

***Case No COMP/M.5150 -  
UPM RUS / BRIST / JV***

Only the English text is available and authentic.

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

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Article 6(1)(b) NON-OPPOSITION  
Date: 28/07/2008

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 28-VII-2008  
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PUBLIC VERSION

MERGER PROCEDURE  
ARTICLE 6(1)(b) DECISION

**To the notifying parties**

Dear Sir/Madam,

**Subject: Case No COMP/M.5150 - UPM RUS / BRIST / JV  
Notification of 20/06/2008 pursuant to Article 4 of Council Regulation  
No 139/2004<sup>1</sup>**

1. On 20/06/2008, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 by which the undertakings B.R.I.S.T. Limited ("BRIST", Malta) and UPM-Kymmene RUS Holdings Oy ("UPM RUS", Finland), a wholly owned subsidiary of UPMKymmene Corporation ("UPM", Finland), acquire within the meaning of Article 3(1)(b) of the Council Regulation joint control of a joint venture ("JV", the Netherlands) by way of purchase of shares in a newly created company constituting a joint venture.

**I. THE PARTIES**

2. **BRIST**, is a holding company ultimately controlled by a Russian entrepreneur who controls a number of businesses in the steel and mining sector, banking, insurance, woodworking and solutions for effective power production.

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<sup>1</sup> OJ L 24, 29.1.2004 p. 1.

3. **UPM**, is a global forest products group with core businesses in printing papers, specialty papers, label materials and wood products.
4. The **JV** will produce sawn timber, OSB and pulp in the Vologda region of Russia, as of 2010 – 2012.

## **II. THE OPERATION**

5. The notified concentration concerns the creation of the JV, which is a newly established greenfield operation, in which each notifying party<sup>2</sup> will have a 50% equity interest.
6. According to the Joint Venture Agreement signed on 25 April 2008, each of the two notifying parties nominates 2 members in the JV's Board of Directors. Its chairman will be appointed by UPM and BRIST on a rotating basis. Save for certain reserved matters, resolutions will be decided by majority of the votes cast. The reserved matters, such as any material changes regarding the JV's scope of operations or its corporate structure or any major strategic decisions, will be decided by all Directors of the JV unanimously.

## **III. CONCENTRATION**

7. The notifying parties submit that they will not contribute any existing business operations to the JV<sup>3</sup>, which will have its own personnel<sup>4</sup> and management. The latter will be separate from the parent companies. The notifying parties have also signed, on December 19, 2007, a Letter of Intent, where the responsibilities of each of them during the initial construction and start up period of the project are defined.
8. It is moreover foreseen that the JV is set up for an indefinite period of time and therefore will be operating on a lasting basis.
9. As described below, the JV will perform activity well beyond one specific function for the parent companies, being active in both production and trade in its products. Moreover, the JV will hold wood cutting rights in its own name and therefore will have access to raw material supply independently from its parents. Also, most of its production will be sold on the market and traded independently of its parents. Finally, the relations between the JV and its parents will be at arm's length on the basis of normal commercial conditions.
10. Based on the above, the proposed operation constitutes a full function joint venture and a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

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<sup>2</sup> BRIST [...] Sveza, a holding company active in the forestry sector in Russia. Sveza's business consists of wood-processing and various applications of its products are sold in some 45 countries worldwide. Sveza owns and operates five manufacturing sites in Russia that are used for the production of plywood.

<sup>3</sup> With the initial financial backing from its parent groups, the JV will develop, build and operate an entirely new state-of-the-art forest industry facility in the Vologda region of Russia. The planned industrial complex includes a sawmill, an oriented strand board ("OSB") panels mill and a pulp mill in the community of Sheksna, in the southern part of Vologda.

<sup>4</sup> Over 650 people, including over 100 in administration and support.

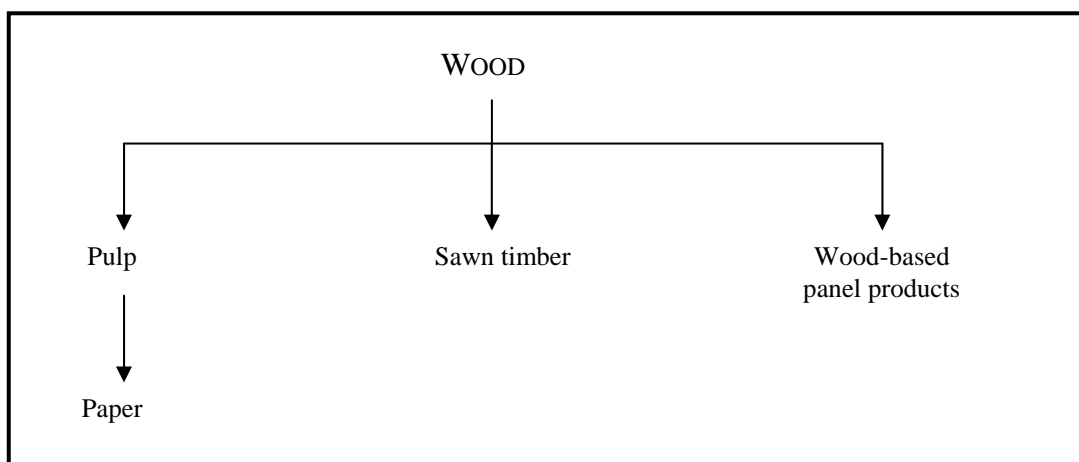
#### IV. COMMUNITY DIMENSION

11. The operation has a Community dimension pursuant to Article 1(2) of the Merger Regulation. The undertakings concerned have a combined aggregate worldwide turnover in excess of EUR 5000 million (BRIST [...] and UPM EUR 10,035 million), and both of them have a Community-wide turnover in excess of EUR 250 million (BRIST [...] and UPM EUR [...]). They do not achieve more than two-thirds of its Community-wide turnover in one and the same Member State. The notified operation therefore has a Community dimension.

#### V. COMPETITIVE ASSESSMENT

##### V.1. RELEVANT MARKETS

12. The notified transaction covers a number of markets along the forestry and logging; manufacture of wood and of wood products and manufacture of paper and paper products industries. In accordance with the Joint Venture Agreement the business of the JV will in the Vologda region of Russia engage in:
- (i) construction of saw, pulp and OSB mills and raising funds for these purposes;
  - (ii) production of pulp, OSB and sawn timber;
  - (iii) timber procurement, including forestry and timber cutting; and
  - (iv) wholesale trade of pulp, OSB and saw timber.
13. Various parts of the forestry industry are vertically related. Wood is used as a raw material in the manufacture of pulp, which is then used as one of the raw materials in the printing and publishing paper industry. Wood is also used as an input for the production of sawn timber and wood-based panel board products<sup>5</sup>. This can be illustrated as follows:



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<sup>5</sup> See Case No COMP/M.2498, *UPM-Kymmene/Haindl*, *op. cit.*, para 35.

14. UPM is one of Europe's sawn timber producers and operates seven sawmills and six processing facilities in Finland as well as one sawmill in Austria and one in Russia. It also produces plywood and pulp which is used for its internal paper production.
15. SVEZA is producing plywood and particleboard (but does not sell particleboard in the EEA).
16. The parties submit that UPM and Sveza only purchase their wood requirements, they do not sell wood in the merchant market. The JV will hold wood cutting rights in its own name and will also not be selling any wood to third parties.

#### **V.1.1. Relevant product markets.**

##### *Sawn timber*

17. Sawn timber is produced from different types of wood, primarily logs, processed by sawmills and is used in construction, e.g. for flooring and staircases. It is also used for furniture, interior walls, doors, window frames, civil engineering and packaging.
18. UPM only produces and the JV will only produce pine and spruce based sawn timber. In the past<sup>6,7</sup>, the Commission has left open the question of whether there is one market for sawn timber which covers all different types of wood or if it should be sub-divided depending on the type of timber, into narrower product sectors, for example pine or spruce. On this basis and also on the high degree of supply-side substitutability, the notifying parties take the view that there is one market for sawn timber which covers all different types of wood. The precise market definition can be left open as the transaction does not raise competition concerns on any of these alternative markets.

##### *Wood-based panel board products*

19. The market for wood-based panel board products consists of several types of panels and board, such as plywood, hardboard, raw particleboards and coated particleboards, decorative laminates (HPL/CPL) and wood-based panel components for the furniture and construction industry. It is recalled that the JV will not produce the same wood-based panel board products as the two notifying parties.
20. The Commission has in the past concluded that some of these different types of wood-based panel boards may belong to separate product markets<sup>8</sup>. The notifying parties however submit that particleboard, MDF, OSB, plywood and hardboard could all form part of the product base for the same distribution channels and that thus there is a certain degree of substitutability among the different wood-based panel board products<sup>9</sup>, although end-user requirements may make some types of panels more suitable for a given purpose than others.

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<sup>6</sup> Case No. IV/M.646, *Repola/Kymmene, op. cit.*, para 32 1 60.

<sup>7</sup> Case No COMP/M.2234 - *Metsäliitto/Vapo/JV, op.cit.*, paras 14 & 22.

<sup>8</sup> Case No COMP/M.4165, *Sonae Industria /Hornitex*, Commission decision of 28 June 2006, para 11. See also Case No COMP/M.4525, *Kronospan/Constantia*, Commission decision of 19 September 2007, paras 16, 17 and 19.

<sup>9</sup> Case No COMP/M.599, *Noranda Forest/Glunz*, Commission decision of 8 September 1995, para 20.

21. The exact product market definitions can be left open in this case given that the JV will not produce the same wood-based panel board products as the notifying parties. Therefore, the concentration does not give rise to competition concerns under any alternative product market definition.

### *Pulp*

22. Pulp is a raw material for manufacturing various grades of paper and cartonboard.

23. The Commission has treated pulp as a single product market for the purposes of earlier decisions<sup>10</sup>, notwithstanding the different characteristics of different pulp products (chemical pulp – mechanical pulp). The notifying parties also submit that there is an overall product market comprising all types of pulp.

### *Paper products*

24. Pulp is a raw material for manufacturing various *paper products* (paper and cartonboard). According to the notifying parties, paper production is one of UPM's core businesses. Its principal paper grades are magazine papers, newsprint and fine papers and it also produces label papers, packaging papers and other specialty papers.

25. In past decisions, the Commission has identified separate product markets for magazine paper, newsprint, fine paper and specialty papers<sup>11</sup>.

26. Concerning magazine paper, the Commission has in the past concluded that (i) wood-free magazine paper (WFC) and (ii) wood-containing magazine paper constitute two different relevant product markets<sup>12</sup>. The parties do not agree with this position and still consider that there is a single market for magazine papers.

27. In line with past Commission decisions, the notifying parties submit that newsprint constitutes a separate product market<sup>13</sup>.

28. In past decisions, the Commission has considered that fine paper should be seen as a separate product market (with a possible further division into wood-free coated paper and wood-free uncoated paper)<sup>14</sup>. The notifying parties take the position that this is a single market. The precise market definition can be left open, since a further distinction does not seem relevant for the assessment of the present transaction as it would not have any impact on the competitive assessment.

29. In line with past Commission decisions, the notifying parties submit that separate product markets exist for each of the three different specialty papers<sup>15</sup> (base material, face material and packaging papers).

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<sup>10</sup> Case No 1006 *UPM-Kymmene/April* Commission decision of 11 June 1998.

<sup>11</sup> That is i) base material, (ii) face material and (iii) packaging papers

<sup>12</sup> Case No COMP/M.2498, *UPM-Kymmene/Haindl*, para 22.

<sup>13</sup> Case No COMP/M.2498, *UPM-Kymmene/Haindl*, *op. cit.* and Case No COMP/M.3822, *Stora Enso/Schneidersöhne Papier*, Commission decision of 25 July 2005.

<sup>14</sup> Case No COMP/M.3822, *Stora Enso/Schneidersöhne Papier*, Commission decision of 25 July 2005.

<sup>15</sup> Case No IVM.526, *Sappi/DLJMB/UBS/Warren*, para 23, 26-27,

30. As the concentration would not raise competition based on any of these alternative markets, it is not necessary to conclude on the exact product market definition for the purposes of this case.

### **V.1.2. Relevant geographic markets.**

#### *Sawn timber*

31. In the past the Commission has concluded that the relevant geographic market for sawn timber is at least EEA-wide<sup>16</sup>. The notifying parties agree with this position.

#### *Wood-based panel board products*

32. In the past the Commission has concluded that the relevant geographic markets for wood-based panel board products, for various wood products are wider than national, but narrower than the EEA (so at least cross-border regional) in light of the transportation costs relevant for such products<sup>17</sup>.

33. The notifying parties however suggest that the market for wood-based panel board products should be at least EEA-wide, because wood-based panel products can be transported over long distances, given that they do not decrease in quality within a short time. The geographic market definition for wood-based panel products can be left open given that, on the basis of the alternative geographic market definitions considered, the concentration does not give rise to competition concerns.

#### *Pulp*

34. In the past the Commission has concluded that the relevant geographic market for pulp is global. The notifying parties agree with this position.

#### *Paper products*

35. In the past the Commission has concluded that the relevant geographic markets for magazine paper and for newsprint, are at least EEA-wide. The notifying parties agree with this position.

36. In the past the Commission has concluded that the relevant geographic market for fine paper is the EEA<sup>18</sup>. Although the notifying parties provide data on an EEA basis, they submit that this market can be considered world-wide since there are significant imports of fine papers into the EEA from Asia and America. The issue of this geographic market definition can be left open given that, on the basis of the alternative geographic market definitions considered, the concentration does not give rise to competition concerns.

37. In the past the Commission has concluded that the relevant geographic markets for specialty papers<sup>19</sup> is at least EEA-wide. The notifying parties agree with this position.

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<sup>16</sup> Case No COMP/M.2234 - *Metsäliitto/Vapo/JV*, para 19.

<sup>17</sup> Case No COMP/M.4165, *Sonae Industria /Hornitex*, paras 12-14.

<sup>18</sup> Case No COMP/M.3822, *Stora Enso/Schneidersöhne Papier*, para 14.

<sup>19</sup> Case No IV/M.526, *Sappi/DLJMB/UBS/Warren*, para 24; Case No IV/M.646, *Repola/Kymmene*, *op. cit.*, para 38; Case No COMP/M.1884, *Mondi/Frantschach/AssiDomän*, *op. cit.*, para 10.

## V.2. ASSESSMENT

### V.2.1. Horizontal effects

38. Since the two notifying parties and the JV will be producing different types of wood based panel products, they will only be together active in the wider market for wood based panel products (that is including all types of panels and board, particleboard, MDF, hardboard, OSB and plywood). In 2006 UPM and BRIST had a cumulative market share of [1-5]%, in the EEA<sup>20</sup>, accounting for [...] m<sup>3</sup>. When the JV becomes fully operational, in 2015, it is expected to have a production capacity of 450,000 m<sup>3</sup>, of which [...] % is planned to be sold to the EEA. Consequently its market share in the EEA will be well below 1%. Therefore the combined market share of the three will be well below 15% at that moment.
39. The JV and UPM will be producing sawn timber. In 2007, UPM had a market share of [1-5] in the EEA ([1-5]% for pine and [1-5]% for spruce), accounting for [...]. When the JV becomes fully operational, it is expected to have a production capacity of 300,000 m<sup>3</sup>, equally split between pine and spruce. Consequently, its market share in the EEA will be well below 1%. Therefore the combined market share of the two will be well below 15% at that moment.
40. The JV and UPM will also be producing pulp. In 2007, UPM's market global market share for pulp in general was around [1-5]%. When the JV becomes fully operational, in 2015, it is expected to have a production capacity of 800,000 representing a market share of below 1%<sup>21</sup>.
41. In the light of the above, the Commission has concluded that the concentration does not raise serious doubts as to its compatibility with the common market in respect of any of the possible market definitions on account of horizontal effects.

### V.2.2. Vertical effects

42. The JV will be producing pulp, which is a market upstream to paper. UPM is active in several paper markets. UPM only exceeds 25% in the market for wood-containing magazine paper, where they have a [25-30]% EEA market share. There are other credible competitors active in this market (Stora Enso [15-20]% and Myllykoski [10-15]%). In any event, as mentioned above, pulp has a wider application than wood-containing magazine paper. Consequently, there would remain a sufficiently large customer base for other pulp producers. The operation is therefore unlikely to lead to foreclosure effects in these markets.
43. In the light of these considerations, the Commission has concluded that the concentration does not raise serious doubts as to its compatibility with the common market in respect of any vertical effects.

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<sup>20</sup> The parties have also submitted country by country figures demonstrating that even on a national basis, which is narrower than what the Commission has previously considered, their current combined market shares do not exceed 10%, with the only exception of [...] where it stands at [25-30]% ([1-5]% increment).

<sup>21</sup> Since the JV will only be producing chemical pulp, the notifying parties have also submitted data for chemical pulp, where UPM had a market share, [1-5]%, accounting for [1-5] million tons out of 144 million tons. Even under this scenario the JV's projected market share will be below 1%.



## **VI. CONCLUSION**

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

For the Commission

*[signed]*  
Meglena KUNEVA  
Member of the Commission