

***Case No COMP/M.4533 -
SCA / P&G (European
tissue business)***

Only the English text is available and authentic.

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

Article 6(2) NON-OPPOSITION
Date: 05/09/2007

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EUROPEAN COMMISSION

Competition DG

Director-General

Brussels, 5/IX/2007

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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 Where possible the information omitted has been replaced by ranges of figures or a general description.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.4533 - SCA/ P&G European Tissue Business
Notification of 02.07.2007 pursuant to Article 4 of Council Regulation
No 139/2004¹**

1. On 02.07.2007, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 (the "Merger Regulation") by which Svenska Cellulosa Aktiebolaget SCA AB ("SCA", Sweden) acquires control within the meaning of Article 3(1)(b) of the Merger Regulation of the European consumer tissue business of Procter and Gamble plc ("P&G ECT ") by way of purchase of assets.
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 those 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.

¹ OJ L 24, 29.1.2004 p. 1.

I. THE PARTIES

3. SCA is a Swedish company active in the personal care sector. In the consumer tissue sector, SCA supplies toilet paper, household towel, and handkerchief/facials, both under its own brands and for retailers' private labels. SCA's main brands include Edet, Softis, Velvet and Zewa.
4. P&G ECT is a business division of Procter and Gamble plc ("P&G") which supplies toilet paper, household towel, and handkerchief/facials in Europe. It has five production sites in Europe (in France, Germany, Italy and the UK). Its main brands are: Bounty, Charmin, Tempo, Bluemia and Bess. Similarly to SCA, P&G ECT also supplies tissue paper products to retailers for their private labels, although to a lesser extent than SCA.

II. THE TRANSACTION AND THE CONCENTRATION

5. On 12.03.2007, SCA entered into an Asset Purchase Agreement with P&G to acquire P&G ECT. The agreement covers five manufacturing plants, the Tempo and Bess trademarks worldwide, a perpetual licence to the Bluemia trademark worldwide and a licence to use the Bounty and Charmin trademarks in Europe for a period of [...]².
6. The transaction will result in the acquisition of sole control by SCA over P&G ECT and therefore constitutes a concentration within the meaning of Art. 3(1)(b) of the Merger Regulation.

III. COMMUNITY DIMENSION

7. The undertakings concerned have a combined aggregate worldwide turnover of more than EUR 5 billion (SCA: EUR 10,961 million; P&G ECT: EUR [...] million) and each has a Community-wide turnover in excess of EUR 250 million (SCA: EUR 7,741 million; P&G ECT: EUR [...] million) in 2006. None of the parties achieves more than two thirds of its Community wide turnover in any Member State. Therefore, the present transaction has a Community dimension.

IV. RELEVANT MARKETS

8. The activities of SCA and P&G ECT overlap in relation to the procurement of pulp, the sale of parent reels and the supply of consumer tissue products. Only the overlaps in relation to the supply of parent reels and consumer tissue products give rise to affected markets with the combined market shares above 15%, and hence will be further discussed below. The transaction does not concern the "away-from-home³" ("AFH") tissue sector, as only SCA is active in this sector, while P&G is not.
9. The Parties' business activities overlap on the consumer tissue product markets of toilet paper, household towel and handkerchief/facials. SCA supplies these products in most

2 P&G has also agreed to assign existing retailer brand and parent reel supply contracts, provided that the relevant customers consent to such assignment.

3 The category "away-from-home" includes all products supplied to hotels, restaurants and catering firms and other corporate customers.

EEA countries, whereas P&G ECT is active primarily in Austria/Germany, Italy and UK/Ireland.

A. Relevant product market

Parent reels

10. Parent reels are large sheets of tissue paper from which consumer tissue products are made. The relevant product market, in line with previous Commission decisions⁴, is considered to be the supply of parent reels to third parties.

Consumer tissue products

11. The Commission has previously defined separate products markets within the consumer tissue sector, namely toilet paper ("TP"), household towels ("HHT"), handkerchief/facials ("HF").⁵
12. For all tissue products, paper producers (SCA and P&G) sell consumer tissue products to retailers which, in turn, sell these products to consumers (individuals). Therefore, there are two stages in the supply chain: the upstream procurement level (production and supply of tissue products to retailers) and the downstream retail level (sale of products to consumers). SCA and P&G are only active at the upstream production and supply level.
13. There are two "categories" of consumer tissue products: "branded products" (also referred to as "manufacturer brands") and "private labels" (also called "retailer brands"). The two categories of products are sourced separately by retailers (through bilateral negotiations for manufacturer brands and through tenders for private labels) but are displayed next to each other on the shelves at the retail level. SCA and P&G produce both manufacturer brands and private labels.
14. The question whether the manufacturer and retailer brands belong to the same product market was in the previous Commission cases treated in two different ways. In the case COMP/M.623 *Kimberly-Clark/Scott Paper*, the Commission found that private labels and manufacturer branded products belonged to the same product market. On the other hand, in the case COMP/M. 2097 *SCA / Metsa Tissue*, the Commission concluded that branded and private label consumer tissue products at wholesale level constituted separate relevant product markets, although the Commission clearly recognised that at the retail level these products are in competition with each other.
15. In the current case, the parties propose to consider branded and private label products as one single relevant product market, both at the downstream and at the upstream level.

⁴ COMP.M2522 SCA HYGIENE PRODUCTS / CARTOINVEST.

⁵ A separate market for napkins was also defined. However, as P&G ECT does not supply napkins, this market is not relevant in the case at stake.

16. To support this claim, the parties submit that since the adoption of the *SCA / Metsa Tissue* decision in 2001, the markets for consumer tissue products have evolved and in particular: (i) retailer brands now predominate and are growing in importance; (ii) the quality of retailer brands has improved; (iii) price premiums for manufacturer brands are more difficult to justify; (iv) there is low brand loyalty; and (v) retailers are increasingly promoting their own brands and reducing the number of manufacturer brands on their shelves. Furthermore, the parties claim that there is substantial supply-side substitutability between manufacturer brands and private labels as suppliers are able to switch easily between the production of branded and non-branded products in the same category of consumer tissue products.
17. The market investigation has also confirmed a number of features of these markets: First, private labels and branded product compete at the retail level. Second, the quality of private label products has increased and is now similar to branded products. Nevertheless, branded products are still sold with a price premium over private labels. As a result, private labels continue to gain market share in most countries.
18. The growth of private labels is also driven by both increasing shelf space being devoted by retailers to their own private label products at the expense of manufacturer branded products, and by the success of their comparable product offering at similar or lower prices. Retailers are increasingly promoting their own brands, with many retailers actively advertising their labels with marketing strategies similar to those of brand manufacturers.
19. Consumer tissues are (to differing degrees) "low emotion" products, thus characterised by low brand loyalty in most markets and substantial consumer switching in general from branded products towards private labels. Consumers are very reactive to "promotions/special offers", and switch temporarily between various products on the basis of one-off purchasing decisions and the best "value for money" offer. This behaviour shows that branded products and private labels clearly compete at the downstream (retail) level, which is indicative of the existence of one single product market.
20. Moreover, the market investigation broadly confirmed that at the retail level, branded products and private labels compete on the shelves and are part of one single market. However, for the purposes of this case it is not necessary to define this market as the parties are not active at retail level. Nevertheless, as explained further below in this decision, the competitive interaction between branded products and private labels at the retail level (on retailers' shelves) is crucial for the competitive assessment of the notified transaction.
21. At the procurement level, in case *SCA / Metsa Tissue*, the Commission found that branded and private label consumer tissue products at wholesale level constituted separate relevant product markets.
22. The analysis, as well as the market investigation carried out by the Commission, have broadly confirmed that at the upstream production and supply level branded products and private labels belong to separate markets.

23. Although there is high supply-side substitutability between production of branded products and private labels⁶, the Commission found that only some consumer tissue producers supply both private labels and branded products.
24. As a matter of fact, while manufacturers of branded products can decide to produce and supply also private labels to maximise the utilization of their production lines, most producers (with some notable exceptions) of private labels do not produce and supply branded products. The reason for that is the relatively high entry cost into the branded segment of the market, with considerable investment and time needed to "build" a brand and raise consumers' awareness thereof.
25. As a result, the competitive interaction at the procurement level between producers of branded products and producers of private labels is asymmetric and very partial: the former can exert competitive pressure on the latter, but not vice-versa. Moreover, if one also considers that producers' margins are typically higher for branded products than for private label products, it appears that manufacturers producing both branded and private labels would therefore normally prefer to use their capacity for production of branded products. As a result, the owners of strongly positioned tissue brands have a clear focus on branded production and mostly produce private labels to the extent necessary to utilise spare production capacity and gain economies of scale. SCA is one of the few players with a relatively balanced presence in the branded and private-label markets.
26. Moreover, the difference between margins on branded products and private labels achieved by the parties has not changed significantly during the last years and branded products still bring higher margins than private labels.⁷ This difference in margins appears to be indicative of separate product markets for branded products and private labels at the wholesale level.⁸
27. Finally, the market investigation has confirmed in full the findings of the *SCA / Metsa Tissue* decision as regards the differing procurement processes of branded tissue and private labels⁹: bilateral negotiations for the former and tenders for the latter.
28. Accordingly, for the purpose of this decision, the markets for the supply of consumer tissue products to retailers should be divided into a) production and supply of manufacturer brands/branded products and b) production and supply of private labels/retailer brands. All of the above is applicable separately to the three categories of tissue products (toilet paper, kitchen towels and handkerchiefs/facials).

⁶ The market investigation has confirmed that there is high supply-side substitutability between production of branded products and private labels, with very short lead-times and practically no cost. In other words, those producers which supply both branded products and private labels can quickly react to shifts in demand between the two "categories" of products.

⁷ Based on the parties' data for Austria, Germany and the UK.

⁸ However, it has to be noted that in their calculation of margins the parties did not include advertising support which has decreased recently but still is much higher for branded products. Therefore, when the cost of advertising is added to the calculation of margins, the gap between the margins is narrowing. This was supported by the parties' data for Germany and Austria only.

⁹ See in particular paragraphs 23-25.

29. However, it must be reiterated and highlighted again that, although the focus of the competitive assessment is on the upstream separate markets as defined above and in which the parties are directly active, the competitive interaction at the downstream retail level (i.e. on supermarkets' shelves) between "manufacturer/branded products" and "retailer/private labels" is crucial for the assessment of the case, as will be explained further below.

B. Relevant geographic market

Parent reels

30. In the previous Commission decisions¹⁰, the geographic market for parent reels was defined as EEA-wide. The Parties consider that it is at least EEA-wide and probably worldwide and submitted relevant data on both basis. For the purpose of this decision the exact geographic market definition can be left open as even on the EEA-wide market for parent reels the current transaction does not raise competition concerns.

Consumer tissue products

31. In its previous cases¹¹, the Commission generally found the relevant consumer tissue markets to be national in scope or to encompass several countries which present similar features (language, retailing chains etc.), or so called "country clusters"¹².
32. The Parties consider that all the consumer tissue product markets (both for branded products and for private labels) are EEA-wide due to the fact that international competitors compete with each other across a large number of countries and retailers are becoming increasingly active cross-border, often negotiating/signing pan-European supply arrangements to source tissue supplies.
33. However, as an alternative to their proposal for an EEA-wide market definition, the parties have also considered these markets either on a national or on a wider-than-national (e.g. "country clusters") basis. According to the parties, in particular Austria/Germany, the Baltic States, the UK/Ireland and Norway/Iceland form such clusters and should be assessed as different clusters on a wider-than-national basis.

¹⁰ COMP.M2522 SCA HYGIENE PRODUCTS / CARTOINVEST

¹¹ COMP.M2522 SCA HYGIENE PRODUCTS / CARTOINVEST; COMP/M. 2097 SCA / METSÄ TISSUE; COMP/M.623 KIMBERLY-CLARK / SCOTT PAPER

¹² UK/Ireland in COMP/M.623 Kimberly-Clark/Scott

34. However, the market investigation has indicated that it is necessary to distinguish between the upstream and downstream levels and, at least within the upstream level, between branded products and private labels.
35. At the downstream retail level, the market investigation has widely confirmed that the consumer tissue markets are largely national because of differing consumer preferences, languages, packaging, importance of brands, and related advertising.
36. However, for the purpose of this decision, the exact geographic market definitions (e.g. national or country clusters) at the downstream retail level can be left open since the notified transaction would not lead to competition concerns under any alternative geographic market definition as the parties are not directly active at the retail level.
37. At the upstream level, a distinction must be made between a) private labels and b) branded products.
38. a) As to the former, according to the results of the market investigation, the market for the production and supply of private labels appears to be driven by the concept of "maximum reach" of producers. This concept was already developed in previous Commission decisions. In particular, respondents to the market investigation in the *Kimberly-Clark/Scott* case estimated that the various tissue products could be economically transported over maximum distances of 540 to 865 km (depending on the product category). The market investigation carried out in the *SCA/Metsa* case considered that this range of distances was still valid, although there was a tendency toward the upper end of the range, with maximum distances of approximately 800 to 1000 km for full truckloads. The market investigation in the present case has broadly confirmed these ranges and highlighted that a number of producers are nowadays active and competitive at 1000 km range from their production facilities, and sometimes even beyond.
39. As a result, the most appropriate geographic market definition for the production and supply of private labels would appear to be "regional", that is broader than national but narrower than EEA, and based on radii of approximately 1000 km.
40. However, for the purposes of the present case, it is not necessary to reach a conclusion on the precise geographic market definition for this product market, as the transaction will not give rise to competition concerns in the market for production and supply of private labels, whatever its geographic scope.
41. Accordingly, the Commission has assessed the present case on both the widest possible (EEA) and the narrowest possible bases (national markets or country clusters). It has not carried out the assessment on the basis of the alternative regional (radius-based) definition, since, as a matter of fact, if no competition concerns are likely to arise on the narrower national/country cluster basis, *a fortiori* this is also the case for the broader, regional, cross-border radius-based alternative market definition.

42. b) As to the branded products, the market investigation has clearly indicated that the production and supply of branded products is either national or wider than national (e.g. "country clusters") as it is largely the reflection of the situation at the retail level, where "national" brands, languages, advertising, consumer preferences are still very strong and more than compensate for the alleged increasing "globalisation" of producers' strategies and activities, as highlighted by the parties.
43. The Commission has therefore assessed the present case on the basis of the alternative market definition proposed by the parties i.e. national or based on a number of "country clusters" i.e. the Baltic States, UK/Ireland and Austria/Germany.
44. The parties argue that the Baltic States should be considered together due to the following facts: they are neighbouring countries, they have comparable income levels and, likewise, comparable levels of consumer tissue product penetration; the majority of retailers active in the Baltic countries are active in the area as a whole, including Ahold, Maxima and Rautakirja; and they tend to be supplied by the same suppliers from the same mills and with the same brands (for example: SCA). The market investigation has not contradicted the parties' claim.
45. The parties propose to consider UK/Ireland as another country cluster based on the previous Commission's decision in the *Kimberly-Clark/Scott Paper* case. In this case, the Commission treated the UK and Ireland as a single geographic market. There were several elements that pointed towards competitive assessment at cluster level and they included: (i) geographic location relative to Continental Europe, (ii) differences with Continental Europe in terms of retail trade concentration, including emphasis on quality consideration and existence of premium private label products, (iii) common language (media exposure); (iv) similar consumer preferences – importance of quality; (v) existence of the same brands. The Parties consider that the factors identified by the Commission in *Kimberly-Clark/Scott* in relation to UK/Ireland continue to exist today, and may even be stronger now than at the time of that decision. The market investigation has not contradicted the parties' claim.
46. As regards Austria and Germany, there are some elements that could point towards separate assessment based on national markets.
47. Firstly, the market structures differ in the two countries. In particular, the significance of sales of private labels with respect to total sales varies in the two countries, with brands playing more important role in Austria when compared to Germany. While private label TP represent 80% of the total TP sales in Germany (measured in value), they amount to only 53% of the total TP sales in Austria; for HHT corresponding figures are: 79% in Germany, 55% in Austria; for HF: 61% in Germany, and 37% in Austria.
48. The parties submit that the difference in the level of private label vs. branded products shares reflects the historical development of certain retailers. In Germany, the penetration of hard discounters such as Aldi and Lidl is greater than in Austria. Because Aldi stocks only retailer branded tissue and Lidl focuses on retailer brands (stocking only one manufacturer brand in some categories), the different retailer mix impacts the overall share of retailer brands. The difference in retailer brand penetration in Austria as compared to Germany is also driven by the geographic and retailer dynamics within the country. In Austria, due to more dispersed population, there is a higher number of smaller shops/retailers, which typically do not have their own retailer brands.

49. However, the general trend towards a decreasing importance of brands, and an increasing importance of private labels is the same in both countries. The parties also claim that the trend is toward retailer brand growth in Austria and retailer brands are expected to reach the levels of Germany in the coming years.
50. Secondly, there are differences in the parties' market shares for the supply of branded products to retailers. The combined market shares tend to be higher in Austria for branded TP (Austria: [70-80]%/ Germany: [50-60]%), and branded HHT (Austria: [90-100]%/Germany: [75-85]%), and lower for HF (Austria: [70-80]%/Germany: [80-90]%).¹³ There are also more competitors present in Germany and the main competitor Kimberley-Clark is stronger in branded TP and HHT in Germany than in Austria.
51. However, there are also many arguments that support the Austria/Germany "cluster" analysis proposed by the parties, as described below.
52. Firstly, a large number of retailers operate in both countries, for example Aldi, Lidl¹⁴, dm, Rewe and Schleckner are among the major retailers in both Austria and Germany. Accordingly, 73% of the Austrian grocery business is owned by German retailers (the only remaining Austrian-owned retailer of any size is Spar). For P&G four out of the top five customers in each product category are German retailers (the only exception being Spar, which represents up to [...] % of the parties' sales in each category of consumer tissue products).
53. This has consequences on the negotiation process between manufacturers and retailers and results in the inability of consumer tissue suppliers to discriminate between the two countries. For example Aldi coordinates its prices across Germany and Austria. Likewise, dm, Lidl, Rewe and Schleckner are major retailers in both countries and so would not be prepared to pay substantially different prices in the two countries. This is confirmed by the almost identical price lists. [...]. Moreover, P&G ECT applies a single sales and marketing policy to both Austria and Germany [...]. The position is broadly similar for SCA, which treats Austria and Germany together as a single region for organisational purposes and also supplies accounts at the same prices in both countries.
54. Furthermore, the average annual gross contribution margins of both P&G and SCA's¹⁵ branded products in each category are very similar in both countries, which is indicative of a single geographic market at the wholesale level.
55. The parties also submit that the same main brands exist within the country clusters. Both tissue manufacturers and retailers supply products under similar brands in Austria and Germany. Thus, for example, SCA's main brands in the region are Zewa and Zewa Softis.¹⁶ P&G ECT's main brands in the region are Charmin (TP), Bounty (HHT) and

¹³ All data in value and for 2006.

¹⁴ Although, as mentioned in paragraph 48, the penetration of Aldi and Lidl is lower in Austria than in Germany.

¹⁵ See: SCA submission of 26/07 and P&G submission of 19/07

¹⁶ However, the relative importance of SCA's local brands in Austria has to be noted.

Tempo (HF). Kimberly-Clark has Hakle and Kleenex as its main brands. Retailers adopt a similar strategy with, for example, Lidl using the Dessa brand in both countries.

56. Consumers in both Austria and Germany exhibit similar characteristics and also have similar product preferences. For example, a preference for thick and strong toilet paper products (e.g. those with an increased number of plies), rather than softer, more flexible products (like in other national/cluster markets)¹⁷.
57. There are also similar marketing strategies/campaigns and media overspill. The commonalities of brands, packaging, retailers and language all allow similar advertising campaigns in both Austria and Germany. This is to a large extent confirmed by the similarities of the parties' advertising and promotional expenses trends in both countries, which differ only to some degree. For instance, P&G ECT has a fully integrated advertisement strategy within Austria/Germany.
58. Finally, Austrian customers tend to be supplied from the same plants as German ones. For example, SCA customers in Austria and Germany are primarily supplied from a combination of SCA's mills in Austria and Germany. P&G ECT does not have a mill in Austria and customers are supplied on the same basis as customers in Germany (i.e. from its German and other mills). The position is similar for other manufacturers supplying tissue products in the region. Indeed, in addition to SCA there is only one other (small) supplier with a tissue mill in Austria.
59. Consequently, Germany and Austria should be considered as a "cluster" at wholesale level, and for the purposes of this case, Austria and Germany jointly rather than separately constitute the most appropriate geographic market definition for the assessment of the impact of the transaction on the market for the production and supply of branded tissue products.

V. COMPETITIVE ASSESSMENT

Parent reels

60. The parties both supply parent reels to third parties who convert the reels into finished consumer tissue products. On an EEA-wide basis, the overlap does not give rise to competition concerns as the combined share will be just over 15% (SCA [10-20]%, P&G ECT [0-5]%). No competition concerns arise in this market, as confirmed by the market investigation.

Consumer tissue products

1. Introduction

61. In the Form CO the parties have focussed on the "downstream retail market" angle (i.e. sales of consumer tissue products directly to end customers via retail chains/supermarkets). For this downstream retail markets (which, as previously indicated, are not technically affected by the transaction as the parties are not active at

¹⁷ By way of additional example, as regards handkerchiefs, more than 85% of the sales in Austria/Germany are pocket packs, while in UK/Ireland boxes sell far better than pocket packs.

the downstream/retail level), the parties have provided data on two bases: "brand ownership" and "total tissue supply". The brand ownership basis allocates market shares of retailer brands/private labels to retailers and manufacturer brands/branded products to manufacturers. The total tissue supply basis allocates both retailer/private labels and manufacturer brands/branded products to the manufacturer. The first approach reflects/highlights the control of the brand (i.e. the manufacturer or the retailer) available on the retailing shelves. The second approach reflects/highlights which manufacturer supplies the tissue products to retailers. According to the parties, the most appropriate basis/angle for the competitive assessment of the case at stake would be the brand ownership basis.

62. However, the Commission considered that the focus of the competitive assessment should be on the upstream markets for the production and supply of consumer tissue products, i.e. the markets on which the parties are in a commercial relationship with their direct customers (supermarkets/retailers) for the three categories of tissue paper products (TP, HHT and HF). The Commission therefore requested the parties to provide separately data for the markets of a) production and supply of manufacturer brands/branded products to retailers and b) production and supply of private labels/retailer brands to retailers, in line with the product market definitions described in the relevant section of this decision.

2. Supply of retailers brands to retailers

2.1 At the EEA level

63. The table below provides a summary of the parties' market shares in the EEA in 2006.

EEA 2006	SUPPLIER	SUPPLY OF RETAILER BRANDS TO RETAILERS (%)	
		VALUE	VOLUME
TP	SCA	[30-40]	[30-40]
	P&G ECT	[0-10]	[0-10]
	Combined	[30-40]	[30-40]
HHT	SCA	[20-30]	[[20-30]
	P&G ECT	0	0
	Combined	[20-30]	[20-30]
HF	SCA	[20-30]	[20-30]
	P&G ECT	[0-10]	[0-10]
	Combined	[20-30]	[20-30]

Source: Form CO

64. At the EEA level, the parties claim that the present concentration will not have a significant impact on competition based on the following arguments:
- (i) The market is characterised by very significant retailer concentration and significant buyer power;
 - (ii) There is a large number of consumer tissue manufacturers, with plants all across Europe;

(iii) There is spare capacity across Europe and there continues to be significant investment in new capacity¹⁸;

(iv) The overcapacity in the EEA ensures that retailers continue to have a choice of suppliers of both manufacturer and retailer brands.

65. The market investigation has overwhelmingly confirmed that the supply of private labels is and will remain competitive in the EEA based on the following facts: (i) there are many producers of consumer tissue products for private labels in the EEA, including the two American suppliers, Kimberly-Clark and Georgia Pacific and a number of other significant producers (Metsä Tissue, Sofidel, LPC, Kartogroup, Wepa, Tronchetti and many other local producers). In other words, the market is greatly fragmented, with producers of differing size and differing business model/geographic presence; (ii) there is and overabundance of production capacity in the EEA for private labels; (iii) all retailers (including Austrian/German ones) have several alternatives for private labels; (iv) retailers can import private labels from other countries, as cross border shipments become increasingly competitive and frequent; (v) a number of players (notably Italian) have expanded their production capacity and built new plants to supply private labels outside their home country.
66. Moreover the market investigation has confirmed that this market is characterised by significant buyer power in favour of retailers, which can switch to alternative suppliers at practically minimal cost, also in view of the increasing role played by e-procurement processes and of the multi-source procurement strategy adopted by practically all retailers.
67. In view of all of the above and of the fact that no competition concerns were raised with regard to this market at the EEA level, the Commission has concluded that the transaction does not raise serious doubts as to its compatibility with the common market as regards the production and supply of private labels at the EEA-level.

¹⁸ The parties estimate that average excess capacity across the EEA amounts to around 10-12% and that overall capacity has increased by approximately 50% in the period 1997-2006.

2.2 At the Regional/national level

68. The table below shows the parties' combined market shares (based on value) in 2006. The absence of one or the other category of products with regard to a specific country (e.g. HHT in Spain) in the chart below is due to the fact that one of the parties (notably P&G ECT) is not active in the production and supply of the specific category in the country at stake. Accordingly, the transaction therefore does not give rise to any overlap on these markets.

COUNTRY 2006 VALUE	PRODUCT	SUPPLY OF RETAILER BRANDS TO RETAILERS
AUSTRIA/GERMANY	TP	[30-40]
	HHT	[15-25]
	HF	[15-25]
UK/IRELAND	TP	[[30-40]
	HHT	[30-40]
	HF	[20-30]
BELGIUM	TP	[60-70]
	HF	[60-70]
DENMARK	TP	[30-40]
FRANCE	HF	[30-40]
GREECE	HF	[90-100]
ITALY	HF	[20-30]
NETHERLANDS	TP	[40-50]
	HF	[35-45]
NORWAY/ICELAND	TP	[35-45]
PORTUGAL	TP	[50-60]
	HF	[50-60]
SPAIN	TP	[50-60]
	HF	[60-70]
SWEDEN	TP	[50-60]

Source: Form CO

69. On narrower geographic markets (national or country clusters) the parties have further developed the arguments outlined above with respect to the impact at the EEA level, and submit that, although the parties will attain high market shares on some national/cluster markets, the transaction will not adversely affect competition because the competition dynamics have shifted in favour of retailers and against manufacturers.
70. In particular, the parties claim (and have provided supporting evidence) that retailers in all the affected national markets/country clusters source their needs from several suppliers simultaneously (multi-sourcing) and regularly switch suppliers and will be able to do so in the future due to substantial overcapacity in the European tissue production. Moreover, it is claimed that the market of the supply of tissue for retailer brands is a very competitive market because the retailers control the product specifications and have the ability to put their requirements out to competitive tenders (often via internet i.e. e-procurement) for which many suppliers with the necessary expertise and capacity compete on a regular basis.
71. The market investigation has validated the arguments put forward by the parties as regards the structure, the functioning and the ongoing evolution/trends in the industry

and has confirmed most of their views with respect to the competitive dynamics of these markets.

72. All of the above-mentioned results are valid for all countries covered by the market investigation, and would appear to indicate that the parties would not be in a position to exert market power vis-à-vis their customers i.e. retailers, in spite of their high market shares in various national/regional markets.
73. Most importantly, it has to be highlighted that in many European countries P&G ECT is only active through its retailer brand contract with [...] (Belgium, Denmark, the Netherlands, Norway/Iceland, Portugal, Spain, Sweden, France, Greece and Italy). In all of these countries, P&G ECT's market presence (most often not particularly significant i.e. below 5%) is attributable to P&G ECT supplying [...], on the basis of its multi-country supply contract with the German discount retailer. It must also be stressed that P&G ECT does not own or operate production facilities in any of these countries, but supplies [...] from its five plants based in Germany, France, Italy and the UK.
74. Buyer power and easiness of switching become particularly important in a scenario in which the bulk of one producer's market presence is "tied" to one single customer and on the basis of a multi-country pan-European contract. Market shares become highly volatile and lose to a great extent their relevance in assessing the ability and the incentive by one party to exert market power in a changed market structure.
75. In this respect, the Greek market for the production and supply of private labels HF is a particularly telling example. In this market, the Parties' combined market share in terms of value increased from [50-60]% to [90-100]% from 2004 to 2006. Although P&G ECT's share decreased from [50-60]% to [40-50]% during this period, SCA's share increased from 0% to [50-60]% due to the winning of a [...] contract (though this was subsequently lost). However, the supply of retailer brand HF in Greece is very small and total sales amounted to only around EUR 2 million in 2006 (slightly increased from 2004). Accordingly, winning or losing one of the few contracts on the market can result in a significantly increased (or decreased) market share and not necessarily reflects long term market positions.
76. As regards the three clusters, i.e. Austria/Germany (where the combined market shares of the parties range from [10-20]% to [30-40]%, depending on the category of tissue paper), UK/Ireland (where combined market shares range from [20-30]% to [30-40]%), and Norway/Iceland (where the combined market share in TP is [35-45]%, with an increment of [0-10]%), the markets for production and supply of private labels appear to mirror closely the market structure at EEA level, with broadly similar market shares, similar level of fragmentation and the same players with similar presence at the level of three country clusters.
77. Finally, it must be stressed that the Commission has assessed the market for the production and supply of private labels for the purposes of the present case also in the light of its decision in the case SCA/Cartoinvest¹⁹, by which it cleared the acquisition by

¹⁹ Case N. COMP/M.2522 of 21.03.2002

SCA of the Italy-based private label producer Cartoinvest²⁰. Not only do the reasoning and the arguments underpinning that clearance decision remain valid today, but they are even more compelling in view of the recent developments in the sector (as regards new entry, new capacity, increased geographical reach of producers, increasing cross-border trade and shipment and, most importantly, buyer power and easiness of switching) as highlighted by the parties and largely confirmed by the market investigation.

78. In view of the above (including the arguments and evidence developed as regard the possible EEA-wide scope of the market) and of the fact that no competition concerns were raised with regard to any of the individual national markets and/or country clusters, the Commission has concluded that the transaction does not raise serious doubts as to its compatibility with the common market as regards the market for production and supply of private labels to retailers at national/country cluster level.

3. Production and supply of manufacturer brands to retailers

79. By way of introduction, it has to be stressed that the market investigation carried out by the Commission has largely confirmed the majority of the parties' arguments and claims as regards the branded product sector. In particular, the market investigation has largely confirmed the parties' claim that branded products compete with private labels at the retail level. This downstream competitive interaction has significant impact on the upstream market for the production and supply of manufacturer brands to retailers.
80. In particular, the market investigation has confirmed that private labels (retailer brands) now predominate in all retail tissue product markets across Europe. The growth of private labels is driven by both increasing shelf space being devoted by retailers to their own private label products at the expense of manufacturer branded products and by the success of their comparable (both in quality and packaging) product offering at similar or lower prices. As a result, price premiums for branded products become ever more difficult to justify and consumers increasingly turn to retailer brands.
81. Moreover, as consumer tissue products are characterized by low brand loyalty, retailers enjoy a very strong buyer power vis-à-vis producers/suppliers on these markets. As will be explained in detail below with respect to specific product markets, the buyer power of retailers often translates into individual brands being totally or partially de-listed (i.e. removed from the shelves) in response to disagreement on the terms of the supply contracts with producers. Retailers are also able to “discipline” manufacturers of branded products by threats of delisting and/or reduction in the shelf space attributed to these products.
82. The table below shows the parties' combined market shares (based on values) in 2006 in countries where both parties are active in the production and supply of branded tissue products. The absence of one or the other category of products from the table with regard to a specific country is due to the fact that one of the parties is not active in the production and supply of the specific category at stake in the specific country at stake. Therefore, no overlap arises from the transaction in the product category/in the specific country at stake.

²⁰ Combined market shares in that case for the production and supply of private label ranged from 37% to 64% depending on the tissue product category and the national markets.

COUNTRY 2006 VALUE	PRODUCT	SUPPLY OF MANUFACTURER BRANDS TO RETAILERS
AUSTRIA/GERMANY	TP	[60-70]
	HHT	[80-90]
	HF	[80-90]
UK/IRELAND	TP	[20-30]
	HHT	[60-70]
	HF	[0-10]
BELGIUM	HF	[30-40]
GREECE	HF	[20-30]
ITALY	HF	[[50-60]
NETHERLANDS	HF	[40-50]
SPAIN	HF	[0-10]
BALTIC STATES	HF	[20-30]

Source: Form CO

83. The combined market shares of the parties are the highest in Germany/Austria and UK/Ireland (with respect to HHT). These markets will be assessed separately below.
84. As regards the other national markets in which the parties' activities overlap in the supply of manufacturer brands to retailers, the combined market shares of the parties are relatively high for handkerchief/facials in Italy ([50-60]%), the Netherlands ([40-50]%) and Belgium ([30-40]%). However, in these three countries, there is only *de minimis* overlap as SCA's share is only 1% or less.
85. In Greece and in the Baltic States, combined market shares in handkerchief/facials are respectively of [20-30]% and [20-30]%. While in Greece, the market share increment is marginal ([0-5]%, from P&G ECT), in the case of the Baltic States the increment is more sizeable ([0-10]%, from SCA). However, the market will remain sufficiently fragmented, with a large number of competitors, ranging from the market leader Kimberly-Clarke (with a share of [25-35]%) to a variety of differently sized players (some local) with market share ranging from 3 to 13%.

86. On the basis of the foregoing, and of the lack of any concern expressed during the market investigation with regard to these markets, the Commission has concluded that the transaction does not raise serious doubts in the market for the production and supply of branded tissue papers in the Baltic States, Belgium, Greece, Italy, the Netherlands and Spain.

3.1 UK/Ireland

87. The table below shows the parties' and their main competitors' market shares based on value in 2006.

UK/ IRELAND 2006 VALUE	SUPPLIER	SUPPLY OF MANUFACTURER BRANDS TO RETAILERS (%)
TP	SCA	[10-20]
	P&G ECT	[10-20]
	Combined	[20-30]
	Kimberly-Clark	[50-60]
	Georgia Pacific	[5-15]
	Sofidel	[0-5]
	Others	[0-5]
HHT	SCA	[0-10]
	P&G ECT	[50-60]
	Combined	[60-70]
	Georgia Pacific	[20-30]
	Kimberly-Clark	[0-10]

Source: Form CO

88. The parties submit that no competition concerns will arise on this market for the following reasons: (i) the market is characterised by very significant retailer concentration (the top 5 retailers account for around 75% of grocery sales) and significant retailers' buyer power; (ii) two major suppliers of manufacturer brands will continue to be present on the market in addition to SCA, namely Kimberly-Clark and Georgia Pacific.

89. Moreover, the parties argue that it will be difficult for SCA to maintain current shares of manufacturer brands as, pursuant to the Share and Purchase agreement signed with P&G, SCA will have to re-brand the Bounty and Charmin brands (currently in P&G's portfolio) [...], and SCA anticipates that this will result in the erosion of its sales of

manufacturer brands to the benefit of both other manufacturer brands and, in particular, retailer brands²¹.

90. As regards retailers, Tesco is the biggest grocery retailer in the UK/Ireland, and it allocates around 60% of total space allocated to consumer tissue to its retailer brands. Sainsbury's allocates around 50% of its consumer tissue shelf space to retailer brands. Asda has invested in the Shades retailer brand and this brand is promoted heavily in its stores and in media advertising. It allocates 60% of consumer tissue shelf space to its retailer brands. Morrisons has expanded recently through acquisition and has a strong retailer brand portfolio – retailer brands represent between 60 and 80% of consumer tissue shelf space in its stores. Somerfield is the smallest of the major UK retailers - its retailer brands occupy 50% of the space allocated to consumer tissue in its stores.

3.1.1 Toilet paper

91. As regards branded toilet paper, SCA is active in UK/Ireland with the Velvet brand while P&G ECT is present with the Charmin brand. The parties combined market share will be [20-30]% ([10-20]% SCA and [10-20]% P&G ECT), still a distant second behind Kimberley-Clark, which holds a market share of [50-60]%. Georgia-Pacific will remain the third main supplier with a share of [10-20]% of the market.
92. At the retail level all these branded products face competition from private labels, which already represent 35% of the total sales of TP. This figure is lower than the average penetration of private labels across the EEA. This is due mainly to the strength of Kimberly-Clarke's Andrex brand, which is considered to be the "must-have" brand by most respondents to the market investigation. Nonetheless, the UK/Ireland market is characterised by the same overall trend as in all other European countries: namely, improvement in the quality of retailer branded products leading to a growth in retailer branded sales at the expense of manufacturer branded products.
93. As indicated, retailers' buyer power is very significant in the UK/Ireland cluster, which is evidenced by examples of recent de-listings of the parties' brands.
94. The market investigation carried out by the Commission has largely confirmed all of the above and has not indicated that there exists a risk of negative impact in this market.²²

3.1.2 HHT

95. In this market, the parties' combined market shares is high ([60-70]%), with Georgia-Pacific a distant second with [20-30]% and Kimberly-Clarke in third position with [0-10]%. The strong market position of the parties reflects mostly P&G ECT's existing position with the Bounty brand, given that the SCA's share is relatively low ([0-10]%).
96. During the market investigation, one customer has expressed concerns that on the branded HHT market, there will be a reduction in the number of suppliers, which may result in higher wholesale prices.

²¹ This argument will also be assessed in more detail when examining the Austrian/German markets.

²² Only one respondent expressed concerns that the transaction may have a negative impact.

97. However, it must be stressed that (unlike for TP) retailer brands account for the majority of HHT (58% in value) sold in the market. Moreover, SCA limited position of [0-10]% is only due to its brand "Wipe & Clean", whose sales have been declining in recent years both in terms of market shares (down from [10-20]% in 2005) and distribution²³ and is now only distributed by a limited number of retailers. For instance, as recently as in early 2006, the brand was de-listed by Sainsbury's, owing to its low sales figures²⁴. By the same vein, P&G ECT's brand [...] has been declining (down from [50-60]% in 2005) and has been de-listed in several occasions by two major retailers in the UK, ([...]) between 2002 and 2006²⁵.
98. On the basis of the foregoing, and in particular that: i) retailers seeking alternative suppliers of manufacturer branded HHT can turn to both Kimberly-Clark and Georgia Pacific; ii) that the competitive constraint exerted by private labels is strong and growing; iii) that the market is characterised by high buyer power; iv) that the increment in market share is relatively low and attributable to a weakening brand; and v) that the market investigation has not raised major and well substantiated concerns, it can be concluded that no competition concerns is likely to arise in this market.
99. To conclude, the Commission considers that the transaction is not likely to raise serious doubts as to its compatibility with the common market in the markets for production and supply of branded toilet paper and branded HHT in UK/Ireland.

3.2 Austria/Germany

100. The table below shows the parties' and their main competitors' market shares based on value.

GERMANY/ AUSTRIA 2006 VALUE	SUPPLIER	SUPPLY OF MANUFACTURER BRANDS TO RETAILERS (%)
TP	SCA	[30-40]
	P&G ECT	[20-30]
	Combined	[60-70]

²³ See Annex 22 to the notification.

²⁴ See Annex 12 to the notification.

²⁵ See Annex 10 to the notification.

	Kimberly-Clark	[20-30]
	Sofidel	[0-5]
	Wepa	[0-5]
	Others	[5-15]
HHT	SCA	[40-50]
	P&G ECT	[30-40]
	Combined	[80-90]
	Kimberly-Clark	[5-15]
	Sofidel	[0-5]
	Metsä Tissue	[0-5]
	Others	[0-5]
HF	SCA	[20-30]
	P&G ECT	[60-70]
	Combined	[80-90]
	Kimberly-Clark	[0-10]
	Others	[0-10]

Source: Form CO and the Commission's computations

101. The Parties argue that the present concentration will not have a significant impact on competition in Austria/Germany based on following arguments: (i) the market is characterised by very significant retailer concentration (the top 5 retailers account for around 70% of grocery sales), and significant retailer buyer power; (ii) there was a recent entry into the brand category – Sofidel with Regina brand; (iii) three companies have recently established tissue production facilities there (or close to the cluster's border) or are about to do so: Kartogroup (2005); Sofidel (2006); and Tronchetti (2001 and 2007/8).
102. Most importantly, the parties have highlighted that the predominance of private labels vis-à-vis branded products (private labels account for around 80% of all consumer tissue products and are still growing) and the importance of hard-discounters (Aldi and Lidl) is particularly evident in Austria/Germany.
103. However, a number of customers (retailers) have expressed concerns with respect to branded tissue products in Austria/Germany. In fact, several respondents to the market investigation considered that SCA's and P&G's brands are so-called "must have brands"²⁶ (either SCA's or P&G's brands or both SCA's and P&G's brands depending on the customers). The brands in question are Zewa (SCA) and Charmin (P&G) for toilet paper, Zewa (SCA) and Bounty (P&G) for HHT and Zewa Softis (SCA) and Tempo (P&G) for handkerchiefs. Hakle (Kimberly Clark) is less often cited. For almost all of

²⁶ This would mean that these brands are actively supported by their manufacturers, enjoy a high level of consumer awareness and that retailers prefer to be able to offer these brands on their shelves for the full satisfaction of their customers. Suppliers of "must-have" brands would enjoy more market power vis-à-vis retailers for branded products, although (these retailers admit) their products would still be subject to competition from private labels.

the retailers selling branded products, SCA and P&G represent the bulk of their branded consumer tissue product offering.

104. With respect to the market investigation, it should be noted that none of the replies contains a detailed discussion of the competitive dynamics between the different branded products or the competitive interaction between branded products and private labels at the retail level or the extent of the countervailing power of retailers. Retailers who expressed concerns often simply stated that the combined entity will have very strong brands, that there will be no or few alternatives and that the reduction in competition will lead to price increases.
105. Finally, some of parties' customers and some of their competitors indicated that both parties own TAD (through air drying) technology. TAD is a technology which due to a specific (dedicated) paper machine allows for the wet tissue sheet to be dried by blowing hot air through it instead of being dried on a hot cylinder. As a consequence of this drying, toilet paper is much softer and kitchen towel is much more absorbent. In Europe there are few machines of this kind and they all belong to SCA, Kimberly Clark, Procter & Gamble, and one to Georgia Pacific. Although this technology is very expensive and hence not affordable for many, the parties claim that it is not a proprietary technology and there are only limited IP rights that may limit access to TAD technology²⁷.
106. The following sections assess in detail the markets for production and supply of branded TP, HHT and HF in Austria/Germany. As the situation is not exactly the same in all three markets concerned they will be discussed separately.

3.2.1 Production and Supply to Retailers of *Branded Toilet Paper (TP)*

107. On the market for branded TP in Germany and Austria, the proposed concentration leads to a horizontal overlap of the parties' activities and would result in a combined market share (value) of [60-70]% (SCA: [30-40]%; P&G: [20-30]%):

SCA	[30-40]%
P&G	[20-30]%
Combined	[60-70]%
Kimberley-Clark	[20-30]%
Sofidel	[0-5]%

²⁷ According to the parties, the use of TAD technology is limited also because TAD technology uses more energy (as compared to traditional technology) which, given the ever increasing energy costs, has a repercussion on the production costs. Therefore investment in TAD technology is less attractive to producers especially given the fact that it does not lead to the production of clearly consumer preferred products.

Wepa	[0-5]%
Others	[5-15]%
Total	100%

Source: Form CO and the Commission's computations

108. The flagship brands owned by the parties are SCA's Zewa (EUR [...] million of sales, that is [80-90]% of SCA's total sales in this category), and P&G's Charmin (EUR [...] million, that is [70-80]% of P&G's total sales in this category)²⁸. Thus, the proposed transaction brings together the number 1 (Zewa) and number 3 (Charmin) brands representing together [40-50]% of the branded TP market.
109. As can be seen from the above chart, there will remain post-transaction one other strong player, Kimberly Clark with its brand Hakle. Hakle is the number 2 brand on the market just behind SCA's Zewa. Several smaller players will also remain on the market including a recent entrant, Sofidel, which accounts for [0-5]% of the market with its brand Regina.
110. As explained below, TP brands are facing a very strong challenge with the continuing rise of private labels (retailer brands), and the parties' combined market position on the market for branded TP does not reflect the market power that the new entity would have. Moreover, there is no evidence that pre-transaction SCA's Zewa and P&G's Charmin are significantly competing against each other. In this context, a post-merger price increase is implausible, and thus it appears unlikely that the proposed concentration would significantly impede effective competition on the market for the supply of branded TP to German and Austrian retailers.

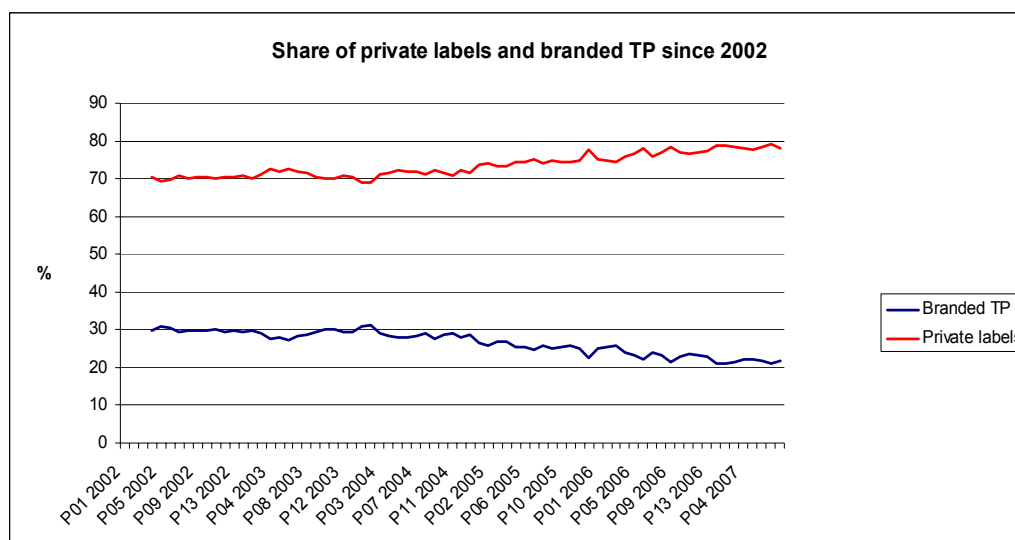
SCA and P&G are heavily and increasingly constrained by private labels

111. It must be highlighted, as the crucial element of the competitive assessment, that TP brands in Austria/Germany account for a small portion of the total TP market which is dominated by private labels. In 2006, branded TP in the Germany/Austria cluster represented 24% of the total TP market in value with private labels taking the lion's share with the remaining 76%. Furthermore, the gap between branded TP and private labels is widening: branded TP was up to 28% in 2004, whilst the share of private labels increased to the current level from 72% over the same period.
112. The weakening of brands is a long-term and on-going process. As can be seen from the chart below, branded TP's sales continue to decrease and the process has accelerated in the last two years²⁹. This evidence was confirmed by the market investigation, according

²⁸ SCA markets two other brands, *Cosy* and *Danke*, so called "secondary brands" which represent each around EUR [...] million of sales. Similarly, P&G also markets the brands *Bess* and *Bluemia*, accounting each for EUR [...] million of sales.

²⁹ Nielsen data provided by the notifying party.

to which consumers increasingly favour private labels rather than branded products as they offer similar quality and are 15-20% cheaper.



113. The strong decline of brands is further illustrated by the fact that not only do consumers buy increasingly TP in hard discount retailers, such as Aldi and Lidl, but also retailers that carry both private labels and branded TP allocate less and less shelf space to branded TP. This is evident from a Nielsen research³⁰ submitted in the form CO showing that the shelf space share of branded TP fell from around 60% to close to 50% in two years (from 2005 to 2007).

114. The rise of private labels and the lack of resilience of brands find its explanation in the low level of differentiation in the eyes of consumers between private label and branded TP. The market investigation has shown that toilet paper (as opposed to handkerchiefs/facials³¹) is a "low emotion" commoditized product where brands do not play an important role. According to a consumer research conducted in Germany and submitted by the parties³², there are many good quality and low cost toilet paper private labels which offer comparably high standard of softness and resistance as branded products. As a consequence, manufacturers find it more and more difficult to justify

³⁰ Joint Confidential Annex 24 of the form CO. The audit was conducted by Nielsen for P&G in stores where P&G's brand was well represented. The outlets surveyed represented 30% of the number of German outlets.

³¹ Given the fact that handkerchiefs/facials are used in contact with facial skin, brand image and positioning still carries some importance.

³² The STIWA Report gives results of a consumer research conducted in Germany with a view to test quality features (e.g. cleaning efficiency, softness, etc.) of various TP products which showed that "You can't really go wrong nowadays when buying toilet paper."

price premiums on their branded products over retailer brands given that quality is similar and that there is little differentiation from private label products³³.

115. The market investigation has indicated that brands "*are no longer important*" in the TP segment,³⁴ which is further demonstrated by the fact that Aldi and Lidl, together accounting for 35% of total TP sales in the Germany/Austria cluster, do not carry the parties' brands. Moreover, even considering retailers that carry brands (i.e. other than Aldi and Lidl), none of the brands (i.e. Zewa, Charmin or Hakle) is carried by all of them. Each brand is carried only by around half of those retailers (Hakle is present in 54% of retailers that carry brands, Zewa and Charmin only in 52%).
116. Brands' loss of relevance is also epitomized by consumers' low loyalty to Charmin and Zewa brands. In Germany, a consumer research³⁵ conducted amongst Charmin and Zewa consumers showed that Charmin represents only 38% and Zewa only 25% of their total toilet paper purchases. This means that parallel/alternative purchases of retailer brands and/or other manufacturer brands represent the majority of the expenditure of these consumers in the TP category.
117. The commoditization of TP is also illustrated by the gradual shift of SCA and P&G from an advertising policy and "equity building" model — so-called *pull* strategy whereby consumers go to stores demanding a specific brand — to a promotion model — so-called *push* strategy whereby suppliers assist retailers in pushing products with e.g. a prominent in-store position or large discounts.³⁶ As a matter of fact, while the difference in price premiums at the retail level between private labels and branded TP is usually 30-40%, it decreases to 5-10% during the promotions which attracts more consumers to the store and leads to the increase of sales volumes of branded TP. This focus on promotions due to diminishing brand awareness has also led to price decreases of branded TP. For example, wholesale prices of Charmin in Germany decreased from EUR [...] in 2004 to EUR [...] in 2006³⁷. It is also worth noting that the parties' margins on branded TP have also been decreasing over the period of last 3 years.³⁸
118. The continuing trend towards the weakness of brands and the increasing share of private labels on the retailers' shelves grants important bargaining power to retailers. Retailers

³³ As a matter of fact, as further explained in paragraph 116, the difference in premiums is heavily affected and reduced by the increasing use of in-store promotions.

³⁴ Minutes of teleconference with a large German retailer, July 1, 2007.

³⁵ GfK Household Panel Data 52 weeks ending Dec 2006 – consumer research measured brand loyalty as the percentage of a consumer's total purchases in a tissue product category (e.g. toilet paper) represented by one brand (e.g. Charmin).

³⁶ This shift from advertising model to promotions based model is illustrated by the evolution of spending devoted to advertising and promotions respectively. For instance, SCA's promotional spend increased from [...] whilst the advertising spend decreased from [...] over the same period (see SCA's reply to the Commission's request for information, July 19, 2007).

³⁷ P&G's reply to the request for information of the Commission, dated 26/07/07, question 1

³⁸ SCA submission of 26/07/07 and P&G reply of 19/07/2007

can relatively easily delist (or threat to delist), reallocate shelf space to other brands, put the manufacturer's brand on a less favourable position on the shelf, and reduce the number of stores stocking the manufacturer's brands in question in order to keep wholesale prices of branded TP under strong constraint³⁹.

119. All of this clearly indicates that the parties' branded TP products are under strong competitive pressure, mostly by private labels, and that therefore the parties are currently not in a position to exercise market power at the wholesale level. In addition, as mentioned above, this competitive pressure is not likely to weaken or cease in the light of the ongoing overall shift towards private labels in TP consumption. In this framework, it is highly unlikely that the parties would even attempt to raise prices on their branded TP products as a result of the proposed concentration.

Lack of significant competitive constraint between SCA and P&G and lack of incentive to increase prices

120. Price increases appear all the more unlikely as the investigation did not provide evidence that SCA's Zewa and P&G's Charmin exert a significant constraint on each other. In other terms, the proposed concentration would not remove a significant competitive constraint between the parties' brands.
121. An examination of the yearly evolution of the sales of SCA and P&G clearly shows that both companies have been suffering from significant losses of sales.
122. In fact, the performance of SCA and P&G is particularly poor, even compared to other brands. In two years, SCA and P&G have both lost close to [20-30]% of their sales (in value)⁴⁰, although the sales of private labels only slightly increased. SCA and P&G have actually been underperforming compared with other brands such as Kimberley-Clark's Hakle, which lost less than the parties have lost. Furthermore, an examination of the weekly evolution of sales of Zewa and Charmin shows that there is no correlation of sales volume between Zewa and Charmin⁴¹. This means that, at the retail level, an increase of Zewa sales is not made at the expense of Charmin (and vice versa). This clearly suggests that the competition between SCA and P&G and their two main brands is not significant and hence the proposed transaction would not remove a significant competitive constraint on either of Zewa or Charmin.
123. In any case, it should be added that SCA would have no incentive to increase prices on Charmin following the proposed concentration as SCA would only be the licensee of the Charmin brand for a short period of time and is already very likely to face volume losses due to the re-branding of Charmin products. Indeed, pursuant to the Share Purchase Agreement concluded by the Parties, SCA is obliged, within [...] years⁴² from the

³⁹ See examples of delisting occurrences (and threats thereof) provided in P&G's reply to the request for information of the Commission, dated 26/07/07, question 3

⁴⁰ [...]

⁴¹ Correlation of [...] for the period going from January 2006 to beginning of July 2007.

⁴² With an option to extend this period to [...] years.

completion of the transaction, to rebrand P&G's Charmin. This is very likely to lead to a loss of market shares, as is almost inevitable in any re-branding process: according to SCA's internal documents⁴³, SCA expects a loss of volume of [10-20]% as a result of the phasing out of Charmin. Thus, the new brand is likely to be too weak for SCA even to consider price increases. SCA will rather have all incentives to keep prices stable to avoid further losses of sales.

Conclusion

124. In the light of the foregoing, the transaction does not raise serious doubts on the market for the production and supply of branded toilet paper to German and Austrian retailers.

3.2.2 Production and Supply of branded household towels (HHT)

125. As regards the supply of branded HHT to German and Austrian retailers, the market positions are as follows:

SCA (<i>Zewa</i>) ⁴⁴	[40-50]%
P&G (<i>Bounty</i>) ⁴⁵	[30-40]%
<i>Combined</i>	<i>[80-90]%</i>
Kimberley-Clark (<i>Kleenex</i>)	[5-15]%
Sofidel	[0-5]%
Metsa	[0-5]%
Others	[0-5]%
Total	100%

Source: Form CO and the Commission's computations

126. As can be seen from the above table, the new entity would have a very high market share on the market for the supply of branded HHT and the constraint exerted by other brands does not appear to be strong. However, as explained below, the role of brands has gradually been shrinking over the years to the benefit of private labels. As a result, SCA and P&G are currently strongly constrained by the rise of private labels and these high market shares do not reflect their real market power vis-à-vis retailers and, ultimately, end-consumers. Furthermore, as shown below, it appears that SCA and P&G brands exert little competition constraint on each other.

⁴³ Confidential Annex 1 to SCA, form CO.

⁴⁴ SCA has secondary brands, such as *Danke*, which together represent less than [...] % of SCA's total sales of branded HHT.

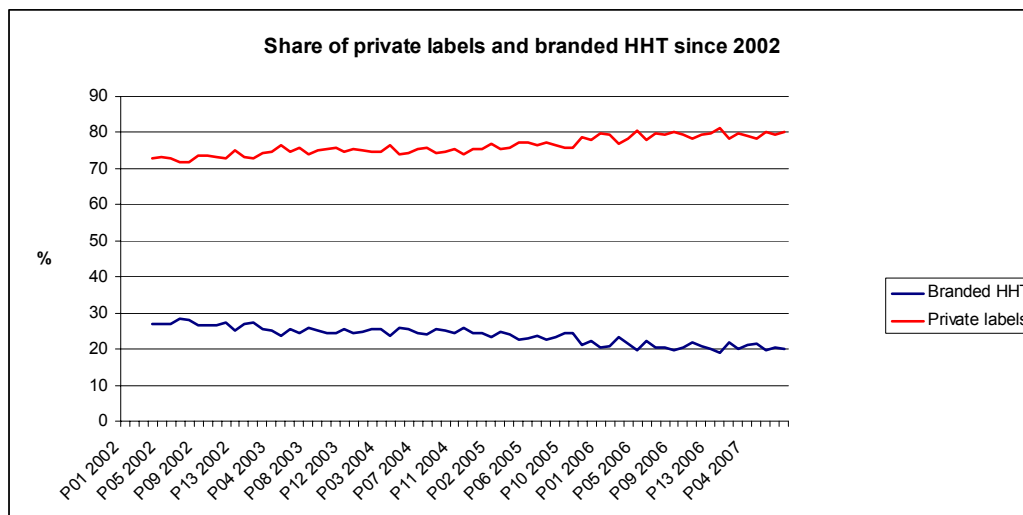
⁴⁵ P&G has a secondary brand called *Bluemia* which represent less than [...] % of the market.

127. Thus, it is unlikely that the new entity would be in the position to increase prices on its branded HHT and that the proposed concentration would significantly impede effective competition on this market.

SCA and P&G's brands face the significant competitive constraint of private labels

128. As explained above, while the wholesale supply of branded HHT on one hand and the wholesale supply of private labels HHT on the other are part of different product markets, the two markets are far from being disconnected. Indeed, since retailers are constrained in the number of products they can display on shelves, an increase in the sales of private labels happens at the expense of branded goods.

129. The rise of private labels and the dwindling importance of branded HHT are gradual but long-term trends. The following chart shows the evolution of the retail sales of private labels and branded HHT as shares of total sales (in value)⁴⁶.



130. While the overall market size has been rather stable over time, this chart shows that, in the period 2002-2007, brands have continuously lost ground against private labels. Moreover, this trend was already clearly discernible before the period of reference. As a result, sales of branded HHT represent today (mid-2007) only 20% (in value) of the total sales to consumers.

131. From 2004 to 2006, the market for branded HHT lost again around 10% of its value (down from EUR 73 million to EUR 66 million), while the market for private label HHT slightly increased in value. As a result of this strong decline, only one out of ten consumers today purchases branded HHT, while the remaining consumers have already switched to private labels.

132. This dramatic retreat of branded goods can be explained by the lack of importance of brands in the eyes of consumers and the price gap between branded HHT and private labels. The average consumer sees household towels as standardized products. Most of

⁴⁶ Including sales made by Aldi and Lidl, which do not sell branded HHT.

them are not prepared to pay a premium for a branded HHT: a German consumer pays today more than EUR 2 for a Bounty- or Zewa-branded 4-roll pack whereas private labels cost on average less than EUR 1.50⁴⁷. As explained in one of P&G's internal documents, "[Due to commoditized nature of products, consumers are reluctant to pay price premiums]"⁴⁸

133. As a result of this lack of differentiation, suppliers of branded HHT both suffer from the fact that consumers increasingly buy HHT in hard discount stores and that, as a reaction, other retailers allocate less shelf space to branded HHT. The competitive dynamics at the retail level add to the difficulties of marketing branded HHT. German retailers (and, to a lesser extent, Austrian retailers⁴⁹) are under the strong competitive constraints of hard-discount retailers (Aldi, Lidl) which sell high-volume but low-margin, low-priced HHT and represent ¼ of the overall sales of HHT in Germany/Austria. In reaction to this strategy, retailers have, to a large extent, replicated hard discounters' strategies and devote more space to private labels.
134. As a matter of fact, among supermarkets that traditionally stock both branded HHT and private labels, those selling brands (SCA, P&G's or Kimberley Clark) are nowadays fewer than in the past. Evidence submitted by the parties shows that the presence of brands (in particular those of SCA and P&G) has decreased while private labels can now be found in every outlet.
135. Furthermore, those retailers which choose to keep brands on their shelves increasingly decide to devote less shelf space to brands to the benefit of low-priced private labels HHT. Branded HHT accounted for 66% of shelf space in March 2005 but this figure was only 59% in March 2005 and down to 51% in March 2006⁵⁰.
136. In accordance with this decline, evident from the above figures, the parties have submitted qualitative evidence of delisting/significant reduction of shelf space with respect to their products due to a poor performance of branded goods. For example, in 2005, [...] launched its own retailer brand line which halved shares of the P&G business within 12 months⁵¹. In another instance, the retailer [...] has started rationalizing its

⁴⁷ It should also be noted that much of the price gap at the retail level is due to different margin policies of retailers. Indeed, the competitive pressure from hard discounters obliges retailers to apply low gross margins on private labels (around 10%). However, retailers' gross margins on branded HHT are much higher (at least 30%). In fact, according to internal documents submitted by the parties, providing a relatively high gross margin to retailers is part of the negotiation process between brand manufacturers and retailers as the former propose their products together with wholesale prices and recommended retailer prices from which retailers can infer the implied gross margin.

⁴⁸ Annex 1 dated December 2005 to P&G' submission of July 30, 2007 on the pricing of Bounty in Germany.

⁴⁹ As explained above, the parties are essentially unable to discriminate between Austrian and German customers and wholesale prices are therefore very close in Austria and Germany. However, Aldi and other hard discounters do not play as strong role in Austria as in Germany and Austrian retailers can price their private labels at a higher level. As a result, the gap between private labels and branded HHT is higher in Germany than in Austria.

⁵⁰ Joint Confidential Annex 24 of the form CO. The audit was conducted by Nielsen for P&G in stores where P&G's brand was well represented. The outlets surveyed represented 30% of the number of German outlets.

⁵¹ So P&G, in its response to the request for information of 24 July 2007, Annex 3.

shelf space devoted to HHT due to below category average profitability and has threatened to delist [...] since July 2006. Another example is provided by a message dated October 2006 from the retailer [...] to P&G stating that they "[Threat of delisting because low turnover and retailer margins]⁵²".⁵³

137. To foil this massive expansion of private labels, manufacturers of branded HHT have tried to differentiate themselves from private labels. This strategy appears to have failed. For instance, most SCA and P&G's HHT are produced with TAD technology⁵⁴ which increases strength and absorbency. However, replicating in a satisfactory fashion these properties with the conventional production process can be done by adding a third ply to conventional paper and the upgrade of all private labels from 2 to 3 plies conventional paper occurred already in 1999. As a result, "*there is no consumer noticeable difference between the Private Label and branded products*"⁵⁵.
138. The launch in 2004 and phase-out in 2006 by P&G of "Jumbo" HHT⁵⁶ illustrates further the unsuccessful efforts made recently by manufacturers of branded HHT to differentiate their products from private labels. However, the launch of the new product did not put an end to the loss of volume of P&G's kitchen towels to private labels, despite a [0-10]% decrease in the price per sheet for the Jumbo HHT format. P&G finally reverted to the conventional product in the course of 2006.
139. Brands - including, the two main brands of the market - SCA's Zewa and P&G's Bounty, appear to be struck by increasing commoditization as a result of this lack of quality differentiation between brands and private labels. According to a study carried out in 2006⁵⁷, Zewa suffers from low consumer loyalty as, on average, purchasers of Zewa kitchen towels buy more than 2/3 of the time HHT other than Zewa. As for Bounty, while it enjoys a greater brand loyalty, it is not high enough compared to that of private labels to warrant advertising expenses. Consequently, P&G cut dramatically advertising expenses on the brand Bounty⁵⁸ in 2005—and completely focused on promotions⁵⁹: while P&G spent each year EUR [...] million in advertising Bounty from 2001 to 2005, this figure plummeted to EUR [...] million for the FY (financial year) 2005/2006 and EUR [...] million in the FY 2006/2007.

⁵² That is, P&G

⁵³ P&G's submission dated August, Annex 2

⁵⁴ TAD stands for Through Air Dried. According to the notifying party (submission of SCA dated July 24, 2007), TAD technology is a technique used at the paper making level and essentially uses hot air to dry the paper rolled on parent reels. Alternative technologies dry parent reels by pressing out water.

⁵⁵ See in particular Annex 1 to P&G' submission of July 30, 2007 on the pricing of Bounty in Germany.

⁵⁶ So called *Monsterrollen* HHT. One jumbo HHT roll consists of 68 sheets instead of the regular 45-sheet rolls. [...].

⁵⁷ GfK study, household panel data during 52 weeks ending Dec 2006, provided by P&G.

⁵⁸ So-called *pull* strategy whereby advertisers make consumers request the presence of a given product in stores.

⁵⁹ Promotions include cuts on prices as well as payments for "agreed activities" e.g. a photo in a leaflet. Promotions are part of a so-called *push* strategy whereby the attention of consumers is driven by promotions.

140. The lack of importance of brands and the propensity of end-consumers to purchase private labels has clear implications at the wholesale level: retailers can switch relatively easily from branded HHT to private labels. Thus, retailers have a powerful bargaining tool to rein in any claims for price increases. As a matter of fact, this environment made it possible for retailers to prevent any wholesale price increase for the last 3 years.
141. For all the above reasons, it is clear that the intense competitive pressure exerted by private labels on branded HHT at the retail level has considerably weakened the bargaining position of branded HHT manufacturers such as SCA and P&G vis-a-vis retailers, thus constraining their ability to raise prices in spite of their high market shares at the procurement level⁶⁰.

Lack of significant competitive constraint between SCA and P&G

142. While SCA and P&G have to deal with the overwhelming clout of private labels in the market, at the same time it does not appear that SCA's Zewa and P&G's Bounty a significant constraint on each other. In other terms, the proposed transaction would not remove a significant mutual constraint on SCA's Zewa or on P&G's Bounty.
143. There is no quantitative evidence that P&G and SCA were significantly competing against each other. In fact, there are indications of the contrary, albeit not conclusive. As a matter of fact, both P&G's Bounty and SCA's Zewa sales decreased between 2004 to 2006 (P&G's [...], SCA [...] million) both losing ground with respect to private labels, whose total retail sales remained stable (around EUR 290 million).
144. It should also be noted that weekly volume sales of Bounty and Zewa exhibit a positive correlation⁶¹. This means that, on average, Bounty and Zewa decrease/increase their volume of sales concurrently and not because of changing total market volumes, further suggesting that, at least at the retail level, Bounty and Zewa do not exert a strong competitive constraint on each other.
145. Furthermore, an examination of the evolution of retail prices from 2004 onward shows that SCA did not particularly react to P&G's launch of jumbo HHT which, as previously indicated, amounted to a price decrease per sheet: whereas P&G's price declined from around [...] to less than [...] in 2004 and was left at this level (on average) until 2006 when P&G decide to end the experiment, SCA prices remained on average close to [...] over this period. Nor did SCA appear to have adjusted prices when P&G stopped selling jumbo HHT and re-introduced regular HHT products, which entailed a price increase on Bounty HHT. This lack of price adjustment at the retail level appears to reflect a lack of

⁶⁰ As evidence of this loss of bargaining power, in the notification the parties have submitted numerous examples of recent de-listings or threat thereof on the part of retailers (See SCA's confidential annex 12 and P&G's confidential annex 10)

⁶¹ The Commission estimated the volume correlation between Zewa and Bounty to 0.3 for the year 2006. Calculation based on Nielsen data.

adjustment at the wholesale level as it seems that retailers maintain a stable gross margin.⁶²

146. As regards qualitative evidence, it further suggests that the current competition between the two brands is weak. Firstly, while there are numerous recent examples of delisting in favour of private labels, the market investigation did not reveal that retailers play SCA and P&G against each other to enhance their bargaining position and obtain more favourable prices.
147. Secondly, internal documents provided by SCA show that, while the company would like to increase prices of branded HHT, it is unable to do so not because of P&G but due to low prices of Aldi and thus of other private labels. Indeed, in an internal document dated September 2006, it is reported that "*because of Aldi's announcement to keep prices stable, price increases of brand and RB [retailer brands] are blocked*".⁶³ In another document⁶⁴, it is stated that in order to stabilize the branded market "*private label prices need to rise*" but that "*SCA currently have difficulties to get higher retailer brand's retail selling prices to close the gap vs. branded retail selling prices [due to Aldi pricing policy and overcapacity]*". In other terms, SCA appears to be of the view that the only way to increase prices of branded HHT is to be able to have a price increase of private labels, which shows that other brands (including Bounty) do not play an important role in SCA's lack of ability to increase prices.
148. At the same time, Zewa does not appear either to play a significant competitive constraint on Bounty. [Strategic decision to maintain only a limited presence⁶⁵]."⁶⁶ It appears therefore that P&G has very moderate ambitions for its product and, as explained above, has also stopped its advertisement. Similarly to SCA, P&G has identified private labels as the source of its difficulties and [lack of perceived product differentiation between manufacturer and retailer brands prevents further investment in manufacturer brands]".⁶⁷
149. It should also be recalled here that SCA is acquiring only a 3-year licence on Bounty and that it has to re-brand Bounty products, if the proposed transaction is to be implemented. SCA will suffer with this re-branding significant volume losses⁶⁸ estimated at 25% of Bounty's volumes, which amounts to a value of EUR 8 million. With this challenge,

⁶² Nielsen data provide in P&G's submissions of August 8 and 9. See P&G's confidential annex 19 to P&G and SCA's confidential annex 6.

⁶³ Annex 9 to SCA's response to Article 11(3) decision dated August 3, 2007.

⁶⁴ Annex 18 to SCA's response to Article 11(3) decision dated August 3, 2007

⁶⁵ See 2005-2006 and 2006-2007 Bounty DACH Marketing Plan recommendation submitted by P&G in Annex 2 in the 19 July 2007 response for information.

⁶⁶ Market share in volume. This market share amounted to less than [...] % at the end of June 2007.

⁶⁷ Annex 1 dated December 2005 to P&G' submission of July 30, 2007 on the pricing of Bounty in Germany.

⁶⁸ Confidential Annex 1 to SCA, form CO.

SCA will have a strong incentive to keep Bounty's prices stable in order to avoid further loss in sales⁶⁹

Conclusion

150. In view of the above, and in particular of the strong competitive constraint exerted by private labels and the lack of strong competition between SCA and P&G, it appears very unlikely that, despite high market shares, the proposed transaction would result in a price increase. Accordingly, no retailers expressed substantiated concerns on the German/Austrian HHT market as, according to the interviews conducted by the Commission, "*brands are no longer important*" and the parties' brands "*are not dominant*" for HHT⁷⁰.

151. It can therefore be concluded that the transaction does not raise serious doubts in the market for the production and supply of branded HHT in Austria/Germany.

3.2.3 Production and Supply of branded handkerchief/facials (HF)

152. With respect to the supply of branded HF to German and Austrian retailers, the market positions are as follows:

SCA	[20-30]%
P&G	[60-70]%
<i>Combined</i>	<i>[80-90]%</i>
Kimberley-Clark	[0-10]%
Others	[0-10]%
Total	100%

Source: Form CO and the Commission's computations

153. The parties' combined market share (in value, 2006) is [80-90]% (SCA: [20-30]%, P&G ECT: [60-70]%), with the next competitor, Kimberley Clark, representing only [0-10]% of the supply of branded handkerchiefs/facials to retailers. Therefore, on this market the transaction would bring together the number 1 and 2 market players with a very sizeable market share increment, with the number 3 player accounting for a (comparatively) very marginal market share.

⁶⁹ It should be noted that, regardless of the re-branding task faced by SCA, it appears on the basis of the figures provided (in particular the gross margins on Bounty and Zewa) that the new entity would not be likely to have an incentive to increase prices. Indeed, in case of a price increase on Bounty, the latter would then likely lose significant volumes through high end-consumer switching at the retail level (as end-consumers appear to be very reactive to promotions/special offers) and through delisting at the wholesale level.

⁷⁰ Minutes of teleconference with a large German retailer, July 1, 2007.

Private labels' penetration and competition is relatively low in HF

154. A determining feature of the competitive scenario in the market for handkerchief/facials in Austria/Germany is the considerably lower market penetration of private labels as compared to TP and HHT. While private labels now clearly predominate in TP and HHT (with an overall share of approximately 80%), branded handkerchief/facials still represent a significant share of total HF sales (42% in value, stable since 2004) with private labels representing "only" 58 % of the overall sales of handkerchief/facials. This appears to indicate that in this market brands continue to play an important role and that the competitive constraint exerted by private labels at the downstream level (on the shelves) is less effective than in the TP and HHT markets.
155. This different competitive scenario appears to be due mainly to the very strong market position/image of the P&G's brand "Tempo". Tempo is a "historical" brand, perceived (at least in Austria/Germany) as "near-synonym" for handkerchief/facials and as a "must-stock" by retailers because of the heavy marketing/advertising by P&G investing considerably in the brand so as to maintain it in a clear market leader position. As a result, P&G holds, exclusively thanks to Tempo, a [...] % market share in the Austrian/German market for branded HF.
156. It therefore appears that the overall trend to move from advertising (TV and press) towards promotions (on-store "special" sales) in toilet paper and HHT is less valid for handkerchief/facials. As a result, brands appear to play a much more prominent role than in the overall tissue paper sector. This is confirmed by internal documents of the parties, highlighting that consumers' "greater involvement" with the Tempo brand and their willingness to pay a higher price create the conditions for greater product differentiation.
157. In other words, producers of branded handkerchief/facials (in particular, P&G with Tempo) are able to create and to exploit consumers' higher "emotional involvement" with handkerchief/facials as compared to other "lower emotion" tissue products.
158. In sum, the strong position of Tempo brand is confirmed by the parties' internal studies: *"[...] German Tempo, which enjoy[s] market leading position and double digit margins"*.
159. As a matter of fact, annual gross contribution margins for Tempo are approximately [60-70] % and stable in 2004-2006, while margins for other tissue paper products within P&G portfolio are lower and visibly decreasing.
160. Moreover, Tempo appears to be the only product in Austria/Germany for which P&G was able to raise price in the period 2004-2006 (between [0 and %]), while prices decreased by up to [0-10] % for the other brands in P&G's portfolio⁷¹.
161. Finally, Tempo's role, importance and dominance of the handkerchief/facial market are clearly reflected in the SCA's calculations on the value of the acquired business in "DACH" (Germany, Austria and Switzerland): out of a total value of €143 million, 131

⁷¹ With the exception of Charmin (toilet paper) in Austria, whose price remained unchanged in the same period.

are attributed to Tempo. On the basis of these figure, it appears that the acquisition of the Tempo brand is one of the drivers (if not the main one) of the whole transaction.

162. The market investigation carried out by the Commission has confirmed the different features of the handkerchief/facials market as compared to the toilet paper and HHT, in particular the greater relevance of brands. While it was indicated that for toilet paper and HHT "brands are no longer important" and that the parties' brands are "not dominant", Tempo was generally considered to be a "must-have" brand and a clear market leader.
163. Accordingly, competition concerns have been expressed by a number of market players (approximately half of the German and Austrian customers).
164. Respondents expressed their fear of being faced with wholesale price increases for SCA/P&G handkerchiefs brands. The parties' main brands Tempo (P&G) and Zewa (SCA) compete directly with each other in the branded sector and there is no equally strong alternative brand on the market, with the (limited) exception Kleenex, of Kimberly-Clarke.
165. One respondent indicated that it would at least attempt resisting possible price increases by threatening to retaliate through (at least partial) delisting and/or reduction in shelf space attributed to the parties' brands but felt that ultimately it would have most likely to accept at least a part of the increases. Another respondent stated that *"P&G can do what it wants with Tempo, the price in Germany may be established by an analyst in New York with no reference to market reality"*.
166. As regards the possible off-setting buyer power of customers to react to price increases post-merger, although there is evidence that the parties' branded handkerchiefs were de-listed in Germany/Austria, it has been indicated by the market investigation that the ability to de-list leading brands in this category depends on the type of customers. For hard discounters that either do not list branded products or stock very limited amounts, (partial or even total) delisting of the parties' brands in case of price increase would appear to be feasible and therefore a credible retaliatory measure. However, for supermarkets and soft discounters the situation is less clear: these categories of retailers need (or perceive the need) to stock certain brands because of their business model. Some retailers, in particular supermarkets and drugstores, have a policy to stock one or two brands for each product category. This is perceived to be a question of "image/reputation", to show consumers that they have sufficient choice and can find the leading/advertised products.
167. In this context, these retailers would end up in a difficult situation for handkerchiefs in Austria/Germany since they would have no real alternative to the parties' brands for stocking branded handkerchief/facials. While it is clearly indicated that a percentage of end-consumers would shift to private labels in the face of a price increase for branded product at the retail level (should retailers decide, as would be likely, to pass-through the wholesale price increase), it was felt that there remains a substantial part of consumers demanding branded handkerchiefs, in particular Tempo, as a result of effective marketing and of consumers' higher "emotional involvement" related to handkerchief/facials, as compared to toilet paper and HHT.
168. Moreover, while the parties have claimed that Tempo and Zewa Softis are not the closest substitutes at the downstream retail level, the market investigation has provided

indication to the contrary, for instance by highlighting that some German retailers (dm Germany and Rewe) have de-listed (in 2005) Zewa Softis and replaced it with Tempo.

169. Furthermore, the fact that branded products and private labels compete to some extent at downstream level, does not exclude the ability of the parties to increase wholesale prices of their branded handkerchiefs/facials sold to retailers. With the high likelihood of full pass-through of upstream price increases to downstream end-customers, price increases at the retail level of branded handkerchiefs/facials can not be excluded. Moreover, as the branded handkerchiefs/facials still represent a very large proportion (42%) of total sales of handkerchief/facials in Germany/Austria, the reaction of the parties' competitors downstream (retailers selling their own private labels), may be insufficiently strong/effective to constrain the parties' anticompetitive behaviour post-mergers.
170. In the light of the above, the Commission considers that the proposed transaction, as originally notified, raises serious doubts as to its compatibility with the common market in Germany/Austria with respect to branded handkerchiefs/facials.

VI. PROPOSED REMEDIES MODIFYING THE NOTIFIED TRANSACTION

A. DESCRIPTION

171. On 30 July 2007, SCA submitted remedies with a view to address the competition concerns identified by the Commission in the market for production and supply of branded HF in Austria/Germany.
172. SCA offered to divest its trade mark "Softis" in Germany and Austria, and as an option for the Purchaser, the Witzenhausen (Germany) production facility, as well as a number of converting lines (located at the SCA Mannheim and SCA Lucca production facility) also optionally available to the Purchaser. The Purchaser would be given the exclusive licence to use the Zewa brand for handkerchief/facials in Austria/Germany for two years (plus, optionally, one additional year).
173. The Commission launched the market test of the remedies on 17 August 2007⁷² with a number of competitors and customers (retailers). Although all customers responding to the market test considered the remedies package to be sufficient and suitable to remove the competition concerns, some competitors indicated a number of areas in which improvements to the original remedy package would be necessary to render the Divested Business viable and competitive in the long term.
174. In particular, these competitors underlined that, because Zewa and Softis are strongly linked in the eye of the consumer (with Zewa as the "umbrella" brand for SCA's tissue products in Austria/Germany and Softis as the specific brand for the handkerchief/facial segment) the duration of the transition period necessary for the Purchaser to de-link the brand Softis from the "umbrella" Zewa brand should be longer.

⁷² The merger procedure was suspended on 3 August 2007 further to a Commission decision pursuant to Article 11.3 of the Merger Regulation and restarted on 20 August 2007, once the parties fulfilled the information request contained in the Article 11.3 decision.

175. Moreover, some competitors considered that the scope of the remedy was too narrow geographically to constitute a viable and sustainable business, also in view of the fact that, as originally conceived by the parties, it would have had no or only limited growth potential. Finally, some competitors expressed a need to increase the available converting capacity.
176. On 29 August 2007 the parties submitted an amended package of remedies aiming at improving and broadening the scope of the remedy package. These remedies, which take the form of commitments, replace the remedies proposed on 30 July 2007.
177. The following is a brief description of the commitments as improved, highlighting their main features⁷³:

-SCA has committed to divest "Softis", its handkerchiefs/facials brand in the German and Austrian market and, as an option for the Purchaser, the Softis handkerchief/facials business in all countries other than Austria and Germany where it is sold under the Zewa umbrella brand⁷⁴ as well as the Deluxe consumer handkerchief/facials business where it is sold under the Zewa umbrella brand⁷⁵. Both Softis and Deluxe are manufacturer brands;

-The Purchaser would also have the option to acquire a plant in Witzenhausen in Germany currently used for the conversion of household towels and toilet paper. Should the Purchaser decide to purchase the plant in Witzenhausen, SCA would assign its current warehouse and logistics contract/agreement to the Purchaser; and SCA undertakes to encourage and give incentives to the key personnel to stay with the Divested Business and not to solicit it.

-Optionally for the Purchaser, SCA offers converting lines necessary to manufacture the "Softis" handkerchiefs/facials. The offered converting lines would be moved from Mannheim⁷⁶, Germany and/or optionally one converting line from Lucca, Italy, to the location indicated by the Purchaser of the Divested Business;

- The Purchaser would be granted the exclusive licence to use the Zewa brand in Austria and Germany for a period of 2 years for handkerchief/facials products. As an option for the Purchaser, this period could be extended to a maximum of 4 years. SCA also commits to discontinue using the Zewa brand name for handkerchief/facials in Austria and Germany entirely within 12 months from closing date and not to use the

⁷³ The "Schedule" attached to the Commitment text contains a full description of the Divested Business.

⁷⁴ Predominantly in Central and Eastern Europe: Hungary, Greece, Russia, the Czech Republic, Romania, Switzerland, Poland, Estonia, Latvia, Slovakia, Lithuania, Moldavia, Croatia, Slovenia and Bulgaria.

⁷⁵ Deluxe is other SCA sub-brand used to sell handkerchief/facials in Central and Eastern European countries. It is sold in Hungary, Russia, the Czech Republic, Romania, Switzerland, Poland, Slovakia, Moldavia, Croatia, and Bulgaria.

⁷⁶ This refers to two specified converting lines from Mannheim and up to two additional lines. The option of four lines from Mannheim is available if the Purchaser opts also to purchase the Softis manufacturer branded consumer handkerchief/facials business in all countries where it is sold under the Zewa umbrella brand.

Zewa name in this product category and in those countries for a period of 6 years, to be extended by 2 years if the licence to use the Zewa brand is extended by the Purchaser.

-Should the Purchaser opt to acquire also the Softis brand in countries other than Austria/Germany, the same licensing arrangements as described above would be applicable to these other countries.

-In terms of personnel currently employed and dedicated to the Divested Business, SCA offers the following:

-sales marketing and administration: 1 sales and marketing manager and at least 2 sales as well as 2 marketing persons currently partly or fully dealing with the Softis brand;

-support functions: 1 manager and 3 other persons for administration and finance; 1 person for IT support; 1 person for product development (and introduction of new products); 1 person for purchasing; 1 person in charge of logistics;

-manufacturing: 5 "white collar" and at least 25 "blue collar" employees.

178. If the Purchaser takes the option to purchase the Softis manufacturer branded consumer handkerchief/facials business in all countries where it is sold under the Zewa "umbrella" brand, SCA will agree with the Purchaser the extent to which the latter may require additional support.

179. By that the package is designed that the Purchaser would be able to choose, in addition to the brand and the converting lines, what it considers of interest and necessary for the viability of the Divested Business. So as to ensure maximum flexibility to the benefit of the Purchaser and to make the remedy package appealing to the largest possible number of candidate Purchasers

B. EVALUATION OF THE REMEDIES

180. The Commission has assessed the improved remedy package and has concluded that the Divested Business constitutes an economically viable business able to compete effectively with the parties on the market for the production and supply of handkerchief/facials in Austria/Germany. The Commission therefore concludes that the remedy package is sufficient to remove the competition concerns brought about by the proposed transaction.

181. As explained in the Commission notice on remedies⁷⁷, under the Merger Regulation, the Commission assesses the compatibility of a notified concentration with the common market. Where a concentration raises competition concerns as it could lead to a significant impediment to effective competition, the parties may seek to modify the concentration in order to resolve the competition concerns raised by the Commission

⁷⁷ Commission Notice on remedies acceptable under Council Regulation (EEC^o No 4064/89 and under Commission Regulation (EC) No 447/98.

and thereby gain clearance of the merger. In assessing whether or not the remedy will restore effective competition, the Commission considers the type, scale and scope of the remedies in relation to the structure and particular characteristics of the market in which competition concerns arise.

182. Where a proposed concentration threatens to significantly impede effective competition, creating the conditions for the emergence of a new competitive entity or the strengthening of existing competitors via divestiture may be an effective way to restore (or maintain) effective competition. The divested activities must consist of or form a viable business that, if operated by a suitable Purchaser, can compete with the parties on a lasting basis.
183. Whenever the notifying parties submit remedies, the Commission has thus to assess whether the remedies will lead to the restoration of effective competition on the relevant markets. In so doing, the Commission has to assess both (i) the effectiveness of the proposed remedy in removing the competition concerns and (ii) the independence, the viability and the competitiveness of the Divested Business on the long term. In order to carry out this assessment, the Commission may seek the views of competitors and customers on the relevant markets.

Effectiveness

184. The remedy package entirely eliminates the overlap between SCA and P&G in the market for supply of branded handkerchief/facials in Austria/Germany in terms of sales and consequently removes the competition concerns identified on this market.

Independence, viability and competitiveness

185. The Commission has concluded that the Divested Business would constitute an independent, viable and competitive business, in particular in the light of the improvements brought to the initial remedy, further to the market test.
186. Most notably, the broader geographic scope of the Divested Business, including all countries in which Softis is currently marketed, will enable the Purchaser to maintain and enhance competitiveness and viability of the Divested Business in the long term. Additionally, the number of converting lines which may be divested at the request of the Purchaser has been increased so as to cover the needs of the broader geographical scope of the Divested Business and to allow potential for growth.
187. Moreover, in view of the necessary marketing investment and time to "de-link" the brand Softis from the "umbrella" brand Zewa (which would be retained by the parties for tissue products other than handkerchief/facials) the initial phase out period offered by the parties was extended. The additional one year will allow the potential Purchaser the necessary time (totalling 4 years) to be able to build Softis into a stand-alone brand, de-linked from the Zewa "umbrella" brand.

188. Finally, with a view to ensuring that the Divested Business is able to compete effectively with the parties on the market for the production and supply of handkerchief/facials in Austria/Germany, the Commission considers that the Purchaser should have sufficient expertise in the consumer tissue business and the ability to offer a full portfolio of tissue products in the relevant geographic market. Preferably it should already be active in the tissue sector in Austria/Germany or have ability to expand its activities into this market. However, it must be highlighted that the remedies package includes the option for the Purchaser to also acquire production facilities and equipment as well as sales and marketing forces, thereby facilitating the entry on this market even of a Purchasers currently not active in the relevant geographic market.

C.CONDITIONS AND OBLIGATIONS

189. The commitments under Section B of the Commitment text attached herewith constitute conditions of this decision, as only through full compliance therewith (subject to any change pursuant to the review clause of the Annex), can the structural change on the relevant market be achieved. The remaining commitments constitute obligations, as they concern the implementing steps, which are necessary to achieve the sought structural change

D.CONCLUSION ON THE REMEDIES

190. The Commission considers that the proposed commitments, as submitted on 29 August 2007, are sufficient to eliminate the serious doubts as to the compatibility of the transaction with the common market in the market for production and supply of branded handkerchief/facials in Austria/Germany.

191. The full text of the commitments is annexed to this decision and form an integral part thereof.

VII. CONCLUSION

192. The Commission has concluded that the remedies submitted by the Parties are sufficient to remove the serious doubts raised by the concentration. Accordingly, subject to the full compliance with the commitments submitted by the notifying party, 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 and Article 6(2) of Council Regulation (EC) No 139/2004.

For the Commission,
signed
Ján Figel'
Member of the Commission

By hand and by fax: 00 32 2 296 4301

European Commission

DG Competition

Rue Joseph II 70

B-1000 BRUSSELS

CASE NO. COMP/M.4533

SCA/Procter & Gamble

COMMITMENTS TO THE EUROPEAN COMMISSION

Pursuant to Article 6(2) of Council Regulation (EEC) No. 4064/89 (the “**Merger Regulation**”), Svenska Cellulosa Aktiebolaget SCA AB (“**SCA**”) hereby provides the following Commitments (the “**Commitments**”) in order to enable the European Commission (the “**Commission**”) to declare the acquisition of sole control by SCA of the European consumer tissue business of Procter & Gamble (“**P&G ECT**”) compatible with the common market and the EEA Agreement by its decision pursuant to Article 6(1)(b) of the Merger Regulation, (the “**Decision**”).

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

This text shall be interpreted in the light of the Decision to the extent that the Commitments are attached as conditions and obligations, in the general framework of Community law, in particular in the light of the Merger Regulation, and by reference to the Commission Notice on remedies acceptable under Council Regulation (EEC) No 4064/89 and under Commission Regulation (EC) No 447/98.

Section A. Definitions

For the purpose of the Commitments, the following terms shall have the following meaning:

Affiliated Undertakings: undertakings controlled by the Parties and/or by the ultimate parents of the Parties whereby the notion of control shall be interpreted pursuant to Article 3 Merger Regulation and in the light of the Commission Notice on the concept of concentration under Council Regulation (EEC) No 4064/89.

Closing: the transfer of the legal title of the Divestment Business to the Purchaser.

Divestment Business: the Softis hanky/facials business as defined in Section B and the Schedule that SCA commits to divest.

Divestiture Trustee: one or more natural or legal person(s), independent from the Parties, who is approved by the Commission and appointed by SCA and who has received from SCA the exclusive Trustee Mandate to sell the Divestment Business to a Purchaser at no minimum price.

Effective Date: the date of adoption of the Decision.

First Divestiture Period: the period of [...] from the Effective Date.

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

Key Personnel: all personnel necessary to maintain the viability and competitiveness of the Divestment Business, as listed in the Schedule.

Monitoring Trustee: one or more natural or legal person(s), independent from the Parties, who is approved by the Commission and appointed by SCA, and who has the duty to monitor SCA's compliance with the conditions and obligations attached to the Decision.

Parties: Svenska Cellulosa Aktiebolaget SCA AB ("SCA") and Procter and Gamble ("P&G").

Personnel: all personnel currently employed by the Divestment Business, including Key Personnel, staff seconded to the Divestment Business, shared personnel and the additional personnel listed in the Schedule.

Purchaser: the entity approved by the Commission as acquirer of the Divestment Business in accordance with the criteria set out in Section D.

SCA: SCA is incorporated under the laws of Sweden, with its registered office at Box 7827, SE-10397, Stockholm, Sweden and registered with the Swedish Companies Registration Office under number 556 012/6293.

Trustee(s): the Monitoring Trustee and the Divestiture Trustee.

Trustee Divestiture Period: the period of [...] from the end of the First Divestiture Period.

Section B. The Divestment Business

Commitment to divest

1. In order to restore effective competition, SCA commits to divest, or procure the divestiture of the Divestment Business by the end of the Trustee Divestiture Period as a going concern to a purchaser and on terms of sale approved by the Commission in accordance with the procedure described in paragraph 15. To carry out the divestiture, SCA commits to find a purchaser and to enter into a final binding sale and purchase agreement for the sale of the Divestment Business within the First Divestiture Period. If SCA has not entered into such an agreement at the end of the First Divestiture Period, SCA shall grant the Divestiture Trustee an exclusive mandate to sell the Divestment Business in accordance with the procedure described in paragraph 24 in the Trustee Divestiture Period.
2. SCA shall be deemed to have complied with this commitment if, by the end of the Trustee Divestiture Period, SCA has entered into a final binding sale and purchase agreement, if the Commission approves the Purchaser and the terms in accordance with the procedure described in paragraph 15 and if the closing of the sale of the Divestment Business takes place within a period not exceeding 3 months after the approval of the purchaser and the terms of sale by the Commission.
3. In order to maintain the structural effect of the Commitments, the Parties shall, for a period of 10 years after the Effective Date, not acquire direct or indirect influence over the whole or part of the Divestment Business, unless the Commission has previously found that the structure of the market has changed to such an extent that the absence of influence over the Divestment Business is no longer necessary to render the proposed concentration compatible with the common market.

Structure and definition of the Divestment Business

4. The Divestment Business consists of:
 - a) The Softis manufacturer branded consumer hanky/facials business in Austria and Germany;
 - b) At the option of the Purchaser, the Softis manufacturer branded consumer hanky/facials business in all countries other than Austria and Germany where it is sold under the Zewa umbrella brand;

- c) At the option of the Purchaser, the Deluxe manufacturer branded consumer hanky/facials business where it is sold under the Zewa umbrella brand;
- d) At the option of the Purchaser, the [...] production facility in Germany and the converting lines specified in the Schedule.

5. The Divestment Business is described in more detail in the Schedule and includes:

- (a) all tangible and intangible assets (including intellectual property rights and know-how) which are necessary to ensure the viability and competitiveness of the Divestment Business;
- (b) all licences, permits and authorisations issued by any governmental organization for the benefit of the Divestment Business to the extent transferable;
- (c) all contracts, leases, commitments and customer orders of the Divestment Business; all customer, credit and other records of the Divestment Business (items referred to under (a)-(c) hereinafter collectively referred to as “*Assets*”) to the extent transferable; and
- (d) the benefit, for a transitional period of up to 3 years after Closing and on terms and conditions equivalent to those at present afforded to the Divestment Business, of all current arrangements under which SCA or Affiliated Undertakings supply products or services to the Divestment Business, as detailed in the Schedule, unless otherwise agreed with the Purchaser.

Section C. Related commitments

Preservation of Viability, Marketability and Competitiveness

6. From the Effective Date until Closing, SCA shall preserve the economic viability, marketability and competitiveness of the Divestment Business, in accordance with good business practice, and shall minimise as far as possible any risk of loss of competitive potential of the Divestment Business. In particular SCA 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 sufficient resources for the development of the Divestment Business, on the basis and continuation of the existing business plans; and
 - (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 of Parties

7. SCA commits, from the Effective Date until Closing, to the fullest extent possible to keep the 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.⁷⁸ SCA shall also ensure to the fullest extent possible that the Personnel do not report to any individual outside the Divestment Business.
8. Until Closing, SCA shall assist the Monitoring Trustee in ensuring that the Divestment Business is managed as a distinct and saleable entity separate from the businesses retained by the Parties. SCA shall appoint a Hold Separate Manager who shall be responsible for the management of the Divestment Business, under the supervision of the Monitoring Trustee. The Hold Separate Manager shall manage the Divestment Business independently and in the best interest of the business with a view to ensuring its continued economic viability, marketability and competitiveness and its independence from the businesses retained by the Parties.

Ring-fencing

9. SCA shall, to the extent possible and reasonable, implement all necessary measures to ensure that it does not after the Effective Date obtain any business secrets, know-how, commercial information, or any other information of a confidential or proprietary nature relating to the Divestment Business (including all assets and personnel identified in the Schedule). In particular, the participation of the Divestment Business in a central information technology network shall be severed to the extent possible, without compromising the viability of the Divestment Business. SCA may obtain information relating to the Divestment Business which is reasonably necessary for the divestiture of the Divestment Business or whose disclosure to SCA is required by law, including where SCA is obliged by law to provide that information.

Non-solicitation clause

10. The Parties undertake, subject to customary limitations, not to solicit, and to procure that Affiliated Undertakings do not solicit, the Key Personnel transferred with the Divestment Business for a period of 3 years after Closing.

Due Diligence

⁷⁸ As discussed further in the Schedule, due to the fluctuating nature of the converting operation, the Softis Converting Team will at times work on products other than Softis for Austria and Germany and likewise at times others from outside the team would work on Softis for Austria and Germany. Also, this department will continue to draw on the general Mannheim site services prior to Closing. The Softis Supervisor must also formally report into the site organisation to safeguard site security and health and safety.

11. In order to enable potential purchasers to carry out a reasonable due diligence of the Divestment Business, SCA shall, subject to customary confidentiality assurances and dependent on the stage of the divestiture process:
 - (a) provide to potential purchasers sufficient information as regards the Divestment Business; and
 - (b) provide to potential purchasers sufficient information relating to the Personnel and allow them reasonable access to the Personnel.

Reporting

12. SCA shall submit written reports in English on potential purchasers of the Divestment Business and developments in the negotiations with such potential purchasers to the Commission and the Monitoring Trustee no later than 10 days after the end of every month following the Effective Date (or otherwise at the Commission's request).
13. The Parties shall inform the Commission and the Monitoring Trustee on the preparation of the data room documentation (if prepared) and the due diligence procedure and shall submit a copy of an information memorandum (if used) to the Commission and the Monitoring Trustee before sending the memorandum out to potential purchasers.

Section D. The Purchaser

14. In order to ensure the immediate restoration of effective competition, the Purchaser, in order to be approved by the Commission, must:
 - (a) be independent of and unconnected to the Parties;
 - (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 the Parties and other competitors; and
 - (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 must, in particular, reasonably be expected to obtain all necessary approvals from the relevant regulatory authorities for the acquisition of the Divestment Business (the before-mentioned criteria for the purchaser hereafter the "**Purchaser Requirements**").
15. The final binding sale and purchase agreement shall be conditional on the Commission's approval. When SCA has reached an agreement with a purchaser, it shall submit a fully documented and reasoned proposal, including a copy of the final agreement(s), to the Commission and the Monitoring Trustee. SCA must be able to demonstrate to the Commission that the purchaser meets the Purchaser Requirements and that the Divestment Business is being sold in a manner consistent with the Commitments. For the approval, the Commission shall verify that the purchaser fulfils the Purchaser Requirements and that the Divestment Business is being sold in a manner consistent with the Commitments. The Commission may approve the sale of the Divestment Business without one or more Assets or parts of the Personnel, if this does not affect the viability and competitiveness of the Divestment Business after the sale, taking account of the proposed purchaser.

Section E. Trustee

I. Appointment Procedure

16. SCA shall appoint a Monitoring Trustee to carry out the functions specified in the Commitments for a Monitoring Trustee. If SCA has not entered into a binding sales and purchase agreement one month before the end of the First Divestiture Period or if the Commission has rejected a purchaser proposed by SCA at that time or thereafter, SCA shall appoint a Divestiture Trustee to carry out the functions specified in the Commitments for a Divestiture Trustee. The appointment of the Divestiture Trustee shall take effect upon the commencement of the Extended Divestment Period.
17. 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 the Parties in a way that does not impede the independent and effective fulfilment of its mandate. In particular, where the remuneration package of a Divestiture Trustee includes a success premium linked to the final sale value of the Divestment Business, the fee shall also be linked to a divestiture within the Trustee Divestiture Period.

Proposal by the Parties

18. No later than one week after the Effective Date, SCA shall submit a list of one or more persons whom SCA proposes to appoint as the Monitoring Trustee to the Commission for approval. No later than one month before the end of the First Divestiture Period, SCA shall submit a list of one or more persons whom SCA proposes to appoint as Divestiture 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 17 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 Divestiture Trustee or whether different trustees are proposed for the two functions.

Approval or rejection by the Commission

19. 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 deems necessary for the Trustee to fulfil its obligations. If only one name is approved, SCA 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 name is approved, SCA shall be free to choose the Trustee to be appointed from among the names approved. The Trustee shall be appointed within one week of the Commission's approval, in accordance with the mandate approved by the Commission.

New proposal by the Parties

20. If all the proposed Trustees are rejected, SCA 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 18 and 19.

Trustee nominated by the Commission

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

II. Functions of the Trustee

22. 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 SCA, give any 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

23. The Monitoring Trustee shall:
- (i) propose in its first report to the Commission a detailed work plan describing how it intends to monitor compliance with the obligations and conditions attached to the Decision.
 - (ii) oversee the on-going management of the Divestment Business with a view to ensuring its continued economic viability, marketability and competitiveness and monitor compliance by SCA with the conditions and obligations attached to the Decision. To that end the Monitoring Trustee shall:
 - a) monitor the preservation of the economic viability, marketability and competitiveness of the Divestment Business, and the keeping separate of the Divestment Business from the business retained by the Parties, in accordance with paragraphs 6 and 7 of the Commitments;
 - (b) supervise the management of the Divestment Business as a distinct and saleable entity, in accordance with paragraph 8 of the Commitments;
 - (c) (i) in consultation with SCA, determine all necessary measures to ensure that SCA does not after the effective date obtain any business secrets, know-how, commercial information, or any other information of a confidential or proprietary nature relating to the Divestment Business, in particular strive for the severing of the Divestment Business' participation in a central information technology network to the extent possible, without compromising the viability of the Divestment Business, and (ii) decide whether such information may be disclosed to SCA as the disclosure is reasonably necessary to allow SCA to carry out the divestiture or as the disclosure is required by law; and
 - (d) monitor the splitting of assets and the allocation of Personnel between the Divestment Business and SCA or Affiliated Undertakings;

- (e) supervise the selection of employees to be part of the Divested Business from among those listed in Annex 1 to the Schedule;
- (iii) assume the other functions assigned to the Monitoring Trustee under the conditions and obligations attached to the Decision;
- (iv) propose to SCA such measures as the Monitoring Trustee considers necessary to ensure SCA's compliance with the conditions and obligations attached to the Decision, in particular the maintenance of the full economic viability, marketability or competitiveness of the Divestment Business, the holding separate of the Divestment Business and the non-disclosure of competitively sensitive information;
- (v) review and assess potential purchasers as well as the progress of the divestiture process and verify that, dependent on the stage of the divestiture 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;
- (vi) provide to the Commission, sending SCA 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 operation and management of the Divestment Business so that the Commission can assess whether the business is held in a manner consistent with the Commitments and the progress of the divestiture process as well as potential purchasers. In addition to these reports, the Monitoring Trustee shall promptly report in writing to the Commission, sending SCA a non-confidential copy at the same time, if it concludes on reasonable grounds that SCA is failing to comply with these Commitments;
- (vii) within one week after receipt of the documented proposal referred to in paragraph 18, submit to the Commission a reasoned opinion as to the suitability and independence of the proposed purchaser 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 Divestiture Trustee

24. Within the Trustee Divestiture Period, the Divestiture Trustee shall sell at no minimum price the Divestment Business to a purchaser, provided that the Commission has approved both the purchaser and the final binding sale and purchase agreement in accordance with the procedure laid down in paragraph 15. The Divestiture Trustee shall include in the sale and purchase agreement such terms and conditions as it considers appropriate for an expedient sale in the Trustee Divestiture Period. In particular, the Divestiture Trustee may include in the sale and purchase agreement such customary representations and warranties and indemnities as are reasonably required to effect the sale. The Divestiture Trustee shall protect the legitimate financial interests of SCA, subject to the Parties' unconditional obligation to divest at no minimum price in the Trustee Divestiture Period.

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

III. Duties and obligations of the Parties

26. SCA shall provide and shall cause its advisors to provide the Trustee with all such cooperation, assistance and information as the Trustee may reasonably require to perform its tasks. The Trustee shall have full and complete access to any of SCA's or the Divestment Business' books, records, documents, management or other personnel, facilities, sites and technical information necessary for fulfilling its duties under the Commitments and SCA and the Divestment Business shall provide the Trustee upon request with copies of any document. SCA and the Divestment Business shall make available to the Trustee one or more offices on their premises and shall be available for meetings in order to provide the Trustee with all information necessary for the performance of its tasks.
27. SCA shall provide the Monitoring Trustee with all managerial and administrative support that it may reasonably request on behalf of the management of the Divestment Business. This shall include all administrative support functions relating to the Divestment Business which are currently carried out at headquarters level. SCA shall provide and shall cause its advisors to provide the Monitoring Trustee, on request, with the information submitted to potential purchasers, in particular give the Monitoring Trustee access to the data room documentation and all other information granted to potential purchasers in the due diligence procedure. SCA shall inform the Monitoring Trustee on possible purchasers, submit a list of potential purchasers, and keep the Monitoring Trustee informed of all developments in the divestiture process.
28. SCA shall grant or procure Affiliated Undertakings to grant comprehensive powers of attorney, duly executed, to the Divestiture Trustee to effect the sale, the Closing and all actions and declarations which the Divestiture Trustee considers necessary or appropriate to achieve the sale and the Closing, including the appointment of advisors to assist with the sale process. Upon request of the Divestiture Trustee, SCA shall cause the documents required for effecting the sale and the Closing to be duly executed.
29. SCA 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 SCA 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.
30. At the expense of SCA, the Trustee may appoint advisors (in particular for corporate finance or legal advice), subject to SCA'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. Should SCA refuse to approve the advisors proposed by the Trustee the Commission may approve the appointment of such advisors instead, after having heard SCA. Only the

Trustee shall be entitled to issue instructions to the advisors. Paragraph 29 shall apply mutatis mutandis. In the Trustee Divestiture Period, the Divestiture Trustee may use advisors who served SCA during the Divestiture Period if the Divestiture Trustee considers this in the best interest of an expedient sale.

IV. Replacement, discharge and reappointment of the Trustee

31. 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 SCA to replace the Trustee; or
 - (b) SCA, with the prior approval of the Commission, may replace the Trustee.
32. If the Trustee is removed according to paragraph 31, the Trustee may be required to continue in its function until a new Trustee is in place to whom the Trustee has effected a full hand over of all relevant information. The new Trustee shall be appointed in accordance with the procedure referred to in paragraphs 16-21.
33. Beside the removal according to paragraph 31, 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

34. The Commission may, where appropriate, in response to a request from SCA showing good cause and accompanied by a report from the Monitoring Trustee:
 - (i) Grant an extension of the time periods foreseen in the Commitments, or
 - (ii) Waive, modify or substitute, in exceptional circumstances, one or more of the undertakings in these Commitments.

Where SCA 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 SCA be entitled to request an extension within the last month of any period.

SCHEDULE

Introduction

SCA commits to divest the Softis manufacturer brand for hanky/facials in Austria and Germany, with total sales of Euro [...] and a market share by value of 11% (on a brand ownership basis). A disposal of Softis would therefore lower the market share of the combined SCA and P&G ECT business in the hanky/facials category from 41% to 30% in Austria/Germany. Furthermore, it would create a new manufacturer branded hanky/facials supplier to compete with retailer brands, SCA and other competitors.

Softis would attract suitable purchasers since:

- It is an attractive manufacturer brand with an established position and scope for development.
- It could be used by the purchaser to further launch other manufacturer branded tissue products in other categories.
- The production equipment could also be used by the purchaser to supply retailer branded tissue products.
- The overall package represents a viable and attractive business proposition.

The manufacturing process for hanky/facials involves the production of parent reels on a paper machine which are then converted on converting lines into hanky/facials. SCA considers that a purchaser would probably be interested in only acquiring the converting equipment to produce Softis in order to utilise its existing parent reel capacity and optimise efficiency, without having to acquire an additional paper making production facility. The purchaser would then also have the possibility better to utilise its own sales and administration structure with the acquisition of an additional manufacturer brand. As such, this remedy includes the main converting equipment currently used for producing these products.

If required by the purchaser, the remedy package will also include a paper making production facility, namely [...], with one tissue paper machine (currently [...] used to produce other products) with a capacity of 29,000 tonnes. The hanky/facials converting equipment could then be moved to [...]. Acquiring [...] would give the purchaser more parent reel and converting capacity than is required to produce Softis so this capacity could be used to grow the Softis brand. For purchasers with no existing facilities in the region, the inclusion of the production facility, strategically located in the centre of the region, would be an attractive entry point to the Austria/Germany market.

If required by the purchaser, the remedy package will also include the Softis manufacturer brand in all countries outside Austria and Germany where it is sold under the Zewa umbrella brand. These volumes represented 2,500 tonnes in 2006 (at a value of [...]).

Unlike in Austria and Germany, SCA also uses other sub-brands in addition to the Softis brand to sell hanky/facials in Central and Eastern European countries. The only significant sub-brand is Deluxe which is sold in a number of countries⁷⁹. Deluxe is a 3-ply product (Softis is a higher quality 4-ply product).

If required by the purchaser, the remedy package will also include the Deluxe manufacturer brand where it is sold under the Zewa umbrella brand. These volumes represented 2,100 tonnes in 2006 (at a value of [...]).

SCA is also creating a separate Sales and Marketing team to manage the Softis business including individuals who have been working with the Softis brand. The Softis sales and marketing team would be available to the purchaser.

During the transitional period, the purchaser would also be fully supported by SCA with all its needs regarding finished products and/or parent reels, R&D, IT, finance and administration, warehousing and distribution services. SCA could also facilitate necessary training and education and provide the resources needed to establish the business.

Sales and Branding

Softis are 4 ply hanky/facials sold mainly in Austria/Germany. Softis is used by SCA as its leading brand for hanky/facials in the region and sales amounted to 11,000 tonnes at a value of [...] in 2006.

In addition to the Softis brand name used for hanky/facials products, Zewa is used as the umbrella brand name. Consumers in Austria and Germany, however, associate hanky/facials with the Softis brand (rather than Zewa). The Zewa brand (which would continue to be used by SCA for both toilet paper and HHT) would be licensed to the purchaser for a sufficient period for the purchaser to transition away from its use.

⁷⁹ Primarily Hungary, Russia, the Czech Republic, Romania, Poland, Slovakia, Moldavia, and Croatia

Product type	k tonnes
10 sheet	9.9
9 sheet	0.5
5 sheet pocket	0.4
100 sheet box	0.2
Total	11.0

[...]

Softis is sold by SCA in other countries outside Austria/Germany under the Zewa umbrella brand, predominantly Central and Eastern Europe⁸⁰ with sales of [...]. These parts of the business are not included in the above turnover figures and will be retained by SCA unless the purchaser takes the option to purchase the Softis manufacturer branded consumer hanky/facials business in all countries where it is sold under the Zewa umbrella brand.

Softis is also used under the different umbrella brand Edet in the Nordics and Benelux, where the net sales are less than [...]. SCA will commit to cease using the Softis brand under the Edet umbrella within one year if requested by the purchaser.

SCA would also retain the Zewa Clean & Soft business (subject to migrating away from Zewa in Austria and Germany), which is a cosmetic facial. Sales are limited and amount to [...] in Austria and Germany.

The purchaser would be given all SCA owned rights to the Softis brand, and SCA would receive an exclusive licence to use the Softis brand only for the countries other than Austria and Germany in which SCA currently uses the Softis brand, unless the purchaser takes the option to purchase the Softis business in these countries as well. As such, the purchaser would be able to expand the Softis business to other countries where SCA is not active. Softis is also currently only used as a brand for hanky/facials but it could also easily be used for other product categories in the future.

⁸⁰ Hungary, Greece, Russia, the Czech Republic, Romania, Switzerland, Poland, Estonia, Latvia, Slovakia, Lithuania, Moldavia, Croatia, Slovenia and Bulgaria

The purchaser would be given the exclusive licence to use the Zewa brand in Austria and Germany for a period of 2 years from Closing for hanky/facials products, which at the option of the purchaser could be extended to a maximum of 4 years from Closing. As Zewa and Softis both appear on the packaging with equivalent prominence, the period required for transitioning away from Zewa should be shorter than the period required when the main brand is being transitioned (eg as SCA will have to do with Bounty and Charmin). SCA would also commit to discontinue using the Zewa brand name for hanky/facials in Austria and Germany entirely within 12 months⁸¹ from Closing and not to use the Zewa name in this product category and those countries for a period of 6 years from Closing, to be extended by 2 years if the licence to use the Zewa brand is extended by the purchaser.

If the purchaser takes the option to purchase the Softis manufacturer branded consumer hanky/facials business in all countries where it is sold under the Zewa umbrella brand, it may also opt to purchase the Deluxe brand.

Current production

The main plant currently producing Softis hanky/facials is the SCA Mannheim facility (where the 10 sheet and 9 sheet products are manufactured). Mannheim is SCA's largest tissue production facility, producing a wide range of products; the total paper making volume in Mannheim is about 260,000 tonnes, whereas the Softis Germany/Austria business is only about 10,400 tonnes. In total 6 converting lines are used in Mannheim to cover the production of Softis in Germany and Austria, Softis in other countries as well as other products. The 6 converting lines have the following characteristics:

⁸¹ This relates to the need for SCA to rebrand the cosmetic facials Zewa Clean & Soft.

[...]

The capacity of the lines is [...] each per annum.

The total number of SCA employees active in the converting of hanky/facials products is [...] on a total of 13 converting lines. The production is organised in 4-shift groups and production runs 24 hours a day for 355 days.

The 5 sheet pocket size is produced in the SCA mill in Lucca, Italy. In total 2 converting lines are used in Lucca to cover production of Softis as well as other products. [...]. The capacity on the lines is between 800-900 tonnes per annum.

In addition the Softis 100 sheet box volume of only 200 tonnes is produced in Stembert, Belgium, alongside other SCA products, for example similar retailer branded and Away-From-Home products. The converting line used for the production of Softis and these other SCA products has a total capacity of more than 2,000 tonnes.

The converting lines in the various locations are only capable of producing the type of product they are built for; being either 9/10 sheet, 5 sheet or the 100 sheet box. This is because the folding technique is different.

Deluxe is also produced in Mannheim on other converting lines than those used for Softis.

All finished goods are delivered from the manufacturing site to the closest located SCA distribution warehouse and for Mannheim this is the warehouse located at the Mannheim facility. The Softis volumes produced at the other facilities and destined for customers in Austria and Germany are also delivered to the Mannheim distribution warehouse. For customers with large volumes, full truck loads are delivered directly to the location specified by the customer. For customers with lower volume requirements, the goods are first transported to a local delivery platform (operated by third party logistic companies) where smaller lots (down to 1 pallet) are transported to the customer. Third party logistics companies are used for the transportation of the products.

The [...] facility which would be included at the option of the purchaser consists of a paper machine with a capacity of 29,000 tonnes as well as three converting lines, currently used to convert HHT and toilet paper. The two HHT converting lines would be removed by SCA prior to the sale of [...]. All finished goods are delivered to warehousing facilities operated by a third party that handles all warehousing functions and distribution to customers.

The [...] facility has some 150 employees, working within production, technical, logistics, HR, finance and IT.

Post-divestment production

A purchaser would have different options for arranging the production structure after the divestment.

- i. The purchaser could fully integrate the conversion into its own production facilities by accommodating three of the converting lines from Mannheim ([...]) as well as one of the converting lines from Lucca. SCA would also provide the supply of finished goods for the 100 sheet box under a supply arrangement (see details further below) as the volume is less than 10% of the total capacity of a converting line⁸². The 100 sheet box only account for less than 2% of sales and is not viewed to be an important part of the Softis business.

If the purchaser opts to purchase the Deluxe business, SCA will, at the option of the purchaser, ensure that one of the Mannheim converting lines used for producing Deluxe will be transferred.

The purchaser could choose to use its own paper making capacity from its own facilities or to buy parent reels on the market or from SCA.

- ii. The purchaser could acquire the [...] facility (including the paper machine) and use it as an integrated facility for the production of Softis, by moving the converting equipment outlined above to [...]. [...] has the capability to produce the paper required for Softis and cover any potential increase in Softis volumes. The excess capacity could also be

⁸² If the purchaser requests, SCA would be able to alternatively offer the purchaser a proportion of the manufacturing time on the Stembert machine equivalent to that required to produce 200 tonnes of finished product.

used either to sell parent reels or to produce other products such as retailer branded toilet paper products. As part of the transaction, SCA would, at the option of the purchaser, also include the existing toilet paper converting line at the [...] facility⁸³.

For a purchaser taking over the [...] facility, the finished goods would, after the converting lines have been moved, be handled by the local existing logistics organisation. The logistics for [...] are principally the same as the logistics for Mannheim. The difference is that the warehouse in [...] is today outsourced and operated by a third party. Therefore, SCA would assign the warehouse and logistics contract/agreement to the Purchaser. SCA would offer the necessary transition support.

In order to cope with increased demand for Softis, the purchaser could at its own option, purchase an additional fourth (and fifth)⁸⁴ converting line from Mannheim increasing the capacity up to 40%. Alternatively, the purchaser could use an existing line or buy a new line⁸⁵ or a second hand line on the market.

For both of the above options, the purchaser would be supported by SCA with finished goods at a cost price basis during a transitional period of up to six months during which time the converting lines would be transferred unless, at the option of the purchaser, this period is extended to a maximum of 12 months to account for the seasonal variations in sales and the need to transfer the equipment outside the busiest months.

For the 100 sheet box, SCA would provide finished goods for a period of one year on a cost price basis and one further year on a market price basis. After this period, the purchaser could either prolong the contract with SCA or source from other producers active in the market, eg retailer branded hanky/facials suppliers⁸⁶.

In addition, the purchaser would be offered the supply of parent reels from SCA during a period of up to three years from Closing (on a cost price basis for the first year and a market price basis for the second and third year).

⁸³ The two converting lines in [...] currently producing HHT would be removed ensuring sufficient space for the Softis converting lines

⁸⁴ The option of a fifth line would be available only if the purchaser opted also to purchase the Softis manufacturer branded consumer hanky/facials business in all countries where it is sold under the Zewa umbrella brand

⁸⁵ At an estimated cost of Euro 4 million

⁸⁶ Possible suppliers include among others Fripa, Wepa, Sofidel, Metsä and Tronchetti.

[...].

Appropriate personnel would be identified to be transferred with the business subject to their consent in line with normal employment regulations.

SCA would also offer the purchaser the necessary training and education for its employees and/or the employees working at the [...] facility in order for them to operate the converting equipment to be moved from Mannheim/Lucca.

Sales Marketing and Administration (SMA)

The Softis sales and marketing activity is integrated into the overall SCA Sales and Marketing function. This department has a European organisation based in Munich and a regional organisation for DACH⁸⁷ based in Mannheim. From this Sales and Marketing function SCA is creating a separate and independent Sales and Marketing organisation for Softis consisting of 1 Sales and Marketing Manager and at least 2 sales persons and 2 marketing persons. [...].

This Softis Sales and Marketing function will oversee the strategy and execution of all activities in marketing, promotions, pricing and branding. It will also be responsible for the negotiation and execution of sales agreements with customers.

It is anticipated that the Sales and Marketing manager for Softis would become the Hold Separate Manager.

This Sales and Marketing function would then be made available to a Purchaser, unless they prefer not to take it. If the purchaser has its own developed Sales and Marketing organisation it may choose to use its own resources. In any event, all relevant marketing documents (including past market studies on the brand Softis) will be conveyed to the Purchaser.

Support Functions

⁸⁷ Germany, Austria and Switzerland

SCA will create a ‘Softis Austria/Germany Administration Department’ based in Mannheim covering the following areas:

- a. Administration and finance – one manager and three other persons
- b. IT support – one person
- c. Product Development – one person
- d. Purchasing – one person
- e. Logistics – one person

[...]. This department is sufficient to administer the Softis business on a stand alone basis while being small enough to ensure the ongoing competitiveness of Softis. It is expected that this department would ultimately be managed by the Sales and Marketing manager.

SCA would also make this department available to the Purchaser, subject to local employment regulations, unless the Purchaser does not need it. It is expected that if the Purchaser also acquired [...], it would be able to replace most of the Softis Austria/Germany Administration Department with the local support function currently located in [...]. SCA would offer the necessary transition support.

For a purchaser with existing production facilities in the region, the above support functions are expected to be covered by their existing organisation in order to achieve synergy effects. Necessary transitional arrangements would of course also be offered.

If the purchaser takes the option to purchase the Softis manufacturer branded consumer hanky/facials business in all countries where it is sold under the Zewa umbrella brand, SCA would agree with the purchaser on the extent to which the purchaser requires additional support.

Manufacturing

SCA will create a Softis Austria/Germany Converting Team based in Mannheim and covering the converting operation for Softis, including:

- a. At least 5 ‘white collar’ persons supervising and engineering etc
- b. At least 25 ‘blue collar’ persons operating the converting machinery

[...]. This department is sufficient to conduct the Softis converting on a largely stand alone basis while being small enough to ensure the ongoing competitiveness of Softis. It is expected that this department would be managed by a Softis Supervisor who would have a second reporting line to the Sales and Marketing manager⁸⁸.

It should be noted that due to the fluctuating nature of the converting operation, this team will at times work on products other than Softis for Austria and Germany and likewise at times others from outside the team would work on Softis for Austria and Germany. It should be noted that this department will also continue to draw on the general Mannheim site services prior to Closing.

SCA would make this team available to the Purchaser, subject to local employment regulations⁸⁹, unless the Purchaser does not need it. It is expected that if the Purchaser also acquired [...], it would be able to replace most of the Softis Austria/Germany Converting Team with the existing production organisation in [...]. SCA would offer the necessary transition support.

If the purchaser takes the option to purchase the Softis manufacturer branded consumer hanky/facials business in all countries where it is sold under the Zewa umbrella brand, SCA would agree with the purchaser on the extent to which the purchaser requires additional support.

Conclusion

These commitments would enable the Softis business to be transferred to an appropriate purchaser and this would in the view of the parties be an attractive business which would be able to compete with SCA, retailer brands and other competitors.

⁸⁸ In order to safeguard site security and health and safety this Supervisor must formally report into the site organisation.

⁸⁹ Employees would have to agree to move from Mannheim to the location of the Purchaser's production site.

Description of Divestment Business

1. The Divestment Business as operated to date has the following legal and functional structure:

The Divestment Business is currently intermingled with the retained and larger other tissue production of SCA.

The various tangible and intangible assets related to the Softis hanky/facials business are all held by companies within the SCA group, together with other assets.

The [...] facility is [...] (and will be divested at the option of the Purchaser).

The sale will be structured as an asset sale.

2. Following paragraphs 4 and 5 of these commitments, the Divestment Business includes, but is not limited to:

- a. the following main assets:

At the option of the Purchaser, the [...] production facility which includes the land and buildings, the paper machine, selected converting equipment, the fixtures and fittings and IT equipment.

At the option of the Purchaser, three converting lines located at the SCA Mannheim production facility, having at least equivalent technical characteristics to the lines currently used by SCA to produce Softis for Austria and Germany. The Purchaser will have the option of purchasing one additional converting line located at the SCA Mannheim production facility (for a total of four converting lines from the Mannheim facility) as part of the Divestment Business. If the Purchaser takes the option to purchase the Softis manufacturer branded consumer hanky/facials business in all countries where it is sold under the Zewa umbrella brand, the Purchaser will have the option of purchasing one additional converting line located at the SCA Mannheim production facility (for a total of five converting lines) as part of the Divestment Business. If the Purchaser takes the option to purchase the Deluxe

manufacturer branded consumer hanky/facials business in all countries where it is sold under the Zewa umbrella brand, the Purchaser will have the option of purchasing one additional suitable converting line located at the SCA Mannheim production facility as part of the Divestment Business.

SCA and the Purchaser will agree to a transition plan to ensure the successful transfer of the equipment to a facility nominated by the Purchaser as quickly as possible following Closing, provided that delivery take place within a maximum of six months from Closing unless, at the option of the Purchaser, this period is extended to a maximum of 12 months to account for seasonal variations in sales. [...].

At the option of the Purchaser, one converting line located at the SCA Lucca production facility, having at least equivalent technical characteristics to the line currently used by SCA to produce Softis for Austria and Germany. SCA and the Purchaser will agree to a transition plan to ensure the successful transfer of the equipment to a facility nominated by the Purchaser as quickly as possible following Closing, provided that delivery take place within a maximum of six months from Closing unless, at the option of the Purchaser, this period is extended to a maximum of 12 months to account for seasonal variations in sales. [...].

Normal levels of stock of finished goods for resale and other materials used to produce and package, outstanding product orders from suppliers. However, should the Purchaser enter into a product supply arrangement in accordance with paragraph (g) below, then it is expected that materials will be retained by SCA to enable the supply arrangements to be fulfilled.

b. the following main intangible assets:

I Softis in Austria and Germany

All SCA-owned rights to the Softis trade mark with a perpetual exclusive licence granted back to SCA to use the Softis brand in countries other than Austria and Germany where SCA is currently using the Softis brand⁹⁰.

⁹⁰ Bulgaria, Croatia, Czech Republic, Estonia, Greece, Hungary, Latvia, Lithuania, Moldavia, Poland, Romania, Russia, Slovakia, Slovenia, and Switzerland.

A non-exclusive licence to use the Zewa trade mark in Austria and Germany for a period of two years after closing for hanky/facials products. At the request of the Purchaser, this period could be extended by up to two years for a total period of four years after Closing. The use of the Zewa trade mark would be subject to an agreed transition plan. During such time, the Purchaser shall agree not to harm the Zewa trade mark in any way through their actions due to quality issues.

SCA commits to discontinue use of the Zewa trade mark for hanky/facials in Germany and Austria within one year after Closing and not to use the Zewa trademark for hanky/facials products in Germany and Austria for a period of six years after Closing, with the option of an extension for up to two years (for a total of eight years) if the Purchaser extends its option to use the Zewa brand to up to four years.

A licence for all patents and designs rights required to produce and sell Softis in Austria and Germany, and in countries other than those where SCA is currently using the Softis brand, to the extent they are assignable.

II Purchaser also opts to acquire both Softis and Deluxe in other countries

If the Purchaser takes the option to purchase the Softis and Deluxe manufacturer branded consumer hanky/facials business in all countries where the brands are sold under the Zewa umbrella brand, a non-exclusive licence to use the Zewa trade mark in these countries for a period of two years after closing for hanky/facials products. At the request of the Purchaser, this period could be extended by up to two years for a total period of four years after Closing. The use of the Zewa trade mark would be subject to an agreed transition plan. During such time, the Purchaser shall agree not to harm the Zewa trade mark in any way through their actions due to quality issues.

SCA commits to discontinue use of the Zewa trade mark for hanky/facials in these countries within one year after Closing and not to use the Zewa trademark for hanky/facials products in these countries for a period of six years after Closing, with the option of an extension for up to two years (for a total of eight years) if the Purchaser extends its option to use the Zewa brand to up to four years.

A licence for all patents and designs rights required to produce and sell Softis in these countries, and in countries other than those where SCA is currently using the Softis or Deluxe brand, to the extent they are assignable.

SCA will commit to cease using the Softis brand under the Edet umbrella within one year if requested by the Purchaser.

- c. the following main licences, permits and authorisations:

All those required to produce and sell Softis, if any, to the extent they are assignable.

If the Purchaser takes the option to purchase the Deluxe manufacturer branded consumer hanky/facials business in all countries where the brand is sold under the Zewa umbrella brand, all those licences, permits and authorisations required to produce and sell Deluxe, if any, to the extent they are assignable.

All those required for the production of the Divestment Business at the [...] facility, to the extent they are assignable. If any licences, permits or authorisations are not assignable, SCA will find an equivalent solution.

- d. the following main contracts, agreements, leases, commitments and understandings:

All those exclusively required to produce and sell Softis to the extent they are assignable. If any licences, permits or authorisations are not assignable, SCA will find an equivalent solution.

In relation to existing contracts with customers for the supply of Softis that are in force at the Effective Date, SCA will use its best efforts – within the limits of the applicable laws and to any possible extent – in order to transfer the benefit post Closing of those parts of the aforementioned contracts that relate to Softis, but it being understood that SCA cannot guarantee that the customers will agree to the transfer of the existing contracts to the Purchaser. In these circumstances, SCA will use its best endeavours to facilitate negotiations of new contracts for the Purchaser with the customers on similar terms as the existing contracts.

All those required to produce the Divestment Business at the [...] facility to the extent they are assignable. For a purchaser taking over the [...] facility, the finished goods would, after the converting lines have been moved, be handled by the local existing logistics organisation. The logistics for [...] are principally the same as the logistics for Mannheim. The difference is that the warehouse in [...] is today outsourced and operated by a third party. Therefore, SCA would assign the warehouse and logistics contract/agreement to the Purchaser. SCA would offer the necessary transition support.

- e. the following customer, credit and other records:

Copies of all the books, records, and other documents exclusively related to or necessary for the operations of the Divestment Business, including the implementation of the sales and marketing strategy for the Divestment Business, provided that SCA may redact from such copies any information that does not relate to the Divestment Business. Such books, records, and other documents include all relevant marketing documents (including past market studies on the Softis brand).

- f. the following Personnel:

The Parties will make best endeavours to facilitate to the extent possible the transfer of the following Personnel to the Purchaser, provided always that the Parties may not legally be able to require a designated employee to transfer to the Purchaser. The transfer of Personnel will be subject to local employment regulations, including those arising from the Acquired Rights Directive.

SCA is creating a separate and independent Sales and Marketing organisation to manage the Softis business that will include individuals who have been working with the Softis brand and will consist of one Sales and Marketing manager and at least two salespeople and two marketing people⁹¹. [...]. This Softis Sales and Marketing team will oversee the strategy and execution of all activities in marketing, promotions, pricing and branding. The Softis Sales and Marketing team will also be responsible for the negotiation and execution of sales agreements with customers. It is anticipated that the Sales and Marketing manager for Softis would become the Hold Separate Manager. The

⁹¹ Currently, the Softis sales and marketing activity is integrated into the overall SCA Sales and Marketing function. This department has a European organisation based in Munich and a regional organisation for DACH based in Mannheim.

Softis Sales and Marketing team would be transferred to the Purchaser (at the option of the Purchaser).

If the Purchaser wishes to purchase [...], the Purchaser will take on all the employees working at the [...] facility, including the management team [...]). The [...] organisation includes people working in all the typical supply chain functions:

- a. Production
- b. Quality Assurance
- c. Technical / Engineering
- d. Safety
- e. Human Resources
- f. Laboratory
- g. Production Planning
- h. Logistics
- i. Finance and controlling
- j. Information Technology (IT)
- k. Purchasing (Buying)

These resources would be capable of operating a stand alone supply chain for a Softis business. SCA would provide transitional support to the Purchaser taking over the supply chain for Softis from SCA.

In addition, the Purchaser will be offered the necessary training and education for its employees and/or the employees working in [...] in order for them to handle the converting equipment to be moved from Mannheim/Lucca.

SCA will create a 'Softis Austria/Germany Administration Department' based in Mannheim covering the following areas:

- a. Administration and finance – one manager and three other persons
- b. IT support – one person
- c. Product Development – one person
- d. Purchasing – one person
- e. Logistics – one person

[...]. It is expected that this department would ultimately be managed by the Sales and Marketing manager.

SCA would make this department available to the Purchaser, subject to local employment regulations, unless the Purchaser does not need or want it. SCA would provide the necessary transition support.

SCA will create a Softis Austria/Germany Converting Team based in Mannheim and covering the converting operation for Softis, including:

- a. At least 5 'white collar' persons supervising and engineering etc
- b. At least 25 'blue collar' persons operating the converting machinery

[...]. It is expected that this department would be managed by a Softis Supervisor who would have a second reporting line to the Sales and Marketing manager⁹².

SCA would make this department available to the Purchaser, subject to local employment regulations⁹³, unless the Purchaser does not need it. SCA would provide necessary transition support.

If the purchaser takes the option to purchase the Softis and/or Deluxe manufacturer branded consumer hanky/facials business in all countries where the brands are sold under the Zewa umbrella brand, SCA would agree with the purchaser on the extent to which the Purchaser requires additional support.

- g. the arrangements for the supply with the following products or services provided by SCA for a transitional period after Closing as follows:

In order to ensure the continuous supply of Softis products to the Purchaser, it is provided that until such time as the converting lines are transferred,

⁹² In order to safeguard site security and health and safety this Supervisor must formally report into the site organisation. It should be noted that due to the fluctuating nature of the converting operation, this converting team will at times work on products other than Softis for Austria and Germany and likewise at times others from outside the team would work on Softis for Austria and Germany. It should be noted that this department will also continue to draw on the general Mannheim site services prior to Closing.

⁹³ Employees would have to agree to move from Mannheim to the location of the Purchaser's production site.

installed, tested and fully operational, SCA shall supply the Purchaser, at the Purchaser's request, with Softis finished products, it being agreed that:

- i. the price should be based on a cost price basis formula.
- ii. the Purchaser shall be entitled to obtain from SCA the types and volumes of finished products currently sold by SCA under the Softis brand.
- iii. the Purchaser will be entitled to request to be supplied for a period of up to one year after closing.

If requested by the Purchaser, SCA would supply the Purchaser with the 100 sheet box for a period of up to two years. Supply of the 100 sheet box would be on a cost price basis formula for the first year and on a market price basis for the second year. If the purchaser requests, SCA would be able to alternatively offer the purchaser a proportion of the manufacturing time on the Stembert machine equivalent to that required to produce 200 tonnes of finished product.

If requested by the Purchaser, SCA would supply the Purchaser with parent reels for a period of up to three years. Supply of parent reels would be on a cost price basis formula for the first year and on a market price basis for the second and third years.

3. The Divested Business shall not include:

- i. the 2 converting lines currently used for the production of HHT currently located at the [...] facility.
- ii. the converting line in Stembert producing Softis hanky/facials.
- iii. a licence to use or produce any other tissue product under the Zewa trademark other than Softis hanky/facials for Austria and Germany, unless the Purchaser takes the option to purchase the Softis and or Deluxe manufacturer branded consumer hanky/facials businesses, in which case the licence will cover those countries where these brands also are currently sold under the Zewa umbrella brand.
- iv. use of the Softis trademark in countries where SCA is currently actively supplying Softis, other than Austria and Germany unless the purchaser takes the option to purchase the Softis manufacturer branded consumer hanky/facials business in all countries where it is sold under the Zewa umbrella brand.
- v. use of the Softis trademark in countries where SCA is currently actively supplying Softis under the Edet umbrella brand for one year

after the Purchaser has requested SCA to cease supplying Softis in that country.

- vi. any other asset not part of the Divestment Business as defined in this Schedule and which is used in relation to a business of the Parties other than the Divestment Business.
- vii. monies owed to SCA by customers for the purchase of Softis products, and monies owed by SCA to suppliers for materials used in the production of Softis.