

EN

*Case No IV/M.613 -
J E F F E R S O N
SMURFIT GROUP PLC
/ MUNKSJO AB*

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 31/07/1995

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 31.07.1995

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying party

Dear Sirs,

Subject : Case No IV/M.613 - JEFFERSON SMURFIT GROUP PLC/MUNKSJO AB
Notification of 28 June 1995 pursuant to Article 4 of Council Regulation No
4064/89

1. On 28 June 1995 Jefferson Smurfit Group plc (Jefferson Smurfit) notified to the Commission its intended acquisition of 29.04% of the shares in Munksjo AB (Munksjo).

I THE PARTIES

2. Jefferson Smurfit, incorporated in Ireland, is an integrated manufacturer and converter of paper and paperboard whose main operations are located in Europe, the United States of America and Latin America. Its European activities were substantially increased in 1994 by its acquisition of the paper packaging interests of Compagnie Saint Gobain⁽¹⁾.
3. Munksjo is a Swedish manufacturer of paper and paper products. Its shares are publicly quoted.

II THE OPERATION

4. Jefferson Smurfit at present holds no shares in Munksjo. The shares which it intends to acquire are held by Trelleborg AB, a Swedish mining company. Trelleborg formerly held 100% of the shares in Munksjo but after divestment by public offer in 1993 held

⁽¹⁾ approved by the Commission (IV/M.499 - Jefferson Smurfit/St Gobain)

25%; it subsequently increased its shareholding to 29.04%. The remaining 78.06% of the shares are held by over 12000 shareholders, both individuals and institutions. Over 40% of the shares are held by shareholders who are not Swedish. The second largest shareholder holds 5.9% and only four others hold more than 3%. Only one Swedish shareholder holds more than 2%. Shareholders holding 35.4% of the shares attended the annual general meeting in 1994. Of the votes cast at that meeting Trelleborg held [.....].⁽²⁾ Shareholders holding 32.2% of the shares attended the annual general meeting in 1995. Of the votes cast at that meeting Trelleborg held [.....] ⁽²⁾ .

5. The operation does not include a shareholders agreement. Jefferson Smurfit will simply succeed to the rights which Trelleborg enjoyed as holders of 29.04% of the shares in Munksjo.
6. There is nothing to suggest that Jefferson Smurfit will not enjoy the same possibility of exercising decisive influence (and therefore control) over Munksjo as Trelleborg has enjoyed since 1993. The Commission has concluded in earlier decisions⁽³⁾ that, where a shareholder has a substantial minority interest in an undertaking and the remaining shares are widely dispersed, and particularly where the substantial but minority shareholder de facto controls the voting at the annual meeting, that shareholder exercises decisive influence on the undertaking within article 3(3) of the Regulation.
7. The operation accordingly constitutes a concentration within the meaning of article 3(1)b of the Regulation.

III CONCENTRATION OF COMMUNITY DIMENSION

8. The undertakings concerned have a combined aggregate worldwide turnover in excess of 5000 million ECU (Jefferson Smurfit group 5,948 million ECU, Munksjo 351 million ECU). Each of them has a Community-wide turnover in excess of 250 million ECU (Jefferson Smurfit group 2,518 million ECU, Munksjo 282 million ECU), but they do not achieve more than two-thirds of their aggregate Community-wide turnover within one and the same Member State.
9. The operation therefore has a Community dimension within the meaning of Article 1(2) of the Regulation.

IV COMPATIBILITY WITH THE COMMON MARKET

A. RELEVANT PRODUCT MARKETS

10. Jefferson Smurfit has identified the following product markets, corresponding to those products in which there is either overlap with Munksjo or there could be a vertical relationship:
 - Corrugated Case Materials (overlap)
 - Corrugated Cases (overlap)
 - Market Pulp/Coated Paper (vertical).

⁽²⁾ Deleted business secret: more than 50%.

⁽³⁾ IV/M.025 - Arjomari-Prioux SA/Wiggins Teape Appleton plc; IV/M.343 - Société Générale de Belgique/Générale de Banque

Corrugated Case Materials

11. Corrugated Case Materials (CCM) are paper products used in the production of corrugated board. Corrugated board takes the form of sheets composed of an undulating middle, called fluting, which has paper outer layers on both sides, called linerboard.
12. The most important distinction within CCM is between those products made from virgin fibre, known as kraftliner, and those made from waste based fibre, known as testliner. However, in its Jefferson Smurfit/St. Gobain decision of 19.9.94⁽⁴⁾ the Commission concluded, with regard to the said products, that there was a high degree of cross-substitutability both on the supply and demand sides and that there was a similar pattern in their respective price trends. Moreover, both in the said decision and in a later Commission decision, Svenska Cellulosa/PWA of 20.2.1995⁽⁵⁾, it was not found necessary to define the market more precisely, as even with a narrower market definition, there was no problem of dominance. The same is true in the present case as set out in the assessment in paragraph 22 below and, consequently, the question of product market definition for CCM can be left open.

Corrugated Cases

13. Corrugated cases are packaging materials constructed out of sheets of corrugated board, which have an infinite number of configurations determined by the nature of the goods being transported. Corrugated cases producers range from those which are integrated to the level of supplying their own CCM and/or corrugated board, to those who purchase corrugated sheets from third parties and simply convert these into corrugated cases. The producers of corrugated cases are generally differentiated by the degree of sophistication and specialization of their production and most integrated companies characterize their operations as providing packaging solutions for their customers, as opposed to simply producing standard boxes.
14. Corrugated cases are in competition with packaging materials made from wood and plastic, into whose markets they have made significant inroads, due to recent technical advances in terms of strength, durability and recyclability. However, it is not necessary to define the market precisely as, even on the basis of a narrower market definition, the Commission's assessment, as set out in paragraph 23 below, would not be affected. This was also the case in both of the previous Commission decisions⁽⁶⁾ mentioned in paragraph 12 above involving this product .

Market Pulp/Coated Paper

15. Pulp is an intermediate product used between the raw material - wood - and the ultimate product - paper. When sold on the open market, as opposed to being used as an integral part of paper manufacture in a paper mill, this product is known as market pulp.
16. Coated papers are superior grades of printing and writing paper, also known as graphic papers, which are coated on one or two sides to give a glossy surface, and are produced from pulp. They are used mainly in advertising and magazine publishing.

⁽⁴⁾ Case No IV/M. 499

⁽⁵⁾ Case No IV/M.549

⁽⁶⁾ Cases Nos IV/M. 499 and IV/M. 549

17. In both of the decisions referred to in paragraphs 12 and 14 above, as also in its earlier *Torras/Sarrio* decision of 24.2.1992⁽⁷⁾, the Commission identified four sub-markets within the graphic or fine papers market (which is itself distinct from the markets for self-adhesive paper and self-copying paper), two of which make up coated paper, i.e., wood-free and wood-containing coated paper, the other two being uncoated wood-free and uncoated wood-containing paper. A more precise market definition is unnecessary, due to the lack of any competition concern with regard to the vertical relationship between market pulp and coated paper in this case, even under the narrowest definition as set out in paragraph 24 below.

B. RELEVANT GEOGRAPHIC MARKETS

Corrugated Cases Materials

18. Corrugated Case Materials (CCM), whether made from virgin fibre or from waste based fibre, are characterized by high density and consequent easy transportability. Most virgin based CCM consumed in the EU is supplied by the Scandinavian countries, while there are also substantial imports from outside the EEA, including from the U.S., Canada, Brazil and South Africa, due to the limited amount of suitable timber resources within the EU. At the same time, one third of the waste based CCM consumed in the EU is traded across national borders. Jefferson Smurfit contends that the fact that a smaller proportion of this waste based fibre is imported from outside the EU than is the case in virgin based fibre is due to the prevalence in the EU of collection and recycling of paper grades. A change in this level of import of waste based fibre to the EU in response to change in the competitive situation cannot be excluded. Consequently, as in the case of two previous Commission decision⁽⁸⁾ involving this product, the geographic market can be considered to be at least EEA-wide.

Corrugated Cases

19. Corrugated cases are characterized by low density and consequently relatively high transport costs. According to Jefferson Smurfit, these characteristics result in largely regional markets, determined by a distance radius of from 200 to 300 kilometres between the corrugator and its customers, regardless of the presence of national borders. However, Jefferson Smurfit has pointed out that, due to the demands of major customers who want their packaging problems to be solved by a single provider, such regional markets do not operate in isolation and increasingly competition is among multinational packaging groups serving global customers. The Commission, however, in this case, as in two previous decisions⁽⁸⁾ involving this product, can leave the question of geographic market open, as even the narrowest definition would not alter its assessment as set out in paragraph 23 below.

Market Pulp/Coated Paper

20. With regard to market pulp, Jefferson Smurfit considers that this product's high density and consequent easy transportability make its market world-wide. The Commission, however, in an earlier decision⁽⁹⁾ involving this product, in view of the evidence of related trade flows, considered it to be at least EEA-wide. Moreover, as even on the basis

⁽⁷⁾ Case No IV/M.166

⁽⁸⁾ Cases Nos IV/M. 499 and IV/M. 549

⁽⁹⁾ Case No M/IV. 166

of the latter narrower definition there is no competition concern with respect to this product, it is not necessary to consider a broader market definition in this case.

21. With regard to coated paper, Jefferson Smurfit contends that, as in the case of market pulp, due to the high density and easy transportability of the product, characteristic moreover of printing and writing papers in general (graphic paper), its market is world-wide. Nonetheless, as, due to the superior quality of European paper, (e.g. compared to the US), imports have not played a significant role in the market for coated paper, the Commission in its previous decisions in the Jefferson Smurfit/ St. Gobain and Svenska Cellulosa/PWA cases⁽⁸⁾, which involved coated and uncoated paper respectively, defined the market as EEA-wide. Such a definition is likewise valid for the present case.

V ASSESSMENT

Corrugated Case Materials (CCM)

22. According to Jefferson Smurfit and data available to the Commission, the combined 1994 market share of Jefferson Smurfit and Munksjo in CCM in the EU does not exceed 15%. On the basis of 1993 figures and the 1994 data available, Jefferson Smurfit estimates the combined 1994 EEA market share at below 15%, thus falling short of the share required to be considered an affected market.

Corrugated Cases

23. Based on the data available for 1993 and 1994, Jefferson Smurfit estimates the combined market share of Jefferson Smurfit and Munksjo in corrugated cases in the EEA at below 15%. At member state and regional level, there is no addition of market share as a result of the proposed operation as Munksjo is only present in Sweden in this product, while Jefferson Smurfit is not present in any of the Scandinavian countries. Consequently, corrugated cases are not considered to be an affected market in this case.

Market Pulp/Coated Paper

24. Pulp is an upstream product for the production of coated paper. Jefferson Smurfit is not active in the open market for pulp and Munksjo is not a producer of coated paper. According to Jefferson Smurfit and data available to the Commission, Munksjo's production of pulp represented less than 25% of the EU market for this product in 1994, while Jefferson Smurfit's production of coated paper represented less than 25% of the EU market for that down stream product. Consequently, in the case of the proposed operation, the coated paper market is not considered to be an affected market in a vertical sense.

VI CONCLUSION

25. As set out above, none of the product markets, which were identified by Jefferson Smurfit as those in which there was either an overlap (CCM and corrugated cases) or the possibility of a vertical relationship (market pulp/coated paper) with Munksjo, constitutes an affected market for the purposes of this assessment. Consequently, it is considered that there is neither creation nor strengthening of a dominant position as a result of the proposed operation.

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

For the Commission,