

Case No COMP/M.6512 - DS SMITH/ SCA PACKAGING

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

Article 6(1)(b) in conjunction with Art 6(2)
Date: 25/05/2012

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EUROPEAN COMMISSION

Brussels, 25.5.2012
C(2012) 3542 final

In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EC) No 139/2004 concerning non-disclosure of business secrets and other confidential information. The omissions are shown thus [...]. Where possible the information omitted has been replaced by ranges of figures or a general description.

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying party

Dear Sir/Madam,

**Subject: Case No COMP/M.6512 - DS SMITH/ SCA PACKAGING
Commission decision pursuant to Article 6(1)(b) in conjunction with Article 6(2)
of Council Regulation No 139/2004¹**

1. On 28 March 2012, the European Commission received notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which the undertaking DS Smith Plc ("DS Smith", United Kingdom) acquires within the meaning of Article 3(1)(b) of the Merger Regulation sole control of the whole of the undertaking SCA Packaging Holding B.V. ("SCA Packaging", The Netherlands) by way of purchase of shares.² (DS Smith is designated hereinafter as the "notifying party" and together with SCA Packaging as "the Parties".)

I. THE PARTIES AND THE OPERATION

2. DS Smith is a United Kingdom registered company, listed on the London Stock Exchange. It is an international supplier of recycled packaging for industrial and consumer goods, employing over 10,000 people at 94 manufacturing locations.
3. SCA Packaging is a Dutch registered company and a wholly-owned subsidiary of Svenska Cellulosa Aktiebolaget SCA AB ("SCA"), a company listed on the Stockholm Stock Exchange. SCA Packaging is an international supplier of packaging for industrial and

¹ OJ L 24, 29.1.2004, p. 1 ("the Merger Regulation"). 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 Publication in the Official Journal of the European Union No C 99, 3.4.2012, p. 13.

consumer goods, employing approximately 12,600 people at 110 corrugated manufacturing locations in 21 countries.

4. Pursuant to an agreement dated 17 January 2012 DS Smith will acquire SCA Packaging and its subsidiaries and associated companies with the exception of two kraftliner mills located in Sweden³.
5. Due to French employment law requirements, a separate agreement has been entered into between DS Smith and SCA for the acquisition of the French business of SCA Packaging. More specifically, before SCA accepts DS Smith's binding offer to purchase the French business, French law requires it to consult with the Works Councils. Against this background, DS Smith made a formal and irrevocable offer also dated 17 January 2012 to acquire the French business. This structure enables SCA to comply with the legal requirements in France for the mandatory Works Council consultations.⁴
6. After completion of the proposed transaction, DS Smith will have sole control of SCA Packaging. The proposed transaction therefore constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

II. EU DIMENSION

7. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 2 500 million⁵ (DS Smith: EUR 2 123 million, SCA Packaging: EUR 2 542 million) and an aggregate EU-wide turnover of more than EUR 100 million (DS Smith: [...], SCA Packaging: [...]). The combined aggregate turnover of all the undertakings concerned is more than EUR 100 million in nine Member States ([...]). In six of these Member States ([...]), the aggregate turnover of each of the undertakings concerned is more than EUR 25 million. Finally, none of the undertakings concerned achieves more than two-thirds of its aggregate Union-wide turnover within one and the same Member State.
8. The notified operation therefore has an EU dimension pursuant to Article 1(3) of the Merger Regulation.

III. RELEVANT MARKET AND COMPETITIVE ASSESSMENT

III.1. Introduction

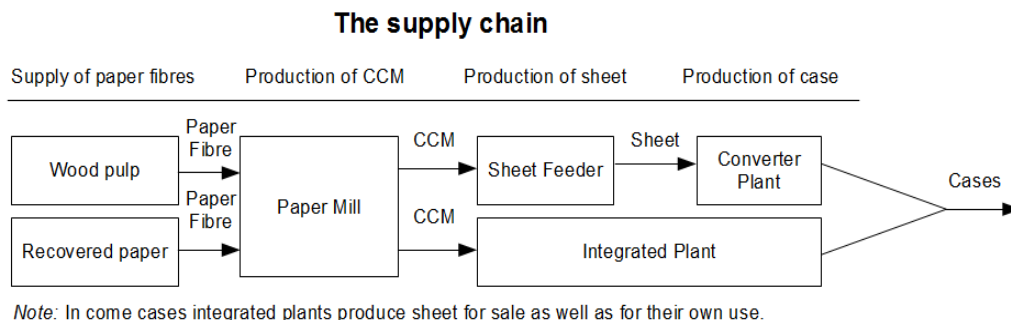
9. Both DS Smith and SCA Packaging are active in the corrugated packaging industry. The corrugated packaging sector involves the production of corrugated boxes that are sold to end-customers for a variety of packaging needs. Figure 1 below shows the key stages in the supply chain:

³ DS Smith does not produce kraftliner (i.e. corrugated case material made from virgin fibre) and SCA regards the two mills as a strategic part of its ongoing forestry activities in Sweden. DS Smith has and will continue to have a kraftliner supply agreement with SCA.

⁴ The consultation with the French works councils has been completed. As a result, SCA has accepted DS Smith's formal offer and a sale and purchase agreement for the French operations was signed on 25 April 2012. See <http://www.sca.com/en/media/press-releases/press-releases/2012/2012-04-25-sca-has-accepted-ds-smiths-formal-offer/>

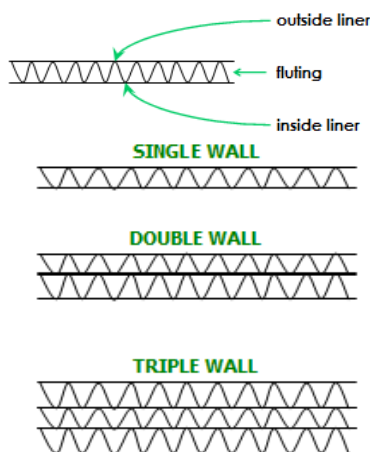
⁵ Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Consolidated Jurisdictional Notice (OJ C 95, 16.4.2008, p. 1).

Figure 1: Key stages in the supply chain of corrugated case production⁶



10. Corrugated case material ('CCM') is the main input product for the manufacturing of corrugated sheet. It is distinguished from other grades of paper because it contains a high proportion of "long fibres" which are required to ensure that corrugated paper packaging has sufficient strength and rigidity and it can be made from virgin fibre (kraftliner), recycled/recovered fibre (testliner), or a combination of the two. CCM ranges in weight and width depending on the configuration of the production machinery and the requirements of the end-customer.
11. CCM is converted into corrugated sheet in a corrugator by creating fluting (a rippled middle layer of paper), which is combined with liners (flat surface layers which are glued to each side of the fluting). As with CCM, corrugated sheet ranges in thickness and width depending on the needs of the end-customer. In addition, two or three layers of corrugated sheet can be combined to produce "double wall" or "triple wall" corrugated sheet, see Figure 2 below.

Figure 2: Examples of corrugated sheet



12. As a last step in the production process, corrugated sheets are converted into corrugated cases through printing, slotting and/or die-cutting, folding and gluing and/or stitching.
13. The Parties are fully vertically integrated producers of corrugated packaging, i.e. they produce CCM, corrugated sheet and corrugated cases. Although there are a number of

⁶ Source: Form CO. See also http://www.competition-commission.org.uk/rep_pub/reports/2004/fulltext/492.pdf, at page 5.

competitors who are also fully vertically integrated, not all players are active along the whole supply chain⁷.

III.2. Focus of the assessment

14. According to earlier Commission market definitions, the transaction gives rise to a number of horizontally and vertically affected markets.⁸ However, in a number of those markets no substantiated concerns were raised. The present decision focuses on markets where concerns were raised by third Parties and where the proposed transaction could, potentially, raise serious doubts as to its compatibility with the internal market, namely: (i) the collection and supply of recovered paper in the United Kingdom, (ii) the supply of CCM, (iii) the commercialisation of corrugated sheets in the United Kingdom and (iv) the commercialisation of corrugated cases in the United Kingdom and in France.

III.3. Recovered paper

15. Both Parties collect recovered paper which is used in the production of CCM or sold to third Parties on the merchant market.
16. In previous decisions, most recently *Jefferson Smurfit/Kappa*⁹, the Commission has concluded that there are likely to be separate product markets for: (i) the purchase (also called collection or acquisition) of recovered paper on the one hand; and (ii) the supply of recovered paper on the other hand. In the recent *UPM/Mylykoski and Rhein Papier*¹⁰ case, the Commission also considered the purchase of recovered paper as a separate product market.
17. The Parties consider that the purchase and the supply of recovered paper constitute two distinct separate product markets. This was confirmed by the market investigation.

III.3.1. Relevant product market

Collection of recovered paper

18. In the EEA, the Parties, as corrugated packaging producers, are mainly concerned with recovered paper that can be used to produce CCM. In the United Kingdom, only DS Smith is active in the production and supply of CCM as SCA Packaging has no paper mills in the United Kingdom.¹¹

⁷ In particular, according to the Parties, there are a number of large independent so called sheet feeders (who are only active in the production of corrugated sheet) and also sheet plants that are only active in the production of corrugated cases.

⁸ The proposed transaction gives rise to horizontally affected markets in: (i) the collection of recovered paper in the United Kingdom (ii) the supply of recovered paper in the United Kingdom (iii) the supply of corrugated sheet in the United Kingdom and Lithuania and the (iv) the supply of corrugated cases in the United Kingdom, France, Italy and Lithuania. Moreover, The proposed transaction also gives rise to a number of vertical relationships between the Parties with regard to (i) their upstream activities in the supply of recovered paper in the United Kingdom and their downstream activity in CCM; (ii) their upstream activities in CCM and (a) their downstream activity in corrugated sheet in the United Kingdom and Lithuania and (b) their activities in corrugated cases in Lithuania, Denmark, Finland, Sweden and East of France; (iii) their upstream activities in corrugated sheet in Lithuania and their downstream activity in corrugated cases in Lithuania.

⁹ COMP/M.3935 *Jefferson Smurfit/Kappa*, 10 November 2005.

¹⁰ COMP/M.6101 *UPM/Mylykoski and Rhein Papier*, 10 July 2011.

¹¹ In the United Kingdom, SCA Packaging collects recovered paper for SCA's hygiene and newspaper plants that are outside the scope of the proposed transaction and will be retained by SCA.

19. There are various types of waste paper that can be collected from waste generators. The Commission considered in its decision *Jefferson Smurfit/Kappa* a possible further segmentation by reference to the grade/quality of the recovered paper (e.g. ordinary grades, medium grades, high grades, kraft grades and special grades). In *UPM/Myllykoski and Rhein Papier*, the Commission considered four main categories: (i) Old Corrugated Containers ("OCC"), which includes both old corrugated containers and other converted unbleached kraft products (such as beer carriers) (ii) deinking recovered paper (made up of Old Newspapers ("ONP") and Old Magazines ("OMG")) (iii) High Grade Recovered Paper ("HG/PS"), which includes high quality, mainly wood-free, paper grades.) and (iv) mixed Paper and Board ("MPB"), which is a catch-all category of unsorted paper.
20. The Parties submit that the classification considered in *UPM/Myllykoski and Rhein Papier* corresponds broadly to the classification used in the earlier *Jefferson Smurfit/Kappa* decision. More precisely, the Parties suggest that OCC corresponds to the kraft category, deinking recovered paper to the medium grade recovered paper, HG/PS to the high grades and MPB to the ordinary grades.
21. Taking into account the results of the market investigation in the present case, the Commission considers that there is a possible segmentation of the market for the collection of recovered paper according to the paper quality. However, as the operation does not raise serious doubts even on the basis of narrow markets by grade/quality of paper, the precise market definition can be left open.

Supply of recovered paper

22. Both Parties sell some of the recovered paper that they collect on the merchant market.
23. In relation to the supply of recovered paper, the Commission considered in *Jefferson Smurfit/Kappa* a possible further segmentation by reference to the grade/quality of the recovered paper (e.g. ordinary grades, medium grades, high grades, kraft grades and special grades).
24. According to the Parties, it is not appropriate to further segment the supply of recovered paper by reference to different grades, given that each grade is largely substitutable from the customer's perspective for the purpose of producing CCM. In addition, from the suppliers' perspective¹², it is straightforward to convert higher grades of recovered paper into lower grades.¹³
25. The market investigation in the present case has indicated that it would be appropriate to further segment the supply of recovered paper by reference to its quality and grade as qualities of paper do not have the same use and the same price.¹⁴

¹² Where the Parties act as merchant suppliers to third Parties.

¹³ This is because each time a fibre is recycled, it loses some of its strength and the fibre length decreases. For this reason, higher grades of recovered paper can be used in the manufacture of lower grades of recovered paper but not vice versa. See Form CO, para. 129.

¹⁴ E.g. ordinary grades, medium grades, high grades, kraft grades and special grades (see COMP/M.3935 *Jefferson/Smurfit Kappa*; COMP/M.6101 *UPM/Myllykoski and Rhein Papier*).

26. However, as the notified operation does not raise serious doubts even on the basis of narrow markets by grade/quality of paper, the Commission considers that the precise market definition can be left open.

III.3.2. Relevant geographic market

Collection of recovered paper

27. In *Jefferson Smurfit/Kappa*, the Commission considered market shares on both a national and EEA-wide basis. In the present transaction, the Parties have provided market share for the United Kingdom only as this is the only Member State in which their collection activities overlap.
28. With the exception of third Parties located in the United Kingdom, respondents to the Commission's request for information have indicated a trend to a certain level of trade between other EEA Member States for the collection of recovered paper.
29. However, as the operation does not raise serious doubts on any reasonable geographic market, the market definition can be left open.

Supply of recovered paper

30. In *Jefferson Smurfit/Kappa* and *UPM/Mylykoski and Rhein Papier*, the Commission considered market shares for the supply of recovered paper and its various subgrades at both the national and EEA-wide level whilst ultimately leaving the market definition open.¹⁵
31. The Parties have noted that the level of international cross-border trade within and beyond the EEA in recovered paper has increased substantially in the six years since the *Jefferson Smurfit/Kappa* decision, suggesting that the relevant geographic market for the supply of recovered paper should indeed be considered to be at least EEA-wide in geographic scope, if not global due to the increased demand of customers based in Asia (especially China and India).
32. As regards the United Kingdom, the only country where both Parties overlap, it is worth stressing that the country is a net exporter of recovered paper, with more than 50% of the recovered paper that is collected in the United Kingdom being exported.¹⁶
33. As the operation does not raise serious doubts on any reasonable geographic market, the market definition can however be left open.

III.3.3. Competitive assessment

Collection of recovered paper

34. The Parties' activities in relation to the collection of recovered paper only overlap in the United Kingdom. They estimate their combined share in volume¹⁷ of purchases of recovered

¹⁵ Although the Commission recognized in *UPM/Mylykoski and Rhein Papier* that "*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*".

¹⁶ Form CO, paras 132 and 217.

¹⁷ The other market shares used in the decision are also in volume. The packaging industry measures the market size and consumption, and companies' sales in millions of square metres.

paper (all grades / all quality) to be around [20-30]%. The other competitors hold smaller market shares (Palm: [0-5]%; UPM [0-5]%, Ayelsford: [0-5]%; Viridor: [0-5]%). If the market were to be sub-segmented by grade/quality, the combined market shares of the Parties would be around [20-30]% for ordinary grades, [20-30]% for medium grades, [20-30]% for kraft grades, [5-10]% for high grades; the Parties have no activities in specialty grades. The Parties have indicated that they are not able estimate their competitors' shares by grade/quality of paper.

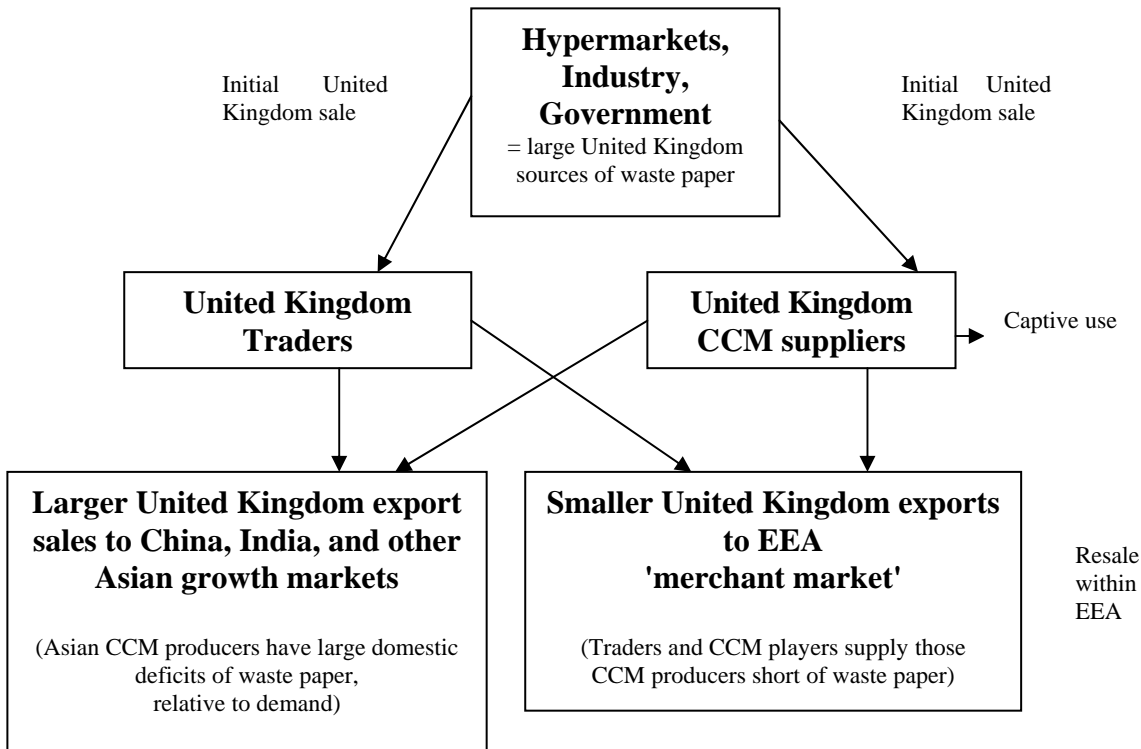
35. The Parties' United Kingdom collection activities are primarily to feed their own recovered paper requirements: in the case of DS Smith, its CCM mills and in the case of SCA Packaging, its hygiene and newspaper plants that are outside the scope of the proposed transaction.¹⁸ DS Smith is the only one of the Parties to have paper mills located in the United Kingdom.
36. Both Parties also sell some of the recovered paper that they collect on the merchant market. This will be assessed below as part of the market for the supply of recovered paper.
37. The Parties collect recovered paper mostly from waste generators¹⁹, mainly supermarkets and other retail stores, newspaper publishers. Their collections of recovered paper from local authorities are not significant in the context of their overall operations (the private sector represents [...]% of DS Smith's collection activities and [...]% of SCA Packaging's activities²⁰). The vast majority of wastepaper is collected on "payment to waste generator basis". Therefore, in this market, the Parties generally act as buyers of recovered paper, not as suppliers of collection services.

¹⁸ The hygiene and newspaper plants are assets of SCA, not SCA Packaging, and are therefore retained by SCA.

¹⁹ DS Smith sources [...]% of its recovered paper from waste generators while SCA sources approximately [...] of its recovered paper from other recovered paper suppliers.

²⁰ The Parties' non-confidential replies to the Commission's questionnaire dated 19 April 2012, question 3.

Figure 3: United Kingdom recovered paper supply chain²¹



38. The Parties submit that although they would become the main collector of waste in the United Kingdom, the market for the collection of recovered paper is competitive and fragmented such that waste generators and other suppliers of recovered paper can and do obtain quotes from DS Smith's competitors for the price they are willing to pay to secure that source of paper supply.
39. There is no set mechanism for pricing. The price that a particular customer pays depends on a number of variables, in addition to the grade, including volumes purchased, frequency of collection, etc.
40. Moreover, commercial relationships depend on the waste paper generator involved. There is no particular format: some collections are done on a spot/ad hoc basis, whereas some waste generators enter into contract with the collector. For instance, in the United Kingdom, DS Smith [...].
41. The duration of the contracts also varies and may be short (i.e. weeks/months), medium (i.e. one year) or long term (i.e. more than one year). DS Smith [...].
42. However, due to the open and competitive nature of the recovered paper market, most waste generators prefer to supply on the basis of short-term arrangements and agree sales on a monthly or weekly basis to give them the ability to switch collectors if they desire. In the United Kingdom, [...] % of DS Smith's recovered paper collection is done on a spot/adhoc basis, [...] % on the basis of short contracts, [...] % on the basis of medium-term contracts and [...] % per cent on the basis of long-term contracts. [...] % of SCA Packaging's recovered paper collection is done

²¹ Form CO, para. 209.

on a spot/adhoc basis, [...] % on the basis of medium-term contracts and [...] % per cent on the basis of long-term contracts.

43. Exclusive agreements are uncommon and suppliers are typically large companies that would be able to resist any attempt on the part of the Parties to exercise buyer power by offering prices that are too low. The market investigation has confirmed that these large waste generators have a degree of negotiation power and generally do not expect any anti-competitive effects as a result of the proposed transaction.
44. One competitor to the Parties in the collection and supply of recovered paper in the United Kingdom raised concerns about the alleged position that the combined entity would hold, post-transaction, as regards the collection of recovered paper from local authorities. However, the contracts with local authorities represent less than [...] % of the overall contracts concluded by the Parties.²²
45. The same third party also raised concerns about the limited ability for competing waste collectors to supply, post-transaction, the merged entity's paper mills in the United Kingdom, as a result of the vertical integration of the merging parties. However, SCA Packaging has no paper mills located in the United Kingdom: SCA focusses on the collection of newsprint for a business which is retained by SCA and is therefore not part of the proposed transaction. As regards DS Smith, it is already vertically integrated in the United Kingdom. In 2010 DS Smith used [...] tonnes of recovered paper in its paper mills in the United Kingdom. Of this amount, [...] was sourced internally and thus only [...] was purchased from third parties.²³ [...] ²⁴ In addition, there exist a number of independent paper mills in the United Kingdom as well as other outlets for recovered paper outside the country.
46. In view of the moderate market shares under all potential market definitions, the fact that several competitors are active in all segments and the absence of substantiated concerns from the customers, the Commission considers that the proposed transaction does not raise serious doubts as to its compatibility with the internal market as regards the market for the collection of recovered paper in the United Kingdom.

Supply of recovered paper

47. Both Parties sell some of the recovered paper that they collect on the merchant market.
48. In 2010, the Parties' estimated combined market share on the supply of recovered paper in the EEA was [5-10] % (all grades / all quality). A number of other competitors hold larger shares (Smurfit Kappa: [10-20] %; Mondi: [10-20] %, SAICA: [10-20] % and Veolia: [10-20] %). If the market were segmented by grade/quality, the combined market shares would be [5-10] % for ordinary grades, [5-10] % for medium grades and [5-10] % for kraft grades.
49. The only Member State in which the Parties both sell recovered paper is the United Kingdom where they would hold a [30-40] % market share (all grades / all quality). The other competitors hold smaller shares (Smurfit Kappa: [5-10] %; SAICA: [0-5] %; Veolia: [0-5] %, Sita: [0-5] %). If the market were to be segmented by grade/quality, the combined market shares of the Parties would be [40-50] % for ordinary grades (though with no increment as DS Smith is not active in

²² The Parties' non-confidential replies to the Commission's questionnaire dated 19 April 2012, question 3.

²³ The Parties' non-confidential replies to the Commission's questionnaire dated 19 April 2012, question 6.

²⁴ The Parties' non-confidential replies to the Commission's questionnaire dated 19 April 2012, question 7.

this grade), [30-40]% for medium grades and [0-5]% for kraft grades (with again no increment as DS Smith is not active in this grade). In terms of their competitors, the Parties estimate that for the supply of ordinary grades Smurfit Kappa has a [30-40]% market share, followed by Veolia ([0-5]%), SAICA ([0-5]%) and Sita ([0-5]%). In medium grades, SAICA has [5-10]% and Smurfit Kappa and Veolia each holds [0-5]%. The Parties have indicated that they are not able to estimate their competitors' shares in kraft grades.

50. The majority of the recovered paper supplied by the Parties on the merchant market is purchased by large multinational companies active in the corrugated packaging industry (such as Mondi, Stora Enso). These are large and sophisticated buyers who are fully integrated corrugated packaging suppliers (i.e. they are active in the production of CCM and the downstream markets for corrugated sheets and cases). There is little customer loyalty and generally there are no approval requirements so CCM manufacturers can, and do, switch suppliers regularly. In addition, most customers source from a large number of suppliers (well organised CCM mills may have up to 50 suppliers according to the Parties) and lead times for the majority of orders are short (typically a matter of days). When combined with the commoditised nature of recovered paper and the fact that customers can and do source from suppliers located outside their country of production, this gives customers a significant amount of bargaining power.
51. Some concerns were raised as regards the combined position of the Parties on the United Kingdom market for the supply of recovered paper as they would hold a significant share of that market ([25-35]% according to the Parties' estimates – see above) which combined with DS Smith's large network of paper mills (SCA Packaging has no paper mills in the United Kingdom) and depots, could give the merged entity the ability to control the price for the supply of recovered paper and potentially foreclose competitors' access to a significant customer in the shape of a merged DS Smith/SCA Packaging.
52. However, these concerns do not appear to be substantiated for two main reasons. First, generators of waste paper in the United Kingdom (such as supermarket chains and newspaper publishers) do not expect any significant change to the competitiveness of the market as a result of the transaction. Second, DS Smith supplies to third Parties in the United Kingdom only around [...]% of the recovered paper that it collects in the United Kingdom (SCA Packaging has no paper mills located in the United Kingdom). Third, the market investigation has shown that recovered paper is a globally traded commodity with more than 50% of the recovered paper collected in the United Kingdom being exported principally to Asia and also to other EEA countries. Therefore, even if the merged entity were to source more of its paper requirements from its own recycling network, competing suppliers of recovered paper would still have a sufficient customer base for their sales.
53. In view of the moderate market shares under all potential market definitions, the fact that several competitors are active in all segments and the absence of substantiated concerns from customers, the Commission considers that the proposed transaction does not raise serious doubts as to its compatibility with the internal market as regards the market for the supply of recovered paper in the United Kingdom.

III.4. CCM

III.4.1. Relevant product market

54. In previous decisions (e.g. *Jefferson Smurfit/Kappa*), the Commission identified a separate product market for CCM. In that decision, the Commission considered merchant/third party supply only (i.e. CCM sold to third Parties only and excluding captive/internal supply).

Moreover, while ultimately leaving the product market definition open, the Commission considered a potential further segmentation of the CCM market between kraftliner (i.e. CCM made from virgin fibre) and testliner (i.e. CCM made from recovered fibre).

55. In the present case, the Parties have identified the affected markets in line with the market definition considered by the Commission, i.e. both third party supply of CCM and testliner (DS Smith does not produce kraftliner and will not acquire SCA Packaging's kraftliner assets).

III.4.2. Relevant geographic market

56. In *Jefferson Smurfit/Kappa*, the Commission also concluded that the relevant geographic market for CCM was at least EEA-wide.
57. In the present case, the Parties agree that the relevant geographic market for CCM is no narrower than EEA-wide.

III.4.3. Competitive assessment

58. The market investigation has not raised any concerns as regards CCM while confirming the EEA scope of the market. The combined market share of the Parties is estimated at [5-10]%.
59. In view of the Parties' limited market shares and in the absence of concerns during the market investigation, the Commission considers that the proposed transaction does not raise serious doubts as regards the EEA market for the supply of CCM.

III.5. Corrugated sheets in the United Kingdom

III.5.1. Relevant product market

60. In previous decisions²⁵, the Commission has identified a separate product market comprising all types of corrugated sheet. In assessing the competitive effects of the transaction, in *Jefferson Smurfit/Kappa* the Commission had regard to merchant/third party supply of corrugated sheet only (i.e. excluding captive/internal supply).
61. The Commission did not identify any product markets potentially narrower than all corrugated sheet in *Jefferson Smurfit/Kappa*. However, in the earlier decision *SCA Packaging/Rexam*²⁶ (1999), the Commission - while ultimately leaving the market definition open - indicated that heavy duty grades²⁷ of corrugated sheet could constitute a separate product market.
62. The Parties believe that it would not be appropriate to define a separate market for heavy duty sheet (and cases) as, firstly, there is no universally accepted definition of heavy duty sheet (and case) and the different grades form a continuum in terms of performance. Secondly, in the Parties' view, heavy duty competes with other types of packaging materials such as wooden crates, plastic boxes and bulk bags. The Parties notably provided a number of

²⁵ See COMP/M.3935 *Jefferson Smurfit/Kappa*.

²⁶ COMP/M.1418 *SCA Packaging/Rexam*.

²⁷ "Cases made of triple wall and double wall board insofar as the board contains at least one A flute (i.e. AA, CA and BA board) and weighs more than 800g/sqm, although some would only categorise triple wall cases as heavy duty."

examples of substitution of triple-wall box by boxes made of heavy double-wall sheets and of contracts lost to wooden alternatives²⁸.

63. However, the market investigation in the present case has not supported the Parties' claim that all corrugated sheets fall into a single product market. In particular, a large number of the replies received in the market investigation indicate that "heavy duty" sheets form a distinct segment²⁹.
64. The investigation confirmed that while no industrial standard exists that precisely defines heavy duty sheets, these comprise either (i) only triple wall sheets, or (ii) triple wall and double wall sheets insofar as the sheet contains at least one A flute (i.e. AA, CA and BA board) and weighs more than a given threshold (ranging between 300 and 1000 g/sqm depending on the replies)³⁰.
65. Most respondents to the market investigation indicated that if the price of heavy duty sheets were to increase by 5-10% whilst the price of non-heavy-duty sheets remained stable, they would not switch to these other sheets for their business needs³¹. Respondents also noted that the price of heavy duty sheets is higher, that they are used for targeted purposes (e.g. in the industrial segment) and that their conversion into cases requires specialized machinery³².
66. On the supply-side, the number of producers able to manufacture both conventional³³ sheets and heavy-duty sheets is extremely limited, at least with regard to triple wall sheets and double wall sheets with an A flute. It was indicated in the course of the market investigation that to produce triple wall or any A flute sheet, a large investment is needed to purchase special corrugator manufacturing equipment³⁴. Furthermore, the market investigation showed that the possibility of manual conversion from double wall sheets to triple wall ones as had been submitted by the Parties as a viable means of production, i.e. by gluing sheets together, could not be considered as a credible and competitive alternative mainly due to the inefficiency and the less satisfactory results the manual method would produce³⁵.
67. Finally, the market investigation did not confirm the Parties' view regarding the substitutability of heavy duty corrugated sheets with other materials such as timber or

²⁸ Submission of DS Smith on United Kingdom heavy duty – triple wall sub segment dated 9 May 2012.

²⁹ Third Parties' non-confidential replies to the Commission's questionnaire on corrugated sheets in the United Kingdom and in Lithuania, question 7.

³⁰ Third Parties' non-confidential replies to the Commission's questionnaire on corrugated sheets in the United Kingdom and in Lithuania, question 8. Non-confidential minutes of the conference call with a competitor held on 3 May 2012. Non-confidential minutes of the conference call with a customer held on 25 April 2012.

³¹ Third Parties' non-confidential replies to the Commission's questionnaire on corrugated sheets in the United Kingdom and in Lithuania, question 8.5.

³² Third Parties' non-confidential replies to the Commission's questionnaire on corrugated sheets in the United Kingdom and in Lithuania, question 8.

³³ In this decision, "conventional" corrugated packaging refers to corrugated packaging other than heavy duty corrugated and litho laminated packaging.

³⁴ Third Parties' non-confidential replies to the Commission's questionnaire on corrugated sheets in the United Kingdom and in Lithuania, question 8.1.1. Non-confidential minutes of the conference call with a competitor held on 3 May 2012.

³⁵ Non-confidential minutes of the conference call with a customer held on 3 May 2012.

plastic³⁶. Heavy duty sheets were described as being very cost effective, since they can carry heavy and delicate products while being light, flexible, not sensitive to air transport and relatively cheap³⁷. In addition, it is very costly to switch from heavy duty to timber packaging, due to differences in the machinery and the production methods used³⁸.

68. On the basis of the above, the market investigation provides indications that there exists a distinct relevant product market for the commercialisation of heavy duty sheets. It may be left open whether the heavy duty segment comprises only triple wall sheets, or also double wall with an A flute, since this does not affect the competitive assessment of the proposed transaction.
69. As regards other types of sheets, the market investigation did not provide indications that the market for non-heavy duty sheets should be further segmented.³⁹
70. However, as the proposed remedies address the concerns with regard to both heavy duty and other types of corrugated sheets, the precise scope of the product market for corrugated sheet can be left open.

III.5.2. Relevant geographic market

71. With regard to the geographic scope of the market, in previous decisions, most recently *Jefferson Smurfit/Kappa*, the Commission analysed the effects of the transaction at both: (i) the national level; and (ii) the regional level with regard to a 300-400 km radius around the relevant production sites. In *DS Smith/Linpac*⁴⁰, the United Kingdom Competition Commission concluded that the geographic market for corrugated sheet was the whole of Great Britain.⁴¹ Although it found that the average delivery distance for sheet was 200 miles from the point of manufacture, the Competition Commission noted (i) that transport over longer distances was not uncommon, (ii) that there were overlapping regional supply territories with no clear breaks, and (iii) that many sheet suppliers operated a number of plants across the United Kingdom. In *Smurfit Kappa/Mondi*⁴², the United Kingdom Office of Fair Trading ("OFT") also indicated that there were small quantities of imported corrugated sheet

³⁶ Third Parties' non-confidential replies to the Commission's questionnaire on corrugated sheets in the United Kingdom and in Lithuania, question 9. Non-confidential minutes of the conference call with a competitor held on 3 May 2012. Non-confidential minutes of the conference call with a competitor held on 27 April 2012. Non-confidential minutes of the conference call with a customer held on 25 April 2012.

³⁷ Non-confidential minutes of the conference call with a competitor held on 3 May 2012. Non-confidential minutes of the conference call with a competitor held on 27 April 2012.

³⁸ Non-confidential minutes of the conference call with a customer held on 25 April 2012.

³⁹ For the sake of completeness it has to be mentioned that the so called off-set printed litho-laminated corrugated cases (see section III.6 below) were considered by several respondents to the market investigation as a separate product market. Off-set printed litho-laminated corrugated cases are made of litho-laminate sheets. Lamination is a type of corrugation, where single faced corrugated is laminated to a sheet of litho printed paper. However, neither DS Smith nor SCA Packaging supplies third Parties with litho-laminated corrugated sheets, they only supply third Parties with litho-laminated corrugated cases.

⁴⁰ United Kingdom Competition Commission, *A report on the completed acquisition of Linpac Containers Ltd by DS Smith plc*, 21 October 2004.

⁴¹ That is to say the British mainland of England, Scotland and Wales.

⁴² Office of Fair Trading, *Anticipated acquisition by Smurfit Kappa Group plc of the United Kingdom corrugated packaging operations of Mondi Packaging AG*, decision of 16 April 2010.

from France and Germany but that the vast majority was supplied within the United Kingdom, with imports accounting for only [0-5] % of third party sales of sheet in the United Kingdom.

72. As the Parties' activities in relation to the third party supply of corrugated sheet primarily overlap in the United Kingdom, the Parties consider it appropriate to also have regard to the relevant decisional practice of the United Kingdom competition authorities.
73. With regard to the heavy duty segment, the Parties are of the view that the market would be no narrower than EEA-wide. They emphasize that in the *SCA Packaging/Rexam* decision of 1999, the Commission concluded that the geographic scope of the market for heavy duty corrugated sheets was broader than national. The Parties also estimate that over 60 % of the volumes of heavy duty sheets (and also triple wall sheets) that are sold in the United Kingdom are imported.
74. The market investigation in the present case has indicated that the geographic scope of the market for non-heavy duty corrugated sheets is not wider than national as transport costs limit the radius within which corrugated packaging can be economically transported⁴³.
75. With regard to heavy-duty corrugated sheets, customers emphasized during the market investigation the necessity for their suppliers to be located geographically close (generally in a radius of 100-450 km)⁴⁴. They were of the view that it is important to have a local presence and a distribution network to sell in a given country⁴⁵. In addition, while one customer explained that it was considering imports as a solution of last resort to continue to have an alternative to the Parties post-merger⁴⁶, several respondents to the market investigation indicated that imports of heavy duty sheets do not constitute a competitive alternative since it is difficult and costly to import heavy duty sheets with the required characteristics and delivery time⁴⁷.
76. However, as the proposed remedies address the serious doubts that arose in relation to corrugated sheets within the United Kingdom, the precise geographic scope of the market for corrugated sheet (whether heavy duty or non-heavy duty) can be left open.

⁴³ Third Parties' non-confidential replies to the Commission's questionnaire on corrugated sheets in the United Kingdom and in Lithuania, questions 10, 14 and 15.

⁴⁴ Third Parties' non-confidential replies to the Commission's questionnaire on corrugated sheets in the United Kingdom and in Lithuania, questions 11 and 12. Non-confidential minutes of the conference call with a competitor held on 24 April 2012.

⁴⁵ Third Parties' non-confidential replies to the Commission's questionnaire on corrugated sheets in the United Kingdom and in Lithuania, questions 15 and 16.

⁴⁶ Non-confidential minutes of the conference call with a competitor held on 24 April 2012.

⁴⁷ [...]s non-confidential reply to the Commission's questionnaire on corrugated sheets in the United Kingdom and in Lithuania, questions 14, 15, 16, 17. Non-confidential minutes of the conference call with a competitor held on 27 April 2012. Non-confidential minutes of the conference call with a customer held on 25 April 2012.

III.5.3. *Competitive assessment*

77. Pre-merger, SCA was not active in conventional corrugated sheets. Consequently, there was no horizontal overlap between the Parties in relation to conventional corrugated sheets⁴⁸.

78. [...] ⁴⁹, [...].

Heavy duty corrugated sheets

79. In the Form CO, the Parties submitted they would have a market share of only [10-20]% for heavy duty corrugated sheets in the United Kingdom. The Parties subsequently explained that these market shares corresponded to a segment comprising all corrugated sheet above 800g/sqm.⁵⁰ They estimated that they have a combined share of [30-40]% (DS Smith [10-20]%, SCA Packaging [10-20]%) on the market for triple wall corrugated sheet, the remainder being supplied by importers (notably Prowell and Catala, which according to the Parties account for respectively [20-30]% and [10-20]% of sales in the United Kingdom).

80. However, a large number of the replies to the market investigation suggest that the Parties have much higher market shares in the United Kingdom than they have indicated with regard to heavy duty sheets.

81. Several respondents to the market investigation explained that the merged entity would have a monopoly or quasi-monopoly position in the heavy duty segment in the United Kingdom, at least with regard to triple wall corrugated sheets or double wall with an A flute⁵¹. The Parties confirmed that SCA Hinckley and DS Smith Monmouth are the only sites in the United Kingdom producing triple wall sheets.

82. The market investigation showed that the main competitor mentioned in the Form CO by the Parties as regards heavy duty used to produce one particular category of heavy duty sheet (double wall CA flute) but stopped this production in 2011⁵².

83. Regarding importers of heavy duty sheets, a main competitor explained that it was not competing with SCA Packaging and DS Smith in the United Kingdom and was not

⁴⁸ In 2008, SCA Packaging disposed of its CCM as well as conventional corrugated sheet and case assets in the United Kingdom and Ireland to SAICA. SCA Packaging retained ownership of its assets in heavy duty corrugated board and litho laminated corrugated board business.

⁴⁹ On 18 June 2008 [...], SCA Packaging and SAICA entered into a joint venture agreement (the JV agreement). In particular, this agreement gives SCA Packaging [...] and an option to acquire a stake in the business divested to SAICA at a future date.

⁵⁰ Submission of DS Smith on United Kingdom heavy duty – triple wall sub-segment, sent to the Commission on 9 May 2012.

⁵¹ Third Parties' non-confidential replies to the Commission's questionnaire on corrugated sheets in the United Kingdom and in Lithuania, question 44; third Parties' non-confidential replies to the Commission's questionnaire on vertical relationships, questions 5, 8, 9, 10 and 44. Non-confidential minutes of the conference call with [...] held on 17 April 2012. Non-confidential minutes of the conference call with a competitor held on 24 April 2012. Non-confidential minutes of the conference call with a competitor held on 27 April 2012. Non-confidential minutes of the conference call with a customer held on 25 April 2012.

⁵² Non-confidential minutes of the conference call with a competitor held on 3 May 2012.

manufacturing any A flute sheets or triple wall⁵³. As a result, it does not sell heavy duty sheet to third Parties in the United Kingdom⁵⁴.

84. According to the Parties, there are other manufacturers producing triple wall outside the United Kingdom, including Prowell (Germany) and Catala (Belgium), to which the Parties claim that they have lost contracts in recent years. However, the products' offering of these competitors were described by several customers in the United Kingdom as unsuitable for their needs due to their products characteristics (e.g. high recycled paper content) and lead times (as they are only prepared to ship full truck loads to the United Kingdom)⁵⁵. Moreover, one of the manufacturers explained that its heavy duty triple wall exports to the United Kingdom are currently limited as they represent only 1-2% of the United Kingdom sales of triple wall sheets⁵⁶. Similarly, another manufacturer indicated that it currently supplies very little triple wall into the United Kingdom⁵⁷.
85. In addition, the Parties had alleged that a large part of the market was accounted for by small local suppliers that they were however not able to identify in the notification. The market investigation has not provided any firm evidence that there is such a large fringe of suppliers which would account for a significant share of the market. One customer explained on the contrary that small suppliers have not survived on this market mainly because of their low quality and inefficient production capabilities⁵⁸.
86. Respondents to the market investigation indicated that buyers of heavy duty sheets have less negotiation power than buyers of conventional corrugated sheet as a result of the limited number of suppliers in the United Kingdom, the specialised nature of the product and stronger customer loyalty⁵⁹.
87. Moreover, respondents have not observed any entry in the past five years in heavy duty sheets and do not foresee any in the future⁶⁰. [...] ⁶¹.
88. At present the Parties are competing directly against each other in relation to heavy duty sheets. One respondent indicated for instance that it had recently switched from DS Smith to

⁵³ A competitor's non-confidential reply to the Commission's questionnaire on corrugated sheets in the United Kingdom and in Lithuania, questions 8.2 and 11.

⁵⁴ Non-confidential minutes of the conference call with a competitor held on 24 April 2012.

⁵⁵ Non-confidential minutes of the conference call with a competitor held on 27 April 2012. Non-confidential minutes of the conference call with a customer held on 25 April 2012.

⁵⁶ Non-confidential minutes of the conference call with a competitor held on 11 May 2012.

⁵⁷ Non-confidential email of a competitor of 11 May 2012.

⁵⁸ Non-confidential minutes of the conference call with a competitor held on 27 April 2012.

⁵⁹ Third Parties' non-confidential replies to the Commission's questionnaire on corrugated sheets in the United Kingdom and in Lithuania, question 28.

⁶⁰ Third Parties' non-confidential replies to the Commission's questionnaire on corrugated sheets in the United Kingdom and in Lithuania, questions 30 and 31. Non-confidential minutes of the conference call with a competitor held on 3 May 2012.

⁶¹ [...].

SCA Packaging for triple wall sheet supply due to the fact that SCA Packaging offered better quality, prices and delivery terms⁶².

89. Several customers expressed serious concerns about the impact of the transaction on the market for heavy duty sheets in the United Kingdom⁶³. They indicated that they would be left with no competitive alternative, which could result in higher prices and poorer service quality⁶⁴.
90. Given the very strong position of the merged entity in the market for heavy duty corrugated sheets in the United Kingdom, the high concentration level of the market, as well as the substantiated customer concerns, the Commission considers that the transaction raises serious doubts as to its compatibility with the internal market in relation to heavy duty corrugated sheets in the United Kingdom.

III.6. Corrugated cases in the United Kingdom

III.6.1. Relevant product market

91. In previous decisions⁶⁵, the Commission has identified a separate product market for corrugated cases. Unlike corrugated sheet, corrugated boxes are not an input product but a finished product sold to end customers in a variety of sectors including fast-moving consumer goods (FMCG), automotive, defence etc. Accordingly, it is not necessary to distinguish third party (merchant) supply from internal (captive) supply.
92. The Commission did not identify any product markets narrower than all corrugated cases in *Jefferson Smurfit/Kappa*.
93. The Parties argued that the corrugated cases market should not be subdivided into further product segments, neither from the demand nor from the supply side perspective.
94. However, the market investigation demonstrated that the corrugated cases market could be further broken down into the conventional segment, the heavy duty segment and the so called litho-laminated segment for the reasons discussed below.

Heavy duty corrugated cases

95. Firstly, the market investigation did not confirm that heavy duty cases (i.e. cases based on heavy duty sheets as defined in the preceding sub-section) and non-heavy duty cases belong to the same product market.

⁶² Non-confidential minutes of the conference call with a customer held on 25 April 2012.

⁶³ Third Parties' non-confidential replies to the Commission's questionnaire on corrugated sheets in the United Kingdom and in Lithuania, question 44; third Parties' non confidential replies to the Commission's questionnaire on vertical relationships, questions 5, 8, 9, 10 and 44.

⁶⁴ Third Parties' non-confidential replies to the Commission's questionnaire on corrugated sheets in the United Kingdom and in Lithuania, question 44; third Parties' non-confidential replies to the Commission's questionnaire on vertical relationships, questions 5, 8, 9, 10 and 44.

⁶⁵ See Case COMP/M.3935 *Jefferson Smurfit/Kappa*.

96. On the demand side, heavy duty cases are typically used for specific purposes (for example in the industrial or defence segments) and comprise a low level of decoration⁶⁶. They are considered a 'specialist' product for customers needing a high level of protection for their goods in transit. Most of the respondents to the market investigation do not consider it easy to switch from heavy duty cases to other types of corrugated cases for their business needs⁶⁷. In addition, a large majority indicate that they would not switch to non-heavy duty cases or indeed other materials such as plastics or wooden crates if the price of heavy duty cases relative to other packaging solutions were to increase by 5-10%⁶⁸.
97. On the supply-side, particular technology and production method are required to produce heavy duty cases, which are sold in low volumes⁶⁹. As a result, not all producers offer heavy duty packaging solutions and some of these suppliers depend on the Parties for their procurement of heavy-duty cases that they simply resell⁷⁰.
98. On the basis of the above, there appears to be strong indications that there is a separate relevant product market for the commercialisation of heavy duty cases. It is not necessary however for the purposes of the present decision to decide on a possible further segmentation of this market since this would not affect the competitive assessment. Moreover, as the proposed remedies address the concerns in the heavy duty segment, the precise scope of the relevant product market can be left open given that no concerns would arise in the case of a wider market encompassing heavy duty and non-heavy duty corrugated case.

Off-set printed litho-laminated corrugated packaging

99. Contrary to the Parties claim, several respondents to the initial market investigation suggested that the so called "off-set printed litho-laminated corrugated packaging" should be distinguished from conventional corrugated products. Litho-laminated corrugated packaging constitutes secondary packaging to transport the goods, but it is also used as "shelf ready packaging"⁷¹ which can be placed directly on retailers' shelves. These boxes therefore need to meet the requirements of both transport and promotional purposes⁷². In fact, this type of product segment includes corrugated packaging printed off-set with high-quality images⁷³,

⁶⁶ Third Parties' non-confidential replies to the Commission's questionnaire on corrugated cases in the United Kingdom, France, Italy and Lithuania, questions 7 and 8. Non-confidential minutes of the conference call with a customer held on 25 April 2012.

⁶⁷ Third Parties' non-confidential replies to the Commission's questionnaire on corrugated cases in the United Kingdom, France, Italy and Lithuania, question 8.4.

⁶⁸ Third Parties' non-confidential replies to the Commission's questionnaire on corrugated cases in the United Kingdom, France, Italy and Lithuania, question 8.5.

⁶⁹ Third Parties' non-confidential replies to the Commission's questionnaire on corrugated sheets in the United Kingdom and in Lithuania, question 8; Third Parties' non-confidential replies to the Commission's questionnaire on corrugated cases in the United Kingdom, France, Italy and Lithuania, question 8.

⁷⁰ Third Parties' non-confidential replies to the Commission's questionnaire on corrugated cases in the United Kingdom, France, Italy and Lithuania, question 8.2.

⁷¹ Non-confidential minutes of the conference call with a customer held on 20 April 2012, also referred to as "shop ready", non-confidential minutes of the conference call with a customer held on 20 April 2012.

⁷² Non-confidential minutes of the conference call with a customer held on 19 April 2012.

⁷³ Non-confidential minutes of the conference call with a customer held on 19 April 2012, non-confidential minutes of the conference call with a competitor held on 24 April 2012.

and as such the main difference from other types of corrugated packaging consists in the printing process.

100. Off-set printed litho-laminated corrugated packaging is different from the so called "flexo" (or direct) print technology, in that in the litho-lamination process the sheet is printed in a separate printing processor, called a laminator, and is then glued with two reels, a "microflute" and an inner board. This type of packaging mainly uses so called "microflutes", i.e. N, D, E, F flutes⁷⁴. The "flexo" technology, by which the box is directly printed ("post-print"), is however far more widespread than the more specific off-set litho-laminated technology.
101. In relation to the product market definition, the Parties first submitted that litho laminated corrugated cases form part of the overall market for corrugated cases. The Parties also claimed that even if there were a hypothetical market for printed corrugated cases, this should include both litho-laminated and flexo products. In particular, the Parties consider that from the end customer's perspective, litho-laminated and flexo printed corrugated cases are almost always considered substitutable and that in the recent past there have been examples of customers switching from litho-laminated to flexo printed packaging as the quality of the latter has increased in recent years.
102. The Commission first notes that, as regards to the Parties' claims that the litho-laminated segment forms part of the overall market for corrugated cases, or, in the alternative, of the hypothetical market for printed cases, (i) on DS Smith's website the plants dedicated to litho-laminated technology are clearly marked and (ii) [...].
103. With regard to supply-side substitutability, it was confirmed both by the Parties and by the market investigation that the production of off-set litho-laminated corrugated packaging requires different machinery and equipment in comparison to the conventional corrugated packaging and flexo printing, and that the technology used is investment-intensive. In fact, only a limited number of the Parties' plants in the United Kingdom are suitable for the production of litho-laminated corrugated boxes.⁷⁵
104. Concerning demand-side substitutability, the market investigation confirmed that litho-laminated packaging is preferred by customers for two main reasons: (i) the litho process is capable of producing more consistent and higher quality printing for some types of graphics and (ii) in terms of quantity, litho-laminated packaging is more cost effective for small quantities in the scale of 100.000 – 500.000 boxes per annum.⁷⁶ On the contrary for higher quantities customers may prefer "flexo" pre-printed packaging because of the cost structure. In general, both customers and producers of litho-laminated boxes confirmed that this technology provides better images, as it can use more pixels and colours although it was also stated that there is a certain convergence between the two technologies and the quality of "flexo" printing has come closer to that of litho-laminated. Nevertheless, several respondents

⁷⁴ Non-confidential minutes of the conference call with a competitor held on 25 April 2012.

⁷⁵ DS Smith Lockerbie and SCA Packaging Darlington.

⁷⁶ Non-confidential minutes of the conference call with a competitor held on 24 April 2012.

(including competitors and customers) to the market investigation confirmed that customers that use litho-laminated packaging for their business hardly switch to post-print.⁷⁷

105. The result of the market investigation is thus in contrast with the Parties' view that litho-laminated corrugated cases form part of the overall market for corrugated cases, and even if a separate market for printed corrugated cases were defined it would be not appropriate to define separate markets for litho-laminated cases on the one hand and "flexo" post-print cases on the other.
106. The Commission considers that the above elements point towards a separate product market for off-set printed litho-laminated corrugated packaging. For the purposes of the present decision, however, as the remedies proposed address the concerns arising under a narrow product market definition restricted to litho-laminated cases in the United Kingdom only, the precise scope of the relevant product market can ultimately be left open as no concerns would arise in case of a wider market.

III.6.2. Relevant geographic market

Conventional corrugated cases

107. In previous decisions⁷⁸, the Commission analysed the effects of previous concentrations at both: (i) the national level; and (ii) the regional level with regard to a 200-300 km radius around the relevant production sites. In *DS Smith/Linpac*, the United Kingdom Competition Commission concluded that the geographic market for corrugated case comprised the whole of Great Britain (i.e. England, Scotland and Wales). In *DS Smith/Otor*⁷⁹, the French Autorité de la Concurrence considered the competitive effects in corrugated case on both a national and regional level. With regard to regional overlaps, the Autorité de la Concurrence based its analysis on the five national divisions adopted by *ONDEF-Carton Ondulé de France* (the professional organisation of French corrugated packaging manufacturers), i.e. (i) North France; (ii) East France; (iii) West France; (iv) South East France; and (v) South West France.
108. In the notification, the Parties adopted the approach taken by the NCAs in *DS Smith/Linpac* and *DS Smith/Otor*.
109. The market investigation indicated that in general corrugated cases are delivered with a radius of 300km or less from the production plant⁸⁰. However, the precise scope of this market can be left open since it does not affect the competitive assessment of the case.

⁷⁷ Non-confidential minutes of the conference call with a customer held on 19 April 2012, Non-confidential minutes of the conference call with Nestlé held on 20 April 2012, Non-confidential minutes of the conference call with a competitor held on 3 May 2012.

⁷⁸ See notably Case COMP/M.3935 *Jefferson Smurfit/Kappa*.

⁷⁹ Autorité de la Concurrence, Décision n° 10-DCC-99 du 23 août 2010 relative à la prise de contrôle exclusif des sociétés Otor Finance SA et Otor SA par la société DS Smith Plc.

⁸⁰ Third Parties' non-confidential replies to the Commission's questionnaire on corrugated cases in the United Kingdom, France, Italy and Lithuania, question 14.

Heavy duty corrugated cases

110. With regard to the heavy duty segment, the Parties are of the view that the market would be no narrower than EEA-wide. They have provided three examples of triple wall case contracts lost to importers⁸¹.
111. The market investigation has however provided indications that the market may be no wider than national. Many respondents to the market investigation did not identify importers as a significant alternative to the Parties for the supply of heavy duty corrugated cases in the United Kingdom. In relation to heavy-duty cases, the majority of customers have indicated that they make purchase decisions at local or national level⁸². In addition, the majority of suppliers decide on price and commercial strategy at local or national level⁸³.
112. However, as the proposed remedies address the concerns in the heavy duty segment, the precise scope of this market can be left open.

Off-set printed litho-laminated corrugated packaging

113. The Parties submit that in case off-set printed litho-laminated corrugated packaging is considered to be a separate product market, such a market should be defined as EEA-wide, due to the fact that the value of litho-laminated corrugated cases is higher than for non-printed board and that litho-laminate customers tend to be large FMCG customers who often negotiate a single agreement with one supplier for all their corrugated packaging needs. Finally, the Parties argue that there is a high level of imports to the United Kingdom.⁸⁴
114. With regard to imports, although respondents to the market investigation also confirmed that to a certain extent⁸⁵ there are imports from Continental Europe (mainly from the Benelux) to the United Kingdom⁸⁶, some remained sceptical about imports to the United Kingdom⁸⁷. The Commission also notes that the Parties claim that there [10-20]% of the market for litho-laminated corrugated cases is supplied by imports, implies that close to [90-100]% of the market is fulfilled by domestic production.
115. Moreover, the market investigation demonstrated that in fact litho-laminated corrugated cases have a wider geographical scope than conventional corrugated cases as the litho-laminated cases use smaller flutes (i.e. there is less air "to be transported") and the products are of a higher value than is the case of conventional packaging.
116. Indeed, transportation costs seem to be a crucial element in the supply. Producers seem to estimate the maximum economically viable transport radius of these products between 400

⁸¹ Submission of DS Smith on United Kingdom heavy duty – triple wall subsegment, dated 9 May 2012.

⁸² Third Parties' non-confidential replies to the Commission's questionnaire on corrugated cases in the United Kingdom, France, Italy and Lithuania, question 11.

⁸³ Third Parties' non-confidential replies to the Commission's questionnaire on corrugated cases in the United Kingdom, France, Italy and Lithuania, question 10.

⁸⁴ According to the Parties, the share of imports on the GB litho-laminated market amounts to [10-20]%.

⁸⁵ According to a customer, the South of the United Kingdom can be supplied from Continental Europe.

⁸⁶ Non-confidential minutes of the conference call with a customer held on 20 April 2012, Non-confidential minutes of the conference call with a competitor held on 25 April 2012.

⁸⁷ Non-confidential minutes of the conference call with a customer held on 19 April 2012.

and 1000km, whereas in order for the 1000km transport to be successfully materialised, the producer should dispose of a structure for the provision of services and a strong supply chain.⁸⁸ There have been also concerns as to the product's sensitivity to humidity and thus to maritime transport which can cause bowing of the packaging.⁸⁹

117. In view of the above, the Commission considers that there are factors which indicate that the market for litho-laminated corrugated packaging could be no broader in scope than the United Kingdom. However, as the proposed remedies address the concerns identified in the litho-laminated segment on the basis of a geographic market restricted to the United Kingdom, and in the absence of concerns in the market investigation relating to this type of packaging in any other Member State, the precise scope of this market can be left open for the purpose of this decision.

III.6.3. Competitive assessment

118. Pre-merger, SCA Packaging was not active in conventional corrugated cases. Therefore there was no horizontal overlap between the Parties in relation to conventional corrugated cases.

119. [...].

Heavy duty corrugated cases

120. A number of third Parties have expressed concerns with respect to heavy duty cases⁹⁰. According to market participants, post-merger, the combined business would hold a very large market share in heavy duty corrugated cases⁹¹.

121. This contrasts with the figures presented in the Form CO according to which the combined entity would have a market share of only [5-10]% in the United Kingdom. The Parties subsequently explained that these market shares corresponded to a segment comprising all corrugated case above 800g/sqm.⁹² They estimated that they have a combined share of [40-50]% on the market for triple wall corrugated cases (DS Smith [10-20]%, SCA Packaging [30-40]%). They consider that Smurfit Kappa and Logson Group account for over [10-20]% of United Kingdom triple-wall cases sales in the United Kingdom and that more than 20 competitors exist in this market.

122. An important competitor estimates its market share to be limited at 5-10%⁹³. Another competitor, mentioned by the Parties as an alternative in the Form CO, explained that it has now only a minor presence in heavy duty cases and depends on the Parties for its sourcing of heavy duty sheets⁹⁴.

⁸⁸ Non-confidential minutes of the conference call with a competitor held on 20 April 2012.

⁸⁹ Non-confidential minutes of the conference call with a customer held on 19 April 2012.

⁹⁰ Third Parties' non-confidential replies to the Commission's questionnaire on corrugated cases in the United Kingdom, France, Italy and Lithuania, question 79.

⁹¹ *ibid.*

⁹² Submission of DS Smith on United Kingdom heavy duty – triple wall subsegment, dated 9 May 2012.

⁹³ Non-confidential email of Smurfit Kappa of 25 April 2012.

⁹⁴ Non-confidential minutes of the conference call with a competitor held on 3 May 2012.

123. Several of the smaller heavy duty case producers or resellers in the United Kingdom which were identified by the Parties as credible alternatives have expressed concerns. They explain that they are entirely dependent for the sourcing of heavy duty sheets on the Parties with which they compete on the downstream market for heavy duty cases⁹⁵. They indicated that such access could be restricted as a result of the transaction thereby putting them at a significant commercial disadvantage⁹⁶.
124. As a result, several respondents to the market investigation expressed concerns that the merger could lead to higher prices and reduced choice in the market for heavy duty cases⁹⁷. The market investigation also showed in that respect that countervailing buyer power is much more limited in the heavy duty segment than for conventional corrugated cases due to the limited number of credible alternatives available⁹⁸.
125. In addition, [...] mentioned the risk that it would be left with only one option in relation to heavy duty sheets and would thus risk being foreclosed by the merged entity. As a result, it considered that its ability to supply customers who buy both conventional and heavy duty boxes would be restricted⁹⁹.
126. Given the very strong position of the merged entity in the market for heavy duty corrugated cases in the United Kingdom, the high concentration level of the market, as well as the substantiated customer concerns, the Commission considers that the transaction raises serious doubts as to its compatibility with the internal market in relation to heavy duty corrugated cases in the United Kingdom.

Off-set printed litho-laminated corrugated packaging

127. The Parties submit that even if litho-laminated is considered to form a separate product market, no competition concerns arise with regard to the United Kingdom market.
128. First, the Parties submit that no competition concerns would arise either in relation to litho-laminated cases if they are considered as part of the overall United Kingdom market for the supply of corrugated cases, or in case of a narrower product market definition in relation to printed cases in the United Kingdom. The Parties also submit that no competition concerns would arise either for printed cases or litho-laminated cases under an EEA-wide definition.
129. With regard to the supply of litho-laminated cases in the United Kingdom, the Parties submit that their combined market share would amount to [20-30]%. Moreover, they also argue that

⁹⁵ Third Parties' non-confidential replies to the Commission's questionnaire on corrugated sheets in the United Kingdom and in Lithuania, question 44; third Parties' non confidential replies to the Commission's questionnaire on vertical relationships, questions 5, 8, 9, 10 and 44. Non-confidential minutes of the conference call with a competitor held on 27 April 2012.

⁹⁶ Third Parties' non-confidential replies to the Commission's questionnaire on vertical relationships, questions 9, 10 and 44. Non-confidential minutes of the conference call with a competitor held on 27 April 2012.

⁹⁷ Third Parties' non-confidential replies to the Commission's questionnaire on corrugated cases in the United Kingdom, France, Italy and Lithuania, question 79. Third Parties' non-confidential replies to the Commission's questionnaire on vertical relationships, question 44.

⁹⁸ Third Parties' non-confidential replies to the Commission's questionnaire on corrugated cases in the United Kingdom, France, Italy and Lithuania, question 30.

⁹⁹ Third Parties' non-confidential replies to the Commission's questionnaire on vertical relationships, question 44.

there is a large number of alternative sources of supply that exist for customers in the United Kingdom, including imports and non-integrated laminators.

130. The Parties also submit that there are no barriers to entry, and that there is spare capacity on the market, especially outside the United Kingdom. Furthermore, the Parties refer to significant buyer power, their top customers being mainly large FMCG companies.
131. The main concerns during the market investigation with regard to the supply of litho-laminated cases emerged in relation to the Parties' position on the United Kingdom market as it was suggested by several respondents that that the merged entity would be the only credible supplier of high quality litho-laminated cases in the United Kingdom.¹⁰⁰
132. In fact, contrary to the above claims of the Parties, several litho-laminated packaging customers considered the Parties as the two main suppliers of litho-laminated corrugated packaging which can deliver certain quantities and qualities. As the Parties also recognise, after the merger, there would be only one smaller remaining player (CRP) with local integrating production facilities apart from the Parties. Although there are also importers supplying into the United Kingdom market and some small independent "laminators" as also mentioned by the Parties, these market players, however, are not necessarily considered as credible alternatives by customers.
133. Moreover, the availability, timeliness and reliability of supply are very important factors for customers, hence they prefer to multisource on the one hand and to choose suppliers which are located in relative geographic proximity on the other hand.¹⁰¹
134. The United Kingdom market shares for litho-laminated (including independent laminators and imports) presented by the Parties in fact demonstrate that the merged entity would have an estimated market share of [20-30]%¹⁰², the second biggest player CRP [5-10]% and the third biggest, Swanline, [5-10]%¹⁰³. According to the Parties' estimate, the rest of the market is extremely fragmented with none of the smaller market players having a market share exceeding [0-5]% (Chesapeake [0-5]%, Mayr-Melnhof [0-5]%, Weedon [0-5]%, OPL [0-5]%, Charapak [0-5]%, other converters [20-30]%, other laminators [10-20]%, other imports [10-20]% and "other" [5-10]%).
135. As regards the Parties' claim that there are no barriers to entry, the market investigation showed that the necessary technology is investment intensive and that apart from the Parties, there is only one smaller supplier which has invested in the integrated technology. Concerning the Parties' claim that there is sufficient spare capacity in the United Kingdom, and especially Continental Europe, this is in contrast to the customers' reaction who clearly formulated their concerns on the Parties' market position after the merger.

¹⁰⁰ Non-confidential minutes of the conference call with a customer held on 19 April 2012, Non-confidential minutes of the conference call with a customer held on 20 April 2012.

¹⁰¹ A customer, for instance is concerned that in other regions of the country, especially the North, the merged entity will remain the only supplier. Non-confidential minutes of a conference call with a customer held on 20 April 2012.

¹⁰² DS Smith [10-20]%, SCA Packaging [10-20]%.

¹⁰³ A UK competitor, on the other hand, estimated that the Parties' combined market share after the merger would be at around [40-50]%, whereas the second biggest competitor would be at around [10-20]%. Non-confidential minutes of a conference call with a competitor held on 24 April 2012.

136. Given the very strong position of the merged entity in the market for off-set printed litho-laminated corrugated packaging in the United Kingdom, the high concentration level of the market, as well as the substantiated customer concerns, the Commission considers that the transaction raises serious doubts as to its compatibility with the internal market in relation to off-set printed litho-laminated corrugated packaging in the United Kingdom.

III.7. Corrugated cases in France

III.7.1. The relevant product market

137. As explained above (Section III.6.1) with respect to the United Kingdom, the market investigation confirmed that corrugated cases constitute a relevant product market. There appears to be strong indications that there are separate relevant product markets for the commercialisation of heavy duty cases and for off-set printed litho-laminated corrugated packaging. However, as the proposed remedies address the concerns in the corrugated case segment in France, and specifically for Brittany, the precise scope of the relevant product market can be left open given that no concerns would arise in the case of a narrower market encompassing heavy duty and litho-laminated for which the Parties do not have any overlaps in Brittany.

III.7.2. The relevant geographic market

138. The market test respondents indicated that the geographic market should be assessed on a narrower basis than the ones previously considered by the Commission and various National Competition Authorities ("NCA").
139. In previous Commission and NCA decisions (for example of the OFT and French Autorité de la Concurrence), the geographic market for corrugated cases has been considered at national and regional level (200-300 km radius around the relevant production sites)¹⁰⁴.
140. With respect to France, in *DS Smith/Otor*, the French Autorité de la Concurrence considered the competitive effects in the market for corrugated cases at both the national level and the French regional level. With regard to regional overlaps, the French NCA based its analysis on the five national divisions adopted by ONDEF (the professional organisation of French packaging manufacturers), i.e., (i) North France; (ii) East France; (iii) West France; (iv) South East France; and (v) South West France¹⁰⁵.
141. The broad majority of respondents to the market investigation indicated that the relevant geographic market for the supply of corrugated cases should be in a radius of 200-300 km from the relevant production sites due to the relatively high transport costs and the fact that customers need to be delivered on a daily basis. With regard to France, the Parties' main competitors even put forward shorter distances. Smurfit Kappa, for example, submits that the average distance to French customers is 130 km¹⁰⁶. [...] considers the proximity of the corrugated case supplier to the customer is important because of the increased transports costs if a customer is located further afield. In addition, a key factor in meeting a customer's

104 See Case COMP/M.3935 Jefferson Smurfit/Kappa.

105 Autorité de la Concurrence, Décision n° 10-DCC-99 du 23 août 2010 relative à la prise de contrôle exclusif des sociétés Otor Finance SA et Otor SA par la société DS Smith Plc para. 25.

106 Smurfit Kappa and other third Parties' non-confidential replies to the Commission's questionnaire on corrugated cases in the United Kingdom, France, Italy and Lithuania, question 14.

demand is the speed with which a supplier is able to fulfil an order (i.e. meeting orders placed with short lead times), which is easier if the customer is located close to the supplier. In France, [...] "*considers local preferences (i.e. based on the types of corrugated cases that are available in a particular region) are of greater relevance than national preferences*".¹⁰⁷

142. As the remedies proposed address the concerns arising in Brittany by removing the production overlap between the Parties, the precise scope of the geographic market, be it national, regional (Western France) or sub-regional (Brittany) can ultimately be left open.

III.7.3. Competitive assessment

143. With regard to **France**, the Parties have a combined market share of [20-30]%. Indeed the Commission notes that a market share amounting to [20-30]% and the present HHI data¹⁰⁸ indicate that the merger does not in principle raise any competition concerns. This indication is confirmed by the market investigation showing that there are numerous strong competitors¹⁰⁹ and, according to the Parties, there is substantial countervailing buyer power and that barriers to entry are low.
144. In view of the merged entity's relatively moderate market shares on a national basis, the presence of a number of strong competitors and in the absence of concerns from customers, the Commission considers that the proposed transaction does not raise serious doubts as regards the French market for the supply of corrugated cases.
145. With regard to possible regional markets in France, which were considered by the Autorité de la Concurrence in *DS Smith/Otor*, the proposed transaction gives rise to horizontally affected markets in the regions "North" (combined market share: [20-30]%), "East" (combined market share: [20-30]%), and "West" (combined market share: [20-30]%).¹¹⁰ In the "North" region, however the increment is only [0-5]% and there is strong competition from other market players.¹¹¹ In the "East" region the increment is only [0-5]% and there is strong competition from competitors.¹¹² The delta HHI of [100-200] confirms that the Transaction will not substantially increase concentration in this segment.
146. In view of the merged entity's relatively moderate market shares in the French regions "North" and "East", the presence of a number of strong competitors and in the absence of concerns from customers, the Commission considers that the proposed transaction does not raise serious doubts as regards the French regional markets "North" and "East" for the supply of corrugated cases.

¹⁰⁷ [...] non-confidential replies to the Commission's questionnaire on corrugated cases in the United Kingdom, France, Italy and Lithuania, question 15.

¹⁰⁸ Pre-merger HHI: [1200-1300], post-merger HHI [1300-1400], HHI delta: [100-200].

¹⁰⁹ Smurfit Kappa ([20-30]%), SAICA ([10-20]%), Ondulys ([5-10]%), International Paper ([5-10]%), Europac ([5-10]%), Emin Leydier ([5-10]%), Rossmann ([5-10]%), Seyfert Packaging ([0-5]%), Allard ([0-5]%), Gondardennes ([0-5]%), Lacaux Frères ([0-5]%) and Suforem ([0-5]%).

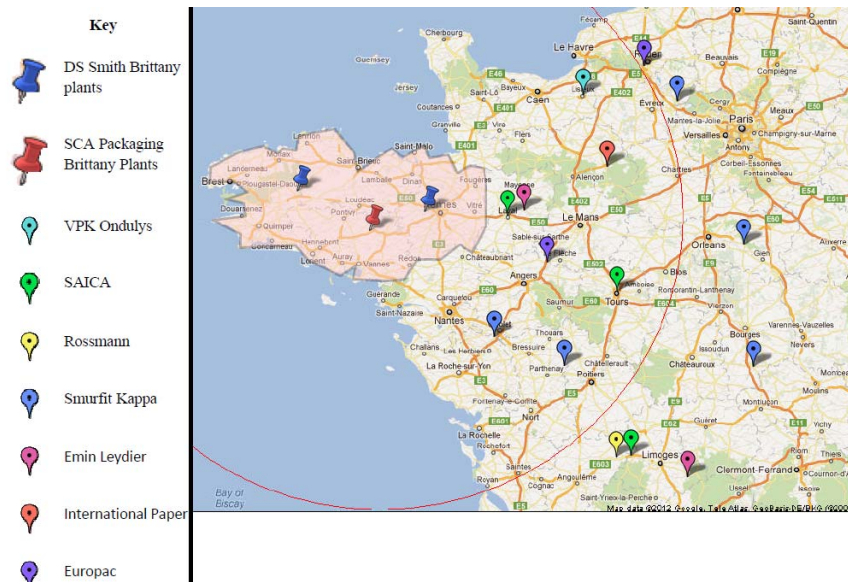
¹¹⁰ The combined market share of the Parties in the regions "South East" ([10-20]%), "South West" ([10-20]%) do not give rise to horizontally affected markets.

¹¹¹ Smurfit Kappa ([10-20]%), Ondulys ([10-20]%), International Paper ([5-10]%), Europac ([5-10]%), Gondardennes ([5-10]%), SAICA ([5-10]%), Rossmann ([5-10]%) and Emin Leydier ([5-10]%).

¹¹² Smurfit Kappa ([20-30]%), International Paper ([5-10]%), SAICA ([5-10]%), Seyfert Packaging ([5-10]%) Rossmann ([5-10]%).

147. On the other hand, the Parties submitted in the Form CO that in the **West of France**, DS Smith has a market share of [10-20]% and SCA Packaging has a market share of [10-20]%, giving a combined market share of [20-30]%. The merged entity would therefore remain behind the first player, Smurfit Kappa ([30-40]%), and would continue to face important competition from Europac ([10-20]%), Ondulys ([10-20]%), SAICA ([5-10]%), International Paper ([5-10]%) and Emin Leydier ([5-10]%).
148. However, the market investigation did not support the view of the Parties. Indeed, many of the respondents (competitors as well as customers) raised concerns for Western France and more specifically for Brittany where the Parties would own the only three manufacturing plants of corrugated cases operating in that region.
149. For instance, for a customer's plant operating near Brest, DS Smith plants in Carhaix-Plouguer and L'Hermitage would be respectively located at [0-100]km and [200-300]km from this customer while the SCA plant in Caradec would be situated at some [100-200] km distance. In comparison, the Parties' main competitors' plants are located between [300-400] km (SAICA-Laval) and [300-400] km (International Paper & Smurfit Kappa) from this customer.

Figure 4: Parties and competitors' plants location in Western France



150. As noted in the Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings (the "Horizontal Merger Guidelines")¹¹³, *"customers of the merging Parties may have difficulties switching to other suppliers because there are few alternative suppliers or because they face substantial switching costs. Such customers are particularly vulnerable to price increases. The merger may affect these customers' ability to protect themselves against price increases"*.
151. Indeed, several customers located in Brittany¹¹⁴ argue that the distances from the Parties' competitors are too great to ensure security of supply and competitive prices. In addition,

¹¹³ Official Journal C 31, 5.2.2004, p. 5-18, recital 31.

¹¹⁴ Third party non-confidential replies to the Commission's questionnaire on corrugated cases in the United Kingdom, France, Italy and Lithuania, question 10 to 15.

most of the customers active in Brittany are indeed mainly sourcing from the two merging firms as a means of obtaining competitive prices¹¹⁵. Therefore, post-merger, it is very likely that they could not object to price increases from the merged entity.

152. The Parties' competitors confirmed this view and recognize that it is difficult for them to supply Brittany at similar conditions to the Parties. One of the Parties' competitors stated: *"The proposed transaction will result in a high concentration of corrugated case manufacturers in Western France (Bretagne) [...] On a narrow basis (based on the Bretagne-Bretagne region) the Parties will account for more than [80-90]% of the supply of corrugated cases in the region. In the wider Bretagne region the Parties will have more than [70-80]% of the supply of corrugated cases"*¹¹⁶.
153. In a specific submission¹¹⁷, the Parties submit that (1) relatively modest transport cost differentials will not deter third Parties from competitively supplying customers in Brittany at pre-merger prices; and (2) the actual supply in 2011 from the DS Smith Brittany plants to destinations well beyond Brittany, should, when taken together, be sufficient to alleviate any credible possibility of "serious doubts" in relation to a hypothetical geographic market limited to this one region within Western France.
154. The notifying party argues that its average transportation costs for its plants located in Brittany are as follows: [...]. This would demonstrate that competitors have scope for reducing their margins([...]).
155. DS Smith also explained that one of DS Smith's plants in Brittany (in Carhaix-Plouguer) delivered [...] tonnes to a customer located at a distance of [...] km from the plant, [...] tonnes to a customer located at [...] km and [...] tonnes to a customer located at [...] km. Thus, according to the notifying party, it would not be uncommon for deliveries to be made well in excess of [200-300] km from the plant, and in some cases up to [600-700] km, even where the customers are located in closer proximity to competitors' plants.
156. First, the figures provided by the Parties clearly demonstrate that the transport cost would at least double between delivery distances of 100 and 300 km. However, the majority of customers who replied to the market investigation pay normally 5% as an average transport cost¹¹⁸, therefore it would double their transport cost to be supplied from a competitor located at 300 km. It corroborates the result of the market investigation which indicated as average transport distances 100-200 km for corrugated cases and even less with regards Brittany (around 100-150 km)¹¹⁹. One of the customers active in Brittany mentioned *"Geographic proximity is crucial to us, we have limited stock capacities, we therefore depend on the quick*

¹¹⁵ Third party non-confidential replies to the Commission's questionnaire on corrugated cases in the United Kingdom, France, Italy and Lithuania and non-confidential minutes of the conference call with a customer held on 19 April 2012.

¹¹⁶ Third party non-confidential replies to the Commission's questionnaire on corrugated cases in the United Kingdom, France, Italy and Lithuania, question 79.

¹¹⁷ DS Smith Submission from 3 May 2012 "Submission on Brittany Transport Costs".

¹¹⁸ Third Parties' non-confidential replies to the Commission's questionnaire on corrugated cases in the United Kingdom, France, Italy and Lithuania, question 13 and 14.

¹¹⁹ Third Parties' non-confidential replies to the Commission's questionnaire on corrugated cases in the United Kingdom, France, Italy and Lithuania, question 13 and 14.

*reaction and proximity of our suppliers...due to fuel prices and transport taxes, other suppliers are not able to provide similar prices than the Parties"*¹²⁰.

157. Second, as explained before, the other suppliers confirmed the importance of proximity and do not mention that they would be as competitive in Brittany. One of the Parties' main competitors in Brittany underlined "*Supplying Finistere from our Nantes plants (Getigne or Mortagne) at 450km will reduce our ability to have a good service level, more importantly our cost disadvantage in terms of transport will be about 5 % (our prices to this region will be 5% higher than the local supplier DSS/SCA)*"¹²¹.
158. Third, the volume that the Parties provide to demonstrate that it is not uncommon to deliver to customers at distances beyond 300 km have to be analysed in the light of the total volume of corrugated cases that DS Smith sells from this plant. According to the notifying party, it produced [...] tonnes of corrugated cases¹²² at its Carhaix-Plouguez's plant in 2011. Therefore the volume delivered to these three customers located at more than 300 km ([...] tonnes) represent around [...] % of the total volume sold by DS Smith's plants located in Carhaix. In consequence, it cannot be considered as a common practice to supply customers located at more than 300 km but rather as an exception.
159. Finally, several of the Parties' major customers active in Brittany expressed strong concerns relating to the proposed transaction. One customer explained how it had tried to establish contacts with an alternative supplier to the Parties but was unable to receive any assurance from the alternative supplier that its prices would be similar to those of the parties pre-merger due to increased transport distances. This customer noted that "*The corrugated case manufacturers active in Bretagne are DS Smith (Carhaix) and SCA (Caradec). Tomorrow, they will be only one entity; there will not be any competition at all. The corrugated cases have to be produced locally and the transport costs do not allow to be supplied from more than 250 km and there is no other competitor in that perimeter....this transaction brings deep concerns in Bretagne, Smurfit being located at more than 300 km*"¹²³. Another customer was also concerned about the risk of increased prices as a result of the proposed transaction¹²⁴.

III.7.4. Conclusion

160. Given the very strong position of the merged entity in the market for corrugated cases in Brittany, the high concentration level of the market, as well as the substantiated customer concerns, the Commission considers that the transaction raises serious doubts as to its compatibility with the internal market in relation to corrugated cases in Brittany. However the proposed transaction does not raise serious doubts in other regions of France.

III.8. Vertical relations

161. The proposed transaction gives rise to a number of vertical relationships between the Parties with regard to (i) their upstream activities in the supply of recovered paper in the United

¹²⁰ See non-confidential minutes of the conference call with a customer held on 11 May 2012.

¹²¹ See a competitor's reply to additional questions, 30 April 2012.

¹²² See Form CO table 29.

¹²³ See non-confidential minutes of the conference call with a customer held on 19 April 2012.

¹²⁴ A customer's non-confidential replies to the Commission's questionnaire on corrugated cases in the United Kingdom, France, Italy and Lithuania, question 79.

Kingdom and their downstream activity in CCM; (ii) their upstream activities in CCM and (a) their downstream activity in corrugated sheet in the United Kingdom and Lithuania and (b) their activities in corrugated cases in Lithuania, Denmark, Finland, Sweden, West and East of France¹²⁵; (iii) their upstream activities in corrugated sheet in Lithuania and their downstream activity in corrugated cases in Lithuania.

162. The Parties' combined market share is higher than 25%¹²⁶ either in the upstream or downstream market in the following vertical relationships.

III.8.1. Supply of recovered paper in the United Kingdom / CCM

163. With regard to the supply of recovered paper, in case the United Kingdom is considered to be a separate market the combined share of the Parties for all grades would amount to [30-40]% and for medium grades [30-40]%.
164. Nevertheless the Parties argue that there the merged entity would neither have the ability nor the incentive to engage in customer foreclosure, in particular as in the downstream EEA market (CCM) the Parties' overall combined market share is [5-10]%, while for testliner it is [5-10]%¹²⁷. A large majority of respondents to the market investigation endorsed the Parties' arguments as they confirmed that the transaction would not deprive them of access to CCM customers¹²⁸.
165. As regards input foreclosure, the Parties submit that the supply of recovered paper is fiercely competitive with substantial cross border trade flows and even if the supply of recovered paper is considered to be a national market, CCM competitors would have access to other sources. Moreover the Parties argue that it is easy to switch suppliers and multi-sourcing is standard practice. Finally, there is an excess supply of recovered paper in the United Kingdom and large volumes are being exported to other EU countries and Asia. In addition, the Parties submit that there would be no incentive to engage in input foreclosure, especially as in the downstream CCM EEA market their combined market share is [5-10]%.
166. The respondents to the market investigation overwhelmingly support the view that, post transaction, a sufficient number of competitors will allow recovered paper customers to find

¹²⁵ Although Denmark ([30-40]%), Finland ([20-30]%), Sweden ([20-30]%) are not overlapping markets in terms of production or sales between the merging Parties, SCA Packaging's market share exceeds 25% and as such they give rise to a vertical relationship between these activities and the Parties' upstream activities in the supply of CCM. The increment is [0-5]% for all three countries. CCM suppliers would therefore be able to supply a sufficient customer base in those markets. As regards the merged entity's incentive to engage in any foreclosure strategy, the Parties submit that it represents only a fraction of demand in the EEA-wide CCM market. With regard to East and West of France, Parties' market shares are likely to be superior to [20-30]%. However, as the merged entity's market share is below the presumptive safe-harbour of 30% and the increment in market share is limited to [0-5]%, this vertical relationship is unlikely to raise concerns. Finally if a geographic market for Brittany was considered (see section on "Corrugated cases in Brittany), market shares upstream in CCM would still be very low ([5-10]%) while market shares upstream in corrugated cases would be very high. However, as the proposed remedies address the concerns with regard to corrugated sheet and cases in Brittany, there is no need to proceed to a detailed competitive assessment.

¹²⁶ In Denmark the Parties combined market share is [30-40]%, however as DS Smith is not active in Denmark, the increment is [0-5]%.

¹²⁷ On a hypothetical United Kingdom geographic market for CCM, Parties' shares would amount to [10-20]% for CCM and [10-20]% in testliner.

¹²⁸ Third Parties' non-confidential replies to the Commission's questionnaire on vertical relationships, question 10.

alternatives and possibly to switch to alternative suppliers. Indeed, out of the Parties' current customers, a very broad majority indicated that, in case the merged entity would stop supplying them with recovered paper, they would be easily able to find alternative suppliers such as Smurfit Kappa, SAICA, Sunion, Ribble, Cepac, Rigid, Mondi, Palm or Europac¹²⁹.

167. The proposed transaction therefore does not raise serious doubts as regards the vertical link between the activities of the Parties in the market for the supply of recovered paper in the United Kingdom and their downstream activities in CCM.

III.8.2. CCM / Corrugated sheet in the United Kingdom

168. According to the Parties, their combined market shares are [20-30]% for corrugated sheet in the United Kingdom. Further investigations have shown that Parties market shares should rather be between [30-40]% in corrugated sheet.

169. In any event, the Parties submit that, with regard to potential customer foreclosure, their combined market share is quite low and the increment only [0-5]% and thus the proposed transaction does not increase the Parties' ability to foreclose competing CCM suppliers from access to a "must have" customer on the relevant downstream market. The market investigation has confirmed the absence of SCA Packaging on the conventional corrugated packaging market in the United Kingdom¹³⁰ which should represent more than 90% of the total corrugated packaging market. Therefore, the transaction will indeed hardly modify the market shares of DS Smith in corrugated sheet in the United Kingdom.

170. Moreover, CCM suppliers would be able to compete to supply customers other than the Parties in the United Kingdom corrugated sheet market¹³¹. The Parties also emphasise the lack of incentive to engage in such a strategy as the Parties' CCM demand represents only a fraction of demand in the EEA-wide CCM market. A broad majority of respondents stated in the market investigation that if the merged entity were to stop purchasing CCM from them, they would be able to find alternative customers. As stated by a CCM provider: *"the value of purchases of CCM in the EEA by each of DS Smith and SCA Packaging from [...] are low, and there are a number of alternative customers"*¹³².

171. Finally, with regard to the input foreclosure, the Parties position in the EEA is rather small ([5-10]%) and is not indicative of a potential input foreclosure. Other important CCM suppliers are active in the EEA such as Smurfit Kappa ([10-20]%), SAICA ([5-10]%), Jass ([5-10]%) Mondi ([5-10]%), Prinzhorn ([5-10]%). As stated by a CCM customer, *"there is plenty of competition for the supply of CMM (sic) to the United Kingdom. Over recent years additional Mills and competitors have been added to this market"*¹³³.

¹²⁹ Third Parties' non-confidential replies to the Commission's questionnaire on vertical relationships, question 6, 7, 8 and 9.

¹³⁰ The conventional corrugated packaging exclude is understood by the business as excluding the heavy duty segment and other speciality segments such as the litho-laminated one. [...]

¹³¹ Smurfit Kappa ([20-30]%), SAICA ([10-20]%), Logson Group ([5-10]%), VPK/Rigid ([5-10]%), Cepac ([0-5]%), Encase ([0-5]%), Prowell ([0-5]%) and TRM ([0-5]%).

¹³² Third party non-confidential reply to the Commission's questionnaire on vertical relationships, question 13.

¹³³ Third party non-confidential reply to the Commission's questionnaire on vertical relationships, question 13.

172. The proposed transaction therefore does not raise serious doubts as regards the vertical link between the activities of the Parties in the market for CCM and their downstream activities in corrugated sheet in the United Kingdom.

III.8.3. CCM / corrugated sheets and supply of corrugated sheets / cases in Lithuania

173. The Parties' combined market share is [30-40]% for both corrugated sheets and corrugated cases in Lithuania, DS Smith having no overlap in production but accounting for approximately [0-5]% of the market on the basis of imports from Poland.

174. The Parties submit that, with regard to potential customer foreclosure in the CCM / corrugated sheets/corrugated cases downstream market, the increment is only [0-5]% in the corrugated sheets/cases market and as such does not increase DS Smith's ability to foreclose CCM suppliers from customers (sheet producers, who are often vertically integrated anyway). They further argue that rival sheet/cases suppliers will still have two-thirds of the cases market, and that in any case most of the competitors in both markets are vertically integrated. In addition, as regards the merged entity's incentive to engage in any foreclosure strategy, the Parties submit that the merged entity represents only a fraction of demand in the EEA-wide CCM market.

175. The majority of CCM suppliers who replied to the market investigation and who are currently selling CCM to the Parties underlined that they would be able to find alternative customers if the merged entity were to stop purchasing from them¹³⁴. In addition, all respondents argued they would not be deprived of access to CCM as a result of the proposed transaction¹³⁵.

176. The proposed transaction therefore does not raise serious doubts as regards the vertical link between the activities of the Parties in the market for CCM and their downstream activities in corrugated sheets in Lithuania.

177. With regard to input foreclosure of sheets to corrugated cases, the Parties repeat that the increment is only [0-5]% in the corrugated sheets market and that rival case producers will still be able to source merchant supply from around two-thirds of the Lithuanian sheet market. Likewise, they argue that rivals are mainly vertically integrated companies. The respondents to the market investigation who indicated they currently purchase corrugated sheet in Lithuania from SCA and/or DS Smith argued that they could find alternative suppliers if the Parties were to stop selling them corrugated sheet¹³⁶.

178. The proposed transaction therefore does not raise serious doubts as regards the vertical link between the activities of the Parties in the market for corrugated sheet in Lithuania and their downstream activities in corrugated cases in Lithuania.

¹³⁴ Third Parties' non-confidential replies to the Commission's questionnaire on vertical relationships, question 17, 18, 31 and 32.

¹³⁵ Third Parties' non-confidential replies to the Commission's questionnaire on vertical relationships, question 21.

¹³⁶ Third Parties' non-confidential replies to the Commission's questionnaire on vertical relationships, question 36, 37 and 38.

III.8.4. CCM / Corrugated cases in Denmark, Finland, Sweden and East of France

179. Although Denmark, Finland, Sweden are not overlapping markets in terms of production or sales between the merging Parties, SCA Packaging's market share in these Member States exceeds 25% and as such they give rise to a vertical relationship between these activities and the Parties' upstream activities in the supply of CCM.
180. The Parties submit that, with regard to potential customer foreclosure, their combined market share is less than [...] % for Finland ([20-30]%) and Sweden ([20-30]%), and reaches [30-40] % for Denmark. However, the increment is below [0-5] % for all three countries. CCM suppliers would therefore be able to supply a sufficient customer base in those markets. As regards the merged entity's incentive to engage in any foreclosure strategy, the Parties submit that it represents only a fraction of demand in the EEA-wide CCM market.
181. The Parties' combined market share for corrugated cases in the East of France region at [20-30] % is above [20-30] %. Hence, if the corrugated case market were considered to be regional, this market and the upstream market for the supply of CCM would be vertically affected. However, as the merged entity's market share is below the presumptive safe-harbour of 30% and the increment in market share is limited to [0-5] %, this vertical relationship is not considered to raise concerns. Indeed, no substantiated concerns were raised in the course of the market investigation in relation to this vertical link or any other vertical links mentioned in this section.
182. The proposed transaction therefore does not raise serious doubts as regards the vertical link between the activities of the Parties in the market for CCM and their downstream activities in corrugated cases in Denmark, Finland, Sweden and the East of France.

III.9. The UK and Irish joint venture between SCA Packaging and SAICA

183. During the course of the market investigation, the Commission's attention was drawn to the existence of a Joint Venture agreement ("JV agreement") concluded between SCA Packaging and the Spanish company Sociedad Anonima Industrias Celulosa Aragonesa ("SAICA")¹³⁷. SAICA is a direct competitor of SCA Packaging and DS Smith in the corrugated packaging industry in the EEA. The JV agreement¹³⁸ concerns the United Kingdom and Ireland.
184. According to the provisions of the JV agreement, SCA Packaging benefits from an option to buy back a stake in the conventional corrugated business (i.e. 45% in the container board material (i.e. CCM) business and 55% equity interest in conventional corrugated sheets and cases). [...].
185. [...].

¹³⁷ This JV agreement dates back to 2008 when SCA Packaging disposed of certain corrugated assets in the United Kingdom to SAICA. On 18 June 2008, SCA Packaging and SAICA concluded an Asset and Purchase Agreement according to which SCA Packaging disposed of its CCM, corrugated sheets and cases assets located in the United Kingdom and Ireland to SAICA. SCA Packaging retained ownership of its assets in heavy duty corrugated board and litho laminated corrugated board business (also referred to as the "non-conventional corrugated board business"). This transaction was cleared by the Office of Fair Trading on 28 August 2008: case ME/3733/08, SAICA/SCA Packaging, 28 Aug 2008.
See: http://www.offt.gov.uk/shared_offt/mergers_ea02/2008/SAICA.pdf

¹³⁸ [...].

186. In addition, the JV agreement contains a number of restrictions including a non-compete clause. [...].
187. [...].
188. SAICA has argued that [...].

IV. REMEDIES

IV.1. The remedy package

189. In order to render the concentration compatible with the internal market, on 30 April 2012 the undertakings concerned have modified the notified concentration by entering into the following commitments, which are annexed to this decision and form an integral part thereof.

190. These remedy package consists of a full divestiture of the following assets (altogether "the Divestment Businesses") to one or more suitable purchasers:

- Heavy duty sheet/cases in the United Kingdom: DS Smith proposes at its sole discretion either (a) the divestment of all facilities and related assets of its plant located in Monmouth, Wales including all tangible and intangible assets, contracts, customers and personnel attached thereto or (b) the divestment of all facilities and related assets of SCA Packaging's plant located in Hinckley, England.

In the case of DS Smith's Monmouth plant, the divestiture would not include DS Smith's PSM Trading business which proposes packaging solutions to certain customers or DS Smith's specialty pallets products business which is located on the same site. In the case of SCA's Hinckley plant, the divestiture would not include SCA's Packaging Delta trading business which also proposes various packaging solutions to certain customers.

- Litho-laminated in the United Kingdom: DS Smith proposes to divest all facilities and related assets of SCA Darlington which is SCA's only United Kingdom plant that has an integrated laminator/corrugator capable of producing litho-laminated corrugated sheet.
- Corrugated sheet and case in Brittany: DS Smith proposes to divest all facilities and related assets of SCA Caradec.

191. The Divestment Businesses include:

- all tangible and intangible assets (including intellectual property rights, save as set out in the Schedules), which contribute to the current operation or are necessary to ensure the viability and competitiveness of the Divestment Businesses;
- all licences, permits and authorisations issued by any governmental organisation exclusively for the benefit of the Divestment Businesses;
- all existing contracts, leases, commitments and customer orders of the Divestment Businesses; all customer, credit and other records of the Divestment Businesses (items referred to under (a) to (c) hereinafter collectively referred to as Assets);
- the Personnel; and
- at the request of the Purchaser(s), the benefit, for a transitional period of up to six months after Closing and on terms and conditions equivalent to those at present afforded to the Divestment Businesses, of all current arrangements under which SCA Packaging or

Affiliated Undertakings supply products or services to the Divestment Businesses, as detailed in the Schedules, unless otherwise agreed with the Purchaser.

192. In order to ensure the immediate restoration of effective competition in the event of the divestment of any or all of the Divestment Businesses, the Purchaser of each Divestment Business, in order to be approved by the Commission, must:
- be independent of and unconnected to the Parties;
 - have the financial resources, proven expertise and incentive to maintain and develop the Divestment Businesses as a viable and active competitive force in competition with DS Smith and other competitors; and
 - neither be likely to create, in the light of the information available to the Commission, prima facie competition concerns nor give rise to a risk that the implementation of the Commitments will be delayed, and must, in particular, reasonably be expected to obtain all necessary approvals from the relevant regulatory authorities for the acquisition of the Divestment Businesses.
193. Finally, in order to maintain the structural effect of the Commitments, DS Smith shall, for a period of 10 years after the Effective Date, not acquire direct or indirect influence over the whole or part of the Divestment Businesses, unless the Commission has previously found that the structure of the market.
194. In addition to the divestitures noted above, [...].
195. The proposed remedies were market tested by the Commission.

IV.2. Assessment of the proposed remedies

IV.2.1. Heavy duty sheet/cases in the United Kingdom - Divestiture of the Monmouth or Hinckley plant

196. The divestiture offered addresses all the concerns identified in the heavy duty corrugated packaging segment in the United Kingdom by removing the entire overlap between the Parties. Indeed, Monmouth and Hinckley are the Parties' only United Kingdom plants that have a corrugator capable of producing triple wall sheet (i.e. a corrugator with three single facers)¹³⁹.
197. The wide majority of the respondents to the market test were positive with respect to the suitability of this commitment to remove the competition concerns with regard to the heavy duty corrugated packaging segment¹⁴⁰. A broad majority of respondents did not see any difficulties with DS Smith having sole discretion to divest either the Monmouth or Hinckley

¹³⁹ DS Smith has also a plant in Burwell that supplies triple wall cases. However, Burwell is a sheet plant that converts bought in corrugated sheet into corrugated cases. The Burwell plant does not have a corrugator with three single facers that is capable of producing triple wall sheet. Rather, its activities are limited to the conversion of triple wall sheet, produced at DS Smith's Monmouth plant, into triple wall cases (similar to the large number of converters active in the United Kingdom market that purchase triple wall sheet from third Parties and convert into cases for sale to third party end-users).

¹⁴⁰ Third Parties' non-confidential replies to the Commission's questionnaire on remedies, question 1.

plant and did not consider that one plant is more appropriate than the other to solve the competitions concerns¹⁴¹.

198. In addition, respondents were of the view that the proposed remedy will attract suitable purchasers¹⁴², is viable and a suitable purchaser can indeed effectively compete for the supply of heavy duty segment in the United Kingdom on a lasting basis¹⁴³. Moreover they also deemed the commitment to be sufficiently clear. A number of respondents also indicated that they would be interested in buying the Monmouth or Hinckley plant¹⁴⁴.
199. On the basis of the above, the Commission concludes that the proposed remedy is sufficient to remove the serious doubts identified on the heavy duty corrugated packaging segment in the United Kingdom.

IV.2.2. Litho-laminated in the United Kingdom - Divestiture of the SCA Darlington plant

200. The divestiture offered addresses all the competition concerns in the litho-laminated market by removing the entire overlap.
201. In fact, the vast majority of the respondents to the market test were positive with respect to the suitability of this commitment to remove the competition concerns with regard to the litho-laminated segment in the United Kingdom. In addition, respondents were of the view that the proposed remedy would attract suitable purchasers, is viable and a suitable purchaser can indeed effectively compete for the supply of litho-laminated cases in the United Kingdom on a lasting basis. Moreover they also deemed the commitment to be sufficiently clear. A number of respondents also expressed an interest in buying the SCA Darlington plant.
202. On the basis of the above, the Commission concludes that the proposed remedy is sufficient to remove the serious doubts identified on the United Kingdom litho-laminated corrugated case market.

IV.2.3. Corrugated sheet and case in Brittany: Divestiture of the SCA Caradec plant

203. The divestiture offered addresses all the competition concerns in the corrugated cases market in Brittany by removing the entire overlap, SCA Caradec being the only SCA plant of corrugated cases in Brittany (while DS Smith is active through its plants in Carhaix and L'Hermitage).
204. The majority of the respondents to the market test were positive with respect to the suitability of this commitment to remove the competition concerns with regard to the corrugated case market in Brittany¹⁴⁵. Respondents were also of the view that the proposed remedy would attract suitable purchasers¹⁴⁶, be viable and that a suitable purchaser could indeed effectively

¹⁴¹ Third Parties' non-confidential replies to the Commission's questionnaire on remedies, question 4 & 5.

¹⁴² Third Parties' non-confidential replies to the Commission's questionnaire on remedies, question 14.

¹⁴³ Third Parties' non-confidential replies to the Commission's questionnaire on remedies, question 2.

¹⁴⁴ Third Parties' non-confidential replies to the Commission's questionnaire on remedies, question 17.

¹⁴⁵ Third Parties' non-confidential replies to the Commission's questionnaire on remedies, question 34.

¹⁴⁶ Third Parties' non-confidential replies to the Commission's questionnaire on remedies, question 42.

compete for the supply of corrugated case in Brittany on a lasting basis¹⁴⁷. Moreover they also deemed the commitment to be sufficiently clear¹⁴⁸. A number of respondents also expressed an interest in buying SCA Caradec¹⁴⁹.

205. On the basis of the above, the Commission concludes that the proposed remedy is sufficient to remove the identified serious doubts on the corrugated cases market in Brittany.

IV.2.4. The UK and Irish joint venture between SCA Packaging and SAICA

206. As one of the major competitors in the conventional corrugated sheets and cases markets, SAICA is one of the potential buyers of the divested businesses. The JV agreement does not *per se* prevent SAICA from acquiring the divested businesses. [...].

207. [...].

208. [...].

209. [...].¹⁵⁰ [...].

IV.2.5. Conclusion

210. For the reasons outlined above, the commitments entered into by the undertakings concerned are sufficient to eliminate the serious doubts as to the compatibility of the transaction with the internal market.

211. The commitments in sections B and C of the Commitments submitted by the Parties on 30 April 2012 constitute conditions attached to this decision, as only through full compliance therewith can the structural changes in the relevant markets be achieved. The other commitments set out in the section D and E of the same Commitments constitute obligations, as they concern the implementing steps which are necessary to achieve the modifications sought in a manner compatible with the internal market.

V. CONCLUSION

212. For the above reasons, the Commission has decided not to oppose the notified operation as modified by the commitments and to declare it compatible with the internal market and with the functioning of the EEA Agreement, subject to full compliance with the conditions in sections B and C of the Commitments annexed to the present decision and with the obligations contained in the other sections of the said commitments. This decision is adopted in application of Article 6(1)(b) in conjunction with Article 6(2) of the Merger Regulation.

*For the Commission
(Signed)
Joaquín ALMUNIA
Vice-President*

¹⁴⁷ Third Parties' non-confidential replies to the Commission's questionnaire on remedies, question 35.

¹⁴⁸ Third Parties' non-confidential replies to the Commission's questionnaire on remedies, question 36.

¹⁴⁹ Third Parties' non-confidential replies to the Commission's questionnaire on remedies, question 45.

¹⁵⁰ [...].

By hand and by fax: 00 32 2 296 4301
European Commission – Merger Task Force
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Case M. 6512 – DS Smith and SCA Packaging

COMMITMENTS TO THE EUROPEAN COMMISSION

Pursuant to Article 6(2), of Council Regulation (EEC) No. 4064/89 as amended (the **Merger Regulation**), DS Smith Plc (**DS Smith**) hereby provides the following Commitments (the **Commitments**) in order to enable the European Commission (the **Commission**) to declare the acquisition by DS Smith of SCA Packaging Holding B.V. (**SCA Packaging** and together with DS Smith, the **Parties**) (the **Notified Concentration**) compatible with the common market and the EEA Agreement by its decision pursuant to Article 6(1)(b) of the Merger Regulation (the **Decision**).

The Commitments shall take effect upon the date of adoption of the Decision.

This text shall be interpreted in the light of the Decision to the extent that the Commitments are attached as conditions and obligations, in the general framework of Community law, in particular in the light of the Merger Regulation, and by reference to the Commission Notice on remedies acceptable under Council Regulation (EEC) No 4064/89 and under Commission Regulation (EC) No 447/98.

Section A. Definitions

For the purpose of the Commitments, the following terms shall have the following meaning:

Affiliated Undertakings: undertakings controlled by the Parties, whereby the notion of control shall be interpreted pursuant to Article 3 Merger Regulation and in the light of the Commission Notice on the concept of concentration under Council Regulation (EEC) No 4064/89.

Closing: the transfer of the legal title of the Divestment Businesses to the Purchaser.

Divestiture Trustee: one or more natural or legal person(s), independent from the Parties, who is approved by the Commission and appointed by DS Smith and who has received from DS Smith the exclusive trustee mandate to sell the Divestment Businesses to a Purchaser at no minimum price.

Divestment Business: the business or businesses as defined in Section B and the Schedules that DS Smith commits to divest.

DS Smith: DS Smith Plc, incorporated under the laws of England and Wales, with its registered office at Beech House, Whitebrook Park, 68 Lower Cookham Road, Maidenhead, Berkshire, SL6 8XY and registered with the Commercial/Company Register at Companies House under number 01377658.

DS Smith Triple Wall Candidate Divestment Business: the DS Smith plant located in Monmouth, UK, as described in further detail in Schedule 1.

Effective Date: the date of adoption of the Decision.

First Divestiture Period: the period of [...] from the Effective Date.

Hold Separate Manager: the person appointed by DS Smith for the Divestment Businesses to manage the day-to-day business under the supervision of the Monitoring Trustee.

Key Personnel: all personnel necessary to maintain the viability and competitiveness of the Divestment Businesses, as listed in the Schedules.

Monitoring Trustee: one or more natural or legal person(s), independent from the Parties, who is approved by the Commission and appointed by DS Smith, and who has the duty to monitor DS Smith's compliance with the conditions and obligations attached to the Decision.

Personnel: all personnel currently employed by the Divestment Businesses, including Key Personnel, staff seconded to the Divestment Businesses, shared personnel and the additional personnel listed in the Schedules.

Purchaser: the entity approved by the Commission as acquirer of the Divestment Businesses in accordance with the criteria set out in Section D.

[...].

SCA Triple Wall Candidate Divestment Business: the SCA Packaging plant located in Hinckley, UK, as described in further detail in Schedule 2.

Triple Wall Divestment Business: either the SCA Triple Wall Candidate Divestment Business or the DS Smith Triple Wall Candidate Divestment Business, as stipulated in writing by DS Smith at its sole discretion in accordance with paragraph 5.

Trustee(s): the Monitoring Trustee and the Divestiture Trustee.

Trustee Divestiture Period: the period of [...] from the end of the First Divestiture Period.

Section B. The Divestment Businesses

Commitment to divest

1. In order to restore effective competition, DS Smith commits to divest, or procure the divestiture of the Divestment Businesses by the end of the Trustee Divestiture Period as a going concern to a purchaser and on terms of sale approved by the Commission in accordance with the procedure described in paragraph 17. To carry out the divestiture, DS Smith commits to use its best endeavours to find a purchaser and to enter into a final binding sale and purchase agreement for the sale of the Divestment Businesses within the First Divestiture Period. If DS Smith has not entered into such an agreement at the end of the First Divestiture Period, DS Smith shall grant the Divestiture Trustee an exclusive mandate to sell the Divestment Businesses in accordance with the procedure described in paragraph 26 in the Trustee Divestiture Period.
2. DS Smith shall be deemed to have complied with this commitment if, by the end of the Trustee Divestiture Period, DS Smith has entered into a final binding sale and purchase agreement, if the Commission approves the Purchaser and the terms in accordance with the procedure described in paragraph 17 and if the closing of the sale of the Divestment Businesses takes place within a period not exceeding [...] after the approval of the Purchaser and the terms of sale by the Commission.
3. In order to maintain the structural effect of the Commitments, DS Smith shall, for a period of [...] after the Effective Date, not acquire direct or indirect influence over the whole or part of the Divestment Businesses, unless the Commission has previously found that the structure of the market has changed to such an extent that the absence of influence over the Divestment Businesses is no longer necessary to render the proposed concentration compatible with the common market.

Structure and definition of the Divestment Businesses

4. The Divestment Businesses consists of:
 - (a) the Triple Wall Divestment Business;
 - (b) the SCA Packaging plant located in Darlington, UK, as described in further detail in Schedule 3;
 - (c) the SCA Packaging plant located in Caradec, France, as described in further detail in Schedule 4.
5. DS Smith shall notify the Commission and Monitoring Trustee in writing, at any time prior to the end of the First Divestment Period, which of either of (i) the DS Smith Triple Wall Candidate Divestment Business or (ii) the SCA Triple Wall Candidate Divestment Business it stipulates, at its sole discretion, shall constitute the Triple Wall Divestment Business. Following confirmation by DS Smith of the identity of the Triple Wall Divestment Business, the alternative candidate business shall cease to be a Divestment Business.
6. The present legal and functional structure of the Divestment Businesses as operated to date is described in the Schedules. The Divestment Businesses, described in more detail in the Schedules, includes:
 - (a) all tangible and intangible assets (including intellectual property rights, save as set out in the Schedules), which contribute to the current operation or are necessary to ensure the viability and competitiveness of the Divestment Businesses;
 - (b) all licences, permits and authorisations issued by any governmental organisation exclusively for the benefit of the Divestment Businesses;
 - (c) all existing contracts, leases, commitments and customer orders of the Divestment Businesses; all customer, credit and other records of the Divestment Businesses (items referred to under (a) to (c) hereinafter collectively referred to as **Assets**);
 - (d) the Personnel; and
 - (e) at the request of the Purchaser(s), the benefit, for a transitional period of up to [...] after Closing and on terms and conditions equivalent to those at present afforded to the Divestment Businesses, of all current arrangements under which SCA Packaging or Affiliated Undertakings supply products or services to the Divestment Businesses, as detailed in the Schedules, unless otherwise agreed with the Purchaser.

Section C. Related commitments

[...]

7. [...].

Preservation of Viability, Marketability and Competitiveness

8. From the Effective Date until Closing, DS Smith shall preserve the economic viability, marketability and competitiveness of the Divestment Businesses, in accordance with good business practice, and shall minimise as far as possible any risk of loss of competitive potential of the Divestment Businesses. In particular DS Smith undertakes:

- (a) not to carry out any act upon its own authority that might have a significant adverse impact on the value, management or competitiveness of the Divestment Businesses or that might alter the nature and scope of activity, or the industrial or commercial strategy or the investment policy of the Divestment Businesses;
- (b) to make available sufficient resources for the development of the Divestment Businesses, on the basis and continuation of the existing business plans; and
- (c) to take reasonable steps, including appropriate incentive schemes (based on industry practice), to encourage all Key Personnel to remain with the Divestment Businesses.

Hold-separate obligations

- 9. DS Smith commits, from the Effective Date until Closing, to keep the Divestment Businesses separate from the businesses it is retaining and to ensure that Key Personnel of the Divestment Businesses – including the Hold Separate Manager – have no involvement in any business retained and vice versa. DS Smith shall also ensure that the Personnel does not report to any individual outside the Divestment Businesses without prior approval of the Commission.
- 10. Until Closing, DS Smith shall assist the Monitoring Trustee in ensuring that the Divestment Businesses are managed as a distinct and saleable entity separate from the businesses retained by the Parties. DS Smith shall appoint a Hold Separate Manager who shall be responsible for the management of the Divestment Businesses, under the supervision of the Monitoring Trustee. The Hold Separate Manager shall manage the Divestment Businesses independently and in the best interest of the businesses with a view to ensuring their continued economic viability, marketability and competitiveness and their independence from the businesses retained by the Parties.

Ring-fencing

- 11. DS Smith shall implement all necessary measures to ensure that it does not after the Effective Date obtain any business secrets, know-how, commercial information, or any other information of a confidential or proprietary nature relating to the Divestment Businesses. In particular, the participation of the Divestment Businesses in a central information technology network shall be severed to the extent possible, without compromising the viability of the Divestment Businesses. DS Smith may obtain information relating to the Divestment Businesses which is reasonably necessary for the divestiture of the Divestment Businesses or whose disclosure to DS Smith is required by law.

Non-solicitation clause

- 12. The Parties undertake, subject to customary limitations, not to solicit, and to procure that Affiliated Undertakings do not solicit, the Key Personnel transferred with the Divestment Businesses for a period of [...] after Closing.

Due Diligence

- 13. In order to enable potential purchasers to carry out a reasonable due diligence of the Divestment Businesses, DS Smith shall, subject to customary confidentiality assurances and dependent on the stage of the divestiture process:
 - (a) provide to potential purchasers sufficient information as regards the Divestment Businesses; and
 - (b) provide to potential purchasers sufficient information relating to the Personnel and allow them reasonable access to the Personnel.

Reporting

14. DS Smith shall submit written reports in English on potential purchasers of the Divestment Businesses and developments in the negotiations with such potential purchasers to the Commission and the Monitoring Trustee no later than 10 days after the end of every month following the Effective Date (or otherwise at the Commission's request).
15. The Parties shall inform the Commission and the Monitoring Trustee on the preparation of the data room documentation and the due diligence procedure and shall submit a copy of an information memorandum to the Commission and the Monitoring Trustee before sending the memorandum out to potential purchasers.

Section D. The Purchaser(s)

16. In order to ensure the immediate restoration of effective competition in the event of the divestment of any or all of the Divestment Businesses, the Purchaser of each Divestment Business, in order to be approved by the Commission, must:
 - (a) be independent of and unconnected to the Parties;
 - (b) have the financial resources, proven expertise and incentive to maintain and develop the Divestment Businesses as a viable and active competitive force in competition with DS Smith and other competitors; and
 - (c) neither be likely to create, in the light of the information available to the Commission, *prima facie* competition concerns nor give rise to a risk that the implementation of the Commitments will be delayed, and must, in particular, reasonably be expected to obtain all necessary approvals from the relevant regulatory authorities for the acquisition of the Divestment Businesses (the before-mentioned criteria for the purchaser hereafter the **Purchaser Requirements**).
17. The final binding sale and purchase agreement(s) shall be conditional on the Commission's approval. When DS Smith has reached an agreement with a purchaser, it shall submit a fully documented and reasoned proposal, including a copy of the final agreement(s), to the Commission and the Monitoring Trustee. DS Smith must be able to demonstrate to the Commission that each purchaser meets the Purchaser Requirements and that the Divestment Businesses is being sold in a manner consistent with the Commitments. For the approval, the Commission shall verify that each purchaser fulfils the Purchaser Requirements and that the Divestment Businesses are being sold in a manner consistent with the Commitments. The Commission may approve the sale of the Divestment Businesses without one or more Assets or parts of the Personnel, if this does not affect the viability and competitiveness of the Divestment Businesses after the sale, taking account of the proposed purchasers.

Section E. Trustee

I. Appointment Procedure

18. DS Smith shall appoint a Monitoring Trustee to carry out the functions specified in the Commitments for a Monitoring Trustee. If in respect of one or more of the Divestment Businesses DS Smith has not entered into a binding sales and purchase agreement one month before the end of the First Divestiture Period or if the Commission has rejected a purchaser proposed by DS Smith at that time or thereafter, DS Smith shall appoint a Divestiture Trustee to carry out the functions specified in the Commitments for a Divestiture Trustee. The appointment of the Divestiture Trustee shall take effect upon the commencement of the Trustee Divestiture Period.

19. The Trustee shall be independent of the Parties, possess the necessary qualifications to carry out its mandate, for example as an investment bank or consultant or auditor, and shall neither have nor become exposed to a conflict of interest. The Trustee shall be remunerated by DS Smith in a way that does not impede the independent and effective fulfilment of its mandate. In particular, where the remuneration package of a Divestiture Trustee includes a success premium linked to the final sale value of the Divestment Businesses, the fee shall also be linked to a divestiture within the Trustee Divestiture Period.

Proposal by DS Smith

20. No later than one week after the Effective Date, DS Smith shall submit a list of one or more persons whom DS Smith proposes to appoint as the Monitoring Trustee to the Commission for approval. No later than one month before the end of the First Divestiture Period, DS Smith shall submit a list of one or more persons whom DS Smith proposes to appoint as Divestiture Trustee to the Commission for approval. The proposal shall contain sufficient information for the Commission to verify that the proposed Trustee fulfils the requirements set out in paragraph 19 and shall include:
- (a) the full terms of the proposed mandate, which shall include all provisions necessary to enable the Trustee to fulfil its duties under these Commitments;
 - (b) the outline of a work plan which describes how the Trustee intends to carry out its assigned tasks; and
 - (c) an indication whether the proposed Trustee is to act as both Monitoring Trustee and Divestiture Trustee or whether different trustees are proposed for the two functions.

Approval or rejection by the Commission

21. The Commission shall have the discretion to approve or reject the proposed Trustee(s) and to approve the proposed mandate subject to any modifications it deems necessary for the Trustee to fulfil its obligations. If only one name is approved, DS Smith shall appoint or cause to be appointed, the individual or institution concerned as Trustee, in accordance with the mandate approved by the Commission. If more than one name is approved, DS Smith shall be free to choose the Trustee to be appointed from among the names approved. The Trustee shall be appointed within one week of the Commission's approval, in accordance with the mandate approved by the Commission.

New proposal by DS Smith

22. If all the proposed Trustees are rejected, DS Smith shall submit the names of at least two more individuals or institutions within one week of being informed of the rejection, in accordance with the requirements and the procedure set out in paragraphs 18 and 21.

Trustee nominated by the Commission

23. If all further proposed Trustees are rejected by the Commission, the Commission shall nominate a Trustee, whom DS Smith shall appoint, or cause to be appointed, in accordance with a trustee mandate approved by the Commission.

II. Functions of the Trustee

24. The Trustee shall assume its specified duties in order to ensure compliance with the Commitments. The Commission may, on its own initiative or at the request of the Trustee or DS Smith, give any orders or instructions to the Trustee in order to ensure compliance with the conditions and obligations attached to the Decision.

Duties and obligations of the Monitoring Trustee

25. The Monitoring Trustee shall:

- (i) propose in its first report to the Commission a detailed work plan describing how it intends to monitor compliance with the obligations and conditions attached to the Decision.
- (ii) oversee the on-going management of the Divestment Businesses with a view to ensuring its continued economic viability, marketability and competitiveness and monitor compliance by DS Smith with the conditions and obligations attached to the Decision. To that end the Monitoring Trustee shall:
 - (a) monitor the preservation of the economic viability, marketability and competitiveness of the Divestment Businesses, and the keeping separate of the Divestment Businesses from the business retained by DS Smith, in accordance with paragraphs 8 and 9 of the Commitments;
 - (b) supervise the management of the Divestment Businesses as a distinct and saleable entity, in accordance with paragraph 10 of the Commitments;
 - (c)
 - (i) in consultation with DS Smith, determine all necessary measures to ensure that DS Smith does not after the Effective Date obtain any business secrets, knowhow, commercial information, or any other information of a confidential or proprietary nature relating to the Divestment Businesses, in particular strive for the severing of the Divestment Businesses' participation in a central information technology network to the extent possible, without compromising the viability of the Divestment Businesses; and
 - (ii) decide whether such information may be disclosed to DS Smith as the disclosure is reasonably necessary to allow DS Smith to carry out the divestiture or as the disclosure is required by law;
 - (d) monitor the splitting of assets and the allocation of Personnel between the Divestment Businesses and DS Smith or Affiliated Undertakings;
- (iii) assume the other functions assigned to the Monitoring Trustee under the conditions and obligations attached to the Decision;
- (iv) propose to DS Smith such measures as the Monitoring Trustee considers necessary to ensure DS Smith's compliance with the conditions and obligations attached to the Decision, in particular the maintenance of the full economic viability, marketability or competitiveness of the Divestment Businesses, the holding separate of the Divestment Businesses and the non-disclosure of competitively sensitive information;
- (v) review and assess potential purchasers as well as the progress of the divestiture process and verify that, dependent on the stage of the divestiture process, (a) potential purchasers receive sufficient information relating to the Divestment Businesses and the Personnel in particular by reviewing, if available, the data room documentation, the information memorandum and the due diligence process, and (b) potential purchasers are granted reasonable access to the Personnel;
- (vi) provide to the Commission, sending DS Smith a non-confidential copy at the same time, a written report within 15 days after the end of every month. The report shall cover the operation and management of the Divestment Businesses so that the Commission can assess whether the business is held in a manner consistent with the Commitments and the progress

of the divestiture process as well as potential purchasers. In addition to these reports, the Monitoring Trustee shall promptly report in writing to the Commission, sending DS Smith a non-confidential copy at the same time, if it concludes on reasonable grounds that DS Smith is failing to comply with these Commitments;

- (vii) within one week after receipt of the documented proposal referred to in paragraph 17, submit to the Commission a reasoned opinion as to the suitability and independence of the proposed purchaser and the viability of the Divestment Businesses after the Sale and as to whether the Divestment Businesses is sold in a manner consistent with the conditions and obligations attached to the Decision, in particular, if relevant, whether the Sale of the Divestment Businesses without one or more Assets or not all of the Personnel affects the viability of the Divestment Businesses after the sale, taking account of the proposed purchaser.

Duties and obligations of the Divestiture Trustee

- 26. Within the Trustee Divestiture Period, the Divestiture Trustee shall sell at no minimum price the Divestment Businesses to a purchaser, provided that the Commission has approved both the purchaser and the final binding sale and purchase agreement in accordance with the procedure laid down in paragraph 17. The Divestiture Trustee shall include in the sale and purchase agreement such terms and conditions as it considers appropriate for an expedient sale in the Trustee Divestiture Period. In particular, the Divestiture Trustee may include in the sale and purchase agreement such customary representations and warranties and indemnities as are reasonably required to effect the sale. The Divestiture Trustee shall protect the legitimate financial interests of DS Smith, subject to DS Smith's unconditional obligation to divest at no minimum price in the Trustee Divestiture Period.
- 27. In the Trustee Divestiture Period (or otherwise at the Commission's request), the Divestiture Trustee shall provide the Commission with a comprehensive monthly report written in English on the progress of the divestiture process. Such reports shall be submitted within 15 days after the end of every month with a simultaneous copy to the Monitoring Trustee and a non-confidential copy to DS Smith.

III. Duties and obligations of DS Smith

- 28. DS Smith shall provide and shall cause its advisors to provide the Trustee with all such co-operation, assistance and information as the Trustee may reasonably require to perform its tasks. The Trustee shall have full and complete access to any of DS Smith's or the Divestment Businesses' books, records, documents, management or other personnel, facilities, sites and technical information necessary for fulfilling its duties under the Commitments and DS Smith and the Divestment Businesses shall provide the Trustee upon request with copies of any document. DS Smith and the Divestment Businesses shall make available to the Trustee one or more offices on their premises and shall be available for meetings in order to provide the Trustee with all information necessary for the performance of its tasks.
- 29. DS Smith shall provide the Monitoring Trustee with all managerial and administrative support that it may reasonably request on behalf of the management of the Divestment Businesses. This shall include all administrative support functions relating to the Divestment Businesses which are currently carried out at headquarters level. DS Smith shall provide and shall cause its advisors to provide the Monitoring Trustee, on request, with the information submitted to potential purchasers, in particular give the Monitoring Trustee access to the data room documentation and all other information granted to potential purchasers in the due diligence procedure. DS Smith shall inform the Monitoring Trustee on possible purchasers, submit a list of potential purchasers, and keep the Monitoring Trustee informed of all developments in the divestiture process.
- 30. DS Smith shall grant or procure Affiliated Undertakings to grant comprehensive powers of attorney, duly executed, to the Divestiture Trustee to effect the sale, the Closing and all actions and

declarations which the Divestiture Trustee considers necessary or appropriate to achieve the sale and the Closing, including the appointment of advisors to assist with the sale process. Upon request of the Divestiture Trustee, DS Smith shall cause the documents required for effecting the sale and the Closing to be duly executed.

31. DS Smith shall indemnify the Trustee and its employees and agents (each an **Indemnified Party**) and hold each Indemnified Party harmless against, and hereby agrees that an Indemnified Party shall have no liability to DS Smith for any liabilities arising out of the performance of the Trustee's duties under the Commitments, except to the extent that such liabilities result from the wilful default, recklessness, gross negligence or bad faith of the Trustee, its employees, agents or advisors.
32. At the expense of DS Smith, the Trustee may appoint advisors (in particular for corporate finance or legal advice), subject to DS Smith's approval (this approval not to be unreasonably withheld or delayed) if the Trustee considers the appointment of such advisors necessary or appropriate for the performance of its duties and obligations under the mandate, provided that any fees and other expenses incurred by the Trustee are reasonable. Should DS Smith refuse to approve the advisors proposed by the Trustee the Commission may approve the appointment of such advisors instead, after having heard DS Smith. Only the Trustee shall be entitled to issue instructions to the advisors. Paragraph 31 shall apply *mutatis mutandis*. In the Trustee Divestiture Period, the Divestiture Trustee may use advisors who served DS Smith during the Divestiture Period if the Divestiture Trustee considers this in the best interest of an expedient sale.

IV. Replacement, discharge and reappointment of the Trustee

33. If the Trustee ceases to perform its functions under the Commitments or for any other good cause, including the exposure of the Trustee to a conflict of interest:
 - (a) the Commission may, after hearing the Trustee, require DS Smith to replace the Trustee; or
 - (b) DS Smith, with the prior approval of the Commission, may replace the Trustee.
34. If the Trustee is removed according to paragraph 33, the Trustee may be required to continue in its function until a new Trustee is in place to whom the Trustee has effected a full hand over of all relevant information. The new Trustee shall be appointed in accordance with the procedure referred to in paragraphs 18 to 23.
35. Beside the removal according to paragraph 33, the Trustee shall cease to act as Trustee only after the Commission has discharged it from its duties after all the Commitments with which the Trustee has been entrusted have been implemented. However, the Commission may at any time require the reappointment of the Monitoring Trustee if it subsequently appears that the relevant remedies might not have been fully and properly implemented.

Section F. The Review Clause

36. The Commission may, where appropriate, in response to a request from DS Smith showing good cause and accompanied by a report from the Monitoring Trustee:
 - (i) Grant an extension of the time periods foreseen in the Commitments, or
 - (ii) Waive, modify or substitute, in exceptional circumstances, one or more of the undertakings in these Commitments.

Where DS Smith seeks an extension of a time period, it shall submit a request to the Commission no later than one month before the expiry of that period, showing good cause. Only in exceptional circumstances shall DS Smith be entitled to request an extension within the last month of any period.

Duly authorised for and on behalf of

DS Smith Plc

Matt Jowett

.....
Name: MATT JOWETT

Position: GENERAL COUNSEL & COMPANY SECRETARY,

30 April 2012

SCHEDULE 1
DSS MONMOUTH
[...]

SCHEDULE 2
SCA HINCKLEY
[...]

SCHEDULE 3
SCA DARLINGTON

[...]

SCHEDULE 4
SCA CARADEC
[...]

ANNEX 1

[...]

PART 2

[...]

ANNEX 2

DSS MONMOUTH PERSONNEL

[...]

ANNEX 3

DSS MONMOUTH IP RIGHTS

[...]

ANNEX 4

SCA HINCKLEY PERSONNEL

[...]

ANNEX 5

SCA DARLINGTON PERSONNEL

[...]

ANNEX 6

SCA CARADEC PERSONNEL

[...]