

*Case No IV/M.499 -
Jefferson Smurfitt /
Saint Gobain*

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**REGULATION (EEC) No 4064/89
MERGER PROCEDURE**

Article 6(1)(b) NON-OPPOSITION
Date: 19/09/1994

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 19.09.1994

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

Registered with advice of delivery

To the notifying party

Dear Sirs,

Subject : Case No IV/M.499 - Jefferson Smurfit/St. Gobain
Notification of 16.08.1994 pursuant to Article 4 of Council Regulation No 4064/89

1. On 16 August 1994 Jefferson Smurfit Group plc (JSG) notified to the Commission its intended acquisition of the paper and packaging interests of Compagnie de St Gobain Group (St Gobain).
2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of application of Council Regulation No 4064/89 and does not raise serious doubts as to its compatibility with the common market and with the functioning of the EEA Agreement.

I. THE PARTIES

3. JSG, incorporated in Ireland, is an integrated manufacturer and converter of paper and paperboard whose main operations are located in Europe, the United States of America and Latin America. During the course of the examination of this case the Commission was informed of the proposed acquisition by JSG of a 27.5 per cent non-controlling interest in an Austrian competitor, Nettingsdorfer Beteiligungs-AG (Nettingsdorfer).
4. The principal activity of St Gobain, whose ultimate holding company is incorporated in France, is the manufacture of glass. It conducts its paper and packaging interests through a division of the group (the Division) consisting of seven companies which are controlled by La Cellulose du Pin SA and Cristaleria Espanola SA and which operate in France, Italy and Spain.

II. THE OPERATION

5. JSG will acquire from La Cellulose du Pin and from Cristaleria Espanola their shares in the companies in the Division.

III. CONCENTRATION OF COMMUNITY DIMENSION

6. The notified operation constitutes a concentration within the meaning of Article 3(1)b of the Regulation.
7. The undertakings concerned have a combined aggregate worldwide turnover in excess of 5000 million ECU. Both JSG and the Division have a Community-wide turnover in excess of 250 million ECU, but they do not achieve more than two-thirds of their aggregate Community-wide turnover within one and the same Member State. The notified operation therefore has a Community dimension.

IV. COMPATIBILITY WITH THE COMMON MARKET

a) Relevant product markets

8. JSG and the Division are both active in several product markets involving the supply of paper and packaging - corrugated case materials, corrugated cases, coated paper, sack kraft and paper sacks.

Corrugated case materials

9. Corrugated case materials (CCM) are the paper products used to create corrugated board - sheets of paper linerboard enclosing a layer of fluted undulating paper - which is itself converted into corrugated cases.
10. CCM is produced from either virgin or waste fibre. A high degree of cross-substitutability exists between virgin fibre- and waste fibre-based material due to a high degree of cross-substitutability of both supply and demand. Important factors in demand cross-substitutability are cost and performance characteristics such as compression strength and porosity. Purchasers usually specify objective characteristics rather than relying on a specific manufacturing process; prices for both types of fibre therefore tend to follow similar patterns. However, as the operation will not result in the creation or strengthening of a

dominant position it can be left open whether virgin and waste fibre-based CCM belong to the same product market.

Corrugated cases

11. Corrugated cases, the packaging materials constructed out of sheets of corrugated board, compete with other types of packaging, in particular wood and plastic packaging. However, as even on the narrow definition of a market for corrugated cases the operation does not create or strengthen a dominant position, the precise market definition can be left open.

Coated paper

12. Coated papers are superior grades of printing and writing paper which are coated on one or both sides to produce a glossy surface. They are used in advertising, magazine publishing, book publishing and photocopying and for business forms. In its decision *Torras/Sarrio* (IV/M.166, 24 February 1992) the Commission recognised the existence of four separate markets within the fine paper market (which is itself distinct from the markets for self-adhesive paper and self-copying paper) - uncoated wood-containing paper, uncoated wood-free paper, coated wood-containing paper, and coated wood-free paper. JSG and the Division each supply only coated wood-free paper.

Sack kraft

13. Sack kraft is strong brown paper made from virgin pulp and used for the production of paper sacks. It has lower grammage per square metre than CCM and is produced on different machines. It is therefore not substitutable for CCM either on the demand side or on the supply side. It accordingly forms a distinct market from CCM.

Paper sacks

14. Paper sacks, made from sack kraft, are used for packaging a wide range of products. Among the most important such products in Europe are cement, gypsum and other construction materials.

b) Geographical reference markets

Corrugated case materials and sack kraft

15. CCM and sack kraft have high density and are thus easily transportable. According to the parties the markets are global. About 70 per cent of virgin fibre-based and 40 per cent of waste fibre-based CCM consumed in the EU is imported from outside; about 30 per cent of all CCM used in the EU is produced in another member state. Almost 50 per cent of the sack kraft used in the EU is imported from the EFTA. The reference markets can thus be considered to be at least the EEA area.

Corrugated cases and paper sacks

16. Corrugated cases and paper sacks have low density and thus incur relatively high transport costs which limit delivery ranges to a radius of between 200 and 300 kilometres. The parties stressed that as major customers seek supplies of corrugated cases from a single supplier with local operations the market is increasingly at least Europe-wide. However, as even on the

narrower market definition, the operation will not create or strengthen a dominant position, the precise market definition can be left open.

Coated papers

17. Because of high density and thus easy transportability printing and writing paper are supplied on a world-wide market. But the quality of paper produced in Europe is generally higher than that produced elsewhere, so that imports into Europe are not significant. The reference market is thus the EEA area.

c) Competitive assessment

Corrugated case materials

18. The combined shares of JSG and the Division of the EU market for CCM are less than 12 per cent and of the EEA market 11 per cent. If virgin fibre-based and waste fibre-based materials are considered as separate markets these proportions are roughly similar. Nettingsdorfer has less than a 2 per cent share of the EU market and of the EEA market for CCM; even, if therefore the market shares of JSG, the Division and Nettingsdorfer were to be aggregated, the total would not exceed 14 per cent in the European Union and 13 per cent in the European Economic Area.

Corrugated cases

19. The parties' share of the EU and the EEA markets for corrugated cases will be about 10 per cent. If the local areas are considered, the parties' activities will overlap only in Italy and (to a lesser extent) France; in both these areas they will face a number of established competitors. In Italy the leading suppliers are Italcarta (part of SCA, Sweden) [], Guisti [] and International Paper (USA) []⁽¹⁾. In France the leading suppliers are Otor [], International Paper (USA), Rossmann [] and Groupe Giepac []⁽¹⁾. The overall market share of JSG following the operation will amount to [less than 10%] in Italy and [less than 25%] in France. Nettingsdorfer's activities overlap with those of JSG only in Italy; however, even if the market shares of JSG, the Division and Nettingsdorfer in Italy were to be aggregated, the total would not exceed 15 per cent. Furthermore the market is characterised by low cost of entry; thus it could be easily entered by any of the European competitors of JSG.

Coated papers

20. The combined shares of the parties of the EU market for coated wood-free papers is about 3 per cent.

Sack kraft

21. The combined shares of the parties of the EU market for sack kraft will not exceed 6 per cent.

(1) Deleted business secrets - their total market share is about 30%.

(2) Deleted business secrets - they have a total market share of about 35%.

Paper sacks

22. JSG produces paper sacks only in Ireland; they export only a small amount - to Northern Ireland. The Division supplies paper sacks only in France and Spain. On the basis of the narrower market definition there is accordingly no overlap between their geographic markets. If however the market was considered to be Europe-wide the aggregated market shares of the parties would amount to 12 per cent.
23. The proposed concentration will not therefore create or strengthen a dominant position as a result of which effective competition will be significantly impeded in the common market or in a substantial part of it.

V. ANCILLARY RESTRAINTS

24. The parties have asked that certain restrictions be considered as ancillary to the concentration.
25. By section 6.8 of the Share Purchase Agreement companies in the St Gobain group agree to maintain existing levels of the purchase of goods from the Division provided that prices and conditions are competitive. This restriction lasts for five years and is intended to reduce disruption to the activities of the Division following the acquisition. In its absence the concentration could be implemented only with considerably less prospect of success.
26. By section 10 of the Share Purchase Agreement companies in the St Gobain group accept restrictions on competing with businesses carried on by the Division, specifically by providing advice to competitors, soliciting customers or soliciting employees. These restrictions last for five years and are intended to ensure the transfer of the goodwill of the Division to JSG.
27. These restrictions are directly related to and necessary for the successful implementation of the concentration and can thus be treated as ancillary to it.

VI. CONCLUSION

28. For the foregoing reasons, the proposed concentration does not raise serious doubts as to its compatibility with the common market and with the functioning of the EEA Agreement.

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For the above reasons, the Commission has decided not to oppose the notified operation and to declare it compatible with the common market and with the functioning of the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of Council Regulation No. 4064/89.

For the Commission