

***Case No COMP/M.5477 -
VOTORANTIM /
ARACRUZ***

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

Article 6(1)(b) NON-OPPOSITION
Date: 20/04/2009

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 20/04/2009

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

Legal representative

Dear Sir/Madam:

**Subject : Case No COMP/M.5477 – Votorantim/ Aracruz
Notification of 12/03/2009 pursuant to Article 4 of Council Regulation
No 139/2004**

1. On 12/03/2009, the European Commission received a notification of a proposed transaction by which Votorantim Industrial SA (Votorantim, Brazil) will acquire within the meaning of Article 3(1)(b) of the Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (EC Merger Regulation)¹ control of Aracruz Celulose S.A. (Aracruz, Brazil), currently jointly controlled by Votorantim, Arapar S.A. (Arapar, Brazil) and Arainvest Participações S.A. (Arainvest).
2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of the EC Merger Regulation but does not raise serious doubts as to its compatibility with the common market and the functioning of the EEA Agreement.

I. THE PARTIES AND THE OPERATION

3. Votorantim is active in a variety of business segments, including industrial activities, financing and new business. It has operations in the cement and concrete, mining and metallurgy (aluminum, steel, nickel and zinc), as well as pulp and paper business, in the production of concentrated orange juice, in chemical specialty markets, in self-generation of electric power and in the financial sector. In the pulp and paper sector, it

¹ OJ L 24, 29.01.2004, p. 01.

is active both through its wholly-owned subsidiary VCP and through its shareholding interest in Aracruz, jointly controlled with Arainvest and Arapar.

4. Aracruz is mainly active in the production of pulp and wood products.

II. THE TRANSACTION AND THE CONCENTRATION

5. The proposed concentration involves the acquisition of sole control over Aracruz by Votorantim within the meaning of Article 3(1)(b) of the EC Merger Regulation.
6. On 19/01/2009, Votorantim Celulose e Papel S.A. (VCP), which is Votorantim's wholly owned subsidiary, acquired from Arapar [...] common shares issued by Aracruz, representing approximately 28.03% of the voting capital, thereby raising its capital share in Aracruz to 56%.
7. VCP will also acquire Arainvest's shares, [...], raising VCP's capital share in Aracruz to 84%.
8. [...].
9. Part of the resources for the acquisition is provided by Bndes Participações SA (Bndespar), who will provide capital to Votorantim [...] and will own approximately 26% of the voting shares of VCP. Pursuant to a shareholder's agreement to be concluded between Votorantim and Bndespar, Votorantim will have sole control over VCP and Aracruz.

III. COMMUNITY DIMENSION

10. Votorantim's worldwide turnover amounted to €10 860 million and the Community-wide turnover amounted to € [...] million in 2007. Aracruz' worldwide turnover amounted to €1 564 million and the Community-wide turnover amounted to €[...] million in 2007. The parties did not derive more than two-thirds of their aggregated Community-wide turnover within one member state. The transaction therefore has a Community dimension according to Article 1(2) of the EC Merger Regulation.

IV. RELEVANT MARKETS

A. Relevant product markets

Pulp

11. Pulp is a dry fibrous material made from wood, used especially to produce paper and paper board. Pulp can be either produced to be sold in the merchant market or kept for internal use by vertically integrated companies in paper production.

12. Pulp is usually divided according to the production process used in the separation of the fibres (chemical or mechanical) and by the type of wood used (hardwood² or softwood³). Both Votorantim and Aracruz produce chemical pulp⁴.
13. In the past, the Commission has come to different conclusions with regard to the product market definition for pulp. In one previous decision, the Commission has treated chemical pulp as a single product market⁵. However, Votorantim considers that there is an overall product market comprising all types of pulp (e.g. chemical pulp, mechanical pulp and recycled pulp) in line with Commission practice⁶ in other cases.
14. The result of the market investigation in this case strongly supports the definition of a single product market for chemical pulp, thus a narrower market than defined in the majority of the previous cases. Even within this narrower market, a few respondents pointed to a segmentation of chemical pulp markets into hardwood and softwood pulps, each further divided into bleached and unbleached pulp.
15. The Commission has analyzed the effects of the merger on the narrower chemical pulp market and two of its potential sub-segments where the parties are active. The Commission notes that share of supply data for chemical pulp is a reasonable proxy even for overall pulp market shares because over 90% of pulp production is chemical pulp.
16. With regard to a further sub-segmentation of the chemical pulp market, Votorantim provided the market shares for bleached eucalyptus kraft pulp (BEKP), a narrower pulp segment within hard wood chemical (HW) pulp. This was motivated by the fact that according to Votorantim, the merged entity would have a market share of 28% in the EEA merchant market of BEKP. Accordingly, if such a narrower segment were to be defined as a relevant product market, BEKP would be an affected market under this transaction.
17. The Commission conducted a market test to examine the need to delineate HW pulp as a separate product market within the chemical pulp market and to further segment such a HW pulp market into BEKP and other types of pulp, as well as the validity of the figures for these possible narrower segmentations of the wood pulp market.
18. The results from the market investigation unanimously highlighted a large degree of substitution between BEKP and other types of HW pulp. Therefore the market test supported the view that the HW pulp market should not be further segmented and a separate BEKP pulp market can be excluded. As described in recital 14, the clear majority of competitors and customers in this market investigation considered the relevant pulp market to consist of all chemical pulp.

² Hardwood pulp which contains short fibres is produced from trees such as oak, eucalyptus, aspen, birch and acacia.

³ Softwood pulp which contains long fibres is produced from trees such as pine.

⁴ Chemical pulping processes are mainly the kraft (or sulfate) process and the sulfite process. Chemical pulping therefore differs from mechanical, chemimechanical and recycled pulping processes.

⁵ M.1006 UPM-Kymmene / April.

⁶ M.4054 Koch Industries / Georgia-Pacific, M.2243 Stora Enso / Assidomän / JV, M.646 Repola / Kymmene, M.210 Mondi / Frantschach, and M.166 Torras / Sarrio.

19. Since the concentration does not raise serious doubts under any of the alternative product market delineations, the precise product market definition for pulp can be left open for the purposes of this decision.

Paper

20. Votorantim also sells wood-free uncoated (WFU) fine paper in the EEA.⁷ This is a downstream market from wood pulp. The Commission has previously distinguished between wood-containing paper⁸, wood-free coated (WFC) and uncoated paper⁹, magazine paper and mechanical coated paper¹⁰. In its previous practice, the Commission has considered defining separate markets for each paper segment according to whether the paper was supplied in reels or sheets¹¹. The Commission has in previous decisions also considered the distribution channel of paper relevant i.e. paper sold directly from the manufacturers or indirectly through merchants¹².
21. Aracruz has only very limited activities in the downstream paper markets¹³. Given the limited vertical relationship between the parties, the precise product market definition can be left open for the purposes of this decision.

Sulphuric acid

22. Votorantim also submits that one of its subsidiaries, Nitro Quimica, manufactures sulphuric acid, a chemical product which is used in the manufacture of pulp in Brazil. The Commission has in its previous decisions left open the precise definition of the product market for sulphuric acid¹⁴.
23. As only Votorantim operates in this market and given the limited vertical relationship between the Parties, the precise product market definition can be left open for the purposes of this decision.

⁷ Sales of paper in the EEA in 2008 were marginal, i.e. [...] tons, which account for less than [...]% of the European market.

⁸ Paper is made either of pulp mechanically treated, so called “wood-containing”, or of pulp chemically treated, also referred to as “woodfree”.

⁹ In coated paper, the surface is coated with a mixture of clay or chalk and other substances in order to get better results in printing.

¹⁰ M.2498 UPM-Kymmene/Haindl, and M.2245 Metsä-Serla/Zanders.

¹¹ M.4513 Arjowiggins/M-Real Zanders Reflex.

¹² M.4753 Antalis/MAP.

¹³ Aracruz’ paper activity is limited to Brazil, where it produces a small amount of WFU (approximately [...] tons capacity representing [0-5]% of a global WFU market).

¹⁴ M.3284 Outokumpu/Boliden. M.1182 Akzo Nobel/Courthaulds. In Outokumpu/Boliden the Commission considered that the relevant product market is at least sulphuric acid. The Commission also considered the inclusion of liquid sulphur dioxide in the same product market. In Akzo Nobel/Courthaulds the Commission left open the possibility that sulphuric acid is part of a wider product market. Waste acids and carbon dioxide can substitute sulphuric acid in the pulp and paper industry.

B. Relevant geographic markets

24. In line with previous Commission decisions,¹⁵ Votorantim submits that the pulp market is at least EEA-wide. The present market investigation has overwhelmingly confirmed this view.
25. In the past, the Commission held that the market for fine paper including WFU paper is at least EEA-wide in scope.¹⁶
26. The Commission has so far left open the geographic market definition for sulphuric acid.¹⁷
27. The Commission considers that for the purpose of this decision, the exact geographic market definitions can be left open since the transaction does not raise serious doubts as to its compatibility with the Common market under any of the alternative geographic market definitions.

V. COMPETITIVE ASSESSMENT

A. Horizontal effects

28. The Parties have a horizontal overlap in the chemical pulp market. Votorantim submits that there is no horizontally affected market based on the market definition that has been constantly retained by the European Commission, i.e. a market for all pulp that is at least EEA-wide. The Notifying Party submits that the merged entity will have a market share of [5-10]% in the merchant market of chemical pulp in the EEA and in a hypothetical worldwide market in 2008. Aracruz' share would be [5-10]% in both markets. The results of the market test supported Votorantim's estimate of the market share of the combined entity in an overall market for chemical pulp.
29. Under the hypothetical HW pulp market delineation, the market investigation provided indications of a combined market share of [10-20]% in potential EEA and global markets. The increment from Aracruz' market share in HW pulp in either geographic market would be between [10-20]%.
30. Even under a hypothetical BEKP market delineation, the market investigation confirmed that the combined market share of the parties is [30-40]% in potential EEA and global markets. Under this product market delineation, the increment from Aracruz' share in either geographic market would be approximately [20-30]%.

¹⁵ See footnote 5.

¹⁶ M.5283 SAPPI/M-Real.

¹⁷ M.3284 Outokumpu/Boliden.

31. Therefore, assuming the need to delineate such narrower markets (contrary to the results of the market investigation, see above recitals 14, 18), the transaction would lead to affected HW and / or BEKP pulp markets.
32. The Commission observes that under the hypothetical HW pulp and BEKP market definition, notwithstanding the merger, a significant number of relevant suppliers will remain both in the EEA and global merchant markets.
33. For a hypothetical HW pulp market, the market investigation gave indications of the following market shares for other HW suppliers worldwide in 2008: Arauco, Cenibra, CMPC, Ence, Metsä Botnia, Stora Enso and Suzano each with a 0-10% market share. EEA-wide in 2008 the market shares of the alternative suppliers would be: Ence 10-20%, and CMPC, Metsä Botnia, Stora Enso and Suzano each with a 0-10% market share.
34. Worldwide in 2008, the market shares of the alternative remaining BEKP suppliers are: Arauco & CMPC (10-20%), Ence (5-10%), Cenibra (5-10%), Suzano (5-10%) and others (30-40%). For an EEA-wide market, the market shares of the alternative BEKP suppliers would be: Ence (10-20%), Cenibra (5-10%), Suzano (5-10%), Stora Enso (5-10%), Arauco & CMPC (5-10%) and others (20-30%).
35. During the market investigation one customer voiced concerns that the reduction in the number of competitors in the market place would increase the ability of the merged entity to manage the supply of eucalyptus and thus lead to an increase in pulp prices. The Commission has analyzed the merits of these concerns.
36. However, there are no indications that the acquisition of sole control by Votorantim would lead to a change in market behaviour of Aracruz compared with the situation pre-merger when Votorantim controlled Aracruz jointly with Arapar and Arainvest. The proposed transaction formally entails a change of control that will however not substantially modify the structure of competition in the relevant markets.
37. Pre-merger, Votorantim held sole control over VCP and as the sole owner of VCP joint control over Aracruz. The other shareholders are Arainvest and Arapar. Arainvest is a Brazilian company jointly owned by two individuals with interests predominantly in banking and financial institutions. Arapar is owned by individuals of three families (the Lorentzen, the Moeira Salles and the Almeida Braga) who have no interest in the pulp and paper sector other than their current stake in Aracruz.
38. While Arainvest and Arapar could potentially have exercised influence on the daily business activities of Aracruz, Votorantim maintains that even in the pre-merger situation, Votorantim has been the only industrial shareholder exercising control over Aracruz and VCP. VCP forms an important part of the business activities of Votorantim even as a stand-alone company. VCP is an important player in its field and vertically integrated into paper. Votorantim has thus had a real interest in the business activities of Aracruz as opposed to the financial or fiduciary interests of the other shareholders.
39. Therefore, any change in the competitive structure due to the transaction appears to be limited given the fact that post-merger, Bndespar will assume Arainvest's and Arapar's role as a financial investor but actual control of VCP and Aracruz will remain in the hands of Votorantim.

40. The market test neither supported the claim that the pulp markets under any plausible market delineation were particularly "tight". In fact, a significant majority of competitors and customers considered that there will be sufficient supplies and competitive pressure even post-merger. As pointed out in recitals 32-34, notwithstanding the merger, a relevant number of HW pulp and BEKP suppliers will remain both EEA-wide and worldwide.
41. As regards the paper market, the Commission notes that in the EEA the transaction does not lead to a potential horizontal overlap since Aracruz does not sell any paper outside Latin America. In a potential worldwide market, the existence of a horizontally affected market can be excluded given the minimal presence of Aracruz in the market.¹⁸
42. In view of the above, the Commission considers that the transaction does not raise serious doubts as to the compatibility of the merger with the Common market with regard to the horizontal overlap of the Parties' activities in the pulp and paper markets.

B. Vertical effects

43. As described in recitals 20-21 above Votorantim is vertically integrated and thus also active in the manufacture of WFU paper, which it sells to the EEA market. It also produces sulphuric acid in Brazil.
44. Approximately [...] % of the pulp Votorantim produces is used internally for the manufacture of printing and writing papers, thermal papers and carbonless papers.
45. Therefore the parties' activities are potentially vertically linked in the possibility of Aracruz to supply pulp on the one hand, and Votorantim's activities in the downstream supply of paper, on the other, as well as in Votorantim's manufacture of sulphuric acid used in the manufacture of pulp in Brazil.
46. Votorantim submits that there are no vertically affected markets. However, it cannot be excluded that the parties' individual or combined market shares at either level exceed 25 % in the potential BEKP markets.
47. In view of the assessment made in recitals 38-39 supra, the Commission notes that the present transaction is not likely to lead to a structural change in the market.
48. In 2008, Votorantim used [...] kilo tonnes of pulp for the production of paper in total. Aracruz' pulp capacity was [...] kilo tonnes. Therefore, input foreclosure is highly unlikely as Votorantim's pulp use represents less than [5-10] % of Aracruz' capacity. As described in recitals 32-34, even if Votorantim would use all of Aracruz's pulp for its internal requirements, a significant number of relevant suppliers of HW pulp and BEKP will remain both in the EEA and global merchant markets.
49. Votorantim in fact sources most of its pulp requirements internally for its paper activities ([...] % of its requirements). With regard to the part of its pulp requirements

¹⁸ See footnote 13.

purchased on the merchant market for consumption in its paper units in Brazil, it has a long-term supply agreement with International Paper. In this context Votorantim buys [...] kilo tonnes of chemical pulp annually which represents [...]% of its requirements. As to the possibility of losing a pulp customer, Votorantim's intake of pulp represents less than [0-5]% of the global chemical pulp market.

50. Votorantim's minor importance as a pulp customer is also reflected by the fact that it has a marginal market share under any plausible paper segmentation downstream. As Votorantim sells [80-90]% of its production in Brazil, its position on the downstream paper market in the EEA is limited¹⁹. Worldwide, for the overall paper market, Votorantim is the 12th largest manufacturer with a capacity of [...] million tons. Votorantim holds less than a [0-5]% market share of WFU and WFC globally.
51. With regard to sulphuric acid, Votorantim's market share in the supply to pulp manufacturers²⁰ in Brazil is approximately [0-5]%. Aracruz has no presence in sulphite pulping as it concentrates on the kraft process (BEKP) which does not require sulphuric acid. Therefore, serious doubts can be excluded in relation to a potential link between Votorantim's production of sulphuric acid and Aracruz' BEKP pulping process.
52. In view 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 to any vertical relations.

VI. CONCLUSION

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

For the Commission
(signed)
Neelie KROES
Member of the Commission

¹⁹ It sold less than [...] tons of WFU in the EEA market with no production capacity there. It accounts for [0-5]% of the EEA WFU market. Votorantim does not sell any WFC in the EEA.

²⁰ In pulp manufacturing, sulphuric acid is mainly used in sulphite pulping processes.