able to produce significant additional volumes of LPB by switching production of their board machines. It should be noted that both companies will be able to produce these additional volumes of LPB at very short notice and without incurring any significant costs. LPB suppliers therefore do not face capacity constraints.
41. Finally, it should be noted that CUK and WTKL are typically supplied either without formal contracts or under short term agreements (normally one year) without fixed annual volumes. There are thus no legal restrictions for LPB suppliers to switch production from CUK and WTKL to LPB.
42. In view of the foregoing, and in light of the emerging competition from outside the EEA (see below), it is likely that should the merged entity (or StoraEnso) raise its prices for LPB, other suppliers would significantly increase their LPB production in response. This would be feasible due to the respective “swing” capacities of LPB suppliers and would make price increases by either the merged entity or StoraEnso unprofitable (safe of any coordinated effects – see below).

Customers enjoy countervailing buyer power

43. On the demand side, there are six converters active in the EEA. The main one is by far Tetra Pak. The market investigation confirmed³⁰ that Tetra Pak plays a pivotal role in the industry and enjoys a significant degree of buyer power vis-à-vis all LPB suppliers. There was a near-consensus amongst respondents that Tetra Pak’s purchasing position will broadly remain unchanged post-merger³¹.
44. The notifying party estimates that Tetra Pak accounts for more than [50-70]% of the total EEA consumption of LPB³². As a result, Tetra Pak is the largest customer of all LPB suppliers active in the EEA, accounting for at least [40-60]% of their total

²⁷ [Results of the market investigation]

²⁸ This figure has to be compared with a total EEA demand for LPB of [500–1500]kt

²⁹ [Results of the market investigation]

³⁰ [Results of the market investigation]

³¹ [Results of the market investigation]

³² The notifying party estimates that Tetra Pak purchased [>500]kt of LPB in 2004 out of a total EEA production of [500–1500]kt for this year

deliveries. On the basis of the information provided by the merging parties, it appears that Tetra Pak accounted for more than [80-100]% of their respective LPB deliveries world-wide in 2004 and more than [80-100]% in 2005. By contrast, Tetra Pak would have accounted for approximately [40-60]% of StoraEnso's global LPB deliveries in the same years.

45. According to the notifying party, Tetra Pak currently sources its LPB procurements mainly from StoraEnso ([40-60]%) and from each of the merging parties ([20-40]% from AD Cartonboard and [10-30]% from Korsnäs)³³.
46. In view of the above, there is no doubt that Tetra Pak enjoys a significant degree of countervailing buyer power with respect to all LPB suppliers (including the merged entity and StoraEnso), as suppliers are heavily dependent upon Tetra Pak for a large share of their respective sales and profitability in relation to their LPB activities. By contrast, Tetra Pak is less dependent upon the merged entity and StoraEnso, as it is capable of securing competitive LPB supplies by playing-off the merged entity and StoraEnso against each other (safe of any coordinated effects – see below).[...]. Tetra Pak also procures sufficiently large volumes of LPB as to establish a new entrant in the EEA or to support an increase in capacity of an existing player outside the EEA by committing to purchase volumes³⁴. As noted in the Enso / Stora decision, Tetra Pak has in the past been instrumental in developing several of its current suppliers into producers of LPB.
47. Combibloc and Elopak are the 2nd and 3rd largest buyers of LPB in the EEA with a share of the EEA consumption of [10-30]%³⁵ and [10-30]%³⁶ respectively in 2004. Their main supplier is StoraEnso which according to the notifying party accounted for [70-90]% and [80-100]% of their respective procurements in 2004.
48. None of the merging parties supplies [...] with LPB. By contrast, both merging parties supply [...] with LPB[...].
49. Amongst the other smaller converters active in the EEA, only [...] is supplied by the merging parties³⁷. Historically, [...] import all of their LPB procurements from the USA.
50. The market investigation confirmed that, as noted in the Enso / Stora decision, both Combibloc and Elopak enjoy buyer power vis-à-vis LPB suppliers as they place orders large enough to fill the capacity of a board machine. As the LPB industry is characterised by high fixed costs, LPB producers' profitability is heavily dependent on the utilisation rate of their board machines, so that even relatively small supplies are crucial for profitability. In addition, the market investigation showed that Combibloc's and Elopak's respective LPB procurements are also large enough as to allow them to

33 The notifying party also indicates that during summer 2005, Tetra Pak purchased an estimated volume of [<50]kt of LPB from Klabin in Brazil. These purchases were made during the strike at StoraEnso's Finnish paper mill. According to the notifying party, Tetra Pak does not import significant volume of LPB in the EEA on a regular basis

34 [*Results of the market investigation*]

35 The notifying party estimates that Combibloc purchased [>150]kt of LPB in 2004

36 The notifying party estimates that Elopak purchased [>150]kt of LPB in 2004

37 According to the merging parties, AD Cartonboard and Korsnäs collectively account for roughly 100% of [...] LPB requirements

establish a new entrant in the EEA or to support an increase in capacity of an existing player outside the EEA by committing to purchase volumes.

51. As noted above, [...] changed twice its procurement policy over the past five years as it first shifted significant volumes from [...] to [...], and then from the latter to [...] within short delay. As noted above, [...] also changed its procurement policy further to the Enso/Stora merger by moving significant volumes from [...] to [...]. These examples illustrate that it is possible for converters to shift a significant part of their LPB procurements from one supplier to another at short notice.
52. In addition, the risk that the merged entity (or StoraEnso) would discriminate against smaller converters (i.e. Tetra Pak's competitors) can be excluded. Indeed, such a discriminatory policy would clearly be counter-productive in medium to long term for LPB suppliers as it would affect smaller converter's competitiveness and would ultimately put them **at risk of being foreclosed from** the market. This in turn would leave the LPB suppliers with a monopsonistic buyer (Tetra Pak).
53. Finally, no LPB customer complained about the proposed transaction. On the contrary, customers explained that their buyer power will be enhanced by the operation, as the merged entity will benefit from an extended product portfolio (notably in terms of LPB grammages), and will therefore constitute a more credible alternative source of supply to StoraEnso than Korsnäs and AD Cartonboard separately.

Growing competition from outside the EEA

54. The market investigation indicated that European LPB suppliers are to face increasing competitive pressure in the coming years from producers outside Europe, mainly in South America and Asia³⁸. In particular, the Brazilian company Klabin has publicly announced plans to build a new large board machine in Brazil with a total production capacity of 350 kt per year. The US company International Paper has also publicly announced that it will invest US\$ 140 million to build a new board machine in China (in association with the Chinese company Sun Paper) which should be operational in late 2007.
55. Even though these additional volumes are expected to be delivered mainly to South America and Asia, they are likely to have a ripple effect on the European market for two reasons. First, both Korsnäs and StoraEnso currently export a significant share of their European production to customers located outside the EEA (more than [10-20]% for AD Cartonboard and more than [55-65]% for Korsnäs). StoraEnso also confirmed that it exports a significant share of its European production outside the EEA. Should the merged entity and StoraEnso lose significant volumes of sales outside the EEA, the lost volumes will be available for sale in Europe, which will necessarily have an impact on European prices. Second, converters typically enter into framework agreements with their LPB suppliers with a single ex-mill price list for deliveries to all their factories world-wide. Therefore, the additional capacities which are being built up in China and South America will exert a pricing constraint on LPB deliveries in Europe. Finally, one cannot exclude that in the medium-term LPB imports into the EEA will rise as a result of the new production capacities which are being built outside Europe in low cost countries.

³⁸ [Results of the market investigation]

56. It can therefore be inferred from the above elements that competition from outside the EEA will exert in the 2-3 years a growing constraint on both the merged entity and StoraEnso as regards their competitive behaviour in Europe.

The proposed transaction is likely to generate merger-specific efficiencies that will be passed on to consumers

57. The notifying party submits that it expects substantial synergies to arise as a result of the proposed transaction. In particular, the notifying party expects to save input cost, reduce personnel and improve production efficiencies. Once fully implemented, Korsnäs estimates that these three categories of savings will amount to [20-50] million, [...] million and [10-30] million SEK per year respectively, which combined correspond to [0-5]% of the net sales of the merging parties (including products other than LPB). These estimates emerge from a report by [...] provided to the board of Korsnäs prior to the acquisition.

58. In addition, Korsnäs argues that it will be in a position to realise R&D efficiencies as well as benefit from implementing best practices across the two production sites. As noted above, the merged entity will have a wider portfolio range within LPB. Finally, the merged entity will have a broader portfolio of products generally in that it will combine AD Cartonboard's presence in CUK with Korsnäs' activity in WTKL.

59. The notifying party has submitted a term sheet agreement between Korsnäs and Tetra Pak³⁹ regarding deliveries for 2006-2009. The agreement contains specific provisions for the scenario in which the merger with AD Cartonboard is implemented. In particular, approval of the transaction by the relevant authorities will trigger:

- [...].

60. All respondents in the Commission's market investigation agreed that the proposed transaction entails a certain scope for efficiencies⁴⁰, although they did not all agree that the benefits would be substantial and passed on to consumers⁴¹. However, a large majority of converters and competitors agreed that the broader portfolio of the merged entity will improve the ability of the merged entity to better compete with StoraEnso⁴².

61. In order to take into account efficiency claims in its assessment, the Commission must be in a position to reach the conclusion that the efficiencies are merger specific, verifiable and benefit consumers⁴³.

62. The submission by the parties raises a lot of issues, which cannot be fully assessed within the context of a first phase investigation, in particular with respect to savings in input costs and staff reduction.

³⁹ Annex 8.13.3 LPB of the notification

⁴⁰ [Results of the market investigation]

⁴¹ [Results of the market investigation]

⁴² [Results of the market investigation]

⁴³ Guidelines on the assessment of horizontal mergers. *Official Journal C 31, 05.02.2004, pages 5-18, par. 78*

63. Nevertheless, it appears realistic to assume that the allocation of production among the increased portfolio of machines will indeed allow the merged entity to increase overall production on the machines (for instance by running longer batches thereby reducing time spent on switching). In light of the abovementioned term sheet agreement with Tetra Pak and on the general absence of concern about the transaction among customers, the Commission considers that the parties have sufficiently established that this category of efficiencies is likely to occur and be passed on to consumers.
64. These efficiencies are thus likely to enhance the ability and incentive of the merged entity to act pro-competitively for the benefit of consumers, and therefore strengthen the conclusion that the proposed transaction will not significantly impede effective competition as a result of non coordinated effects.

Conclusion on non-coordinated effects

65. In view of the foregoing, it can be concluded that the proposed transaction will not significantly impede effective competition in the EEA market for LPB (or any sub-market thereof) as a result of non-coordinated effects.

B. Coordinated Effects

66. The proposed transaction will result in the creation of a near-duopoly in the European LPB market, therefore raising the question of possible post-merger coordination between the two main remaining suppliers. In particular, one can argue that the proposed transaction will enhance the market transparency and thus makes coordination between the two leading suppliers easier. In this respect, it should be noted that although the market investigation unanimously revealed that the LPB market is transparent as regards volumes, a majority of respondents indicated that the market is not as far as prices are concerned⁴⁴. However, without being necessary to conclude on market transparency, there are several other elements which allow the Commission to conclude that the merger will not result in the merged entity and StoraEnso having greater ability and incentive to coordinate their respective competitive behaviour in the EEA.

Difficulties in reaching terms of coordination

67. The merged entity and StoraEnso would face difficulties in reaching terms of coordination as a result of the combination of several reasons.

Imperfect symmetry between the merged entity and StoraEnso

68. First, while being enhanced by the merger, the symmetry between the two main suppliers will still not be perfect post-merger, as neither Korsnäs nor AD Cartonboard produces White/White LPB. Therefore, even after the merger the merged entity will not be able to compete with StoraEnso for a significant share of the LPB demand (approximately 30% in the EEA, 100% in the US and Japan). This means that if the merged entity and StoraEnso collectively raised prices for WB LPB, only the latter would benefit from the partial migration of demand from WB to WW LPB that it will induce. In addition, StoraEnso's production capacity will remain by far larger (approximately [30-50]%) than the one of the merged entity, be it in terms of total production capacity (for liquid and non liquid packaging boards) or production capacity

⁴⁴ [Results of the market investigation]

allocated to LPB. Furthermore, StoraEnso operates five board machines able to produce LPB, whereas the merged entity will only operate three (two for Korsnäs, one for AD Cartonboard) which confers on StoraEnso a significant advantage in terms of efficient allocation of LPB production and thus cost structure. Finally, it should be stressed that LPB accounts for roughly [65-75]% of the total commercial activities of each of the merging parties, whereas this proportion is significantly lower for StoraEnso.

LPB is not a homogeneous product

69. Second, LPB is not a completely homogeneous product. In addition to the distinction between White/White and White/Brown, there exists a wide variety of LPB's characteristics, notably in terms of grammage, thickness, density, roughness, brightness, number of layers and coating types (e.g. clay, polyethylene). Furthermore, LPB delivered to each customer differs in that each converter has its specific quality specifications due to the individual requirements of each end-customer (i.e. the fillers). Each particular specification is developed by converters and the LPB suppliers to accommodate the fillers' particular needs. In view of this, even LPB with similar characteristics produced for different converters are in general not interchangeable.

The converter market is not prone to customer sharing

70. Third, reaching terms of coordination between the merged entity and StoraEnso would also be difficult because of the particular structure of the converter market. There are only a limited number of LPB customers in Europe and world-wide and one of them (Tetra Pak) accounts for more than 50% of the total demand. In itself this particularity makes it difficult to establish any form of customer sharing between the two leading European suppliers.
71. One could however argue that the merged entity and StoraEnso might share amongst them the smaller converters (notably Combibloc and Elopak) while continuing to compete for supplies to Tetra Pak. Such a scenario is unrealistic for three reasons. First, as noted above, both Combibloc and Elopak enjoy a sufficient degree of buyer power that would enable them to counter such an attempt by the merged entity and StoraEnso. Second, as noted above, both Combibloc and Elopak are currently almost exclusively supplied by StoraEnso which for this reason is also less dependent on sales to Tetra Pak than each of the merging parties. This asymmetry between StoraEnso's and the merged entity's respective customer base makes it very unlikely that they would be able to establish any form of smaller customer sharing. Third, as Elopak and Combibloc are currently being almost exclusively supplied by StoraEnso, it is very unlikely that the latter would accept to lose a customer in order to secure deliveries to the other one which is already almost exclusively supplied by StoraEnso. In addition, as WW LPB accounts for virtually all of Elopak's procurements, the merged entity, which predominantly produces WB LPB, will not be able to compete against StoraEnso for supplying Elopak.

Supply agreements are staggered over time

72. Finally, the LPB industry is characterised by long-term supply agreements (usually three years) where converters commit to purchase fixed annual volumes of LPB at pre-determined prices. These long-term contracts with the different converters are therefore staggered over time. This also makes any form of collusion difficult to establish, as it will take many years before the coordination between firms would become effective.

Coordination would not be sustainable over time

Strong incentives to deviate

73. Even if the merged entity and StoraEnso were able to coordinate their behaviour, this coordination will likely not be sustainable over time for two reasons. First, as noted above, both parties are able to significantly increase their LPB output at short notice and without incurring significant costs by reducing the output of the other board materials which are produced on the same machines. As noted above, the merged entity and StoraEnso both have incentives to shift production from CUK and WTKL to LPB as they achieve generally higher margins with the latter. This means that StoraEnso and the merged entity will both have strong incentives to increase their LPB supplies at the detriment of the other supplier thereby deviating from their commonly agreed terms of coordination. In addition, as noted above, CUK and WTKL are typically supplied either without formal contracts or under short term agreements (normally one year) without fixed annual volumes. There are thus no legal restrictions for LPB suppliers to switch production from CUK and WTKL to LPB.

Outsiders are able to make coordination unstable

74. There are two groups of outsiders who will be able to make coordination between the merged entity and StoraEnso unstable: customers (i.e. converters) and suppliers active outside the EEA.
75. As noted above, LPB customers enjoy countervailing buyer power and are thus able to counter any attempt by the merged entity and StoraEnso to increase prices in a coordinated way. In particular, converters may counter any such attempt by concentrating large amounts of their procurement with one supplier as this would have a significant impact on the other supplier's profitability.
76. In addition, converters would not be able to fully pass on a price increase. On the one hand, not knowing what the price increase for competing converters is, they would risk losing volumes if the price increase was passed on in its totality. On the other hand, converters also face a certain degree of competitive constraints from alternative liquid packaging solutions, notably plastic bottles. If the price increase was passed on to fillers, the latter could, in medium and long term, consider switching to plastic bottles.
77. Against this background, it is more likely that the converters would chose to actively oppose any coordinated price increases rather than simply pass on the price increase to fillers.
78. In addition, larger converters active also outside the EEA (Tetra Pak, Elopak and Combibloc) may shift part of their LPB procurement for deliveries outside the EEA from the merged entity and StoraEnso to other producers. For the reasons explained above, this would have a direct impact on the price levels in the EEA.
79. As noted above, the three larger converters (Tetra Pak, Combibloc and Elopak) may also ultimately establish a new entrant in the EEA or support an increase in capacity for an existing player outside the EEA by committing to purchase volumes. Even though establishing a new entrant (which will likely be a company already producing non liquid packaging board) or supporting new capacity will likely take between 2 and 3 years, it constitutes a credible threat on existing LPB suppliers. In the Enso / Stora decision, the Commission noted that Tetra Pak has been instrumental in the past in developing several of its current suppliers into LPB producers.

Retaliation is not credible

80. Retaliation does not seem to constitute a credible threat to a supplier which would deviate from coordination as a deterrent mechanism could only be implemented with a significant time lag. This is due to the fact that LPB supply agreements are generally entered for a relatively long period of time (usually three years) with fixed volumes to be delivered and purchased each year. In addition, there are only few converters active in Europe and world-wide. Therefore the long-term contracts with the different converters are staggered over time, which means that a rival supplier could only retaliate several months or even years after the deviation occurred. This increases the profit that a supplier can achieve by deviating from the terms of coordination and makes retaliation even less credible.

Conclusion on coordinated effects

81. In view of the foregoing, it can be concluded that the proposed transaction will not significantly impede effective competition in the EEA market for LPB (or any sub-market thereof) as a result of coordinated effects.

V. CONCLUSION

82. For the above reasons, the Commission has decided not to oppose the notified transaction and to declare it compatible with the common market and 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)
Joaquin ALMUNIA
Member of the Commission