

EN

This text is made available for information purposes only.

A summary of this decision is published in all Community languages in the Official Journal of the European Union.

***Case No COMP/M.6101
- UPM/ Myllykoski and
Rhein Papier***

Only the English text is authentic.

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

Article 8 (1)
Date: 13/07/2011

Brussels, 13/07/2011

C(2011) 4997

PUBLIC VERSION

COMMISSION DECISION

of 13/07/2011

**declaring a concentration to be compatible with the internal market
and the functioning of the EEA Agreement**

(Case No COMP/M.6101 - UPM/ Myllykoski and Rhein Papier)

Commission Decision

of 13/07/2011

**declaring a concentration to be compatible with the internal market
and the functioning of the EEA Agreement**

(Case No COMP/M.6101 - UPM/ Myllykoski and Rhein Papier)

(Only the English text is authentic)

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to the Agreement on the European Economic Area, and in particular Article 57 thereof,

Having regard to Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings¹, and in particular Article 8(1) thereof,

Having regard to the Commission's decision of 4 March 2011 to initiate proceedings in this case,

Having given the undertakings concerned the opportunity to make known their views on the objections raised by the Commission on 5 May 2011,

Having regard to the opinion of the Advisory Committee on Concentrations²,

Having regard to the final report of the Hearing Officer in this case³,

WHEREAS:

- (1) On 28 January 2011 the European Commission received a notification of a proposed concentration pursuant to Article 4 of Regulation (EC) No 139/2004 ("the Merger Regulation") by which the undertaking UPM-Kymmene Corporation ("UPM")

¹ OJ L 24, 29.1.2004, p. 1. With effect from 1 December 2009, the Treaty on the Functioning of the European Union ("TFEU") has introduced certain changes, such as the replacement of "Community" by "Union" and "common market" by "internal market". The terminology of the TFEU will be used throughout this Decision.

² OJ C200. , p....

³ OJ C200. , p....

acquires within the meaning of Article 3(1)(b) of that Regulation sole control over Myllykoski Corporation (“Myllykoski”) and Rhein Papier GmbH (“Rhein Papier”).

I. THE PARTIES

- (2) UPM is a worldwide company headquartered in Finland which develops, produces and markets paper products. It also produces pulp, electricity, label-stock, sawn timber and wood panel products.
- (3) Myllykoski is a privately-owned Finnish company. It develops, produces and markets paper products. It also produces pulp. It has mills in Finland, Germany and the United States and sales activities worldwide.
- (4) Rhein Papier, located in Germany, produces paper products in Germany and has sales worldwide. It is managed by Myllykoski and is controlled by the same shareholders that own Myllykoski. Myllykoski and Rhein Papier are referred to as the Myllykoski Group.

II. THE OPERATION AND THE CONCENTRATION

- (5) UPM intends to acquire 100% of the share capital of the Myllykoski Group. Following the concentration, UPM will have sole control over the Myllykoski Group.
- (6) The operation constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

III. UNION DIMENSION

- (7) The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million⁴ (in 2009: UPM: EUR 7 719 million and Myllykoski Group: EUR [...]*) . Each of them has an EU-wide turnover in excess of EUR 250 million (in 2009: UPM: EUR [...]*, Myllykoski Group EUR [...]*), but they do not achieve more than two-thirds of their aggregate Union-wide turnover within one and the same Member State. The notified operation therefore has a Union dimension.

IV. THE PROCEDURE

- (8) By decision of 4 March 2011, the Commission raised serious doubts as to the compatibility of the concentration with the internal market and initiated proceedings pursuant to Article 6(1)(c) of the Merger Regulation ("the Article 6(1)(c) Decision").
- (9) UPM submitted its written comments on the Article 6(1)(c) decision on 22 March 2011.

⁴ Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Consolidated Jurisdictional Notice under Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings (OJ C95, 16.04.2008, p1).

* Parts of this text have been edited to ensure that confidential information is not disclosed; those parts are enclosed in square brackets and marked with an asterisk.

- (10) On 15 April 2011, UPM submitted a set of documents called “Papers on a number of key issues” and announced submitting another economic study. The study was submitted on 18 April 2011.
- (11) On 5 May 2011, the Commission adopted a Statement of Objections pursuant to Article 18 of the Merger Regulation.
- (12) By submission of 20 May 2011 UPM responded to the Statement of Objections and asked for an Oral Hearing.
- (13) On 27 May 2011 an Oral Hearing took place. As third parties, the Myllykoski Group, its lending banks and Bertelsmann AG including all subsidiaries of the Bertelsmann Group attended the Oral Hearing.
- (14) The meeting of the Advisory Committee took place on 1 July 2011.

V. COMPETITIVE ASSESSMENT

- (15) Both parties are active in the production and distribution of magazine paper and newsprint. In addition, the parties’ activities overlap in the field of wood pulp production, wood procurement and procurement of recovered paper. The concentration also gives rise to several vertical relationships.

Horizontal relationships

1. Magazine paper

1.1. Introduction

- (16) Paper is a product made from natural fibres (usually cellulose from wood but also fibres from recovered paper). It is produced in a wide range of qualities and has a wide range of applications. Kraft papers and cardboard are used in the packaging industries, newsprint for the daily press, magazine papers for the production of magazines, catalogues and direct mail, fine papers for office use and books. Each of these broad categories can be further subdivided. UPM considers that magazine paper and newsprint together may be considered as "publication paper".

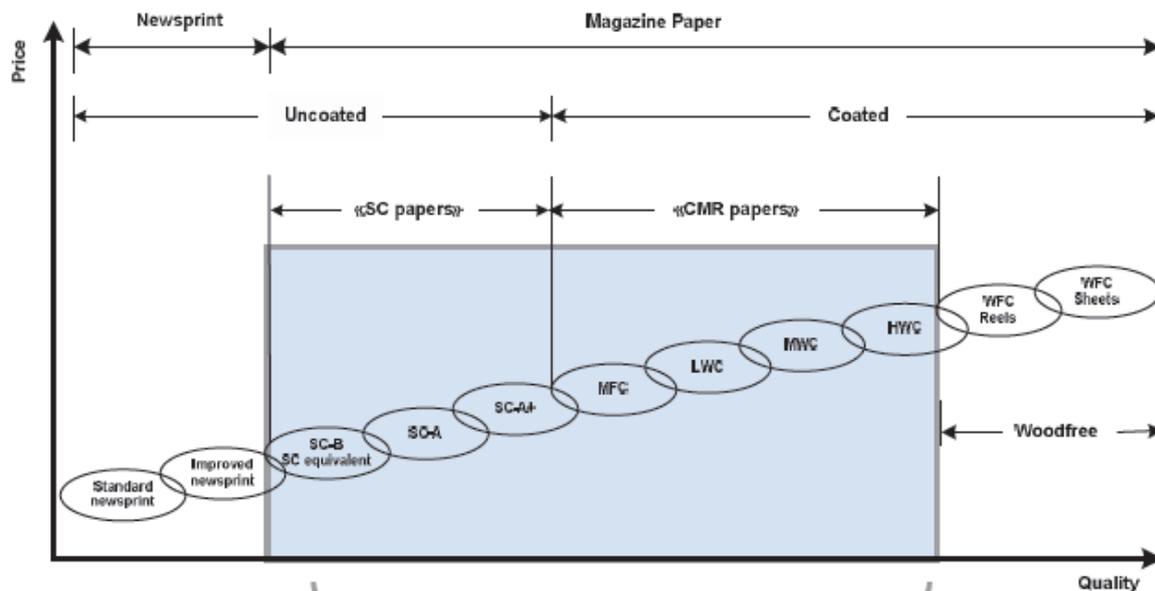
1.2. Product Market

- (17) Both parties are active in the market for supply of all grades of magazine paper except for wood-free paper and machine finished coated paper ("MFC"), which the Myllykoski Group does not produce. Magazine paper contains mechanical, chemical and/or recycled pulp as well as chemicals, fillers and pigments.
- (18) The various grades and specifications of magazine paper make up a continuum of different qualities and prices, which in general terms runs from wood-free coated paper (used mainly for magazine covers or very high-quality corporate presentations such as annual reports), through coated mechanical reels (CMR), and supercalendered

paper grades (SC). CMR and SC papers are primarily used for publication of consumer magazines, catalogues and advertising/ direct marketing materials⁵.

- (19) The various grades and sub-grades of magazine paper have differing characteristics such as whiteness, brightness, printability, grammage (weight in grammes per square metre) bulk and stiffness, which impact on the quality perception of the products as well as on the pricing. In the continuum, prices and qualities increase gradually.
- (20) Below magazine paper there is a broad category of newsprint paper, generally used for printing newspapers, that is containing standard and improved newsprint.
- (21) The graphic in Figure 1 below gives an overview of the different magazine paper qualities as well as the adjacent newsprint grades:

Figure 1: The publication paper continuum



Source: UPM – Slide 1 of the introductory presentation made by UPM at the Oral Hearing

- (22) As can be seen from the graphic in Figure 1 above, these paper grades can be further segmented into sub-grades, so that CMR is subdivided into light weight coated (LWC), medium weight coated (MWC) and heavy weight coated (HWC). In between SC and CMR there is machine-finished coated (MFC) paper which may be considered a different category⁶.

⁵ Both CMR and SC papers are produced from natural (wood containing) pulp. For the lower qualities pulp from recycled paper may also form part of the input. SC papers, in contrast to CMR papers, are not coated. The production of all kinds of paper involves the use of calenders at the end of the manufacturing process to smooth the surface. A calender is a pair of rolls that applies pressure to the paper. In SC paper production at least two pairs of rubber covered rolls (soft nips) are used and often more.

⁶ MFC is of minor importance in terms of volume and usually not reported separately, but included in LWC. Myllykoski Group does not produce MFC paper.

- (23) SC paper includes a number sub-grades: SC-A, SC-A + (and even SC-A++) and SC-B. Recently, a number of products have been introduced on the market which although not produced on SC machines and not necessarily classified as SC papers for statistical purposes, compete at the lower end with the SC grades and are referred to as SC-B Equivalent papers or SC-C grades.
- (24) Newsprint and magazine paper are used in a variety of applications related to publishing and commercial printing, and whilst newsprint is mainly used for newspapers, magazine paper is used for (a) magazines, (b) catalogues, (c) flyers, (d) books and directories, and (e) other paper-based marketing materials such as direct mail.
- (25) The boundaries between the different magazine paper grades and sub-grades have become increasingly blurred. The technology of production has improved so that lower grades now offer many of the characteristics once only available in higher grade products. These improved products fill the gaps between the grades and offer customers balance between price and quality. Whilst certain customers may be more conservative and resistant to changing paper grades, the market investigation has revealed a significant number of movements between products within the magazine paper spectrum.
- (26) Ultimately, the publishers of magazines and of commercial publications decide which paper to use, taking into account the price but also the application they are using the paper for, and taking due regard to the target audience and, in the case of magazine publishers, the target advertisers. There is therefore a trade-off between the quality of the paper and the price of the paper. Publishers are faced with a range of potentially suitable products along the paper spectrum, each having their own matrix of technical characteristics.
- (27) In the case of well established magazines where brand and quality perception are intrinsic to the magazine, a significant change in paper quality might entail the re-positioning of a product, which would have to take into account the impact on advertisers. In such cases the publishers may be reluctant to change the paper quality, in particular when moving to a lower quality paper⁷.
- (28) On the other hand, commercial publications such as retailers' flyers and catalogues and low-end direct marketing material and even some magazine publishers may be less sensitive to paper quality and more willing to move up and down the paper continuum as the paper quality does not have such an important bearing on the printed product itself and its image. These switches occur mainly between paper products of relatively similar qualities which may be classified in sub-grades immediately above or below, and which may involve even a change of grade, especially when the products involved are situated at the edges.

Commission precedents

- (29) The Commission has previously analysed the magazine paper market, and, has considered that all grades of wood-containing magazine paper (including both SC and

⁷ Replies to question 20 of Questionnaire R2 to magazine paper customers.

CMR paper) form a single product market, excluding from that market therefore wood-free coated paper (WFC). The Commission observed that prices for WFC did not move in parallel with SC-grades and CMR papers⁸. There was also very little demand-side substitution between WFC and LWC paper (then, as now, the predominant CMR paper), as WFC had a higher grammage, making it thicker and bulkier than LWC, and therefore used for different applications⁹. The Commission also considered that from a supply-side perspective there was practically no substitution between WFC and wood-containing grades as all paper machines producing WFC were dedicated machines and the production of WFC required 100% chemical pulp as the fibre input, whereas SC and LWC were based on wood-containing mechanical pulp¹⁰.

View of UPM

- (30) Following the previous practice of the Commission, UPM considered in the notification that the magazine paper market includes SC and CMR (including MFC), but it argues that WFC should also be included in the market¹¹.
- (31) During the procedure, UPM submitted that at least some of the newsprint products should be taken into account and considered as part of the magazine paper market¹². UPM argues that improved newsprint provides a strong competitive constraint on SC paper. It argues from the demand side that both improved newsprint and SC papers can be used in heatset offset printing and for the same range of applications and pointed to customer switching. On the supply side UPM claimed that any newsprint machine with four (or more) roll calenders is capable of producing SC paper and points to the example of its own operations and those of Myllykoski Group.

Assessment of the relevant product market

- (32) Since the parties activities' overlap in particular within the SC segment, this is the segment where the merger may impact most on competition and served thus as the starting point for the Commission analysis of the relevant market.
- (33) In this context, the Commission has considered in detail the outer boundaries of the magazine paper market (WFC on the top end and improved newsprint on the low end), but also a distinction between SC papers and the adjacent CMR papers, as well as a possible sub-segmentation of the SC segment itself.

⁸ See Case COMP/M.2498 *UPM-Kymmene/Haindl*, 21 November 2001, para. 17.

⁹ See Case COMP/M.2498 *UPM-Kymmene/Haindl*, 21 November 2001, para. 18.

¹⁰ See Case COMP/M.2498 *UPM-Kymmene/Haindl*, 21 November 2001, para. 19.

¹¹ UPM considers that wood free uncoated paper ("WFU") does not form part of the magazine paper market as WFU is A4 paper which is mainly used for office applications.

¹² UPM's Response to the Article 6(1)(c) decision, Section 1.4.

End-use applications

- (34) The different grades of magazine paper are used in a variety of end-use applications. Table 1 sets out the paper grades used for the different end use applications.

Table 1: Paper grade mix (kilotonnes (kt)) within each application in 2009:

Grade/ Application	Newspapers	Application made from grade (%)	Magazines	Application made from grade (%)	Catalogues	Application made from grade (%)	Flyers + inserts	Application made from grade (%)	Other direct marketing print	Application made from grade (%)	Directories	Application made from grade (%)	Books	Application made from grade (%)	Total
Newsprint	[...]*	[...]*	[...]*	[...]*	[...]*	[...]*	[...]*	[...]*	[...]*	[...]*	[...]*	[...]*	[...]*	[...]*	[...]*
used for application (%)	[...]*		[...]*		[...]*		[...]*		[...]*		[...]*		[...]*		[...]*
Improved newsprint	[...]*	[...]*	[...]*	[...]*	[...]*	[...]*	[...]*	[...]*	[...]*	[...]*	[...]*	[...]*	[...]*	[...]*	[...]*
used for application (%)	[...]*		[...]*		[...]*		[...]*		[...]*		[...]*		[...]*		[...]*
SC	[...]*	[...]*	[...]*	[...]*	[...]*	[...]*	[...]*	[...]*	[...]*	[...]*	[...]*	[...]*	[...]*	[...]*	[...]*
used for application (%)	[...]*		[...]*		[...]*		[...]*		[...]*		[...]*		[...]*		[...]*
CMR	[...]*	[...]*	[...]*	[...]*	[...]*	[...]*	[...]*	[...]*	[...]*	[...]*	[...]*	[...]*	[...]*	[...]*	[...]*
used for application (%)	[...]*		[...]*		[...]*		[...]*		[...]*		[...]*		[...]*		[...]*
WFC	[...]*	[...]*	[...]*	[...]*	[...]*	[...]*	[...]*	[...]*	[...]*	[...]*	[...]*	[...]*	[...]*	[...]*	[...]*
used for application (%)	[...]*		[...]*		[...]*		[...]*		[...]*		[...]*		[...]*		[...]*
Total	[...]*	[...]*	[...]*	[...]*	[...]*	[...]*	[...]*	[...]*	[...]*	[...]*	[...]*	[...]*	[...]*	[...]*	

Source: CEPI data and UPM estimations

- (35) As can be observed in Table 1, [...]* of all magazines use CMR paper ([...]*) and SC paper ([...]*), with WFC representing most of the remaining amount ([...]*). For catalogues CMR also plays the most relevant role ([...]), with WFC playing a more important role ([...]*) than SC paper ([...]*). For flyers and magazine and newspaper inserts the most important paper grades are CMR ([...]*), SC ([...]*) and improved newsprint ([...]*), with WFC playing a less important role ([...]*). For direct marketing print (other than flyers and inserts, meaning for example very high quality corporate publications such as annual reports) WFC plays the most important role

([...]*) , whilst CMR and SC represent [...] * and [...] * , respectively. Directories are almost exclusively done using improved newsprint. Books are mostly printed on WFC ([...] *) and [...] * of books are printed on improved newsprint, whereas no books are printed on SC and only very limited volumes ([...] *) on CMR. As can be seen there is therefore a very significant overlap in the uses given in particular to SC and CMR paper, and to a lesser extent to WFC and improved newsprint.

- (36) By far the most important outlet for both SC and CMR is for magazines, with 45% and 50%, respectively, of all quantities of these grades being used for this type of application.
- (37) It should be noted that as there are a number of sub-grades of paper, with different smoothness, glossiness and other characteristics, there are also a panoply of magazine types.
- (38) WFC is mainly used in magazine covers and very high upscale magazines such as *Mente e Cervello*. Magazines printed on LWC are mid-scale general interest magazines including *Der Spiegel* or *Espresso* and catalogues for comparatively more expensive products such as *Ikea's*. Magazines such as *Vogue* and *Elle* are printed on MWC.
- (39) SC-A and SC-A+ papers are used for mass circulation magazines like *Stern*, *Bild der Frau*, *ADAC Motorwelt* and *Auto Bild* in Germany, whereas SC-A++ papers are used for more upscale mass circulation magazines, like *Maxi* in Germany, *Pirrkka* in Finland.
- (40) There are mass circulation magazines like weekly TV guides and other in terms of paper quality low-end magazines (for example, *Tele Loisirs*, *Tele 2 semaines*, *Tele Pocket* in France, *Computer Bild* in Germany) printed on SC-B paper at the lower end of the SC scale. Lower-end SC grades are also popular for magazine supplements, inserts and marketing flyers.

Woodfree coated paper is a different type of magazine paper

- (41) The Commission has concluded in a previous case that WFC paper is not in the same relevant product market as the grades of wood-containing magazine paper (including SC, MFC and CMR paper).
- (42) WFC paper is at the very upper end of the potential publishing paper spectrum (Myllykoski Group is not active in this grade). In fact, the responses to the market investigation suggest that WFC paper is typically used for covers of magazines as it is much thicker than the paper used inside magazines, and is generally not used for the latter. WFC paper was also reported to be a typical book paper (in contrast to CMR and SC paper which are not used in books), and it is also used in very high quality publications¹³.
- (43) To substantiate the claim that the market for magazine paper includes SC, CMR and wood-free (WFC) papers in particular, UPM submitted throughout the procedure descriptive price analyses, price correlation analyses and co-integration analyses based

¹³ See responses to question 9 of Phase I Questionnaire to Customers magazine paper.

on monthly prices. With these submissions UPM has tried to identify the extent to which price series moved together over time.

- (44) However, price co-movements do not, in themselves, constitute sufficient evidence for market definition. Namely, price co-movement does not directly answer to whether or not a price increase of 5-10% would be profitable for the hypothetical monopolist. Neither does finding that prices of two products move closely together provide any insights as to the causality of the relationship between the prices. While the Commission has used price co-movement tests it has also acknowledged their limitations¹⁴.
- (45) Furthermore, the Commission has identified several significant problems in the way UPM has implemented the tests in this case¹⁵. Therefore, the Commission is not convinced about the validity of UPM's correlation and co-integration analyses for the purposes of market definition in the case at hand.
- (46) As regards switching, UPM provided only very limited examples of switching between WFC and CMR grades of paper, these representing only very small amounts in terms of volume of sales.
- (47) In addition, there appears to be only very limited competition between WFC and SC papers. Indeed, no instances of switches between SC papers and WFC were reported to the Commission in the market investigation¹⁶. UPM did not report any switching between SC and WFC paper in the past¹⁷ as it explains that, in general, customers will not switch directly between WFC and SC papers, since these grades are relatively distant along the publication paper continuum.

¹⁴ See for example M.4439 Ryanair/Aer Lingus, Annex III., Price Correlation Analysis for Geographic Market Delineation, para 54.

¹⁵ First, no control for common shocks has been provided by UPM, in order to avoid spurious correlation. It is acknowledged that common shocks, either supply or demand shocks, may drive the results of price test. In this respect a high price correlation between two time series may not mean that the products are substitutes but rather the high price correlation can be driven by the common costs they share or by other common shocks. Second, UPM conducted analysis on both UPM and Myllykoski Group price data for subgrades. However, several months are missing for some of the data for Myllykoski Group. UPM constructed these missing observations and aggregated Myllykoski Group's price data for the SCA and SCA+ sub-grades. Most of Myllykoski Group's SC-A data are constructed which biases the results in a significant way. Third, UPM has introduced "structural breaks" in the analysis of the relative prices, claiming that this was necessary to "correct for atypical behaviour [...] if otherwise it may affect the assessment of price co-movement". The Commission believes that UPM has failed to provide convincing evidence why these structural breaks should be included and also failed to check whether the original price series are non-stationary after taking into account the structural breaks. The non-inclusion of the structural breaks would lead to opposite results. Finally, a useful robustness test in employing co-integration for the purposes of defining a relevant market would be to run a co-integration analysis between prices series of both UPM and Myllykoski Group for the same paper grade. When doing this the Commission observes mixed and contrary evidence after performing a number of different co-integration tests between various grades and sub-grades

¹⁶ The only switches concerned CMR papers, responses to question 13 of Phase 1 Questionnaire to customers magazine paper.

¹⁷ See pages 73 and 92 of the Form CO as well as the reply to the Request for information of 11 March 2011, submitted on 22 March 2011, Annex 2.1 (UPM) and 2.2 (Myllykoski Group).

- (48) Concerning the supply-side perspective, there is no (or very limited) substitution between WFC and wood-containing grades as all paper machines producing WFC are dedicated machines. In addition, the production of WFC requires 100% chemical pulp as the fibre input, whereas SC and LWC are based on wood-containing mechanical pulp.
- (49) In view of the different paper characteristics, different applications, the price differences and limited – if any – supply side switches between WFC and other types of magazine paper, WFC should not be included within the magazine paper market.

Newsprint is not to be included in the magazine paper market

- (50) Newsprint is at the lower end of the publishing paper spectrum, and will be assessed in more detail in the part on newsprint market (recital (184)), which explains that there are two types of newsprint: (a) standard newsprint and (b) improved newsprint.
- (51) From the demand side, the market investigation indicates that a large majority of customers do not consider either of the two newsprint types as part of the market for magazine paper¹⁸. This reflects the different uses of these types of paper as set out in Table 1 above. Improved newsprint is significantly less used for magazines and catalogues than SC paper¹⁹. The Commission's market investigation generally pointed to quality differences between regular improved newsprint and SC including SC-B. SC-B paper has a smoother surface, and is glossier and more durable than the traditional improved newsprint products. Newsprint has a higher weight than SC-B paper. Therefore, many customers considered that SC-B paper cannot be replaced by improved newsprint without reducing the quality and changing the image of the print product²⁰.
- (52) However, some customer switching between these grades was observed in the market investigation and the initial assessment pointed to customers switching from SC to improved newsprint notably for certain applications for which SC-B paper (at the lower end of the SC grade paper) is widely used, such as flyers, leaflets and newspaper supplements²¹.
- (53) On the competitors' side, broadly speaking producers considered that newsprint and magazine paper are separate markets, as they address different needs and applications and present differing quality characteristics²². However, several competitors considered that some improved newsprint products are used for the same purpose as SC-B paper and could be included within the magazine paper market²³.
- (54) Following a closer analysis and investigation during the procedure, it became clear that while some (limited) switching occurs between SC and traditional (improved)

¹⁸ Replies to question 8 of Phase 1 Questionnaire to Customers magazine paper and replies to question 11 of Questionnaire to Competitors in Magazine Paper.

¹⁹ SC papers are predominantly used for magazines and catalogues (60%) whereas only approx. 20% of improved newsprint is used for magazines and catalogues.

²⁰ See responses to question 17 and 21 of Questionnaire R2 to magazine paper customers.

²¹ Responses to question 24 and 25 of Questionnaire R2 to magazine paper customers.

²² See question 11 of the Phase I Questionnaire to magazine paper competitors.

²³ See for example answer of Holmen to question 6 to phase I questionnaire to magazine paper suppliers.

newsprint, a significant part of the substitution stems from the fact that a group of new products developed from improved newsprint have been recently introduced. With much higher quality, these products are very close in terms of characteristics and demand side substitutability to SC products, and it was suggested in the investigation that they are closer to SC than to the traditional improved newsprint paper. This new group of products is considered to be SC-B Equivalent paper or "SC-C" as will be discussed in more detail below (recitals (76)-(87)). The SC-B Equivalent paper is not considered by the Commission as part of the traditional newsprint segment comprising standard and improved newsprint.

- (55) As regards supply-side substitution, UPM submits that many producers are capable of switching between paper grades. Such switches can take place very quickly for "swing" machines that are capable of switching without significant investment²⁴. According to UPM, many machines currently dedicated to the production of standard newsprint or improved newsprint are equipped with the technology that enables them to produce SC-B paper, that is to say a soft calender with at least four rolls²⁵. UPM submits that such swing machines can produce SC-B by altering the settings of the calender and the input mix of recovered fibre and mechanical pulp, at minimal cost²⁶. UPM considers that producers with swing machines could and would start producing SC-B should UPM attempt to raise prices for SC paper²⁷.
- (56) The Commission Notice on the definition of relevant market for the purposes of Community competition law²⁸ ("the Relevant Market Notice") lays down strict conditions for supply-side substitution, which emphasize that suppliers should be able to switch production and market the products in the short term without incurring significant additional costs or risks in response to small and permanent changes in relative prices.²⁹ The Relevant Market Notice further specifies that different qualities of a product will be grouped into one product market, provided that *most of the suppliers* are able to offer and sell the various qualities immediately and without significant increases in costs³⁰. When supply-side substitutability would entail the need to adjust significantly existing tangible and intangible assets, or would entail additional

²⁴ Form CO para. 546.

²⁵ A calender is a piece of machinery that compresses the paper (and by so doing improves its finish). A calender can have hard or soft rolls (in the latter, one of each pair of rolls is fitted with a rubber casing, so as to improve the compression—or calendaring—process). It can also have a varying number of rolls, from two up to around 16. Each pressure point between the rolls is known as a "nip". According to UPM, a four-roll soft calender (producing two nips, i.e. pressure points between the rolls) is both necessary and sufficient for the production both of improved newsprint and SC-B paper.

²⁶ The opportunity cost arises from the fact that the machine's output gradually transitions from one grade to the next over a period of approximately two hours. The paper produced in this interim period may be neither technically improved newsprint nor SC-B paper; it is either sold to customers at a [...] discount or recycled at the mill for future paper production.

²⁷ To support this claim, UPM submits that its own PM6 machine at the Schongau plant and Myllykoski Group's PM4 and PM5 machines at its Ettringen/Lang plant and PM10 machine at Plattling currently switch between improved newsprint and SC-B paper grades relatively regularly. UPM also submitted a list of newsprint producers having swing machines that are capable of producing SC paper.

²⁸ OJ C 372, 9.12.1997, p.5.

²⁹ Paragraph 20.

³⁰ Paragraph 21 of the Relevant Market Notice.

investments, strategic decisions or time delays, supply-side substitutability will not be considered at the stage of market definition³¹.

- (57) Even if some machines of UPM and the Myllykoski Group are capable of switching between improved newsprint and SC-B, the market investigation does not support UPM's views that other competitors have such swing machines in place.
- (58) Contrary to UPM's assertion, nearly all of the current producers of (improved) newsprint would have to make substantial investments before they could produce SC-B paper. For example, both Stora Enso and Norske Skog submitted that their newsprint machines would have to be upgraded before they were able to produce SC-B paper. The upgrade would have to include a multi-nip calender³² (more than two nips), and a new winder to handle the heavier SC-B rolls³³. Such rebuilding would cost approximately EUR 35 million and take approximately 12 months, depending on the machine suppliers' lead time³⁴.
- (59) The situation is different in the case of the new 'SC-B Equivalent' products, produced on swing machines which are either upgraded improved newsprint machines or completely new machines. However to the extent that they are produced on existing newsprint machines, adaptation of the machines was necessary in order to be used as swing machines capable of producing the new product. For example, Norske Skog transformed its PM1 machine at the Parengo mill (The Netherlands) that had previously been producing standard and improved newsprint into a machine that is now also capable of producing its SC-B Equivalent product NorCal, in a transformation that took between 6-12 months, and investment in various pieces of equipment. Norske Skog required several months to gradually improve the quality of NorCal.
- (60) Currently, there are only a relatively few swing machines on the market producing SC-Equivalent paper, which are considered in the competitive assessment as actual competition. In the future, after further investments and time, more machines/suppliers may possibly enter this space, however the lack of immediacy and the need for investments for upgrading the machines mean those non-transformed newsprint machines cannot be included in the market on the basis of supply-side substitution, but rather as potential entry.
- (61) The investments and time needed for improved newsprint suppliers to create a swing machine capable of producing SC or SC-B Equivalent paper do not correspond to the strict requirements for supply-side substitution as set out in the Relevant Market Notice³⁵. It is not the case that most newsprint suppliers would be able to offer SC or SC-B Equivalent papers immediately without incurring significant additional costs or risks.

³¹ Paragraph 23 of the Relevant Market Notice.

³² See replies to question 5 of Questionnaire R6 to newsprint producers and teleconference with Stora Enso.

³³ The paper comes off the paper machine in very large rolls called jumbo rolls or reels. Reels are wound on a shaft called a reel spool. The purpose of the machine winder is to convert the large reels into sizes convenient to ship.

³⁴ See responses to question 5 of Questionnaire R6 to newsprint producers.

³⁵ See paragraphs 20 to 23 of the Relevant Market Notice.

- (62) In conclusion, newsprint should not be included within the market of magazine paper for the purpose of this case.

CMR, MFC and SC grades make up the magazine paper market

- (63) As observed in recital (35) above, Table 1 suggests that the end-use patterns are to a considerable extent comparable between SC papers and CMR paper grades. In particular, [40-50]*% of SC papers are used for magazines, which is comparable to approximately [50-60]*% of CMR papers that serve this end-application.
- (64) The market investigation has revealed that a majority of market players (customers and competitors³⁶) consider that CMR grades such as LWC form part of the magazine paper market together with the SC grades.
- (65) The Commission's market investigation indicates a degree of substitutability between SC papers and CMR (in particular LWC³⁷, which constitutes the bulk of CMR papers). More than one third of customers responding to the Commission's first phase investigation reported that they had switched in the recent past between SC papers and LWC³⁸.
- (66) UPM and Myllykoski Group have provided a significant number of examples of SC/CMR switching. The Commission gathered several examples of customers who have switched part of their requirement from LWC to SC-A and SC-A+ papers. These were mostly driven by cost savings in the recent difficult economic environment³⁹. There were also reports of customers switching from SC grades to higher grades, LWC or MWC⁴⁰. Customers switching from SC paper to higher grades generally did so to upgrade the quality of their product.
- (67) The market investigation suggests that in the event of a hypothetical price rise in the SC area there is a likelihood that a number of customers would switch up to CMR grades. Even if most respondents were not inclined to switch, more than a quarter of all customer respondents indicated a willingness to switch in this direction. As one customer notes "*if prices of SC would be to increase 5 to 10% they will reach the level of prices of LWC, so we could have higher quality for the same price as for SC*"⁴¹.

³⁶ Replies to question 12 of Questionnaires Phase 1 to competitors magazine paper. Replies to question 9 of the Questionnaire Phase 1 to customers magazine paper.

³⁷ For the purposes of this decision, MFC paper is included within LWC as volumes are very small, and data in relation to it is very limited and it is commonly reported by the industry as part of LWC paper.

³⁸ Replies to question 13 of Phase I questionnaire to customers.

³⁹ See responses to question 24 of R2 Questionnaire to magazine paper customers. See also RISI, : European Graphic Paper Forecast, November 2010, pages 51-52: "SC grades benefited from the substitution effect from the LWC grades as buyers sought cheaper and lighter options in order to save money during the recession".

⁴⁰ Replies to question 13 of Phase 1 Questionnaire to Customers magazine paper.

⁴¹ Reply by one customer (anonymous) to question 19.1.1 of Phase 1 Questionnaire to Customers magazine paper. See also, RISI European Graphic Paper Forecast, March 2010, page 56: "SC and coated mechanical

- (68) On the supply side the market investigation did not identify any machines producing both SC and CMR grades. Furthermore, in order to produce CMR paper, a coater is needed, involving investments and lead times. UPM itself admits that, while switching between CMR and SC grades could, in principle, be carried out by switching on and off the coater, it is rare that a producer with a machine capable of producing CMR grades uses this machine for the production of SC grades, and neither UPM nor Myllykoski Group has any experience of such switching.
- (69) In conclusion, the relevant product market may comprise both SC and CMR grades. However, as no competition concerns arise even under the potential narrower SC market, the market definition can be left open.

SC sub-grades

- (70) SC paper is at the lower end of the magazine paper spectrum, and is made up of a number of sub-grades which gradually increase in terms of quality and price. Historically, SC paper only had one grade (now referred to as SC-A), but other sub-grades have since developed: the SC-A+ (and even SC-A++) on the higher end, and SC-B on the lower end. Very recently a new paper type referred to as SC-C or SC-B Equivalent was introduced on the market by a number of suppliers as will be discussed further in recitals (76)-(87) below.
- (71) According to the information provided by UPM on a split of end-use applications per SC sub-grade, there is a large degree of functional inter-changeability between SC-B and SC-A/SC-A+ papers⁴². Out of the total production of these two broad paper categories, the proportion of SC-B paper used for magazines, catalogues and inserts is very similar to SC-A/SC-A+ papers, namely [40-50]*% vs. [40-50]*% for magazines, [10-20]*% vs. [10-20]*% for catalogues and [20-30]*% vs. [20-30]*% for inserts. For both categories, the proportion of paper used for newspapers is similarly low ([0-5]*% for SC-B and [0-5]*% for SC-A/SC-A+).
- (72) The market investigation showed that the different SC sub-grades constitute an increasingly tight continuum of qualities and prices, demonstrated by a trend of new intermediary products in-between sub-grades. For example, the company SCA Forest has a product Grapho Verde, sitting just below the traditional SC-A sub-grade but slightly above the SC-B sub-grade⁴³.
- (73) During the proceedings, UPM provided an extensive list of examples of recent substitution, namely customers who switched a considerable proportion or even their

paper prices do not develop in different directions. If SC prices were to increase and coated mechanical prices to decrease, the substitution effect from SC to LWC would decrease operating rates of SC.”

⁴² Annex 5.1 to UPM’s response to the Commission’s request for information of 24 March 2011.

⁴³ SCA Forest described the product Grapho-Verde in the sense that “*even if it is SC-A quality, is regarded by a number of customers as being close to SC-B as in terms of price it sits between SC-A and SC-B.*” Minutes of conference call with SCA of 27 May 2011 . This is also noted by customers such as Gruner and Jahr (Bertelsmann group) who state: “*The GraphoVerde is to our opinion a very good SC B grade, we would rather rank into the group of SC A paper grades.*” (reply to Questionnaire to Customers of SC-B Equivalent paper, question 3).

total demand between different SC paper grades⁴⁴. This picture is confirmed by competitors and customers in the investigation, who confirm extensive switching practices between SC sub-grades⁴⁵.

- (74) On the supply-side, for a machine to be able to switch between SC-A (or SC-A+) and SC-B paper, it has to be fitted with a calender with a sufficient number of soft rolls or nips. Such machines typically have from 10 up to 16 soft rolls, together referred to as a "supercalender". UPM submits that a machine capable of producing SC-A and SC-A+ (that is to say, one fitted with a supercalender) could switch to SC-B (and vice versa) in the course of one to two hours by rebalancing the input mix of recovered fibre and mechanical pulp and adjusting the operation of the supercalender⁴⁶. The investigation revealed that there are a number of machines on the market that have the ability to switch between SC grades. There is thus some degree of supply-side substitutability.
- (75) Hence, for all these reasons, it is concluded that all SC paper grades belong to the same (differentiated) product market.

SC-B Equivalent paper

- (76) Recently, mostly during 2009/2010, new products have been introduced into the market. These papers are produced on upgraded improved newsprint machines with double nip calenders and have similar characteristics to SC-B paper products. A number of suppliers produce these, including Norske Skog with the product NorCal, Holmen with the products Holmen XLNT and the very recent Holmen View, and finally Palm with the product PalmTop. The development of these new products can be explained in particular by the fact that newsprint demand has been falling rapidly and forecasts are that it will continue to do so. Newsprint producers are therefore seeking to extend their product ranges to new product areas.
- (77) In fact, the differences in technical characteristics between the SC-B Equivalent papers identified and "traditional" SC-B paper are very limited in particular with respect to the lower end of the SC-B quality spectrum. These products are well within the quality ranges of SC-B paper. The responses from customers and producers suggest that prices of SC-B Equivalent papers are similar or very close to SC-B products⁴⁷.
- (78) The quality of the SC-B Equivalent products is increasing steadily, moving multiple key technical parameters into the SC-B space. For example, Norske Skog's NorCal

⁴⁴ See Annex 5.2 to UPM's response to the Commission's request for information of 24 March 2011.

⁴⁵ Responses to question 13 of the Phase I Questionnaire to customers magazine papers. Switching examples were reported across the application spectrum, that is flyers, catalogues and magazines..

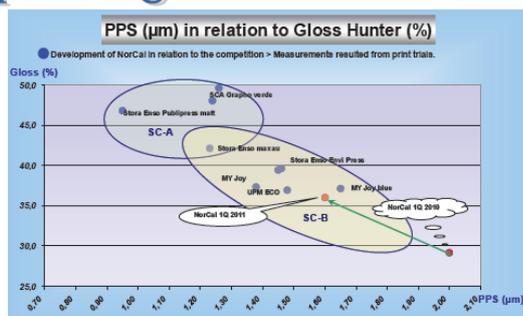
⁴⁶ UPM however explains that it is relatively rare for a machine that is generally dedicated to SC-A production to switch to SC-B production (UPM's Reply to the Article 6(1)(c) Decision paragraph 4.4.)

⁴⁷ Producers' answers to question 4 of the Questionnaire to producers of SC Equivalent Paper and customers' answer to question 5 of the Questionnaire to Customers of SC-Equivalent paper.

product has been significantly improved between 2010 and 2011, as the following slide of NorCal's commercial presentation makes clear (figure2).

Figure 2 Norcal Development

Improving Calander effect



Due to an inline polishing technique for steel rollers:

- Gloss level 30 → 35
- Surface roughness PPS 2,1 → 1,5 µm

Secondary: Sheet formation improvement.



Source: Norske Skog (Presentation of its NorCal product showing improvements and some of its key technical features)

(79) As the suppliers of these new products have themselves stated during the investigation, the products have been introduced in order to compete directly with the SC-B products. Norske Skog explains: "*the conversion of [the relevant machine] was done in 2010, which means NorCal is a fairly new product and has only been on market for approximately one year. Since we are introducing a new product that is competing with the SC grade we have experience mostly with customers switching from SC to NorCal*"⁴⁸.

(80) Holmen also explains that its SC-Equivalent product XLNT (and a new product VIEW) directly compete with SC paper.⁴⁹ The third producer -Palm -introduced its SC-Equivalent product Palm Top only in 2010. As it explains, the 2010 sales were more or less as a commercial test, and the product was successful and perceived positively by customers.⁵⁰

⁴⁸ Reply of Norske Skog to question 6 of the Questionnaire to SC-Equivalent producers.

⁴⁹ Minutes of conference call with Holmen on 7 April 2011. See also reply of Holmen to questionnaires for SC-Equivalent products.

⁵⁰ Minutes of conference call with Palm on 24 May 2011.

- (81) Palm states that "*Palm's SC-equivalent paper competes directly with SC-C grades and SC-B grade paper on the lower end of the quality spectrum. Even the SC-B paper grade is a continuum of different qualities and prices, and there is no gap to Palm's SC-equivalent paper and SC-B. The prices would therefore touch SC-B paper of lower quality. Customers and applications which are targeted by Palm's SC-equivalent paper are essentially the same as the ones using SC-C and SC-B paper, i.e. newspaper supplements, TV guides, flyers or lower-end (women's) magazines.*"⁵¹.
- (82) The respective SC-Equivalent products are also perceived to be competing with SC-B products by their competitors.⁵² For example Stora Enso observes frequent customer switching between SC Equivalent paper and SC-B paper stating that "*In the lower segments of paper applications as in commercial printing and/or low quality magazines paper quality is not very much linked to the image of the printed product. SC-B equivalents are preferred based on cost based decisions.*"⁵³.
- (83) Indeed, the market investigation undertaken specifically to examine the competitive positioning and pressure exercised by this type of product showed that a significant number of publishers and retailers consider these products to compete closely with traditional SC-B paper. Although they are a recent introduction on the market, a number of customers have switched from SC-B to the SC-B Equivalent products.
- (84) The substitution appears to take place at the lower end of the SC segment, targeting SC-B products such as Myllykoski Group's Joy and UPM's Eco and Stora Enso's Envi-Press. UPM has provided a number of examples of SC-B customers lost to SC-B Equivalent⁵⁴. Several of the SC-B Equivalent customers also indicated that they have chosen the new product to replace other types of SC paper⁵⁵.
- (85) The applications which SC-B Equivalent papers are targeting, TV Guides/Magazines, weekly magazine inserts or retail flyers, seem to be very much overlapping with those

⁵¹ Minutes of conference call with Palm on 24 May 2011.

⁵² See replies of producers of SC Equivalent Paper and of Stora Enso on question 2 of the Questionnaire for competitors on SC-Equivalent paper. See also replies of competitors from phase II questionnaire to magazine paper competitors, question 28 where more competitors consider Holmen and Norske Skog among the closest competitors to one or the other parties' SC-B. The company SCA Forest was also considered to be closely competing with the parties' SC-B products. However this is understood to refer to SCA Forest's Grapho Verde which is positioned close to SC-B paper but coming from the higher SC-A grade. As Palm's product was only very recently introduced on the market (2010) and is not yet sold on a large scale, the awareness of Palm's product has been significantly lower until now.

⁵³ Reply of Stora Enso on question 8 of the Questionnaire to Stora Enso on SC Equivalent paper.

⁵⁴ UPM' submission of 6 May 2011.

⁵⁵ See for example the answer of a magazine publisher (question 8 of the Questionnaire for SC-Equivalent customers) "*...for two of our three weekly magazines SC Equivalent papers have [been] used as a substitute for SCA, driven by cost pressure but aided by the improved quality of SC Equivalents. The third magazine currently still using SC-A does require a higher quality than the other two but nevertheless we are looking at the possibility of moving to SC Equivalent*".

of SC-B paper⁵⁶. These applications are largely the same as mentioned for the SC-B papers⁵⁷. As can be seen below in the Norske Skog's 2011 commercial presentation (Figure 3) for the Parengo product portfolio, Norcal is used on a number of retailer flyers/catalogues, but also for some magazines.

Figure 3 Norcal Applications

NorCal product Performance



(86) Despite the fact that Norske Skog and Holmen only relatively recently (mainly 2009/2010)⁵⁸ introduced their SC-B Equivalent products, their sales are growing rapidly, and the companies as well as their clients expect this trend to continue⁵⁹. Another competitor, Palm, has already made commercial trials with a product called

⁵⁶ See replies to question no.2c of the Questionnaires to SC-B Equivalent customers. It should be noted that some customers, notably publishers of branded magazines with higher quality requirements were more reluctant to switch to SC-B Equivalent paper and did not consider it satisfactory for their particular needs.

⁵⁷ See replies to question 12 of the Phase I Questionnaires to magazine paper customers.

⁵⁸ NorCal is sold since 2010 and has since then improved some quality features. Holmen's XLNT already had some sales before 2009 but at the time the sales were much lower than now. Holmen has introduced its new SC-Equivalent product VIEW very recently in 2010.

⁵⁹ Questionnaire to customers of SC Equivalent Paper, question 11 and 12. Questionnaire to producers of SC Equivalent Paper question 10 and Questionnaire to Stora Enso on SC Equivalent paper, question 9 and 10.

Palm Top in 2011, and there is some expectation by the market that more products will enter this space of direct competition with SC-B in the near future⁶⁰.

- (87) In conclusion, based on the very similar product characteristics, the identical scope of applications, price ranges and the switching between the SC-B Equivalent and the SC grades, SC-B Equivalent has to be considered as another type of SC paper and thus as part of the magazine paper spectrum.

Conclusions on product market definition

- (88) Based on the above, it is concluded that the market for magazine papers does not include newsprint and WFC papers, but may comprise all of the CMR (and including MFC) and SC grades (including SC-B Equivalent)⁶¹. In any event, given that no competition concerns arise from the concentration to which this Decision relates, when considering either a wider magazine paper market comprising CMR and SC, or even the a narrow SC market alone, the exact market definition can be left open

1.3. Geographic market

- (89) UPM produces magazine paper in Austria, Finland, France, Germany and the United Kingdom. The Myllykoski Group produces magazine paper in Finland and Germany.
- (90) The Commission has previously considered that the geographic market for magazine paper is at least EEA-wide or, alternatively, is constituted by the EEA plus Switzerland⁶². This determination was based on the fact that there are appreciable trade flows within the area of EEA and Switzerland, there are no significant barriers to intra-EEA trade, transport is both possible and actually undertaken over long distances, and sales prices are uniform across this space.
- (91) In the notification, UPM considers that these arguments remain valid and that there are no reasons for considering the market to be less wide than the EEA plus Switzerland. In its response to the Article 6(1)(c) decision and reacting to the Commission's statement in the decision that a number of customers had reported price differences between EEA countries and that there seem to be national or regional organisations for distribution with local sales offices or agents serving specific geographic areas. UPM put forward two arguments. First it had commissioned a study of prices in the four major Member States. It had found price differences to be small⁶³. Secondly it explained that although both companies may have local or regional sales organisations, this is not strong evidence of narrower markets. UPM and Myllykoski Group organise sales and

⁶⁰ Minutes of teleconference with Norske Skog of 25May 2011: ".. as improved newsprint demand is going down and is expected to continue to go down in the future NS expects that other paper players active in that area may look and think about an upgrade of their machine to enter the SC-B Equivalent space".

⁶¹ Further in this document the expression "magazine paper market" is supposed to include SC, MFC and CMR.

⁶² Case COMP/M.2498 *UPM-Kymmene/Haindl*, 21 November 2001, para. 33. This was before the enlargement in 2004, however given the location of the major paper producers and the lack of internal barriers within the EEA it seems likely that the conditions are similar in the EEA before and after 2004.

⁶³ UPM's Response to the Article 6(1)(c) decision , Annex 1.

marketing at European level. For administrative convenience the sales function is split geographically.

- (92) A large majority of both customer and competitor respondents to the Commission's market investigation considered that the market was at least the EEA and a smaller majority that it was at least the EEA plus Switzerland.
- (93) It is clear that paper producers, large and small, supply the EEA and Switzerland from a limited number of production sites normally located in forest regions. This gives rise to significant trade flows within the area.
- (94) Imports have accounted for less than 1.5% of the apparent consumption, in the EEA and Switzerland, of magazine paper (SC, MFC and CMR) over the last six years. For SC paper they account for less than 1% of apparent consumption. On this basis there seems to be no reason to postulate a wider market than the EEA and Switzerland.

Conclusions on geographic market definition

- (95) In the light of the evidence, it is concluded that the relevant geographic market is the EEA plus Switzerland.

1.4 Compatibility with the internal market and the EEA Agreement – Magazine paper

(a) Introduction

- (96) UPM and Myllykoski Group compete in several segments of magazine paper. In the Statement of Objections the Commission stated its preliminary view that the concentration may lead to a significant impediment of effective competition in relation to SC paper. While leaving the precise market definition open, these concerns were based on the view that the concentration leads to a significant addition of market shares in the SC segment, high capacity utilisation rates of the competitors during peak times and likely further capacity reductions by UPM.
- (97) After a further in-depth investigation and taking into account the Parties' arguments, it is concluded that the proposed concentration is unlikely to lead to a significant impediment of effective competition. This is for a number of reasons. In particular, so-called SC-B Equivalent paper, which is a product group that was introduced mainly in 2009/2010, is already exerting very substantial competitive pressure on the parties' products and its importance is expected to further increase. In addition, there is considerable competitive pressure on the SC paper segment coming from higher paper grades (MFC, CMR) in which the parties are less strong than they are in SC paper.
- (98) Furthermore, the competitors' yearly average capacity utilisation rates and thus spare capacities give them the ability to counteract potential price increases by UPM after the*. Competitors also have the incentives to increase their sales and thus defeat potential price increases as fixed costs in the industry are very high.

* Should read "transaction".

Also, the likely capacity reductions by UPM after the transaction would not directly impact on the ability and incentives of competitors to counteract price increases as they would not directly affect the spare capacity available to the competitors. These and the Commission's additional considerations are set out in detail in the following sections.

(b) The market shares

(99) Market shares in the paper industry are typically based on capacity data, for which independent sources⁶⁴ exist. In line with this practice, UPM submitted capacity based market shares for an overall magazine paper market and for market segments. The Commission's market investigation did not find any grounds for questioning the capacity figures provided by UPM.

Magazine paper market comprising SC, MFC, CMR

(100) For the overall magazine paper market comprising SC, MFC and CMR, UPM submits the following capacity based market shares:

Table 2

Company	Total capacity (kt)	Share of capacity
UPM	[...]*	[20-30]*%
Myllykoski Group ⁶⁵	[...]*	[10-20]*%
Combined	[...]*	[40-50]*%
Stora Enso	[...]*	[10-20]*%
Norske Skog	[...]*	[5-10]*%
SAPPI	[...]*	[5-10]*%
Burgo	[...]*	[5-10]*%
SCA Forest	[...]*	[5-10]*%
Leipa	[...]*	[0-5]*%
Others	[...]*	[5-10]*%
TOTAL	15641	100%

Source Form CO Table 6.9.

(101) As explained in the section on market definition (recitals 76-87), SC-B Equivalent papers are to be considered as part of the SC grade so that they are also part of a wider market comprising SC, MFC and CMR. The market shares in Table 2 provided by UPM therefore need to be qualified in so far as they do not take into account the SC-B Equivalent paper which has emerged in the recent past (2009/2010).

(102) SC-B Equivalent paper is produced on swing machines that can produce improved newsprint grades as well as SC-B Equivalent paper. To some extent these machines are currently still producing improved newsprint but gradually more of this capacity is being used for the production of SC-B Equivalent paper. These swing machines

⁶⁴ Jaakko Pöyry Databank, RISI; CEPI Print is an association of publication paper producers.

⁶⁵ Myllykoski Group's capacity was reduced by 93kt by UPM (Response to the Statement of Objections (see pages 9 and 63). The table includes the corrected figure.

generally have the capability to dedicate their entire production capacities to SC-B Equivalent paper without the need for any technical adjustment and it is likely that more and more of this capacity would be actually used for SC-B Equivalent paper in the future⁶⁶.

- (103) In 2010, Norske Skog' operated the paper machine at Parenco for the production of SC-B Equivalent and had very substantial sales of SC-B Equivalent paper (NorCal) in 2010. Holmen produces SC-B Equivalent in two locations and also had very substantial capacities and sales. In addition, Palm has high production capacity for SC-B Equivalent paper. Palm only had minor sales in 2010 of SC-B Equivalent as it was undertaking commercial trials of the product, but it could increase in the future as the capacity is available.⁶⁷ The three producers' total aggregated SC-B Equivalent capacity amounts to 1100kt. The aggregated sales were in the range of 400-500kt in 2010.
- (104) When including all of the SC-B Equivalent capacity, the capacity based combined market share of the parties is around [30-40]*%.
- (105) The existing SC-B Equivalent capacity will further increase shortly as a producer is currently bringing additional capacity to the market which will be operational by the end of 2011. With the additional capacity, the combined market share would be less than [30-40]*%.

The segments

- (106) For the higher quality paper segments (CMR and LWC as most important quality in terms of volume within the CMR segment) within an overall magazine paper market, UPM provided the following capacity based market shares. Again the market investigation did not raise any doubts regarding this data:

⁶⁶ See further in recital (114).

⁶⁷ See Minutes of conference call with Palm on 24 May 2011, where Palm states that "*if there would be sufficient demand, it could dedicate 100% of the capacity for SC-equivalent paper. The machines are capable of switching instantly, so the only determinant for Palm to switch is the supply and demand balance and the price levels. If prices would increase for its SC-equivalent paper, it would certainly be interesting to produce it.*"

Table 3

Company	LWC capacity (kt)	LWC share (%)	CMR capacity (kt)	CMR Share (%)
UPM	[...]*	[30-40]*%	[...]*	[20-30]*%
Myllykoski Group	[...]*	[5-10]*%	[...]*	[5-10]*%
UPM + Myllykoski Group	[...]*	[30-40]*%	[...]*	[30-40]*%
Norske Skog	[...]*	[10-20]*%	[...]*	[5-10]*%
Stora Enso	[...]*	[10-20]*%	[...]*	[10-20]*%
Burgo	[...]*	[10-20]*%	[...]*	[10-20]*%
Sappi	[...]*	[5-10]*%	[...]*	[10-20]*%
Leipa	[...]*	[5-10]*%	[...]*	[5-10]*%
Perlen	[...]*	[0-5]*%	[...]*	[0-5]*%
Kotka Mills Oy	[...]*	[0-5]*%	[...]*	[0-5]*%
SCA Forest	[...]*	[0-5]*%	[...]*	[5-10]*%
Holmen	[...]*	[0-5]*%	[...]*	[0-5]*%
Steinbeis	[...]*	[0-5]*%	[...]*	[0-5]*%
Kübler&Niethammer	[...]*	[0-5]*%	[...]*	[0-5]*%
M-real	[...]*	[0-5]*%	[...]*	[0-5]*%
Total	7,117	100%	10,200	100%

Source Based on Form CO, Annex A.7.3.2, Table

(107) Table 3 shows that the market position of the parties is weaker in the upper segment of the market (CMR) as compared to the overall magazine paper market, and the parties' combined market share amounts to [30-40]*%. In addition, Myllykoski Group is a relatively small player, in particular in the LWC grade. MWC and HWC are less important quality grades within CMR in terms of volumes. In both of these paper grades the market shares of the parties are below [30-40]*%. Myllykoski Group is not active in the production of MFC paper – which is integrated for statistical purposes in LWC. There are also a large number of competitors active in the respective segments, in particular in LWC.

(108) Concerning SC segment and its different sub-grades, UPM submitted estimated market shares on the basis of a report by an independent consultancy⁶⁸ and its own data. These market shares are as follows⁶⁹:

Table 4: Capacity shares for all SC and SC sub-grades (2010)

Company	SC-B capacity (kt)	SC-B share (%)	SC-A capacity (kt)	SC-A share (%)	SC-A+ capacity (kt)	SC-A+ share (%)	All SC (kt)	All SC share (%)
UPM	[...]*	[30-40]*%	[...]*	[30-40]*%	[...]*	[30-40]*%	[...]*	[30-40]*%
Myllykoski Group	[...]*	[30-40]*%	[...]*	[10-20]*%	[...]*	[20-30]*%	[...]*	[20-30]*%
UPM+ Myllykoski Group	[...]*	[60-70]*%	[...]*	[40-50]*%	[...]*	[50-60]*%	[...]*	[50-60]*%
Stora Enso	[...]*	[30-40]*%	[...]*	[20-30]*%	[...]*	[10-20]*%	[...]*	[20-30]*%
SCA Forest	[...]*	[0-5]*%	[...]*	[10-20]*%	[...]*	[10-20]*%	[...]*	[5-10]*%
NorskeSkog	[...]*	[0-5]*%	[...]*	[10-20]*%	[...]*	[10-20]*%	[...]*	[10-20]*%
Holmen	[...]*	[0-5]*%	[...]*	[5-10]*%	[...]*	[0-5]*%	[...]*	[0-5]*%
Total	1,343	100%	2,633	100%	1,395	100%	5,371	100%

(109) By adding the existing SC-B Equivalent capacities of in total 1100kt the combined market share of UPM and Myllykoski Group in the SC segment is reduced to [40-50]*%. In the SC-B segment where market shares were the highest without considering the SC-B Equivalent, the combined market share drops to [30-40]*%. Also, the importance of Norske Skog, Holmen and Palm as competitors increases significantly. In the SC segment these three competitors together hold a market share of [20-30]*%⁷⁰, Stora Enso about [20-30]*% and SCA around [5-10]*%.

(110) Also, on a confidential basis, the Commission was informed that it is foreseen that by the end of 2011, some further 300kt of capacity for SC-Equivalent paper will be operational. By the addition of these further 300kt, the combined market share of the parties would further decrease.

⁶⁸ Pyöry.

⁶⁹ See Annex 7.3.2. of the Form CO. The "All SC" columns have been calculated by the Commission on the basis of the data in Annex 7.3.2.

⁷⁰ The market share figure of the three producers was aggregated for reasons of confidentiality.

Assessment

- (111) The market shares in the overall magazine paper market comprising SC, MFC and CMR are in the range of approximately [40-50]*% with many competitors being active in the market. Market shares at this level can lead to competition concerns but are not themselves necessarily indicative of market power. In this case, there are several significant competitors with substantial market shares and financial resources as well a number of medium-sized and smaller competitors active in this market.
- (112) In the CMR segment (including LWC which is the most important type of CMR paper in terms of sales volume), the combined market share of the parties is below [30-40]*%.
- (113) Concerning the SC segment, the market investigation indicates that SC-B Equivalent paper should be included in the same market, in a segment which already consists of a range of diversified products. The existing SC-B Equivalent capacity exerts significant competitive pressure at the lower end of the SC spectrum. The market shares in "All SC" (including SC-B equivalent) were approximately [40-50]*% in 2010. With further capacity being available by the end of 2011, the combined market shares of UPM and Myllykoski will further decrease.
- (114) In this respect it is also noted that the SC-B Equivalent producers have significantly increased their sales since the products were introduced, and it can be expected that the competitive pressure will increase in the near future. There are several reasons why this is likely. First, the newsprint demand is falling, and newsprint is the most rapidly declining segment of publication papers. It can be thus expected that newsprint producers will try to expand their sales in the SC-B Equivalent. Second, newsprint producers very recently have made substantial investments in their production facilities and continue to do so. In view of these investments it can be expected that these producers will want to expand their production from improved newsprint to SC-B qualities to amortise their investments as quickly as possible. These investments would not make sense if there was no intention to sell SC-B Equivalents to the market. Third, as the SC-B Equivalent producers indicate, margins are generally higher for SC-B equivalent papers than for (improved) newsprint. There is thus an additional incentive to sell more SC-B Equivalent papers. Fourth, both the current SC-B Equivalent paper producers and their customers expect the sales of this product to increase in the future.^{71,72} Lastly, should the parties attempt to increase prices after the merger, this would be likely to accelerate the growth of SC-B Equivalent paper at the expense of SC. An SC-B Equivalent paper producer states *"if there would be sufficient demand, it could dedicate 100% of the capacity for SC-equivalent paper. The machines are capable of switching instantly, so the only determinant for Palm to*

⁷¹ See replies on question 9 of the Questionnaire to SC-B Equivalent paper suppliers. For example, Norske Skog in its reply explains: "2010 was the year NorCal was introduced. Due to the higher margins for NorCal we are planning to sell more NorCal and less newsprint in the coming years."

⁷² See replies of customers to question 12 of the Questionnaire to SC-Equivalent paper customers.

*switch is the supply and demand balance and the price levels. If prices would increase for its SC-equivalent paper, it would certainly be interesting to produce it."*⁷³

- (115) The recent entry of the SC-B Equivalent producers provides a significant competitive constraint on the parties in the SC segment, increases the relative strength of Holmen and Norske Skog in the SC segment and brings one emerging competitor – Palm – to the competitive landscape.
- (116) Moreover, as explained in the part on market definition (recitals 63-69), higher paper grades exert an important competitive pressure on SC paper. Even if MFC and CMR were not to be part of the same product market as SC, the SC segment could not be considered in isolation. As there is strong evidence for switching between the magazine paper grades the parties' position in SC papers needs to take into account the strong competitive pressure from the MFC/CMR grades – in which the market shares of the parties are lower and where a large number of strong competitors are active.
- (117) In addition, although newsprint grades are not considered as part of the same product market, there is some switching between SC paper and improved newsprint grades. Therefore, there is some degree of external competitive constraint coming from newsprint and the market shares for SC (and in particular in the lower SC grades) need to be further qualified by the fact that account needs to be taken of the neighbouring newsprint grades which diminishes the market position of the parties as their presence in newsprint is more limited.
- (118) Moreover, when analysing the different sub-grades of the SC segment, it is noted that in the lower end (SC-B) the Parties are significantly constrained by SC-B Equivalent producers, and in the higher end (SC-A +) from the adjacent LWC grades. In the middle grade (SC-A) the market position of the Parties and in particular the increment is relatively smaller, while other important competitors are active there.
- (119) In sum, neither the Parties' market position in an overall market for magazine paper comprising SC, MFC and CMR, nor their position in the potential SC market, in itself indicates market power giving rise to a significant impediment of effective competition. This is the case in particular for SC paper since the neighbouring MFC, CMR paper grades exert important competitive pressure on SC paper. Also, SC-B Equivalent paper represents another new type of SC paper that has to be included in the market and which increases the importance and number of competitors putting a significant competitive constraint on the Parties. Finally, as there are some constraints from newsprint grades the significance of the market shares of UPM in the SC paper segment (and consequently also on the overall magazine paper market) after the merger is further reduced. These considerations represent one of the elements leading to the conclusion that the proposed concentration would not lead to a significant impediment of effective competition in relation to magazine paper. The further elements underpinning this conclusion which equally concern the overall magazine paper and its segments are set out below (recitals 120 -149).

⁷³ Minutes of conference call with Palm on 24 May 2011

(c) Demand and capacity utilisation

- (120) Paper making is a capital intensive industry where capacity utilisation is an important determinant of profitability. According to UPM, fixed costs generally account for [...] % of total costs when a paper machine is operating at above 90% of its capacity. In a situation where paper producers are not able to cover their costs they have strong incentives to ensure that their machines are as fully loaded as possible.
- (121) UPM considers that magazine paper producers on average cannot operate profitably with utilisation rates below [90-100] %⁷⁴. Large overcapacities put pressure on prices and may reach levels where producers are not able to cover their costs.
- (122) The level of capacity utilisation rates and hence the spare capacities of competitors is therefore particularly relevant for assessing the market power of the combined entity and the ability and incentives of competitors to react to price increases by UPM post merger.

Demand forecasts

- (123) UPM states that the magazine paper market is characterised by structural overcapacity resulting not only from the economic downturn in 2008/2009 but also from a structural decline caused by the shift from print media to electronic advertising. UPM considers that there is substantial overcapacity and that competitors would increase output to thwart any effort by the combined entity to increase prices.
- (124) In the Statement of Objections the Commission stated that it had found indications that demand for SC paper could be stable or increasing. The use of direct marketing materials (which are typically made of SC paper) seemed to be less affected by the general downturn of print media. Also, several customers reported seasonal shortages of supply for the fourth quarter of 2010.
- (125) In response to this UPM provided further information on demand forecasts for SC - and for other publication paper (magazine and newsprint) supporting the view that the market is declining. UPM notes that demand for SC paper dropped by more than 10% between 2008 and 2009. In 2010 there was no recovery from the decline and [...] is predicted for 2011 and 2012. Long term demand for SC would be [...] on a Europe-wide basis⁷⁵.
- (126) UPM further points to the fact that the demand for SC paper in the first quarter of 2011 was 5% lower than demand in the first quarter of 2010 which itself was a weak first quarter. UPM also provided more recent forecasts showing [...] demand. UPM expects that [...] some demand for SC would [...] with the effect that the short to medium term demand for SC paper would be [...].

⁷⁴ Another magazine paper producer indicated that when balancing closure costs and losses of maintaining a paper machine "If the utilization is permanently below 80% a shut-down would make sense" (Questionnaire Q 1, question 33).

⁷⁵ UPM's submission of 15 April 2011, pages 2-17.

(127) On the basis of several statements by independent sources, several competing producers and the most recent demand trends (first quarter 2011) it is concluded that there are insufficient grounds for assuming that demand for SC paper (or other types of magazine paper) is increasing. Based on the most recent forecasts demand trends in the next years seem to be more pessimistic and at most stable. Demand in the next three to five years for magazine paper (including SC) is therefore likely to be at most stable.

b. Capacity utilisation

(1) The parties' production facilities

(128) UPM has production sites for magazine paper in Austria, Germany, Finland, France, The Netherlands and the United Kingdom. SC paper is produced in Austria, Finland and Germany. UPM has in total seven paper machines producing SC paper, one in Austria, four in Finland (two in each of two locations) and two in Germany (one in Augsburg and one in Schongau).

(129) UPM's SC paper machine PM3 in Austria was built in 1984 (major rebuild in 1999) and has annual capacity of [...]*. Rauma PM2 with SC capacity of [...]* was built in 1971 and underwent major rebuilds in 1990 and 2004. [...]* Rauma PM3 was built in 1980 and rebuilt in 1986. UPM's two Jämsänkoski SC machines PM5 and PM6 have an annual production of [...]* and [...]*, respectively. Although the elder of the two – PM5 was built in 1981, it saw major rebuilds in 1996, 2001 and 2008. PM 6 was built in 1992 and had a major upgrade in 2005. UPM's PM2 in Augsburg is one of [...]* SC machines, with annual production capacity of [...]*. Built in 1955, the machine was last upgraded in 1975, according to UPM. On the other hand, PM9 at Schongau is one of the [...]* SC paper machines in the UPM group, according to the company – built in 2000 and upgraded in 2006, it has an annual production capacity of [...]*.

(130) Myllykoski Group produces magazine paper in Finland and Germany. Its SC paper production consists of two machines at the Myllykoski plant in Finland and three machines in Germany (two machines in Ettringen and one machine in Plattling).

(131) Myllykoski has [...]* machinery. Although it has invested in recent years in some of its machines, [...]* which has a capacity of [...]*, other Myllykoski SC paper assets in Europe are [...]*. PM 6 was commissioned in 1961 / rebuilt in 1993; PM4 was built in 1984/rebuilt in 1996, PM 3 in 1981/2001; PM 7 in 1971/1998. Myllykoski Paper PM 6 (built in 1961, rebuilt in 1993) is considered in the internal document of Myllykoski [...]*. The analysis further considers that Myllykoski [...]* are close to being [...]* in the industry with regard to their [...]*, while Myllykoski [...]* is among the [...]* of the [...]* machines in Europe, according to the analysis.

(2) Capacity utilisation rates

(132) Based on the figures provided in the notification, capacity utilisation of the parties' SC and CMR machines is as follows:

Table 5

UPM – Plant /Machine	2010 Production (kt/Year)	2010 Capacity (kt/year)	2010 Capacity utilisation rate
CMR (and MFC)			
Kaipola, Finland PM6	[...]*	[...]*	[...]*
Kaukas, Finland PM1	[...]*	[...]*	[...]*
Kaukas, Finland PM2	[...]*	[...]*	[...]*
Rauma, Finland, PM1	[...]*	[...]*	[...]*
Rauma Finland, PM4	[...]*	[...]*	[...]*
Stracel, France, PM1	[...]*	[...]*	[...]*
Augsburg, Germany, PM3	[...]*	[...]*	[...]*
Caledonian, UK, PM1	[...]*	[...]*	[...]*
Total CMR	[...]*	[2500-3000]*	[...]*
SC			
Steyermühl, Austria, PM3	[...]*	[...]*	[...]*
Jämsänkoski, Finland, PM5	[...]*	[...]*	[...]*
Jämsänkoski, Finland, PM6	[...]*	[...]*	[...]*
Rauma, Finland, PM2	[...]*	[...]*	[...]*
Rauma, Finland, PM3	[...]*	[...]*	[...]*
Augsburg, Germany, PM2	[...]*	[...]*	[...]*
Schongau, Germany, PM9	[...]*	[...]*	[...]*
Total SC	[...]*	[1500-2000]*	[...]*

Table 6

Myllykoski Group	2010 Production (kt/year)	2010 Capacity (kt/year)	2010 Capacity utilisation rate
CMR			
Finland, PM4	[...]*	[...]*	[...]*
Ahlbruck, Germany, PM5	[...]*	[...]*	[...]*
Ahlbruck, Germany, PM6	[...]*	[...]*	[...]*
Ahlbruck, Germany, PM7	[...]*	[...]*	[...]*
Plattling, Germany, PM10	[...]*	[...]*	[...]*
Plattling, Germany, PM11	[...]*	[...]*	[...]*
Total CMR	[...]*	[500-1000]*	[...]*
SC			
Finland, PM6	[...]*	[...]*	[...]*
Finland, PM7	[...]*	[...]*	[...]*
Ettringen/Lang, Germany, PM4	[...]*	[...]*	[...]*
Ettringen/Lang, Germany, PM5	[...]*	[...]*	[...]*
Plattling Germany, PM1	[...]*	[...]*	[...]*
Total	[...]*	[1000-1500]*	[...]*

(133) For SC paper machines, the capacity utilisation is [80-90]*% for UPM and [90-100]*% for Myllykoski Group. In the CMR segment, UPM's capacity utilisation rate in 2010 was slightly higher but still only attained [80-90]*%. UPM estimates the capacity utilisation rate of the competitors in the SC and in the CMR segment at ca. [80-90]*%.

(134) In the market investigation the Commission examined the information provided by UPM and industry data provided by independent sources⁷⁶. In addition, the Commission examined the capacity utilisation data of competitors obtained in the market investigation⁷⁷. The data obtained in the market investigation confirms the data of the independent consultancy.

(135) Based on the independent industry data, the Commission calculated the following capacity utilisation rates (all measured as production versus capacity):

Table 7: Average utilisation rates per paper grade (2010), excluding parties

	Improved newsprint	SC	CMR
Production/capacity	[80-90]*	[80-90]*	[80-90]*

Source: Commission based on CEPIPRINTdata

(136) The yearly average utilisation rate of the competitors in SC paper is [80-90]*%. In CMR it is only slightly higher, so that also for the overall magazine paper market the average capacity utilisation rate is approximately [80-90]*%.

(137) Based on the independent consultancy data, the Commission also calculated the monthly industry capacity utilisation rates over the years 2005 to 2010 for the overall market and the segments.

⁷⁶ CEPIPRINT, RISI.

⁷⁷ See responses to question 25 of Questionnaire Q1 to competitors magazine paper.

Table 9: Average utilization rate for **magazine paper** (SC, CMR⁷⁸), excluding the parties

Date	2005	2006	2007	2008	2009	2010
Jan	[90-100]*%	[90-100]*%	[90-100]*%	[90-100]*%	[70-80]*%	[80-90]*%
Feb	[90-100]*%	[90-100]*%	[90-100]*%	[90-100]*%	[70-80]*%	[80-90]*%
Mar	[90-100]*%	[90-100]*%	[90-100]*%	[90-100]*%	[70-80]*%	[80-90]*%
Apr	[80-90]*%	[80-90]*%	[90-100]*%	[90-100]*%	[70-80]*%	[80-90]*%
May	[80-90]*%	[90-100]*%	[90-100]*%	[90-100]*%	[70-80]*%	[90-100]*%
Jun	[70-80]*%	[80-90]*%	[90-100]*%	[90-100]*%	[70-80]*%	[80-90]*%
Jul	[90-100]*%	[90-100]*%	[90-100]*%	[90-100]*%	[70-80]*%	[90-100]*%
Aug	[90-100]*%	[80-90]*%	[90-100]*%	[90-100]*%	[70-80]*%	[80-90]*%
Sep	[90-100]*%	[80-90]*%	[90-100]*%	[90-100]*%	[80-90]*%	[90-100]*%
Oct	[90-100]*%	[90-100]*%	[90-100]*%	[90-100]*%	[80-90]*%	[90-100]*%
Nov	[90-100]*%	[90-100]*%	[90-100]*%	[90-100]*%	[80-90]*%	[90-100]*%
Dec	[90-100]*%	[80-90]*%	[100-110]*%	[70-80]*%	[70-80]*%	[80-90]*%
Total	[90-100]*%	[90-100]*%	[90-100]*%	[90-100]*%	[70-80]*%	[80-90]*%

Source: Commission based on CEPIPRINT data

⁷⁸ In the statistics on which the tables are based on, CMR includes MFC paper.

Table 10: Average utilization rates for CMR, excluding the parties

date	2005	2006	2007	2008	2009	2010
Jan	[90-100]*%	[80-90]*%	[80-90]*%	[90-100]*%	[70-80]*%	[80-90]*%
Feb	[90-100]*%	[90-100]*%	[90-100]*%	[90-100]*%	[70-80]*%	[80-90]*%
Mar	[90-100]*%	[90-100]*%	[90-100]*%	[90-100]*%	[70-80]*%	[80-90]*%
Apr	[80-90]*%	[80-90]*%	[90-100]*%	[90-100]*%	[70-80]*%	[80-90]*%
May	[70-80]*%	[90-100]*%	[90-100]*%	[90-100]*%	[70-80]*%	[90-100]*%
Jun	[70-80]*%	[80-90]*%	[80-90]*%	[80-90]*%	[70-80]*%	[80-90]*%
Jul	[90-100]*%	[80-90]*%	[90-100]*%	[90-100]*%	[70-80]*%	[90-100]*%
Aug	[90-100]*%	[80-90]*%	[90-100]*%	[90-100]*%	[70-80]*%	[80-90]*%
Sep	[90-100]*%	[90-100]*%	[90-100]*%	[80-90]*%	[80-90]*%	[90-100]*%
Oct	[90-100]*%	[90-100]*%	[90-100]*%	[90-100]*%	[80-90]*%	[90-100]*%
Nov	[90-100]*%	[90-100]*%	[100-110]*%	[80-90]*%	[80-90]*%	[90-100]*%
Dec	[90-100]*%	[80-90]*%	[100-110]*%	[70-80]*%	[70-80]*%	[80-90]*%
Total	[90-100]*%	[80-90]*%	[90-100]*%	[90-100]*%	[70-80]*%	[80-90]*%

Source: Commission based on CEPIPRINT

Table 11: Average utilization rates for SC, excluding the parties

date	2005	2006	2007	2008	2009	2010
Jan	[90-100]*%	[90-100]*%	[90-100]*%	[90-100]*%	[80-90]*%	[70-80]*%
Feb	[90-100]*%	[90-100]*%	[90-100]*%	[90-100]*%	[70-80]*%	[70-80]*%
Mar	[90-100]*%	[90-100]*%	[90-100]*%	[90-100]*%	[70-80]*%	[80-90]*%
Apr	[90-100]*%	[90-100]*%	[90-100]*%	[90-100]*%	[80-90]*%	[80-90]*%
May	[90-100]*%	[90-100]*%	[90-100]*%	[90-100]*%	[80-90]*%	[80-90]*%
Jun	[90-100]*%	[90-100]*%	[90-100]*%	[90-100]*%	[70-80]*%	[80-90]*%
Jul	[90-100]*%	[90-100]*%	[90-100]*%	[90-100]*%	[80-90]*%	[80-90]*%
Aug	[90-100]*%	[90-100]*%	[90-100]*%	[90-100]*%	[70-80]*%	[80-90]*%
Sep	[90-100]*%	[80-90]*%	[90-100]*%	[90-100]*%	[80-90]*%	[90-100]*%
Oct	[90-100]*%	[90-100]*%	[90-100]*%	[90-100]*%	[80-90]*%	[90-100]*%
Nov	[80-90]*%	[90-100]*%	[90-100]*%	[90-100]*%	[90-100]*%	[90-100]*%
Dec	[80-90]*%	[90-100]*%	[90-100]*%	[90-100]*%	[70-80]*%	[80-90]*%
Total	[90-100]*%	[90-100]*%	[90-100]*%	[90-100]*%	[80-90]*%	[80-90]*%

Source: Commission based on CEPIPRINT

(138) The charts on the monthly data show some seasonality of paper production as rates vary during certain periods of the year. Production tends to be higher in September, October and November than in other periods of the year. In December 2009 and December 2010 utilisation rates decreased again significantly. This (and a general seasonality effect) is however less clear for SC paper for the years 2005, 2006 and 2008. For these years there is no clear peak for the last months of the year and there was also no clear decline in December or in January of the following year.

(139) To the extent that a seasonality effect is present, it can be explained by a higher demand for magazine paper before Christmas. Publishers have thicker magazines due to more advertisements and more flyers, leaflets and catalogues are distributed.

- (140) In the Statement of Objections, the Commission observed that in 2010, competitors' utilisation rates in the months September October and November almost reached full capacity. In the years before, capacity utilisation rates in September, October and November were not as high as in 2010. In 2009, the year of the financial crisis, utilisation rates were particularly low throughout the year and even during September, October and November. On the basis of the high capacity utilisation figures in September-November 2010 the Commission preliminarily considered in the Statement of Objections that capacities may be becoming tight, despite the indications of structural overcapacity.
- (141) UPM explains that the capacity utilisation rates in 2009 and 2010 cannot be regarded as typical. Firstly, 2009 was badly affected by the financial crisis. This low demand continued into the first half of 2010 as companies drew on their stocks and postponed their purchasing decisions as they expected prices to fall further. In the second half of the year demand increased sharply as the result of improved economic conditions and companies ordered paper for both their current needs and for restocking. The situation was aggravated by the fact that producers had committed themselves to exports early in 2010 to compensate for the low domestic demand. These factors combined to raise utilisation rates in the second half of the year and particularly in September to November. Thus neither 2009 nor 2010 can be regarded as typical years.⁷⁹ Indeed, the fall of capacity utilisation rates in December 2010 to [80-90]*% and the most recent figures which show that in the first quarter of 2011 the demand fell by 5% compared to the first quarter of 2010, indicate that the exceptionally high rates at the end of 2010 are not an appropriate benchmark for the future.
- (142) In any event, as there is certain seasonality in demand and of the capacity utilisation rates for production of magazine paper, the Commission sought to establish whether the higher demand during peak times impacts on pricing. In the market investigation several customers indicated that prices are higher during peak periods as compared to outside-peak periods. Moreover, based on UPM's and Myllykoski's pricing data it cannot be established that prices are [...] period of the year⁸⁰. In fact, prices were [...] during this period in the years 2007 and 2009. In 2010, prices for [...] were [...] than during the rest of the year. The fact that prices are not [...] times may be explained by the [...] ⁸¹. Paper deliveries are mostly based on three, six or twelve month contracts. During the contract periods prices are fixed for the suppliers. As one large supplier notes, "*because of overcapacity in Europe on newsprint and magazine*

⁷⁹ UPM's reply to the Statement of Objections, page 25. UPM submits that the usually high capacity utilisation rates were caused by a mix of factors: (a) customers delayed ordering in the early half of 2010 because prices were continuing to fall; (b) in this period they allowed stocks to become increasingly depleted (building on existing depletion in the course of 2009); and (c) when prices began to rise in the second half of 2010 as producers sought to recover some part of input cost increases, demand suddenly shot up – both as a result of depleted stocks and as a result of expectations of higher prices in the months ahead.

⁸⁰ This result holds true for SC paper and other types of magazine paper.

⁸¹ Stora Enso, reply to question 30 of Questionnaire R1 to competitors: "*September to early December is the strongest period together with the month before Easter in the spring. Contracts are traditionally 6 or 12 months and coincide with the calendar year. Traditional weakest order inflow periods are January-February and July-August. In many cases negotiations are still ongoing during these weak periods leading to significantly reduced power in negotiation.*"

grades, a tightness in the market rarely occurs. Although there are some seasonality in demand for paper throughout the year (i.e. large events like Olympics, Soccer World Cup, summer holidays, Christmas), it has no bearing on long term contracts. Customers are fully aware of the seasonality within their segment, and therefore normally give suppliers a monthly rolling forecast for the year. This is incorporated into the supply agreement for the year."⁸² Spot sales are relatively rare and so have little influence on the overall level of prices. In addition, producers maintain some stocks of paper and sell them in periods of higher demand so that individual months are less relevant for the assessment of capacity utilisation rates. As a result of the above elements, peak periods within the year with relatively higher demand and correspondingly higher capacity utilisation rates thus do not have a significant impact on pricing. When assessing competitors' spare capacities, it is thus more appropriate to consider yearly capacity utilisation rates (that is to say, yearly ratio of production over total capacities)⁸³.

Assessment

- (143) UPM's capacity utilisation rates in both CMR and SC paper [...]*. Also, UPM's and Myllykoski Group's competitors have substantial spare capacities available in an overall magazine paper market (SC, MFC, CMR) as well as in the SC segment in particular.
- (144) The 2010 average utilisation rate of competitors for SC (as well as for CMR and the overall magazine paper market) was about 88%. Even assuming that the maximum utilisation rate of a machine is not 100% but 97-98%⁸⁴ this leaves approximately 10% spare capacity on the side of the competitors.⁸⁵
- (145) For the reasons explained in recital (142), it is not appropriate to take utilisation rates in single months or short periods within a year as a reference point.

⁸² Reply of Norske Skog to question 30 of Phase II questionnaire for magazine paper producers.

⁸³ The Commission also considered utilisation rates measured by deliveries over capacities. The Commission considers however that the ratio deliveries versus capacities are less informative for the purposes of determining the ability and incentives to counteract price increases. Producers have to ensure a continuous workload – that is production - on the machines for using them efficiently. In addition, sometimes during the year capacity utilisation rates measured by deliveries exceeded the existing maximum capacities. The fact that the deliveries exceeded the theoretical maximum production shows that to some extent producers are capable of keeping stocks of paper which can be sold during this high demand period.

⁸⁴ [...] * of the theoretical maximum capacity is what UPM considers as practical maximum for a continuous operation of a machine.

⁸⁵ . About 921kt for the overall market 247kt for SC. These figures do not yet include the significant competitors' capacities available for producing SC-B Equivalent paper. In 2010, the sales of SC-B Equivalent paper were in the range of 400-500kt, whereas the capacities were 1100 kt, which leaves more than 600kt potentially available for production of SC-B Equivalent paper. In addition, by the end of 2011 further SC-B Equivalent capacity will be brought into the market. This altogether leaves significant capacity in the hand of competitors, even if lower than full capacities were taken into account as a benchmark.

- (146) Consequently, on the basis of the average capacity utilisations, it is concluded that competitors have available spare capacity both in CMR and in SC paper.
- (147) This spare capacity does not yet take into account the substantial capacities from SC-B Equivalent paper that has been developed recently and the incentives of the producers of SC-B Equivalent paper to expand the sales of this new type of paper that would strongly constrain the ability of UPM to raise prices profitably.
- (148) Furthermore, the existing spare capacities in CMR paper as well as in improved newsprint grades would also constrain any attempt by UPM to raise prices. Customers wishing to trade up to CMR papers would be able to source the higher grade paper, similarly customers of SC papers wishing to use cheaper improved newsprint would also be able to find potential suppliers.
- (149) Competitors –whether in SC (including SC-B Equivalent), CMR or improved newsprint grades have a strong interest in filling their capacities as paper making has very high fixed costs. For this reason, producers seek to fill their capacities and it can be expected that they would try to increase their sales at the expense of UPM if UPM was to attempt to increase prices after the merger. These considerations represent another element suggesting that the proposed concentration would not lead to competition concerns in the field of magazine paper, either in the overall market or in the SC segment.

(3) Capacity reductions by UPM post merger

- (150) Against the background of overcapacities in the market, UPM sets out the rationale for the proposed concentration⁸⁶. It states in the notification that the transaction is intended to present a response to the misalignment of supply and demand. It is further stated that UPM attempts to achieve synergies by optimising capacity by closing less efficient capacity⁸⁷.
- (151) UPM's calculation of cost savings is based on the closures of [...] and [...] and [...]. These rationalisations would reduce the combined entity's capacity by approximately [...]. If this scenario materializes, it will mean a reduction of [...] of SC paper capacity and approximately [...] in the overall magazine paper market.
- (152) UPM considers that even with the potential capacity reductions the proposed concentration would not have negative effects on competition since in the absence of the merger other – more efficient - capacity would exit the market.
- (153) UPM internal documents show that, as an alternative to the merger, UPM considered [...] and that the Myllykoski Group had examined a number of options including [...]. In a document entitled [...] presented to UPM's Board of Directors on 17 December 2010, which [...], UPM estimates that, for the paper industry to run at 90% operating rate in the year 2020, the whole industry would need to close production capacity, including 600kt in LWC and 300kt in SC paper.

⁸⁶ Form CO, Section 1, point D.

⁸⁷ Form CO, Section 3, point 3.6.

- (154) The Myllykoski Group also considered capacity reductions as an alternative to the merger. Consultants advised the Myllykoski Group to [...] ⁸⁸, in the absence of the merger.
- (155) In response to concerns of the Commission that the potential merger-specific capacity reductions would exceed the level of reductions that would occur in the absence of the merger, UPM set out four counterfactual scenarios: [...] ^{*}.
- (156) UPM argues that each of the four scenarios would be less advantageous to customers than the proposed concentration as the latter would result in the more efficient capacity staying in the market, thus reducing the overall cost level of the industry to the benefit of the customers.
- (157) [UPM considers that certain scenarios are unlikely because they would not be in the interests of lenders to the Myllykoski Group.] ^{*}.
- (158) [UPM considers that, in the most likely scenario, the Myllykoski Group would be restructured to some extent. UPM considers that this would most likely lead to some closures of Myllykoski Group capacity. In the status quo scenario, again some closure of capacity would be likely to take place. In both cases, this would lead to a situation where the more efficient capacity of competitors to the Myllykoski Group would be closed] ^{*}.

Assessment

- (159) The Commission considers that the merger would be likely to reduce capacity by more than what would occur in the absence of the merger and that these reductions in capacity would be achieved in a shorter timescale.
- (160) [The Commission takes the same view as UPM that certain scenarios are unlikely to occur because they would not be in the interests of the lenders to the Myllykoski Group] ^{*}.
- (161) [Consultants to the Myllykoski Group had recommended that certain Myllykoski Group capacity should be closed] ^{*}. ⁸⁹ [...] ⁹⁰.
- (162) [The paragraph discusses the resulting change in SC capacity] ^{*}. ⁹¹
- (163) Competitors' spare capacities even in 2010 (corresponding to capacity utilisation rates of [80-90]%) would have been sufficient to offset the effects of the envisaged capacity reductions

⁸⁸ UPM submission of 14. February.2011, Annexes Myllykoski B.2.1-B2.3 and Myllykoski A.2.39.

⁸⁹ Project Snowflake.

⁹⁰ These capacity figures are taken from the Parties' internal documents, see footnote 88. In the Form CO, Annex 3.6.1. the capacity figures are slightly different (Myllykoski PM6 [...] ^{*} and Albbrock PM5 [...] ^{*}, together [...]) ^{*}. However, these differences are not material.

⁹¹ .According to the Form CO (Annex 3.6.1.) this figure is slightly higher at [...] ^{*}.

- (164) Furthermore, capacity reductions by UPM would not impact directly on the ability of competitors to counteract price increases. Such capacity reductions directly concern UPM's and the Myllykoski Group's capacity (which is even slightly lower than the industry average) while leaving the spare capacities on the side of the competitors - at least directly - unaffected.
- (165) In addition, even the total reductions in the SC segment of [...] are much lower than the capacity that has been added to the market by the SC-B Equivalent papers. These additional capacities more than outweigh capacity reductions planned by UPM. Moreover, additional SC-B Equivalent capacity will be commissioned before the end of 2011.
- (166) In conclusion, even with the likely capacity reductions by UPM, competitors would still have sufficient spare capacities and the incentives to counteract price increases by UPM. This consideration represents another element suggesting that the proposed concentration would not lead to a significant impediment of effective competition in this area.
- (167) Concerning the efficiency argument raised by UPM, the Commission notes that UPM made extensive submissions and considerable efforts to show the positive effects of efficiencies resulting from the proposed merger. In particular, UPM provided detailed data to substantiate its arguments in relation to a reduction in variable costs as these are considered by the Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings⁹² as more likely to be relevant to the assessment of efficiencies than the reduction of fixed costs. However UPM did not attempt to show what proportion, if any, of the synergies would be passed on to customers beyond observing that a considerable proportion of the synergies would result from variable cost savings. Under those circumstances it is particularly unclear whether any efficiencies would be passed on to the customers. In any event, since the Commission finds that the concentration is unlikely to lead to competition concerns, it is not necessary to assess potential efficiencies.

(4) Export repatriation

- (168) UPM put forward the argument that competitors could redirect exports from outside the EEA and Switzerland to the domestic market in order to defeat any attempt by UPM to increase prices for SC paper. UPM considers that its competitors export substantial amounts of SC paper at lower margins than those achieved within the EEA and Switzerland. UPM therefore believes that its competitors would redirect their exports at least in part if prices were to rise in the EEA and Switzerland.
- (169) The Commission has investigated the amounts of exports and found that UPM is currently the most important exporter of SC paper. UPM itself has no incentive to redirect its own exports as this would depress prices in the EEA and Switzerland, which appear to be higher than elsewhere. The amounts that could possibly be

⁹² , OJ C 31, 5.2.2004, p.6, paragraph 80.

redirected by competitors are more limited and amount only to approximately 9% for all SC delivered in the EEA plus Switzerland.

- (170) However, even for these amounts it is not likely that most competitors would redirect substantial amounts of their exports. This is for several reasons. First, the larger paper makers sell substantial parts of their export sales on comparatively long term contracts; contract duration seems to be similar to within the EEA. Also some paper makers try to develop export markets. These producers are unlikely to repatriate hard won export sales and relationships developed over a long period for a possible short term gain. However, in so far as exports are made on spot sales or without a particular strategic commitment to the export markets, some of them may be redirected to the EEA and Switzerland if this is attractive to the producer, in particular in view of the higher prices within the EEA.
- (171) Concerning sales margins, the picture is [...]*. Margins outside the EEA and Switzerland are sometimes [...]* but can sometimes be [...]* than within the territory and EEA prices would in some cases [...]* in order to justify a redirection of exports from higher margin areas.
- (172) On the other hand, export markets bear a number of risks for producers such as exchange rate volatility, which may create incentives to sell to the EEA if margins rise. Also the fact that demand in North America seems to be decreasing and due to overcapacities in this area, export redirection seems plausible for exporters to this destination if margins in the EEA and Switzerland were to increase as a consequence of an attempt by UPM to raise prices post merger.
- (173) Against these considerations, the Commission considers that very substantial export redirection by competitors is unlikely and, alone, would not prevent UPM from increasing prices after the merger. However, the Commission does not rule out the possibility that some producers, in particular those selling magazine paper on the spot market, would redirect exports if prices were to rise in the EEA and Switzerland. This can contribute to counteracting potential price increases by UPM. To this limited extent, export redirection represents an element for considering that the proposed concentration would not lead to a significant impediment of effective competition.

(5) Coordinated effects

- (174) During the market investigation some customers raised concerns that magazine paper producers, particularly the larger ones, coordinate or could coordinate their behaviour without effective restraint from the smaller players. Furthermore, concerning current capacity, the level of transparency is high.
- (175) As regards price setting, the level of transparency is low throughout the magazine paper industry including the SC paper segment. Only a few companies have public price lists and the market is characterised by individual negotiations. Also, rebates are common in the industry.
- (176) As regards capacity, there is a high level of transparency for existing capacities. However, at the same time, there are many competitors active in the market making it unlikely that sustainable coordination could be achieved. This is the case for an overall magazine paper market (SC, MFC and CMR) but also has to be taken into account for the SC segment as there is substantial switching to other paper grades. Moreover, the

recent entry of the SC-B Equivalent producers shows that any potential coordination between SC producers is challenged by entry of former newsprint producers.

(177) In conclusion the proposed concentration is unlikely to lead to a significant impediment of effective competition in the magazine paper market including the SC segment based on coordinated effects.

(6) Conclusions

(178) Therefore, it is concluded that the proposed concentration would not lead to a significant impediment of effective competition in relation to a broad magazine paper market or any of its segments (SC, MFC and CMR.) for the following reasons:

(179) First, as explained in recitals (111) to (119), the combined market shares of the parties are in the range of approximately 40% for an overall magazine paper market. In the CMR segment (including MFC) it is lower. In the SC paper segment the market share reaches approximately [40-50]%. However, in all segments a number of significant competitors are active, and customers have the possibility of switching between paper grades. Furthermore, the new SC-B Equivalent producers have particular incentives to challenge the parties' market position.

(180) Furthermore, even without the additional SC-B Equivalent capacities, competitors have some spare capacities available and – due to the high fixed costs – the incentives to counteract potential price increases by UPM (see recitals (143) to (149)). Also, demand forecasts for magazine paper and SC paper in particular are more pessimistic. At any rate, the SC-B Equivalent adds very substantial additional capacities that will constrain UPM after the transaction. The SC-B Equivalent producers have made significant investments to create a new paper product that competes with SC paper which they will want to amortise by selling this product to the market. These high additional capacities will exert competitive pressure on UPM even if UPM reduces its capacities after the transaction as competitors would still have sufficient spare capacities and incentives to defeat any attempt to raise prices (see recitals (159) to (166)).

(181) Finally, as explained in recitals (168) to (173)) the Commission considers that, to a limited extent, exports may be redirected to the EEA and Switzerland in the event that prices in this area increase.

(182) As regards potential coordinated effects, the numerous competitors active in the market and in the segments mean it is unlikely that sustainable coordination would be achieved. As regards the SC segment, this is the case, in particular, due to the recent entry of SC-B Equivalent producers.

(183) In view of these considerations, it is concluded that the proposed concentration would not lead to a significant impediment of effective competition in the magazine paper market or in any of the segments thereof.

2 NEWSPRINT

2.1. Product market definition

- (184) Both UPM and Myllykoski Group are active in the market for newsprint. Newsprint is a type of paper used mainly for the printing of newspapers. It is distinguished by its relatively low cost and high strength, which allows it to be run through large printing presses at high speed and in large volumes. Newsprint comes in various grades and specifications. The two primary segments of the newsprint market are standard newsprint and improved newsprint⁹³. Recently some newsprint paper producers have been producing new grades of paper. These are known as super-improved newsprint, SC-C or SC- B Equivalent that has characteristics that distinguish it from newsprint and improved newsprint. This type of paper has been developed by newsprint and improved newsprint manufacturers to counteract the rapid reduction in demand for their products. UPM and Myllykoski Group do not produce SC-B Equivalent papers. The place of these papers is discussed in more detail in the section on magazine paper, recitals (54) - (62).
- (185) UPM submits that, in accordance with Commission precedents⁹⁴, there is a market for newsprint taken as a whole. It is considered that there is a high degree of demand-side substitutability of different grades of newsprint. In particular, there is common usage of different grades in multiple applications and consumers can and do switch between different grades. In addition, UPM submits that improved newsprint can be used for magazine applications; in particular it could replace SC paper.
- (186) During the market investigation, the majority of competitors expressed the opinion that the newsprint market should not be further segmented. Those competitors mention that, due to technical improvements in the printing process, customers can produce higher quality print on lower quality papers which makes it possible for customers to switch from higher to lower paper grades.
- (187) However, the majority of customers have the opposite view, arguing that there is little or no substitution between standard and improved newsprint paper in their operations. The customers claiming that there are separate markets argued that there are significant differences in prices, quality of paper and technical parameters (weight, whiteness etc). However, a minority of customers states that they either have already switched between newsprint grades or might do so in the future.
- (188) The exact product market definition can, however, be left open as competition concerns would not arise on any reasonable alternative market definition.

⁹³ MFS (synonym for improved newsprint), including UMI (uncoated mechanical improved) and UMO (uncoated mechanical-other).

⁹⁴ See Case COMP/M.646 *Repola/Kymmene*, 30 October 1995, para. 12; Case COMP/M.2498 *UPM-Kymmene/Haindl*, 21 November 2001, para. 13; Case COMP/M.3822 *Stora Enso/Schneidersöhne Papier*, 25 July 2005, para. 16.

2.2. Geographic market definition

- (189) The Commission has previously considered that the geographic market for newsprint is at least EEA-wide⁹⁵, or, alternatively, is constituted by the EEA plus Switzerland⁹⁶. In line with the Commission's findings, UPM submits that the geographic market for newsprint has indeed at least this scope as there are appreciable trade flows within the EEA (and Switzerland)⁹⁷, there are no significant barriers to intra-EEA trade⁹⁸, transport is both possible and actually undertaken over long distances⁹⁹ and sales prices are uniform across this area¹⁰⁰.
- (190) Most respondents to the market investigation, both competitors and customers, considered that the geographic scope of the market for newsprint is the EEA plus Switzerland.
- (191) Nearly all competitors and a substantial proportion of customers mentioned imports from North America, Russia and Eastern Europe into the EEA and Switzerland. These sales do not appear to be significant in relation to the overall sales of newsprint. The imports reported by the respondents to the preliminary investigation were less than 100kt¹⁰¹. One customer estimated total imports from Russia and Eastern Europe at a maximum of 100kt¹⁰². Sales from North America appear to have been mainly spot sales due to exchange rate volatility. All competitors delivered widely throughout the EEA and Switzerland and all customers reported that they purchased from multiple sources in the EEA and Switzerland and from further afield.
- (192) On this basis it is concluded that the relevant geographic market for newsprint is the EEA and Switzerland.

2.3. Compatibility with the internal market and the EEA Agreement - Newsprint

- (193) Table 12 shows the parties' and their main competitors' shares of capacity for newsprint, improved newsprint and all newsprint in the EEA plus Switzerland in 2010:

⁹⁵ See Case COMP/M.646 *Repola/Kymmene*, 30 October 1995, para. 36; Case COMP/M.5283 *Sappi/M-Real*, 31 October 2008, para. 29.

⁹⁶ See Case COMP/M.2498 *UPM-Kymmene/Haindl*, 21 November 2001, para. 30 and 33.

⁹⁷ See Case COMP/M.646 *Repola/Kymmene*, 30 October 1995, para. 33.

⁹⁸ See Case COMP/M.646 *Repola/Kymmene*, 30 October 1995, para. 35.

⁹⁹ See Case COMP/M.646 *Repola/Kymmene*, 30 October 1995, para. 33.

¹⁰⁰ See Case COMP/M.646 *Repola/Kymmene*, 30 October 1995, para. 35.

¹⁰¹ Phase I questionnaire Q4, question 22

¹⁰² Question 4 of Phase 1 questionnaire

Table 12

Newsprint producers	Share of standard newsprint capacity %	Share of improved newsprint capacity %	Share of all newsprint capacity %
UPM	[20-30]*	[10-20]*	[10-20]*
Myllykoski Group	[0-5]*	[0-5]*	[0-5]*
UPM + Myllykoski Group	[20-30]*	[10-20]*	[20-30]*
Stora Enso	[20-30]*	[30-40]*	[20-30]*
Norske Skog	[10-20]*	[5-10]*	[10-20]*
Holmen	[10-20]*	[20-30]*	[10-20]*
Palm	[10-20]*		[5-10]*
SCA Forest	[5-10]*	[0-5]*	[5-10]*
Papresa	[0-5]*	[0-5]*	[0-5]*
Perlen	[0-5]*	[0-5]*	[0-5]*
Utzenstorf	[0-5]*	[0-5]*	[0-5]*
Burgo	[0-5]*	[0-5]*	[0-5]*
Artic	-	[0-5]*	[0-5]*
Others	[0-5]*	[0-5]*	[0-5]*
Total	100	100	100

Source: CEPIPRINT data

- (194) As can be seen from Table 12, the parties' share of newsprint capacity would not exceed [20-30]*%, irrespective of whether the market is considered to be a single market for all newsprint or on separate markets for standard and improved newsprint. The proposed concentration would have no effect on a separate market for super-improved newsprint or SC-B Equivalent as neither UPM nor Myllykoski produce this type of paper.
- (195) In terms of shares of sales the parties would have had combined market shares in 2010 of [20-30]*% (UPM [10-20]*%, Myllykoski [5-10]*%) and [20-30]*% (UPM [10-20]*%, Myllykoski [0-5]*%) for standard and improved newsprint respectively¹⁰³. On a market for improved newsprint excluding all the capacity used for the production of SC-B Equivalent papers the Commission estimates that the parties' combined market share would have been [20-30]*%.
- (196) UPM claims that the proposed concentration would not create competition concerns as a result of that horizontal overlap because: i) there are strong players on the market capable of competing with the merged entity; ii) smaller players can successfully compete for contracts given the multi-sourcing practices in the market and iii) imported paper plays an important role in satisfying EEA demand in newsprint.

¹⁰³ Based on parties own sales and CEPIPRINT overall sales

- (197) After the proposed concentration the combined entity will continue to face competition from Stora Enso which will remain the largest player overall (based on capacity) and for improved newsprint. In addition there are four other important players, Norske Skog, SCA, Holmen and Palm.
- (198) The market investigation has confirmed that many customers have multiple sources and that smaller players can and do supply larger customers. Switching is comparatively easy given the commodity nature of most newsprint products.
- (199) In 2010 imports to the EEA plus Switzerland seem to be limited. However, several responses from customers to the Commission's market investigation¹⁰⁴ indicated that a majority considered that Russian and North American newsprint producers were active in the EEA and Switzerland. All the Competitors' replies stated that they faced competition from these sources¹⁰⁵. Though the amounts involved are not currently very high, it appears that imports are constraint on European producers.
- (200) A majority of customers participating in the market investigation stated that the proposed concentration would have little or no impact on their own businesses. Despite this view more than half of the customers expressed concerns in relation to the reduction of the number of suppliers and to the possibility of potential higher prices as a result of the concentration. A number of them stated that UPM would have a stronger market position after the transaction.
- (201) The majority of competitors considered that the proposed concentration would change very little on the structure of the market given the parties' position (combined market share below [20-30]*%) and the existence of a sufficient number of other suppliers. The overwhelming majority stated that the merger would not affect their operations and would have no effect on prices. A number of them mentioned the existence of overcapacity and that demand is declining.
- (202) Concerning the risk of potential coordination, it is noted that the market shares after the transaction will be more closely grouped, the top four players having between [10-20]*% and [20-30]*%. However, the aggregation brought about by the Myllykoski Group is comparatively minor (less than [0-5]*% on any market definition). It is therefore unlikely that the planned concentration would increase the incentives to collude, particularly as there would be no reduction in the number of significant players. Myllykoski is only the sixth largest player and is less than [20-30]* the size of the current market leader Stora Enso. In this context it is interesting to note that customers sometimes have as many as 10 suppliers and that over 40 % of respondents reported having six or more suppliers and over two thirds have four or more¹⁰⁶. This indicates that the smaller producers are not disadvantaged when dealing with publishers.

¹⁰⁴ Phase I Questionnaire to customers, questions 18 and 19.

¹⁰⁵ Phase I Questionnaire to competitors, questions 21 and 22.

¹⁰⁶ Phase I Questionnaire to customers, question 28.

(203) For these reasons, it is concluded that the proposed concentration would not give rise to a significant impediment to effective competition in relation to the market for newsprint and its potential narrower segments.

3. Acquisition of recovered paper

3.1. Product market definition

(204) Recovered paper is used in paper and board production as a fibre source alternative to wood. There are four main categories of recovered paper:

i. Old Corrugated Containers (OCC), which includes both old corrugated containers and other converted unbleached kraft products (such as beer carriers). OCC is used mainly in the production of containerboard;

ii. Deinking recovered paper (made up of Old Newspapers (ONP) and Old Magazines (OMG)), includes old newspapers and magazines. It is used mainly for the production of newsprint, but also for other mechanical printing papers (mainly SC-B grade magazine paper) and for recycled boxboard. Deinking recovered paper is the main recovered paper grade used by UPM and Myllykoski Group;

iii. High Grade Recovered Paper (HG/PS) includes high quality, mainly wood-free, paper grades. The main sources of HG/PS are pre-consumer waste from printers and converters, and post-consumer waste from offices and households (essentially high-grade deinking recovered paper); and

iv. Mixed Paper and Board (MPB) is a catch-all category of unsorted paper. The typical composition for household collected MPB is 65% deinking RCP, 30% OCC and 5% HG/PS.

(205) The main end uses of recovered paper are packaging (73%), tissue paper (8%) and graphic paper (19%).

(206) Deinking recovered paper is used in the production of newsprint, improved newsprint and SC-B paper. It is used to an extremely limited extent for other magazine paper grades.

(207) In a previous decision the Commission has considered the market for the acquisition of recovered paper¹⁰⁷, analysing the possibility of dividing it into acquisition and supply and, the latter, according to its quality, into five grades. However, the exact product market definition was left open.

(208) UPM considers that the market should not be divided further, submitting that there is not enough sorted OCC to meet demand for the production of board. Therefore, purchasers of mixed grades can either buy sorted OCC or unsorted MPB, exerting a pressure on purchasers of deinking and other grades.

¹⁰⁷ See Case COMP/M.3935 *Jefferson Smurfit/Kappa*, 10 November 2005, para. 12.

(209) A large majority of the buyers of recycled paper participating in the market investigation considered that the acquisition of recovered paper market should not be further segmented, in particular because paper and cardboard producers can use all the different grades of recovered papers¹⁰⁸.

(210) However, there is no need to precisely define the product market in this case as no competition concerns would arise under any reasonable alternative market definition

3.2 Geographic market definition

(211) In its Decision concerning Jefferson Smurfit/Kappa¹⁰⁹, the Commission considered a possible EEA-wide scope for the market for recovered paper and its various sub-grades without concluding on this point.

(212) UPM claims that the geographic market is at least EEA-wide if not global. Transport costs are low and many EEA countries are net exporters of recycled paper. Trade flows between Member States are significant. The EEA-wide nature of the market is encouraged by the environmental and recycling legislation which has resulted in an excess of supply of recovered paper and board in certain countries, leading to widespread exporting.

(213) The majority of respondents to the market investigation considered that the geographic scope of the market for recovered paper and its various sub-grades should be at least EEA-wide.

(214) However, there is no need to precisely define the geographic market in this case as no competition concerns would arise under any reasonable alternative market definition

3.3. Compatibility with the internal market and the EEA Agreement – Acquisition of recovered paper

(215) At EEA level UPM has [5-10]*% and the Myllykoski Group [0-5]*% market share in the overall market for the acquisition of recovered paper. In the market for the acquisition of de-inking grades of recovered paper, UPM has [20-30]*% and Myllykoski Group [5-10]*%. At worldwide level, the market shares are estimated to be lower.

(216) When considering the overall market for recovered paper at national level, the proposed concentration would only give rise to a market share in excess of [10-20]*% in Bulgaria, where UPM has [10-20]*% and the Myllykoski Group [0-5]*%. Given the low increment and the moderate combined market share, the proposed concentration does not raise any competition concerns in respect of the overall market for recycled paper at EEA or national level.

¹⁰⁸ Board producers use high grades of RCP to produce testliners but they can also use lower grades of RCP that are close to deinking grades, impacting therefore the deinking market; cardboard producers can also use deinking grades.

¹⁰⁹ See Case COMP/M.3935 *Jefferson Smurfit/Kappa*, 10 November 2005, para. 13.

(217) UPM submits that the market shares in any of the potential segments are very small. When considering the market under the narrowest possible definition, namely deinking grade of recovered paper at national level, the proposed concentration gives rise to affected markets in the following Member States:

Table 13

Country	Mylykoski Group share of purchases of deinking grades of recovered paper in 2009 (%)	UPM share of purchases of deinking grades of recovered paper in 2009 (%)	Combined market share in 2009 (%)
Austria	[0-5]*	[30-40]*	[40-50]*
Finland	[0-5]*	[60-70]*	[60-70]*
Estonia	[0-5]*	[30-40]*	[30-40]*
France	[5-10]*	[30-40]*	[40-50]*
Germany	[10-20]*	[20-30]*	[40-50]*
Italy	[0-5]*	[10-20]*	[10-20]*
Latvia	[0-5]*	[50-60]*	[50-60]*
Netherlands	[10-20]*	[5-10]*	[20-30]*
UK	[0-5]*	[20-30]*	[20-30]*

Source: Form CO

(218) In Estonia and Latvia the proposed concentration would have no effects as the Mylykoski Group is not active in those Member States. Given the low increments in Finland and the United Kingdom., the proposed concentration is unlikely to significantly change the market structures in these Member States. Given the low or moderate combined market shares in Italy and the Netherlands, the concentration would not raise competition concerns in those Member States.

(219) In Austria, France and Germany, where the combined market shares of the parties are high the operation is unlikely to raise competitive concerns. In Austria and France the increment would be modest and in all those Member States the combined market shares are slightly above [40-50]*% and several competitors are active. In particular, in Germany – the only market where there is a larger overlap, significant competitors such as Mondi, Papierfabrik Palm and Leipa are active. The large majority of respondents to the Commission's market investigation indicated that they sourced recovered paper across borders within the EEA and consider the geographic scope of the market to be larger than national and probably at least EEA-wide¹¹⁰. In this situation competitors would be able to source de-inking grade from neighbouring countries or from further afield where the parties account for a lower share of the purchases.

¹¹⁰ Phase I Questionnaire Q8 to competitors recovered paper, questions 9 and 11

(220) In addition, the overwhelming majority of respondents to the market investigation were of the opinion that the proposed concentration would have little or no effect on the market for the acquisition of all types of recovered paper or on their businesses.

(221) For these reasons, it is concluded that the proposed concentration would not give rise to a significant impediment to effective competition in relation to the market for the acquisition of recovered paper and its potential narrower segments.

4. WOOD PROCUREMENT

4.1. PRODUCT MARKET DEFINITION

(222) Wood is used as an input for the production of both mechanical and chemical pulp. UPM, the Myllykoski Group and other paper manufacturers therefore procure wood for pulp production.

(223) The Commission has previously¹¹¹ analysed this market, concluding that, although wood can, in principle, be divided into logs and pulp wood (on the basis of its end use), there are usually both logs and pulp wood growing in the harvested area, and that the market should therefore not be further divided. UPM agrees with the Commission's view in that decision.

(224) The majority of the competitors participating in the market investigation expressed the opinion that the market should be segmented into wood pulp and logs. They argued that, depending on its end use, there are different requirements for pulp wood, and that prices were different.

(225) However, there is no need to precisely define the product market in this case as no competition concerns would arise under any reasonable alternative market definition.

4.2. Geographic market definition

(226) The Commission has previously left open the geographic market definition for wood procurement¹¹².

(227) UPM submits that the relevant geographic market for wood procurement should be at least EEA-wide, arguing that trade in wood across borders within the EEA and beyond is significant.

(228) The market investigation revealed a large spectrum of responses. For logs, the responses were divided among national and regional scope. For pulp wood the respondents largely considered that the market is regional. The exact extent of the regional scope, however, varied: Central Europe, Northern Europe, Baltic Sea area, Central and Northern Europe. Some respondents indicated that they source wood from Russia and South America.

¹¹¹ See Case COMP/M.2234 *Metsäliitto Osuuskunta/Vapo Oy/JV*, 8 February 2001, para. 16-20.

¹¹² See Case COMP/M.2473 *Finnforest/Moelven Industrier*, 18 July 2001, para. 23-25.

(229) However, there is no need to precisely define the geographic market in this case as no competition concerns arise under any reasonable geographic market definition.

4.3 Compatibility with the internal market and the EEA Agreement–wood procurement

(230) On an overall wood procurement market, at EEA level, UPM has [0-5]*% and the Myllykoski Group [0-5]*% market shares. Stora Enso and the Metsäliitto Group have [5-10]*% and [0-5]*% respectively. In Finland, the Metsäliitto Group has [20-30]% and Stora Enso [20-30]% respectively. Whether the overall procurement of wood market is considered or the potential sub-segment of procurement of pulp wood, the concentration only gives rise to combined market shares in excess of 15% in Finland. Also, it is unlikely that the concentration would raise competition concerns if larger geographic markets are considered. In the potential segment of procurement of logs there is no overlap since Myllykoski Group is not active in this submarket. Table 14 shows the parties' national market shares for wood procurement:

Table 14

Country	Myllykoski Group share of purchases of wood (volume) in 2009 (%)	UPM share of purchases of wood (volume) in 2009 (%)	Combined market share in 2009 (%)
Austria	[0-5]*	[0-5]*	[0-5]*
Finland	[0-5]*	[20-30]*	[20-30]*
France	[0-5]*	[0-5]*	[0-5]*
Germany	[0-5]*	[0-5]*	[0-5]*
Czech Republic	[0-5]*	[0-5]*	[0-5]*
UK	[0-5]*	[10-20]*	[10-20]*

Source: Form CO

(231) Table 15 shows the parties' shares on national markets for the procurement of pulp wood.

Table 15

Country	Myllykoski Group share of purchases of pulp wood (volume) in 2009 (%)	UPM share of purchases of pulp wood (volume) in 2009 (%)	Combined market share in 2009 (%)
Austria	[0-5]*	[0-5]*	[0-5]*
Finland	[0-5]*	[20-30]*	[20-30]*
France	[0-5]*	[0-5]*	[0-5]*
Germany	[5-10]*	[0-5]*	[5-10]*
Czech Republic	[0-5]*	[0-5]*	[0-5]*

Source: Form CO

- (232) A significant number of respondents expressed concerns with regard to the possibility of increased concentration in the market and a stronger market position for the merging entity after the concentration as far as pulp wood (especially in spruce pulpwood) is concerned particularly in Germany and Finland. However, at the same time, the majority of respondents stated that they source wood on a multinational basis.
- (233) At both EEA and national level there are strong alternative buyers of wood; the combined entity's market share is moderate in Finland and small in other contracting parties to the EEA Agreement. Furthermore the small increment brought by the Myllykoski Group is would not significantly change the structure of the markets for wood procurement.
- (234) For these reasons, it is concluded that the proposed concentration would not give rise to a significant impediment to effective competition in relation to the market for wood procurement and its narrower segments.

5. PRODUCTION OF WOOD PULP

5.1. Product market definition

- (235) UPM agrees with the Commission's conclusion in previous decisions that there is a single product market encompassing all types of pulp¹¹³.
- (236) Pulp can be divided into two main types: mechanical pulp and chemical pulp. Both are produced from wood. However, the process for producing chemical pulp eliminates many of the impurities found in mechanical pulp.
- (237) However, there is no need to precisely define the product market in this case as no competition concerns would arise under any reasonable alternative market definition

5.2. Geographic market definition

- (238) The Commission has previously found the geographic market for pulp to be at least EEA-wide¹¹⁴, but left the exact market definition open. UPM submits that the pulp market is global in scope, as pulp is considered to be an internationally traded commodity with standard production grades throughout the world and widespread exports and imports.

¹¹³ See Case COMP/M.210 *Mondi/Frantschach*, 12 May 1992, para. 11-12; Case COMP/M.2243 *Stora Enso/Assidomän/JV*, 22 December 2000, para. 19; Case COMP/M.2245 *Metsä-Serla/Zanders*, 15 December 2000, para. 16; Case COMP/M.4054 *Koch Industries/Georgia-Pacific*, 19 December 2005, para. 9.

¹¹⁴ See Case COMP/M.2245 *Metsä-Serla/Zanders*, 15 December 2000, para. 16; Case COMP/M.646 *Repola/Kymmene*, 30 October 1995, para. 43.

(239) It is not necessary to reach a conclusion on the relevant geographic market as no competition problems arise either at EEA or world-wide level.

5.3. Compatibility with the internal market and the EEA Agreement– production of woodpulp

(240) Both parties produce pulp primarily for their own use. They sell only small quantities on the merchant market. The Myllykoski Group's external sales are very low

(241) The parties have a combined merchant market share of [0-5]*% for all pulp, [0-5]*% for mechanical pulp and [0-5]*% for chemical pulp in the EEA. If the production of pulp is considered, the parties would have a combined share of [10-20]*% in overall pulp, [20-30]*% for mechanical pulp (which includes captive production) and [5-10]*% for chemical pulp in the EEA.

(242) The large majority of the respondents to the market investigation have expressed the opinion that the proposed concentration would change little or nothing with respect to the wood pulp market.

(243) In addition, in the light of the extremely small combined market shares on the merchant market for pulp, with strong competitors active both at EEA and world-wide level, it is unlikely that the proposed concentration would cause any competition concerns.

(244) For these reasons, it is concluded that the proposed concentration would not give rise to a significant impediment to effective competition in relation to the market for wood pulp and its narrower segments.

Vertical Relationships

1. WOOD PROCUREMENT (UPSTREAM) – PULP (DOWNSTREAM)

1.1. Market definitions

(245) The product and geographic market definitions for wood procurement are discussed in recitals (222) to (229).

(246) The product and geographic market definitions for pulp are discussed in recitals (235) to (239).

1.2 Compatibility with the internal market and the EEA Agreement

(247) In wood procurement, at EEA level, the combined entity has a [0-5]*% market share (UPM [0-5]*% Myllykoski Group [0-5]*%). At national level, the parties' combined market share exceeds 25% only in Finland for both overall wood procurement and pulp wood procurement

(248) Downstream, in pulp, the merged entity has [0-5]*% share on the EEA merchant market for pulp ([0-5]*% in chemical pulp and [0-5]*% in mechanical pulp). The combined entity's market shares will not exceed 30% on any of the upstream or the

downstream markets. According to the Commission's Guidelines on the assessment of non-horizontal mergers under Council Regulation on the control of concentrations between undertakings ¹¹⁵ the Commission is unlikely to find concerns if the market shares are below 30% in each of the markets.

- (249) However concerns were raised by respondents to the Commission's market investigation that concentration in the markets would increase and that the merged entity would have a stronger position after the transaction in wood pulp, in particular in Germany and Finland. Those concerns appear to be unfounded. First, given the pulp wood market shares of less than [30-40]*% in Finland and less than [10-20]*% in Germany, UPM/Myllykoski Group would be unable to restrict supplies of pulp wood to its competitors. Second, as the parties' combined position on the market for pulp is extremely low, there would be no incentive to restrict supplies of pulp wood (even if they could) as their position on the downstream market is very weak. Sellers of wood in general and pulpwood in particular have many potential buyers for their products.
- (250) For these reasons, it is concluded that the proposed concentration would not give rise to a significant impediment to effective competition as concerns the vertical relationship between wood procurement and pulp.

2. PULP (UPSTREAM) – MAGAZINE PAPER (DOWNSTREAM)

2.1. Market definitions

- (251) The product and geographic market definitions for pulp are discussed in recitals (235) to (239).
- (252) The product and geographic market definitions for magazine paper are discussed in recitals (16) to (95).

2.2. Compatibility with the internal market and the EEA Agreement

- (253) The proposed concentration would give rise to a vertical relationship between pulp and various grades of paper. Both parties produce chemical pulp which is or may be used in a range of magazine papers where the parties are also active. Both UPM and the Myllykoski Group use the very large majority of the pulp they produce internally.
- (254) The merged entity has [0-5]*% share on the EEA merchant market for pulp ([0-5]*% in chemical pulp and [0-5]*% on the merchant market for mechanical pulp).
- (255) On the downstream markets for the various types of magazine paper the parties would have capacity shares of between about [40-50]*% in the EEA plus Switzerland (for an overall market including SC, MFC and CMR papers). In the SC segment capacity based market shares are somewhat higher.

¹¹⁵, OJ C 265, 18.10.2008, p.6, paragraph 25.

(256) Given the parties' very small share of the pulp market, however defined, they will have no possibility of disadvantaging competitors by restricting their access to pulp. There are many alternative sources of pulp both within and outside the EEA. No concerns were raised in the Commission's market investigation concerning the supply of pulp to magazine paper producers.

(257) For these reasons, it is concluded that the proposed concentration would not give rise to a significant impediment to effective competition as concerns the vertical relationship between pulp and magazine paper under any alternative market definition.

3. Generation and wholesale supply of electricity (upstream) - Magazine paper (downstream)

3.1. Market definitions

(a) Generation and wholesale supply of electricity

(258) UPM and the Myllykoski Group are active in the market for the generation and wholesale supply of electricity.

(259) The Commission has identified a distinct market for generation and wholesale supply of electricity, comprising the production of electricity at power stations and imports for further resale¹¹⁶.

(260) In its previous decisions the Commission has generally defined the wholesale electricity market as national.¹¹⁷ In one case¹¹⁸, the Commission analysed the possibility of the geographic scope of the market for generation and wholesale of electricity for the Nordic countries (Finland, Denmark, Norway and Sweden) being larger than national, without concluding on this point.

(261) It is not necessary to define the scope of the product and geographic market as the concentration to which this Decision relates does not give rise to competition concerns.

(b) Magazine paper

(262) The product and geographic market definitions for magazine paper are discussed in recitals (16) to (95).

¹¹⁶ See Case COMP/M.5467 *RWE/Essent*, 23 June 2009, para. 23; Case COMP/M.5496 *Vattenfall/Nuon Energy*, 22 June 2009, para. 9.

¹¹⁷ See Case COMP/M.4180 *Gaz de France/Suez*, 14 November 2006, para. 696.

¹¹⁸ See Case COMP/M.3268 *Sydskraft/Granninge*, 30 October 2003, paras 21-27.

3.2. Compatibility with the internal market and the EEA Agreement

- (263) As regards the wholesale supply of electricity, UPM has a [0-5]*% market share in the Nord Pool¹¹⁹ and [10-20]*% in Finland, while Myllykoski Group has only a very low share of [0-5]*% of the output of a single plant in Finland which cannot be sold or traded and must be used for its own paper production.
- (264) Notwithstanding the relatively high combined market shares of the parties in magazine paper (combined market share of [40-50]*% in a paper market comprising SC, MFC and CMR), it is very unlikely that they could leverage their position in the upstream market for generation and wholesale supply of electricity given not only their modest share but also that they mainly use the electricity produced to supply their own plants ([5-10]* of the total [...]TWh in 2009). Therefore, both input and customer foreclosure are unlikely.
- (265) For these reasons, it is concluded that the proposed concentration would not give rise to a significant impediment to effective competition as regards the vertical relationship between the generation and wholesale supply of electricity and magazine paper under any alternative market definition.

4. WOOD PROCUREMENT (UPSTREAM) - WOOD PANEL PRODUCTS (DOWNSTREAM)

4.1 Market definitions

- (266) The product and geographic market definitions for wood procurement are discussed in recitals (222) to (229).

(a) Product market definition – Wood panels

- (267) In a previous case, the Commission found that raw particle board, coated particle board and decorative laminates each constituted separate product markets¹²⁰. In another case¹²¹, the Commission's market investigation found that the different types of wood-based boards such as plywood, hardboard, raw particleboards and coated particleboards, decorative laminates (HPL/CPL) and wood-based panel components for the furniture and construction industry could belong to separate product markets. However, in that case, the Commission ultimately left the product market definition open.
- (268) UPM submits that all of the types of wood panel products should form part of the same product market since there is a high degree of demand-side substitutability: for example, particleboard, plywood and OSB are all used for flooring. In addition, in many cases, they are entirely functionally interchangeable. The primary customers for

¹¹⁹ The electricity exchange for Finland, Denmark, Norway and Sweden.

¹²⁰ See Case COMP/M.4525 *Kronospan/Constantia*, 19 September 2007, para. 16-19.

¹²¹ See Case COMP/M.4165 *Sonae Industria/Hornitex*, 28 June 2006, para. 11.

all of the different types are essentially the same, the construction and furniture industries.

(269) In any event, there is no need to precisely define the product market in this case in the absence of competition concerns under any reasonable alternative delineation.

(b) Geographic market definition – wood panels

(270) The Commission has previously considered that the geographic market for wood panel products should be at least cross-border regional without finally concluding on this point.¹²² In another case¹²³, the Commission left open the geographic market definition for raw particle board and coated particle board and concluded that it should be EEA-wide for decorative laminates and components.

(271) UPM submits that the relevant market should be EEA-wide given the relatively limited transport costs for such products and the fact that they can be transported over long distances without degradation.

(272) In any event, there is no need to precisely define the geographic market in this case in the absence of competition concerns under any reasonable delineation.

4.2. Compatibility with the internal market and the EEA Agreement

(273) If the relevant geographic markets were to be considered as the EEA and Switzerland for both wood procurement and for wood panel products there would be no competition concerns arising from the vertical relationship as market shares would be very low - [0-5]*% for wood procurement and [0-5]*% for wood panels.

(274) On the narrower national market basis the parties' combined market share for wood procurement would exceed 25% only in Finland where it is [20-30]*%.

(275) In the national markets for all wood panels UPM has no market share above 15%, whilst the Myllykoski Group is not active in this market.

(276) UPM's market share for the individual types of wood panel exceeds 25% only in Austria ([40-50]*%), and Iceland ([40-50]*% for plywood).

(277) The parties' share of the market for wood procurement in Austria is [0-5]*% (and [0-5]*% in logs). In Iceland they procure no wood. This means that on a purely national basis they would not be able to disadvantage competitors as they have a low or non-existent position on the upstream market and would be unable to restrict supplies to competitors.

(278) If the wood procurement market is considered to be the EEA and Switzerland then the parties' market share EEA is low at [0-5]*%, again insufficient to allow the combined entity to restrict supplies to its plywood competitors.

¹²² See Case COMP/M.4165 *Sonae Industria/Hornitex*, 28 June 2006, para. 14.

¹²³ See Case COMP/M.4525 *Kronospan/Constantia*, 19 September 2007, para. 30, 35 and 37.

(279) For these reasons, it is concluded that the proposed concentration would not give rise to a significant impediment to effective competition as regards the vertical relationship between wood procurement and wood panel products.

5. WOOD PROCUREMENT (UPSTREAM) – SAWN TIMBER (DOWNSTREAM)

5.1. Market definitions

(280) The product and geographic market definitions for wood procurement are discussed in recitals (222) to (229).

(a) Product market definition – Sawn Timber

(281) An alternative use for wood, other than for the production of pulp or panels, is for the production of sawn timber. In general, wood with a larger diameter (logs) is used for sawn timber, and wood with a smaller diameter (pulpwood) is used for the production of pulp, as well as wood-based panels (except for plywood which requires logs). UPM is active in this market while the Myllykoski Group is not.

(282) This market has been previously analysed by the Commission, which did not, however, reach any conclusion as to whether there is a single market for sawn timber or it should be divided on the basis of the type of timber¹²⁴.

(283) The precise product market definition can be left open in this case in the absence of any competition concerns.

(b) Geographic market definition

(284) The Commission has previously considered that the geographic scope of this market is EEA-wide.¹²⁵ This conclusion is not contested by UPM. In any event, the Commission considers there is no need to define the scope of the geographic market in the absence of competition concerns.

5.2. Compatibility with the internal market and the EEA Agreement

(285) Only logs can be used for the production of sawn timber. UPM and the Myllykoski Group have a combined market share of [0-5]*% for overall wood procurement in the EEA and Switzerland and a market share of [0-5]*% for logs.

(286) In sawn timber, UPM has a [0-5]*% market share at EEA level. The Myllykoski Group is not active. Such low market shares on both the upstream and the downstream markets mean that the proposed operation would not have any anti-competitive effects.

¹²⁴ See Case COMP/M.646 *Repola/Kymmene*, 30 October 1995, para. 31-32; Case COMP/M.2234 *Metsäliitto Osuuskunta/Vapo Oy/JV*, 8 February 2001, para. 13-15.

¹²⁵ See Case COMP/M.646 *Repola/Kymmene*, 30 October 1995, para. 44.

(287) In wood procurement, at national level, the parties' combined market share exceeds 25% only in Finland, where it is [20-30]*%.

Table 16

Country	UPM share of purchases of logs (volume) in 2009 (%)
Austria	[0-5]*
Finland	[20-30]*
France	[0-5]*
Germany	[0-5]*
Czech Republic	[0-5]*
UK	[10-20]*

Source: Form CO

(288) Competition concerns are less likely to arise in non-horizontal mergers where the market shares are below 30%¹²⁶. Upstream, the parties' highest market share is in Finland ([20-30]*%). Moreover, it appears that wood procurement is practiced across borders. Given also the very low market shares of the parties in sawn timber and the existence of strong competitors at both levels, both input and customer foreclosure are unlikely.

(289) For these reasons, it is concluded that the proposed concentration would not give rise to a significant impediment to effective competition as regards the vertical relationship between wood procurement and sawn timber.

6. ACQUISITION OF RECOVERED PAPER (UPSTREAM) – PULP (DOWNSTREAM)

6.1 Market definitions

(290) The product and geographic market definitions for acquisition of recovered paper are discussed in recitals (204) to (214).

(291) The product and geographic market definitions for pulp are discussed in recitals (235) to (239).

6.2. Compatibility with the internal market and the EEA Agreement

(292) At EEA level, the combined entity would have a market share of [5-10]*% (UPM [5-10]*%, the Myllykoski Group, [0-5]*%) for all recovered paper. For the acquisition of de-inking grades of recovered paper, the combined share would be [20-30]*% (UPM [20-30]*%, Myllykoski Group [5-10]*%).

¹²⁶ Guidelines on the assessment of non-horizontal mergers under Council Regulation on the control of concentrations between undertakings, OJ C 265, 18.10.2008p. 6, of, para 25..

(293) At the national level the parties' combined market shares for deinking grades of recovered paper would exceed 30 % in the countries shown in Table 17.

Table 17

Country	Myllykoski Group share of purchases of deinking grades of recovered paper 2009 (%)	UPM share of purchases of deinking grades of recovered paper 2009 (%)	Combined market share
Austria	[0-5]*	[30-40]*	[40-50]*
Finland	[0-5]*	[60-70]*	[60-70]*
Estonia	[0-5]*	[30-40]*	[30-40]*
France	[5-10]*	[30-40]*	[40-50]*
Germany	[10-20]*	[20-30]*	[40-50]*
Latvia	[0-5]*	[50-60]*	[50-60]*
UK	[0-5]*	[20-30]*	[20-30]*

Source: Form CO

(294) In pulp, the merged entity has a [0-5]*% share on the EEA merchant market for pulp ([0-5]*% in chemical pulp and [0-5]*% in mechanical pulp).

(295) On the EEA and Switzerland market for all recovered paper the proposed concentration would not give rise to competitive concerns as the market shares upstream and downstream would be modest, namely [5-10]*% for the overall recovered paper and [0-5]*% for pulp.

(296) Even in the countries where the combined entity would have a high share of the market for the acquisition of deinking grade of recovered paper, competition problems are very unlikely to arise. First, in most countries, the market structures will not be significantly changed given the small increment from the Myllykoski Group position. Furthermore sales of pulp by both parties are negligible and there would be no incentive to leverage their position on the upstream market as their position in pulp is very small.

(297) Furthermore the large majority of respondents indicated that they source recovered paper regionally, at supra-national level within the EEA area, that is to say, they can and do source from nearby countries where the position of the parties is weaker. In addition, the overwhelming majority of respondents to the market investigation were of the opinion that the proposed concentration would have little or no effect on the market for the acquisition of recovered paper or on their businesses.

(298) For these reasons, it is concluded that the proposed concentration would not give rise to a significant impediment to effective competition as regards the vertical relationship between the acquisition of recovered paper and pulp.

7. Conclusions

(299) For the above reasons, it is concluded that the proposed concentration is unlikely to significantly impede effective competition in the internal market or a substantial part thereof,

HAS ADOPTED THIS DECISION:

Article 1

The notified operation whereby UPM-Kymmene Corporation acquires sole control of Myllykoski Corporation and Rhein Papier GmbH within the meaning of Article 3(1)(b) of Regulation (EC) No 139/2004 is hereby declared compatible with the internal market and the functioning of the EEA Agreement.

Article 2

This Decision is addressed to:

UPM-KYMMENE CORPORATION
Eteläesplanadi 2
00101 Helsinki,
Finland

Done at Brussels, 13/07/2011

For the Commission
(signed)
Joaquín ALMUNIA
Vice-President