

EN

***Case No COMP/M.6682 - KINNEVIK/ BILLERUD/
KORSNÄS***

Only the English text is available and authentic.

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

Article 6(1)(b) in conjunction with Art 6(2)
Date: 27/11/2012

***In electronic form on the EUR-Lex website under document
number 32012M6682***



EUROPEAN COMMISSION

Brussels, 27.11.2012
C(2012) 8858

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

To the notifying party:

Dear Sir/Madam,

**Subject: Case No COMP/M.6682 - Kinnevik/ Billerud/ Korsnäs
Commission decision pursuant to Article 6(1)(b) in conjunction with Article 6(2) of Council Regulation No 139/2004¹**

1. On 5 October 2012, the European Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 by which the undertaking Investment AB Kinnevik ("Kinnevik", Sweden) acquires within the meaning of Article 3(1)(b) of the Merger Regulation, sole control of Billerud AB ("Billerud", Sweden) by way of purchase of shares.² Below, Kinnevik is referred to as the "Notifying Party" while Kinnevik and Billerud are jointly referred to as "the Parties".
2. After examination of the notification, the Commission has concluded that the operation falls within the scope of the EU Merger Regulation and raises serious doubts as to its compatibility with the internal market.

¹ OJ L 24, 29.1.2004, p. 1 ("the EU 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 312 of 16.10.2012, p. 23.

I. THE PARTIES

3. Kinnevik is a Swedish company listed on the Stockholm Stock Exchange which has equity interests in various companies active in telecommunications services, online services, media, microfinancing, paper industry, agriculture and renewable energy.
4. Korsnäs AB ("Korsnäs"), a wholly owned subsidiary of Kinnevik, is a manufacturer of paper-based packaging materials, covering cartonboard, kraftliner, kraft paper, as well as liquid and non-liquid packaging board. It is also active in the supply and purchase of wood, and it produces wood pulp for the supply of its own downstream businesses.
5. Billerud is a Swedish company listed on the Stockholm Stock Exchange. Billerud is a manufacturer of pulp- and paper-based packaging products active in the areas of packaging and specialty paper, kraft paper, packaging boards and wood pulp. It is also active in the supply and purchase of wood.

II. THE OPERATION AND THE CONCENTRATION

6. Pursuant to a Combination Agreement [...].
7. Following completion of the concentration, Kinnevik will hold 25% of the shares and votes in Billerud. Frapag Beteiligungsholding AG ("FB") currently owns 21% of Billerud's shares (and will hold 15.5% post-transaction) while the other shares are widely dispersed (apart from Kinnevik and FB, the largest shareholders are institutional shareholders such as pensions and other funds none of which would post transaction hold a shareholding above [...]%). On the basis of attendance at the annual general meeting ("AGM") in the last three years, [...] has had approximately [...]% of the shares and votes. On the basis of attendance rates at AGMs over the last three years, Kinnevik's shareholding post-transaction would have been sufficient to attain between just under to just over [...]% of the votes at the AGMs while [...] would have attained around [...]%.
8. The Notifying Party submits that on the basis of Billerud's AGMs, [...]. The Notifying Party also acknowledges that a proposal by Kinnevik is unlikely to be blocked at a shareholders meeting [...].
9. Therefore, as a result of the proposed transaction, Kinnevik will acquire de facto sole control over Billerud. In view of the above, the proposed transaction constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

III. EU DIMENSION

10. The undertakings concerned have a combined aggregate worldwide turnover of more than EUR 5 000 million³ (Kinnevik: EUR 9 742 million, Billerud: EUR 1 257 million). Each of them has an EU-wide turnover in excess of EUR 250 million (Kinnevik: EUR [...], Billerud: EUR [...]), but they do not achieve more than two thirds of their aggregate EU-wide turnover within one and the same Member State. The notified operation therefore has an EU dimension.

³ Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Consolidated Jurisdictional Notice (OJ C95, 16.04.2008, p1).

IV. RELEVANT MARKET DEFINITION

IV.1. Introduction

11. The Parties' activities overlap in the supply of wood, kraft paper, corrugated case materials ("CCM") as well as liquid and non-liquid packaging board (the latter overlap does not however give rise to an affected market in the sense of the Form CO⁴ and will therefore not be discussed further). There is also a vertical relationship between the Parties since Billerud supplies wood pulp on the open market and some limited volumes of wood to Korsnäs.

IV.2. Kraft paper

A. Relevant product market

(i) Introduction

12. Kraft paper is produced from virgin fibre (i.e. wood pulp derived from virgin wood, as opposed to recycled material) or recycled fibre. It may be white or brown, depending on whether it is produced from bleached or unbleached wood pulp. In addition, it can be coated or uncoated.⁵
13. Kraft paper is used primarily to make industrial sacks (e.g. for cement, fertiliser, agricultural products or pet food), consumer bags (e.g. flour and sugar packaging or department store bags), wrapping paper and flexible packaging. Most kraft paper customers are either companies which manufacture the products described above (sacks, bags, etc), which are known as "converters", or downstream operators (brand-owners) with converting capability who source kraft paper to package various types of product, e.g. flour, sugar, cement, etc.
14. The main characteristic of kraft paper distinguishing it from other paper materials is its tensile strength, i.e. the weight it can hold without tearing. Other characteristics assessed or required by customers include tear strength (i.e. the force required to continue tearing the paper from an initial cut), runnability (i.e. ability to run smoothly in the machinery and to ensure accurate feeding and delivery), extensibility (i.e. ability of the paper to stretch without bursting), porosity (i.e. ability of the paper to allow air to pass through it), as well as appearance and printability (white paper has better appearance and printability than brown paper, so it is primarily used when appearance of the packaging is important or when better printability is sought to print logos, instructions, etc).

⁴ Form CO relating to the notification of a concentration pursuant to Regulation (EC) No 139/2004, consolidated with amendments introduced by Commission Regulation (EC) No 1033/2008, Annex I of Commission Regulation (EC) No 802/2004 of 7 April 2004 implementing Council Regulation (EC) No 139/2004 (published in OJ L 133, 20.04.2004, p.1) amended by Commission Regulation (EC) No 1033/2008 of 20 October 2008 (published in OJ L 279, 22.10.2008, p. 3).

⁵ Coated paper has a thin layer of mineral slurry on one of the sides. This is done when appearance of the paper is important and in order to achieve better printability.

15. According to the Notifying Party, from a production perspective there are three types of kraft paper: sack kraft paper, machine finished/unglazed kraft paper and machine glazed kraft paper.
16. Sack kraft paper is a very strong and porous paper whose characteristics include a high "strain to break" (i.e. stretch capacity) and high porosity. Extensibility or stretch refers to the ability of the paper to stretch without bursting. It is expressed as a percentage of the initial sample length and is normally referred to in three categories: (i) natural/flat sack kraft paper (extensibility of 2-3%), (ii) semi-extensible sack kraft paper (extensibility of 5-6%) and (iii) fully-extensible sack kraft paper (extensibility of 7-8%). Whilst the first category corresponds to the sack kraft paper's extensibility in its natural state, the latter two are achieved by extensibility enhancing treatment achieved with a so-called extensible unit (e.g. Clupak or Expanda) installed in the drying section of the paper machine. Converters use sack kraft paper to produce sacks that can be filled up quickly and hold heavy content without tearing. Sack kraft paper finds considerable use in the building sector, in the form of sacks for packaging cement, as well as in other fields such as sacks for pet food, flour or agricultural products.
17. Machine finished/unglazed ("MF/UG") kraft paper has high printability combined with high strength and is matt on both sides. The production process for MF/UG kraft paper is similar to that used for sack kraft paper, except that rather than going through an extensible unit at the end, most MF kraft papers go through a so-called calendar unit attached to the machine. However, MF kraft paper can also be produced with a so-called Yankee cylinder or a so-called smoothing cylinder. A calendar unit includes several smooth cylinders applying pressure on each other. The calendar process makes the kraft paper smoother and improves printability. In case the kraft paper does not go through a calendar unit or similar, it is unglazed kraft paper, which has a rougher surface. End-use applications include carrier bags, pulp bale wrapping and consumer packaging of sugar and flour.⁶
18. Machine glazed ("MG") kraft paper is characterised by a smooth, glossy surface on one side. Its manufacture requires a paper machine equipped with a large drying cylinder, a Yankee cylinder. In addition, MG kraft paper machines may be equipped with a calendar unit. MG kraft paper is used for a range of applications including flexible packaging of consumer goods, bags and pouches and wrapping paper, as well as packaging with stringent demands on purity for medical applications and release liners (i.e. silicon-base paper for stickers and labels).⁷
19. Kraft paper has been the subject of several previous Commission decisions. In its earlier decisions, the Commission assessed separately sack kraft paper and its white and brown segments.⁸ In later decisions, the Commission has considered the overall market for kraft

⁶ To a varying extent plastic is also used for these purposes.

⁷ Plastic can also be used in many of these applications.

⁸ M.210 – *Mondi/Frantschach*, M.499 – *Jefferson Smurfitt/Saint Gobain*, M.646 – *Repola/Kymmene*, M.960 – *Frantschach/MMP/Celulozy Swiecie*, M.1884 – *Mondi/Frantschach/Assidomän*. While in *Mondi/Frantschach* and *Mondi/Frantschach/Assidomän* the Commission assessed the effects of the transaction in the white sack kraft paper segment, in *Jefferson Smurfitt/St Gobain* and *Repola/Kymmene* the Commission specifically referred to sack kraft paper as brown paper.

paper to form a distinct product market separate from other types of paper but it has not, in those cases, considered the further segmentation within kraft papers.⁹ In these decisions the Commission also left open the question whether kraft papers should include kraftliner.¹⁰

(ii) The Notifying Party's views

20. The Notifying Party considers that the market for kraft paper should be defined as one single product market without further segmentations given the demand- and supply-side substitutability between the different types of kraft paper.

Demand-side substitution

21. The Notifying Party submits that in particular there is demand-side substitution between (i) sack kraft and MF/UG kraft papers, (ii) MF/UG kraft and MG kraft papers, as well as (iii) brown and white kraft paper types.
22. First, the Notifying Party argues that there is demand-side substitution between sack kraft and MF/UG kraft papers since sack kraft and low grammage MF/UG kraft papers are very similar kraft papers, differentiated only in respect of the end-use application (sack paper is sold to sack converters while MF/UG kraft paper is used in non-sack applications).
23. According to the Notifying Party there is also demand-side substitution between MF/UG kraft and MG kraft papers since MF kraft papers that have been treated to achieve a smooth surface and good printability would often be fully comparable to MG kraft papers. MG kraft papers typically have lower strain to break and often higher tensile stiffness than MF/UG kraft paper, but for most MF/UG kraft paper and MG kraft paper end-use applications this difference in strain to break would not be of material importance. For some end uses (for example flour and sugar packaging) MF/UG kraft and MG kraft papers could therefore be used on the same converting machine.
24. As regards brown and white kraft paper, the Notifying Party submits that apart from the difference in colour there are only limited differences in the end-use which would not warrant a separate relevant product market. The Notifying Party further argues that their view concords with the Commission's findings in *Repola/Kymmene*, where the Commission referred to a high degree of similarity of the end uses between white and brown sacks on the downstream market for paper sacks.¹¹ Therefore, customers could and would switch from one paper sack type (white and brown) to another if prices on one type were to increase.

⁹ M.2243 – *Stora Enso/AssiDomän/JV* and M.5155 – *Mondi/Loparex Assets*. In *Stora Enso/AssiDomän/JV*, the Commission referred to the market as the "sack and kraft paper" market, while in *Mondi/Loparex Assets* the Commission referred to it as "kraft paper" market.

¹⁰ M.2243 – *Stora Enso/Assidomän/JV* and M.5155 – *Mondi/Loparex Assets*.

¹¹ M.646 – *Repola/Kymmene*, recital 29.

Supply-side substitution

25. The Notifying Party submits that in particular there is supply-side substitution between (i) sack kraft and MF/UG kraft papers, (ii) MG kraft paper and other kraft paper types, as well as (iii) brown and white kraft paper types.
26. As regards sack kraft and MF/UG kraft papers, the Notifying Party states that all sack kraft paper machines could produce UG kraft paper by selecting not to use the extensible unit. In addition, if the machine is equipped with a calendar unit, it can also produce MF kraft paper. Furthermore, all MF kraft paper machines can without any modification and with trivial time outlay produce flat sack kraft paper and – if they are equipped with an extensible unit – also extensible sack kraft paper.¹²
27. Kraft paper machines equipped with both an extensible unit and a calendar unit would provide an existing swing capacity between MF/UG kraft and sack kraft paper. For machines that are not equipped with an extensible unit (for swing from MF kraft to sack kraft paper) or with a calendar unit (for swing from sack kraft paper to MF kraft paper), such units could be bought on the open market and installed by investing approximately EUR [...] and EUR [...] respectively. The Notifying Party argues that these costs are not significant in the light of the total cost of a completely new paper machine, estimated at EUR [...].
28. With respect to the substitutability between MG kraft paper and other types of kraft paper, there would be MG kraft paper machines whose Yankee cylinder could either be bypassed or where the machine configuration would allow for avoidance of the glossing effect of the cylinder, making it possible to produce more than MG kraft paper on the same machine (e.g. one of the machines at [...] is equipped with a Yankee cylinder and [...] produces MF/UG kraft paper).
29. The Notifying Party also submits that the use of bleached rather than unbleached pulp is the only distinction between brown and white kraft paper products. Therefore, all kraft paper machines producing brown kraft paper would be able to produce white kraft paper by using bleached softwood pulp. A manufacturer supplying white kraft paper will either have a bleaching plant at its own pulp mill or can purchase bleached pulp on the open market. Even for an actor who currently only supplies brown kraft paper, the Notifying Party's view is that the investment required to start supplying white sack kraft paper would be at most EUR [...] relating to shredding equipment to handle bleached market pulp.
30. Furthermore, the Notifying Party argues that there would be no technical obstacles to exchanging unbleached for bleached pulp in one and the same machine. Such swing would have modest consequences in that the machine would need to be cleaned (particularly for switching from brown to white kraft paper) for around [...] hours, during which time the machine is at standstill. However, the effects of this could be minimised by scheduling such cleaning at the same time as scheduled maintenance and by having production runs to build up stocks (of white or brown sack kraft paper).

¹² As regards [...], the Notifying Party points out that Eurokraft data indicates that [...].

31. The Notifying Party also submits that kraft paper market meets competitive constraints from sources external to it, such as plastic, kraftliner and fine paper. These potential competitive constraints are addressed in the section concerning the competitive assessment.

(iii) The Commission's assessment

32. This section addresses the arguments concerning the relevant product market put forward by the Notifying Party in light of the results of the market investigation.

(a) Whether kraft paper should be segmented into sack kraft, MF/UG kraft and MG kraft papers

Demand-side substitution

33. As regards demand-side substitution between sack kraft and MF/UG kraft papers, the majority of customers indicated that they would not change their purchasing patterns in response to a price increase although very few said they may do so depending on ultimate customer acceptance. For example, one customer stated that *"you cannot switch between MF/UG paper and sack kraft. They are two completely different substrates with different properties, and finished looks (...) prices (...) are different, and marketed differently - based on functionality (...) It is not about price it is about functionality."*¹³ Another customer replied that *"it is not possible to use other papers and keep the performance of the sacks."*¹⁴ Yet another considers that *"there are not other papers for the production of industrial paper sacks"*.¹⁵ Even Mondi, which is both a competitor and customer of kraft paper products (due to its downstream converting business), considers that demand-side substitution depends on the end-customer acceptance and will depend on the specific end-use.¹⁶ In this context it should be noted that even the Notifying Party concedes that the end-use applications are different (see paragraph 22 above).

34. Regarding demand-side substitution between MF/UG kraft and MG kraft papers, though a few end uses are similar, the majority of customers who replied to the Commission's market investigation stated that they would not change their purchasing patterns in response to a price increase due to the fact that the two products have different end uses. As one customer stated *"the products we make with MG paper need this kind of paper"*.¹⁷

¹³ Forum Packaging's reply to question 16 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Customers – (Q. 2), dated 8 October 2012.

¹⁴ See Jonsac's reply to question 16 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Customers – (Q. 2), dated 8 October 2012.

¹⁵ See Sacchettificio Nazionale G Corazza's reply to question 15 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Customers – (Q. 2), dated 8 October 2012.

¹⁶ See Mondi's reply to question 16 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Customers – (Q. 2), dated 8 October 2012.

¹⁷ Bovo's reply to question 18.2 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Customers – (Q. 2), dated 8 October 2012.

Furthermore, some customers indicated that prices of MG kraft paper and MF/UG kraft paper move in different ways as the end-users of MG and MF tend to be different.

35. Therefore, on balance, the Commission considers that demand-side substitutability between different types of kraft paper is limited.

Supply-side substitution

36. The majority of competitors agreed with the Notifying Party's argument that technically, most sack kraft paper machines could produce UG kraft paper by adjusting the line to operate without the extensible unit and that if the machine is equipped with a calendar unit, it could also produce MF kraft paper. One competitor considered that *"not all paper machines have the same flexibility"*¹⁸ and another argued that *"combinations of both products at the same machine means some restrictions and constraints that depend from individual configurations"*.¹⁹ Competitors have also generally confirmed that MF kraft paper machines can without modification produce flat sack kraft paper, as well as extensible sack kraft paper if equipped with an extensible unit.
37. With regard to the substitutability between MG kraft paper and other types of kraft paper, the results of the Commission's market investigation are mixed. Some competitors said that it is possible for an MG kraft paper producer to produce other types of kraft paper if a proper by-pass of the Yankee cylinder is carried-out. However, other competitors consider that in order for this to work, drying capacity would have to be increased and some competitors also considered that there are technical issues with this by-pass process and that for example, mono-cylinder Yankee machines do not allow for this possibility.
38. In light of the market investigation, the Commission considers that technical supply-side substitutability may exist to some extent between sack kraft paper and MF/UG kraft paper but become more remote between MG kraft papers on the one hand and sack kraft and MF/UG papers on the other.

(b) Whether sack kraft paper should be segmented between flat, semi-extensible and extensible

Demand-side substitution

39. With regard to whether sack kraft paper can be segmented into flat, semi-extensible and extensible sack kraft paper, most customers indicated that the end uses for each of these sack kraft paper types were not the same, suggesting that there is no demand-side substitutability. For example, (i) flat sack kraft paper is used for open-mouth block bottom bags and e.g. in the packaging of flour, sugar or pet food (ii) semi-extensible sack kraft paper may be used for outer ply of paper bags and patches, handles of paper bags, industrial and agricultural bags or sacks for chemical products, and (iii) fully-extensible

¹⁸ Cartiera Lucchese's reply to question 22.1 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Competitors – (Q. 1), dated 11 October 2012.

¹⁹ Alier's reply to question 25 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Competitors – (Q. 1), dated 11 October 2012.

sack kraft paper may be used for industrial and agricultural bags, valve bags, cement sacks, chemical and mineral products sacks.

40. The Commission therefore considers that demand-side substitutability between these different types of sack kraft paper is limited.

Supply-side substitution

41. With regard to supply-side substitution, the replies to the market investigation suggest that the differences in the production processes of the different types of sack kraft paper relate mainly to the use of an extensible unit for the production of semi-extensible and extensible sack kraft paper.
42. On balance the Commission's view is that supply-side substitutability may exist subject to the producer having or being prepared to purchase an extensible unit.

(c) Whether kraft paper and its segments should be segmented into white and brown kraft paper

Demand-side substitution

43. The results of the Commission's market investigation show that the colour of the paper produced is dictated by the end customer's needs rather than those of the converter and that the type of kraft paper used depends on the end-use. Brown sack kraft paper is mainly used for industrial sacks whereas white sack kraft paper, as well as white MF/UG kraft paper, is necessary in particular for consumer goods where the converters' customers require a white finish with good printability. As explained by one converter, a white bag can convey a cleaner image and is used often for marketing purposes to brand premium products. Customers also stated that it is not possible to switch between brown and white kraft paper because "*printability and runnability are not the same*"²⁰ and "*brown paper is not possible for pulp wrapping*".²¹
44. Furthermore customers have indicated that users of white sack kraft paper are less price sensitive than users of brown sack kraft paper and that, as competition is restricted to very few players in white sack kraft paper, "*producers manipulate prices and availability more*".²²
45. In conclusion, the Commission considers that demand-side substitutability between white and brown sack kraft paper is very limited.

²⁰ Fiorini's reply to question 20.2 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Customers – (Q. 2), dated 8 October 2012.

²¹ Metsä Board's reply to question 20.2 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Customers – (Q. 2), dated 8 October 2012.

²² Forum Packaging's reply to question 21 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Customers – (Q. 2), dated 8 October 2012.

Supply-side substitution

46. Regarding supply side-substitution between white and brown kraft paper, some competitors indicated that there are some technical barriers in switching from producing brown kraft paper to white kraft paper. White kraft paper requires very clean conditions to avoid any product defects. While Mondi (which is a vertically integrated operator from pulp production to converting) indicated that it regularly switches between these paper types according to its needs and that *"only cleaning needs to be done"*, the ability of a producer to switch effectively may depend on the production environment in which that particular producer operates as the time required for cleaning does not appear to be the same for all producers. For instance, another producer indicated that *"exchanging brown for white pulp at the same machine needs a great deal of time of shutdown to clean the machine...exchanging brown for white pulp is technically possible...but may cause production losses and increase costs of production."*²³
47. In addition, a number of competitors who responded to the Commission's market investigation argued that integrated mills, i.e. those which have an in-house production facility for bleached pulp, have more advantageous cost conditions than those who source their bleached pulp requirements from the market. Competitors indicate that this is due to the volatility of white pulp prices which increases the financial risk of producing white kraft paper types. Therefore, the lack of an in-house bleached pulp production constitutes a further barrier regarding the entry from brown paper producers. Furthermore, some competitors who only produce brown kraft paper(s) argue that additional investment and know-how relating to customers for the particular white kraft paper type would be needed.
48. As such, although the same machine may technically be used for the production of both white and brown kraft paper(s), other factors, such as the time required for switching, as well as the lack of in-house bleached pulp production and know-how regarding customers may constrain a producer's ability (and incentive) to switch from producing brown kraft paper to white kraft paper. The Commission therefore consider that supply-side substitutability may exist for some producers such as Mondi and the Parties but not for others.

(d) Conclusion

49. In light of the above, and in particular given the lack of any significant demand-side substitutability and the restricted supply-side substitutability, the Commission considers, for the purposes of this decision, that the supply of each of white and brown sack kraft paper and each of white and brown MF/UG kraft paper constitute separate relevant product markets. The question as to whether MG kraft paper should be segmented between white and brown can be left open since the Parties' activities do not overlap in relation to MG kraft papers. Furthermore, the question of whether the white and brown sack kraft paper markets should be further segmented into flat, semi-extensible and extensible sack kraft segments can be left open since the Commission's conclusion is

²³ Oyka Kagit Ambalaj's reply to question 30 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Competitors – (Q. 1), dated 11 October 2012.

that the proposed transaction raises serious doubts under any plausible market definition.

B. Relevant geographic market

50. The Commission has previously defined the relevant geographic market for kraft papers as at least EEA-wide.²⁴ The Notifying Party agrees with this approach and submits that imports from outside the EEA constitute a significant constraint on competition within the EEA.
51. The results of the Commission's market investigation were mixed. A number of customers said they only source kraft paper within the EEA and a number of others said they also source some kraft paper from outside the EEA. Several customers mentioned that sourcing from outside the EEA may be possible but raises a number of issues such as transport costs, currency exchange, lead times and the different geographic focus of competitors based outside the EEA. For example, according to one customer the currency exchanges, transport costs and delivery times have constituted barriers, while another customer said that it is carrying out tests with a paper mill outside the EEA but that the distance was a problem.²⁵ A third customer said that *"the delivery times required in Europe by sack users are counted in days/max weeks. If we would try to seek for alternative supplier oversea, it will be impossible for the multiple needs we have and for the delivery times (...) an order placed in Canada will need 2 to 4 months to be delivered while in Europe we speak about 4 weeks in normal circumstances. We should also say that the alternative to European qualities are unavailable in other parts of the world."*²⁶ Yet another customer stated that *"transport costs play a huge part in sourcing. It is not only transport cost, but lead times for other sources."*²⁷ Another customer points out that *"it is mainly EEA as other markets do not meet requirements for either quality (Asia) or lead times (US)"*.²⁸
52. It is therefore evident that some customers also consider that the quality of the paper sourced from outside the EEA is not the same as the quality of the paper sourced within the EEA, in particular for white kraft papers. Some customers submitted that the best quality wood/paper comes from the Nordic region and some mentioned that the long wood fibres sourced from there results in stronger paper (and therefore lower weight requirements) than wood sourced from outside the EEA.
53. For the purposes of this decision, given the apparent limited role played by imports due to transport costs, longer lead-times, currency-related issues, and some potential quality

²⁴ M.2243 – *Stora Enso/Assidomän/JV*, recital 21, and M.5155 – *Mondi/Loparex Assets*, recital 32.

²⁵ Replies to question 24 the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Customers – (Q. 2), dated 8 October 2012.

²⁶ Valvosacco's reply to question 24 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Customers – (Q. 2), dated 8 October 2012.

²⁷ Forum Packaging's reply to question 26 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Customers – (Q. 2), dated 8 October 2012.

²⁸ Segezha's reply to question 24 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Customers – (Q. 2), dated 8 October 2012.

differences, the Commission considers that the appropriate geographic market for the various kraft papers concerned is the EEA.

IV.3. Corrugated case materials ("CCM")

A. Relevant product market

54. CCM are the input used for the production of corrugated board, from which ultimately corrugated boxes and containers are made. Corrugated board consists of a corrugated layer of paper glued to a flat paper on each of the two surfaces. The corrugated paper in the centre is called "fluting" and the flat papers on either side are called "liner". According to the Notifying Party, kraftliner (like kraft paper) is a very strong material.
55. The main difference between kraft paper and liner is typically the grammage. Liner can be either white or brown, depending on whether the pulp is bleached or not. All types of liners can be coated or uncoated. The coating consists of a thin layer of mineral slurry on one or both surfaces of the liner. Liner produced from recovered waste paper is called testliner, whereas kraftliner is produced from virgin wood pulp. Kraftliner is typically stronger than testliner but the production costs of testliner are generally lower. Kraftliner can also be divided into white top kraftliner (one side is white) and fully white kraftliner (both sides are white).
56. In its previous decisions, the Commission identified a separate product market for CCM²⁹ as well as for corrugated board sheets (comprising both liners and fluting).³⁰ In addition, the Commission further considered a distinction between kraftliner and testliner, but ultimately left the exact market definition open.³¹
57. The Notifying Party submits that there is one single product market for CCM and that any subdivision – in particular a distinction between kraftliner and testliner – would not reflect market reality either from a demand-side perspective, as converters need both to produce corrugated cases, or from a supply-side perspective, as the same machinery can produce both types. Similarly the Notifying Party submits that it is inappropriate to define a discrete market segment for (fully) white kraftliner in the EEA as this is a niche product with limited use and a very small segment with few active players. In any event, it can have no competitive relevance for this case as it produces no overlap due to the fact that Korsnäs only produces white top kraftliner, and not (fully) white kraftliner. In any event the Notifying Party submits that the exact market definition may be left open.

²⁹ M.3935 – *Jefferson Smurfit/Kappa*, recital 17, M.2391 – *CVC/Cinven/Assidoman*, M.2243 – *Stora Enso/Assidomän/JV*, recital 17, M.1442 – *MMP/AFP*, recital 12, M.1208 – *Jefferson Smurfit/Stone Containers*, recital 19 and M.6512 – *DS Smith/SCA Packaging*, recitals 54-59.

³⁰ M.2391 – *CVC/Cinven/Assidoman* and M.2032 – *SCA Packaging/Metsä Corrugated*.

³¹ M.3935 – *Jefferson Smurfit/Kappa*, recital 18.

B. Relevant geographic market

58. In line with the Commission's previous decisions, the Notifying Party submits that the geographic market for CCM is at least EEA-wide. The scope of the market for the supply of corrugated board sheets has been left open in previous Commission decisions.³²

IV.4. Liquid packaging board ("LPB")

A. Relevant product market

59. LPB is a paperboard made from pure virgin fibres and used for the production of packaging containers for liquid and semi-liquid foodstuffs. It is sold to a few large converters active in Europe (Tetra Pak, Combibloc and Elopak) who convert it into liquid packaging containers, which are then sold to end-users (i.e. liquid or semi-liquid food companies, often called "fillers", such as Nestlé, Danone or Unilever).
60. LPB may be bleached or unbleached, coated or uncoated. It may be used for both aseptic and non-aseptic packaging. In addition to the "rigid" LPB there is also "liquid bag paper", also used for liquid food packaging.³³
61. In line with the Commission's previous practice, the Notifying Party submits that (although the exact definition can be left open in this case given the very small increment resulting from the proposed transaction) LPB is a distinct product market that does not include non-liquid packaging boards.³⁴ Nevertheless, as the Commission acknowledged previously, there is a competitive constraint on LPB producers from non-liquid packaging boards and other neighbouring markets such as plastic and glass.³⁵ The Commission has not previously distinguished any narrower markets within the market for the supply of LPB.³⁶

B. Relevant geographic market

62. The LPB market has been considered as at least EEA-wide in previous Commission decisions³⁷ though certain elements indicated a possibly wider market given growing competition from outside the EEA.³⁸ The Notifying Party provided its views on the

³² M.2391 – *CVC/Cinven/Assidoman* and M.2032 – *SCA Packaging/Metsä Corrugate*.

³³ This product is based on a paper which is technically closer to kraft paper than LPB but its end use is identical to similarly sized LPB packages.

³⁴ M.4057 – *Korsnäs/Assidomän Cartonboard*, recitals 13 and 22. See also M.3822 – *Stora Enso/Scheidersonne Papier*, recital 16 and M.1225 – *Enso/Stora*, recital 31.

³⁵ M.4057 – *Korsnäs/Assidomän Cartonboard*, recitals 21 and 22. See also M.1225 – *Enso/Stora*, recitals 18-42.

³⁶ M.4057 – *Korsnäs/Assidomän Cartonboard*, recital 22.

³⁷ M.1225 – *Enso/Stora*, recital 59.

³⁸ M.4057 – *Korsnäs/Assidomän Cartonboard*, recitals 23-26 and 54.

competition assessment at the EEA level although it did not substantiate its views on the relevant geographic market definition.

IV.5. Wood pulp

A. Relevant product market

63. Wood pulp is a dry fibrous material that is most commonly made from wood either by chemical or mechanical means.³⁹ Wood pulp is primarily used to produce paper and paperboard and can be bleached or unbleached: paper made from bleached pulp is white while paper made from unbleached pulp is brown.
64. Both Billerud and Korsnäs produce wood pulp as a raw material for paper production. Because Billerud also supplies pulp to third parties, there is a potential vertical relationship between the Parties. [Reference to the limited pulp sourcing by Korsnäs from Billerud]⁴⁰ [...].
65. The Commission has in the majority of its earlier decisions considered that there is a single product market encompassing all types of pulp.⁴¹ In two decisions the Commission has treated chemical pulp as a separate product market.⁴² The Commission has considered the possibility of further sub-segmenting the chemical pulp market into hardwood and softwood pulps, each further divided into bleached and unbleached pulps. However, the market definition was left open. The Notifying Party submits that the chemical pulp market should not be further sub-segmented but that the market definition can be left open in this case.

B. Relevant geographic market

66. In previous cases, the relevant geographic market for the supply of chemical pulp has been defined as at least EEA-wide.⁴³ The Notifying Party agrees that this should remain the geographic scope of the market definition.

IV.6. Purchase and sale of wood

A. Relevant product market

67. The Parties use wood in their commercial activities as a raw material for wood pulp. Both Parties are active in the purchase and sale of wood. They purchase wood from forest

³⁹ According to the Notifying Party, chemical pulp represents approximately 90% of the total volume pulp sold on the open market, while mechanical pulp corresponds to around 10% of the total volume wood pulp sold on the open market.

⁴⁰ [...].

⁴¹ M.210 – *Mondi/Frantschach*, recital. 11-12, M.2243 *Stora Enso/Assidomän/JV*, recital 19, M.2245 – *Metsä-Serla/Zanders*, recital 16, M.4054 *Koch Industries/Georgia-Pacific*, recital 9.

⁴² M.1006 – *UPM-Kymmene/April*, M.5477 *Votorantim/Aracruz*.

⁴³ See Case COMP/M.2245 *Metsä-Serla/Zanders*, recital 16; Case COMP/M.646 *Repola/Kymmene*, recital 43; COMP/M.5477 *Votorantim/Aracruz*, recital 24.

owners or other sellers of wood, which is then harvested, usually by third parties contracted for this purpose. The Parties purchase wood from forest owners or other sellers of wood, either in the form of wood deliveries to them or in the form of the right to harvest or have harvested wood within a given area ("standing wood").

68. The wood, which consists of a mix of sizes and ages of trees, is then harvested, usually by third parties contracted for this purpose. The harvested wood includes some wood suitable for pulp production.⁴⁴ The harvested wood also contains larger logs not suitable for pulp production.⁴⁵ As a result, wood for pulp production is fed into the respective Party's pulp production. The larger/higher quality wood is sold on to saw mills etc. for consideration in money or in kind, viz. in return for sawmill residue materials suitable for pulp production (sawdust, chips). The tops and branches are either used internally as fuel in the pulp production or sold to producers of alternative energy. The value of the purchased wood is thus maximised for the party in question.
69. The Commission has in its previous cases concluded that there are separate markets for the purchase and sale of wood⁴⁶ and noted that wood may be subdivided into logs and pulp wood (based on end use), but ultimately left the market definition open. The Notifying Party considers that the Commission's previous definitions of the markets for the purchase and sale respectively of wood can apply in this case but that the precise market definition may be left open.

B. Relevant geographic market

70. In its previous practice, the Commission has left open the question whether the precise geographic market scope for the purchase and supply of wood is national, regional or EEA-wide.⁴⁷ The Notifying Party considers this market to be at least regional comprising the whole of the Nordic and Baltic area in order to reflect the competitive dynamics of the market.⁴⁸

IV.7. Conclusion concerning markets other than kraft paper

71. The Commission considers that the exact product market definition of the supply of the products described in sections IV.3 to IV.6 above can be left open in this case since the competitive assessment is unlikely to change under any reasonable market definition. Regarding the geographic scope of the relevant markets, for the purposes of this decision

⁴⁴ According to the Notifying Party, at the pulp mill the wood raw material is first chopped up into wooden chips (c. 5 x 5 x 1 cm) before being fed into the pulp production process, meaning that there is a preference for smaller logs for this purpose.

⁴⁵ These larger logs are more suitable for other purposes, e.g. the production of sawn products (planks, construction wood) by sawmills and can generate more value if used for this purpose. Tops and branches are used as fuel in alternative energy production.

⁴⁶ M.2234 – *Metsäliitto Osuuskunta/Vapo Oy/JV*, recitals 16-20, M.6101 – *UPM/Myllykoski and Rhein Papier*, recitals 222 *et seq.*

⁴⁷ M.6101 – *UPM/Myllykoski and Rhein Papier*, recital 229.

⁴⁸ Indeed, both Korsnäs and Billerud sources some of the wood used in [...]from [...]as well as [...].

the Commission will carry out the assessment on an EEA-wide basis for CCM, LPB and wood pulp, and on the narrowest possible geographic basis for the purchase and sale of wood, i.e. on national level.

V. COMPETITIVE ASSESSMENT – NON-COORDINATED EFFECTS

V.1. Analytical framework

72. Through its control of mergers, the Commission prevents mergers that would be likely to deprive consumers of the benefits that effective competition brings by significantly increasing the market power of firms.⁴⁹ What is meant by increased market power is the ability of a firm to profitably increase prices, reduce output, choice or quality of goods and services, diminish innovation or otherwise influence parameters of competition.⁵⁰ A merger would *inter alia* significantly impede effective competition if it would create or strengthen a dominant position of a single firm, which typically would have an appreciably larger market share than the next competitor post-merger.⁵¹
73. In line with the Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings⁵² ("Horizontal Merger Guidelines"), the Commission focussed on a number of factors to determine whether the proposed concentration in this case is likely to significantly impede effective competition, in particular as a result of the creation of a dominant position and in the light of the merged entity's ability to behave to a significant extent independently of its customers and competitors.

V.2. Kraft paper

V.2.1 *Market shares and market structure*

74. Korsnäs supplies sack paper and MF/UG paper in the EEA (a majority of which is white, but also some quantities of brown[...]). Billerud is active in all of the kraft paper segments (both white and brown). The Parties' activities do not overlap in respect of MG paper since only Billerud produces this type of paper (both white and brown).
75. The table below sets out the Notifying Party's estimates for the Parties' market shares in the EEA in an overall market comprising the supply of all kraft paper.⁵³

⁴⁹ Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings, paragraph 8, (OJ C31, 5.2.2004, p.5).

⁵⁰ Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings, paragraph 8, (OJ C31, 5.2.2004, p.5).

⁵¹ Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings, paragraph 25, (OJ C31, 5.2.2004, p.5).

⁵² OJ C31, 5.2.2004, p.5.

⁵³ The total market in value and volume is the Notifying Party's best estimate and includes sales to the merchant market, i.e. without captive volumes.

Merchant market for kraft paper, EEA, 2011		
Total market	EUR 2,500 million 2,511 kilo-tonnes per annum ("ktpa")	
The Parties	Sales	Share
Billerud	[...] [...]	Value: [10-20]% Volume: [10-20]%
Korsnäs	[...] [...]	Value: [0-5]% Volume: [0-5]%
Combined	[...] [...]	Value: [10-20]% Volume: [20-30]%

76. The tables below show the Notifying Party's estimates regarding the market shares of the Parties and their competitors in the supply of white and brown sack kraft papers in the EEA.

Merchant market for white sack kraft paper, EEA, 2011		
Total market	[...] [...] ⁵⁴	
The Parties	Sales	Share
Billerud	[...] [...]	Value: [50-60]% Volume: [50-60]%
Korsnäs	[...] [...]	Value: [10-20]% Volume: [10-20]%
Combined	[...] [...]	Value: [70-80]% Volume: [70-80]%
Competitors	Sales	Share
Canfor Corporation	[...] [...]	Value: [10-20]% Volume: [5-10]
Mondi	[...] [...]	Value: [0-5]% Volume: [0-5]%
Smurfit Kappa Group	[...] [...]	Value: [0-5]% Volume: [0-5]%
Cartiera del Chiese	[...] [...]	Value: [0-5]% Volume: [0-5]%

⁵⁴ The source of the total market is the industry consultant Pöyry. Figures were adjusted for the Notifying Party's estimated internal sales on the market. Whilst the Notifying Party has not been able to entirely allocate the total sales figure among the Parties and their competitors, it considers this to be the most objective third party estimate available for present purposes.

Merchant market for brown sack kraft paper, EEA, 2011		
Total market	[...]	[...]
The Parties	Sales	Share
Billerud	[...]	Value: [5-10]% Volume: [5-10]%
Korsnäs	[...]	Value: [0-5]% Volume: [0-5]
Combined	[...]	Value: [5-10]% Volume: [5-10]%
Competitors	Sales	Share
Mondi	[...]	Value: [30-40]% Volume: [40-50]%
Smurfit Kappa Group	[...]	Value: [20-30]% Volume: [20-30]%
Nordic Paper	[...]	Value: [10-20]% Volume: [10-20]%
Stora Enso	[...]	Value: [5-10]% Volume: [5-10]%
Horizon	[...]	Value: [0-5]% Volume: [5-10]%

77. The tables below show the Notifying Party's estimates regarding the market shares of the Parties and their competitors in the supply of white and brown MF/UG kraft papers in the EEA.

Merchant market for white MF/UG, EEA, 2011		
Total market	[...]	[...]
The Parties	Sales	Share
Billerud	[...]	Value: [50-60]% Volume: [50-60]%
Korsnäs	[...]	Value: [5-10]% Volume: [5-10]%
Combined	[...]	Value: [60-70]% Volume: [60-70]%
Competitors	Sales	Share
Mondi group	[...]	Value: [20-30]% Volume: [20-30]%
Grupo Iberpapel	[...]	Value: [0-5]% Volume: [0-5]%
Crown van Gelder N.V.	[...]	Value: [0-5]% Volume: [0-5]%
Lenzing Papier GmbH	[...]	Value: [0-5]% Volume: [0-5]%
Favini Srl	[...]	Value: [0-5]% Volume: [0-5]%

Merchant market for brown MF/UG, EEA, 2011		
Total market	[...]	[...]
The Parties	Sales	Share
Billerud	[...]	Value: [10-20]% Volume: [10-20]%
Korsnäs	[...]	Value: [0-5]% Volume: [0-5]%
Combined	[...]	Value: [10-20]% Volume: [10-20]%
Competitors	Sales	Share
Mondi group	[...]	Value: [10-20]% Volume: [10-20]%
Nordic paper AS	[...]	Value: [5-10]% Volume: [5-10]%
Alier/SA	[...]	Value: [5-10]% Volume: [5-10]%
Horizon Pulp & Paper	[...]	Value: [5-10]% Volume: [5-10]%
Cartiera Saci Spa	[...]	Value: [0-5]% Volume: [5-10]%

78. The tables below show the Notifying Party's estimates regarding the Parties' market shares in white flat sack kraft paper and separately in white extensible sack kraft paper⁵⁵ in the EEA.

Merchant market for white flat sack kraft paper, EEA, 2011		
Total market	[...]	[...]
The Parties	Sales	Shares
Billerud	[...]	Value: [50-60]% Volume: [40-50]%
Korsnäs	[...]	Value: [20-30]% Volume: [20-30]%
Combined	[...]	Value: [70-80]% Volume: [70-80]%

Merchant market for white extensible sack kraft paper, EEA, 2011		
Total market	[...]	[...]
The Parties	Sales	Shares
Billerud	[...]	Value: [60-70]% Volume: [50-60]%
Korsnäs	[...]	Value: [10-20]% Volume: [10-20]%
Combined	[...]	Value: [70-80]% Volume: [70-80]%

⁵⁵ The market shares for white extensible sack paper include both the semi-extensible and fully extensible segments of sack paper. According to the Notifying Party, competitors are the same as those listed for white sack kraft paper. The Notifying Party is unable to provide estimates of the precise market shares.

79. It is therefore clear that in the brown kraft paper market segments the market structure is more fragmented and the Parties' combined market shares much lower than in the white kraft paper market segments. Furthermore, the concerns raised by customers during the Commission's market investigation relate almost entirely to the white kraft paper market segments. Therefore the competitive assessment below focuses on the supply of white sack kraft paper and white MF/UG kraft paper. The competitive assessment will refer to market share estimates based in volume figures. In any event, market share estimates based in value figures would not alter the competitive assessment.
80. The concentrated nature of the market in white sack kraft paper is also reflected in the results of the application of the Herfindahl-Hirschmann Index (HHI),⁵⁶ which indicate a level of the HHI of over 3,500 prior to the transaction and over 5,500 after the transaction with a change in the HHI directly brought about by the merger (the "delta") of nearly 2,000.
81. In the supply of white MF/UG kraft paper, the HHI levels are also very high indicating a concentration level of over 4,000 prior to the proposed transaction and over 5,300 after its conclusion with a "delta" of over 1,200.

V.2.2. The Notifying Party's views regarding the overall kraft paper market

82. The Notifying Party argues that the relevant product market should be defined broadly as the supply of kraft paper in the EEA. The Notifying Party also notes that, in addition to competition from current kraft paper producers, there are a number of other competitive constraints imposed on kraft paper producers, notably from kraftliner producers, fine paper producers, kraft paper imports into the EEA and, at the end user level, from producers of other materials (most notably plastic).
83. In any event, on the basis of an EEA kraft paper market the Notifying Party argues that the proposed transaction would not raise competitive concerns since the Parties' combined market share is limited ([20-30]% based in volume) and the concentration leads to a market share increment of less than [0-5]% (Billerud: [10-20]%, Korsnäs: [0-5]%). Moreover, there is strong competition from a number of suppliers, in particular from Mondi (EEA market share of [20-30]%), Smurfit Kappa ([5-10]%), Nordic Paper ([5-10]%), Gascogne Paper ([0-5]%) and Cartiera Lucchese ([0-5]%).
84. According to the Notifying Party, these competitive dynamics would also apply if particular sub-segments of the kraft paper market were considered to be relevant product markets given the scope for competitors to increase substantially their EEA sales of specific types of kraft paper by diverting production capacity to such sales and the ability of converters and end-users to switch to alternatives.
85. The Notifying Party also notes that kraft paper machines are capital intensive investments and that manufacturers' profitability depends on these machines being used intensively. According to the Notifying Party, kraft paper manufacturers are therefore concerned not to lose volume and, similarly, are interested in maximising capacity utilisation and diverting capacity and sales to those products which yield the best profit margins.

⁵⁶ Horizontal Merger Guidelines, paragraph 16.

V.2.3. *White sack kraft paper*

A. The Notifying Party's views

86. Regarding specifically white sack kraft paper, the Notifying Party argues that (i) white sack kraft paper competitors in the EEA could readily increase their sales, (ii) white MF/UG kraft paper producers could produce white flat sack paper without further investment and trivial time outlay, (iii) imports into the EEA could increase, and (iv) brown sack kraft paper suppliers could diversify into the production of white sack kraft paper.
87. First, the Notifying Party submits that existing EEA competitors supplying white sack kraft paper could readily increase their EEA sales of white sack kraft paper. According to the Notifying Party, competitors based in the EEA are Mondi ([0-5]%), Smurfit Kappa ([0-5]%), Cartiera del Chiese ([0-5]%) and Alier ([0-5]%).
88. The Notifying Party claims that the merged entity would be constrained in particular by Mondi, [...],⁵⁷ as well as being a major competitive constraint due to its own manufacturing activities. According to the Notifying Party, Mondi could easily increase its production of white sack kraft paper on existing machines and these volumes could be used either internally or sold on the merchant market.⁵⁸ Against this background, higher prices to Mondi would not be sustainable as Mondi would increase its in-house production and the merged entity would lose sales. Nor would it be sustainable to raise prices to non-integrated customers (competitors of Mondi downstream), as the merged entity would risk losing market share to Mondi. This would not be in the merged entity's interest not only as it would lead to a sales decrease but also as the merged entity would have no interest in increasing its dependence from Mondi.
89. In addition, the Notifying Party submits that there are a number of other EEA players who could potentially increase their production capacity of white sack paper in particular Smurfit Kappa (with a potential added capacity of [...] ktpa), Cartiera del Chiese (with an estimated potential increase of up to [...] ktpa) and Alier (which would be able to produce up to [...] ktpa of extra white sack paper).
90. Second, the Notifying Party argues that all producers of white MF/UG kraft paper can switch quickly to producing flat white sack kraft paper using their existing machines without any further investment and trivial time outlay. According to the Notifying Party, white flat sack kraft paper would represent around [...] % of the total white sack kraft paper production⁵⁹ and thus white MF/UG kraft paper producers would be able to address a

⁵⁷ In 2011, [...], while according to the Notifying Party the total merchant purchases of white sack kraft paper by Mondi would amount to nearly a quarter of the EEA merchant sales of white sack kraft paper.

⁵⁸ According to the Notifying Party, Mondi currently manufactures [...] ktpa of white sack kraft paper (of which [...] ktpa is sold on the merchant market and [...] ktpa to supply its own converting activities). The Notifying Party argues that its production of white sack kraft paper could readily be expanded to an extra capacity of [...] ktpa without any loss of efficiency, mainly by switching production from brown to white sack kraft paper.

⁵⁹ According to data from the Confederation of European Paper Industries ("CEPI") Eurokraft, [...] % is the share of its members' white sack kraft sales represented by sales of flat sack kraft paper. However, not all producers are members of CEPI Eurokraft.

similar percentage of current EEA white sack kraft sales, which would be sufficient to constrain the merged entity. This possibility would be illustrated by Billerud and Korsnäs themselves, [...].⁶⁰ The Notifying Party further argues that the effectiveness of a potential production swing scenario in response to differences in profit margins is confirmed by Korsnäs' own production trends over the last three years. [...]. During the same period, Korsnäs has increased its output of white sack kraft paper by [...]9% by swinging this capacity. In addition, Korsnäs' profit margins on brown sack kraft paper [...].

91. Third, the Notifying Party argues that post transaction any hypothetical price increase by the merged entity would be constrained by a potential increase of imports into the EEA.
92. The Notifying Party submits that, for comparable white sack kraft papers, market prices in North America and South America are at broadly the same level as in Europe, as the current price range, expressed as delivered duty paid ("DDP"), is [...] in all these regions.⁶¹ As for Asia, market prices would typically be at the upper half of this range. Therefore, price levels in the EEA would be at least as interesting to a non-EEA producer as those in other regions.
93. The Notifying Party claims that in particular Canfor, a Canadian kraft paper producer already active in the EEA, is an alternative source of supply. Canfor would have an overall estimated capacity of [...] ktpa, fully dedicated to the merchant market, of which [...] ktpa would be used for white sack kraft paper production and the remaining for brown sack kraft paper production. In addition, the Notifying Party estimates that only [...]% of Canfor's white sack kraft paper would currently be sold in the EEA, while historical trade data indicates that Canfor would have a considerable scope to vary its EEA sales (i.e. to swing additional sales volume back in the EEA) since in 2005 its EEA sales volume reached a [...] kt.⁶² In addition to Canfor, other non-EEA based producers of white sack kraft paper currently not active in the EEA, such as Georgia Pacific (USA) and Klabin (Brasil), would be able to redirect volumes should exports to the EEA become more commercially attractive.
94. The Notifying Party also argues that it is implausible to claim that non-EEA producers would generally suffer from quality issues given that Canfor's global sales are larger than Korsnäs' and that Canfor's home markets are likely to be at least as demanding as regards product standards as the EEA.
95. Fourth, the Notifying Party submits that EEA sales of brown sack kraft paper represent more than twice the EEA sales of white sack kraft paper ([...]) and that there is scope for manufacturers focusing on brown sack kraft paper to diversify into white sack kraft paper by purchasing white market pulp and possibly some pulp shredding equipment (if necessary).

⁶⁰ [...].

⁶¹ According to the Notifying Party, transport costs from the locations where some of the non-EEA competitors are based are only EUR [...] /tonne higher than Billerud's average transport costs within the EEA, or circa [...] of the customer price.

⁶² Source: Pöyry data. The Notifying Party also submits that Canfor could move the production capacity currently allocated to brown sack kraft paper to the production of white sack kraft paper.

96. The Notifying Party has also stated that at least two brown sack kraft paper producers, [...] and [...], have been considering expanding into the production of white sack kraft paper.
97. In support of the argument concerning the competitive constraint posed by potential entry from white MF/UG and brown sack kraft paper producers, the Notifying Party submitted a study prepared by the paper industry consulting firm Pöyry, which indicates that, in the event of a 5% price increase in white sack kraft paper, a number of producers of brown sack kraft paper and a producer of white MF/UG kraft paper ([...]) would find it profitable to switch some of their production volumes to white sack kraft paper.⁶³ The relevant companies would be [...]. The report analysis assumed a switch of at least 20% of the production volume of each machine, which would allegedly typically represent a switched volume of around 30 ktpa. The Notifying Party noted that this volume would equate to the total production of Korsnäs in relation to either white sack kraft or white MF/UG kraft paper, and would therefore be sufficient to impose a competitive constraint on the merged entity post-transaction.⁶⁴

B. The Commission's Assessment

(i) The Parties' leading position in the market

98. According to the Horizontal Merger Guidelines, market shares and concentration levels provide useful first indications of the market structure and of the competitive importance of both the merging parties and their competitors.⁶⁵
99. The total market size for white sack paper amounts to sales of EUR 159 million and 186 ktpa in volume in the EEA. The Parties' strength in this segment reflects their stated business focus on white sack kraft paper.⁶⁶
100. The Parties' combined market share in the supply of white sack kraft paper would be [70-80]% by volume (Billerud: [50-60]% and Korsnäs [10-20]%). According to the Notifying Party, the next largest competitor in white sack kraft is the Canadian importer Canfor Corporation with [10-20]% in the EEA, followed by Mondi ([0-5]%), Smurfit Kappa ([0-5]%) and Cartiera del Chiese ([0-5]%).
101. The proposed transaction therefore results in the merger of the number one and number two players in Europe in white sack kraft paper with the remaining competitors having

⁶³ The study also considered a potential switch to white sack kraft paper production from [...] production of white MF/UG paper and from an unknown uncoated fine paper producer.

⁶⁴ Moreover, the Notifying Party argued that this analysis substantially understates rivals' strategic incentives to diversify their customer base into white MF/UG kraft and white sack kraft papers, given that pre-existing Eurokraft data on which the consultant's study is based indicates that these sectors have exhibited [...] European sales ([...] for white MF/UG and white sack kraft respectively) which is in marked contrast to European brown sack kraft sales which have been [...] (-[...] per annum for brown sack kraft paper) and fine paper sales [...].

⁶⁵ Horizontal Merger Guidelines, paragraph 14.

⁶⁶ The Notifying Party states in paragraph 142 of the Form CO that "the merged entity's position on such a segment in the EEA primarily reflects the fact that Billerud for marketing reasons [...]."

significantly smaller market shares. The Parties' combined market share alone, in the context of the total market structure, therefore gives a first indication of a dominant market position.

102. Market players also noted that this transaction follows the acquisition by Billerud of UPM-Kymmene's kraft paper business earlier this year which has led to a more concentrated market in particular in the white kraft paper segments. This acquisition saw Billerud [...]. In particular, in 2011 the former UPM Pietarsaari mill produced [...] kt of white sack kraft paper ([...] % of Billerud's total sales).
103. While some customers have stated that the proposed transaction would not have an impact on their business, the vast majority of customers considered that post-merger the market structure would be such that no credible alternatives would exist and prices would rise. For example, customers have said that prices would increase *"because production in Europe for white kraft sacks will almost be concentrated in a single dominant group"*⁶⁷ and *"we expect price increase from 20% to 30% in the first months after the merger"*.⁶⁸ Other customers submitted that as a result of the proposed transaction it is likely for *"white sack kraft prices to increase more than brown sack kraft prices, due to there being almost no competition in the white sack kraft market"*⁶⁹ and that *"less competition and higher prices and longer delivery times"*⁷⁰ are expected.
104. Some customers have also highlighted the fact that the remaining producers are not credible alternatives since they would either not be able to provide the volumes requested or would provide lower quality paper which is not acceptable to the converters' customers.
105. Indeed, the Commission considers the Parties to be particularly close competitors in white sack kraft paper. Both Billerud and Korsnäs have focused on high quality white sack kraft as opposed to brown and neither company is vertically integrated downstream (as opposed to one of their main European competitors, Mondi). The replies to the Commission's market investigation support the notion of closeness of competition between the Parties.⁷¹ According to customers, the Parties have *"similar products, high production*

⁶⁷ A customer reply to question 40 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Customers – (Q. 2), dated 8 October 2012.

⁶⁸ A customer reply to question 40 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Customers – (Q. 2), dated 8 October 2012.

⁶⁹ A customer reply to question 40 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Customers – (Q. 2), dated 8 October 2012.

⁷⁰ A customer reply to question 40 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Customers – (Q. 2), dated 8 October

⁷¹ The majority of customers in fact considered Billerud, Korsnäs and UPM-Kymmene (prior to its acquisition by Billerud) as each other's closest competitors in white sack kraft. Replies to question 31 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Customers – (Q. 2), dated 8 October

capacity, good presence on the market"⁷² and *"no other wet strength white sack kraft makers in the world who produce a similar quality"*.⁷³ As explained by one customer, the proposed transaction *"is the union of the two largest producers in the market. No other paper producer...can today for strength and production capacity counterbalance such a concentration, not even the Mondi Group"*.⁷⁴ In the same vein, a competitor explains that post transaction there will not be sufficient alternatives to the merged entity since *"Mondi doesn't sell because paper is used internally."*⁷⁵

106. Whilst some customers also considered that Mondi, Smurfit Kappa and Canfor have similar products, a number of replies were qualified. As regards Canfor, customers have also stated that distance may be an issue and that Mondi and Canfor may not have available volumes. Moreover, approximately half of the customers have raised concerns in respect of potentially having to source from Mondi given that Mondi is vertically integrated downstream and, as such, also a direct competitor to these customers.
107. Actual and potential competitors are generally not concerned by the transaction and most consider that it will lead to no change in their business. Those who raised concerns simply stated that there will be one competitor less in the white sack kraft paper market and that the white sack kraft segment will be rather concentrated. One interpretation of this is that regardless of what happens in the white sack kraft paper market, actual and potential competitors do not expect to change their current portfolios.
108. In conclusion, the Commission considers that the Parties' high combined EEA market share in white sack kraft and the fact the Parties are each other's closest (or at the very least close if not the closest) competitors in white sack kraft paper in the EEA point in the direction of the transaction leading to the creation or strengthening of a dominant position for the merged entity in white sack kraft paper.

(ii) Competition from current competitors

109. Concerning the competitive constraint posed by current white sack kraft paper competitors, the replies to the Commission's market investigation have indicated that should the merged entity increase prices, current competitors would not have the ability or incentive to increase output to a sufficient extent to pose a significant constraint on the merged entity.
110. First, current competitors do not have available free capacity to simply increase their production of white sack kraft paper. The only exception would be Mondi, but as explained customers have raised concerns in respect of potentially having to source

⁷² A customer reply to question 31 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Customers – (Q. 2), dated 8 October 2012.

⁷³ A customer reply to question 31 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Customers – (Q. 2), dated 8 October 2012.

⁷⁴ A customer reply to question 38 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Customers – (Q. 2), dated 8 October 2012.

⁷⁵ Cartiera del Chiese's reply to question 42 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Competitors, dated 11 October 2012.

from Mondi given that the company is also a direct competitor to these customers. In order to increase production, current competitors would have to re-balance their product portfolio. In short, they would have to reduce their production in one type of paper and switch those volumes to producing white sack kraft paper.

111. Second, the replies to the Commission's market investigation have indicated that a switch resulting in a re-balancing of these competitors' product portfolios is unlikely except in the case of Mondi. Competitors have stated that a non-temporary 5% to 10% price increase in white sack kraft paper would not lead them to switch volumes from brown sack paper or MF/UG kraft paper into the production of white sack kraft paper. Although a small number of competitors said that theoretically a supplier could have the incentive to make this switch, none of the competitors who replied to the Commission's market investigation said that they would switch their own volumes in response to such a price increase in white sack kraft paper.
112. In this respect, the Commission notes that each competitor is constrained by a different set of facts. The cost structures of each competitor are different, as are their portfolios and the balances between different paper types in their portfolios. The Commission therefore considered the ability and incentive of each of the main current competitors of white sack kraft paper to increase their volumes of white sack kraft paper in the EEA.
113. As regards Canfor, who the Parties estimate to have a [10-20]% EEA-wide market share and thus to be their largest competitor, the Commission considers any increase in volumes of white sack kraft paper into Europe by Canfor (which is an importer from Canada) as highly unlikely. Canfor itself has submitted that its presence in Europe is limited and will remain so. According to Canfor, its exports to Europe are business driven with the objective of offering its global business a more international scope for marketing and reputational reasons. Furthermore, for various reasons, Canfor said it is currently constrained from expanding its offer of kraft paper in Europe due to longer lead-times, transport costs, capacity constraints related to the fact that Canfor ships the largest percentage of its production to North American markets and is now trying to penetrate deeper into emerging markets, and also because of currency conversion related problems (volatility).⁷⁶
114. As regards Mondi, who the Parties estimate to have a [0-5]% EEA-wide market share, the Commission considers that whilst Mondi could increase its volumes of white sack kraft paper in the EEA, it is questionable whether such volumes would end on the market or be used internally by Mondi in the event of a price rise. However, Mondi is vertically integrated downstream and currently a net buyer of white sack kraft paper from the market. Mondi currently uses most of its white sack kraft production internally and sells small volumes to the market only when it does not need them internally or when the prices on the market are such that it can gain additional profit. Mondi indicated that should prices rise it can increase its own production.⁷⁷ However, given Mondi's internal

⁷⁶ According to one customer, a recent approach to Canfor for volumes of white sack kraft paper resulted in a reply by Canfor stating that Canfor has no spare capacity and if it did, it would prefer to fill that capacity with customers located nearer to the west coast of Canada and the Pacific rim. Minutes of the 23 October 2012 conference call with a customer.

⁷⁷ Minutes of the 22 October 2012 conference call with Mondi.

needs, the Commission considers it unlikely that Mondi would provide to the market sufficient amounts of white sack kraft paper to significantly constrain the merged entity.

115. As regards other competitors present in the EEA, the market investigation also indicated that, absent a re-balancing of portfolio, none of those competitors would have the ability to increase output to a sufficient extent to pose a significant constraint on the merged entity.⁷⁸
116. Third, while the Notifying Party has submitted that the margins in brown sack kraft paper and white MF/UG kraft paper versus the margins in white sack kraft paper would incentivise competitors to switch volumes into the production of white sack kraft paper, the Commission considers that the evidence of this provided by the Notifying Party is insufficient to show that such switching would occur in sufficient volumes in order to constrain the merged entity. While Mondi has stated that it swings some of its production between brown sack kraft paper into white sack kraft paper on an ongoing basis by simply switching from brown to bleached pulp,⁷⁹ as explained the Commission considers it unlikely that Mondi would provide to the market sufficient amounts of white sack kraft paper to significantly constrain the merged entity. Furthermore, competitors who replied to the market investigation have also indicated that the margins in the various kraft paper markets are not static. In addition, documents submitted by the Notifying Party show that the Parties' margins for white sack kraft paper, brown sack kraft paper, white MF/UG kraft paper and brown MF/UG kraft paper [...]Some competitors also supported this view, stating that margins vary depending on the conditions of each mill.
117. Moreover, other competitors present in the EEA indicated that for various reasons relating to the particular circumstances of these companies they would not switch production to white sack kraft paper even in the event of a non-temporary price increase in white sack kraft paper.
118. Fourth, the Notifying Party's arguments that producers of white sack kraft paper currently focused outside the EEA could and would divert their sales to the EEA in the event of a price increase are not confirmed by the market investigation and lead the Commission to consider this as unlikely. Indeed, of the potential importers mentioned by the Notifying

⁷⁸ Replies to the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Competitors, dated 29 October 2012.

⁷⁹ Mondi's reply to question 30 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Competitors – (Q. 1), dated 11 October 2012.

Party, Georgia-Pacific considers such scenario as unlikely,⁸⁰ while Klabin has stated that its business is focused in Brazil and also that it is not active in white sack kraft paper.⁸¹

119. In the Pöyry study submitted by the Notifying Party, it is argued that companies such as Mondi, SmurfitKappa, Alier, Cartiera del Chiese, Klabin and Canfor constitute potential sources of additional volumes of white sack kraft paper. However, for the reasons already discussed the Commission considers that such companies would not pose a significant constrain on the merged entity.
120. The Commission therefore concludes that current white sack kraft competitors would not have the ability or incentive to increase output to a sufficient extent to pose a significant constraint on the merged entity

(iii) Entry from potential competitors

121. According to the Notifying Party, the kraft paper market has shown strong growth (5-10% per annum) in emerging markets in Asia and Africa and stable demand in the mature markets in Europe. The Notifying Party also submits that the North American kraft paper market has shown considerable decline over the last decade (some 2-5% per annum). It is therefore clear that there is less incentive to enter European markets given that demand in Europe is stable whereas there is a greater incentive to enter growing markets such as Asia and Africa. Some competitors also supported this view.
122. The results of the market investigation show that even if it were the case that switching to white sack kraft may be relatively simple from a technical point of view for the producers of certain products, there are serious doubts as to whether a sufficient number of competitors would have an economic incentive (due to other cost barriers) to enter into white sack kraft paper even in the situation of a hypothetical non-temporary 5-10% price increase. Replies to the Commission's market investigation have clarified that no overall "one size fits all" assumption can be drawn but that the potential entry of each potential competitor into white sack kraft needs to be assessed individually.
123. The Commission considered separately the ability and incentive of current producers of (i) white MF/UG kraft paper; (ii) brown sack kraft paper and brown MF/UG kraft paper; (iii) kraftliner; and (iii) fine paper to enter the white sack kraft market.⁸²

⁸⁰ Georgia-Pacific's reply to question 1 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Competitors, dated 25 October 2012. As stated by Georgia-Pacific, "*As an extremely small supplier to the EU/EEA, our export sales from GP's Palatka, Florida mill are based on specific opportunities as they arise and GP does not make significant production decisions regarding the configuration and usage of its Palatka, Florida facilities based on an analysis of demand in the EU/EEA.*"

⁸¹ Klabin's reply to question 6 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Competitors, dated 11 October 2012, and Klabin's reply to question 32.1 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Competitors for the purpose of market testing the 6 November 2012 Commitments, dated 7 November 2012.

⁸² The Notifying Party also argued that kraft paper faces the substantial competition from plastic at the end user level. Although some market investigation respondents indicated that for certain end uses plastic could also be used, the Commission considers that the evidence provided by the Notifying Party is not conclusive

124. As regards the potential of current white MF/UG kraft paper producers to enter the white sack kraft paper market, the majority of replies to the Commission's market investigation indicated that this would involve additional investment. Competitors stated that switching production from white MF/UG kraft paper to white sack kraft paper involves the installation of a Clupak unit, which enables the machine to make the paper extensible. For example, Oyka stated that *"It is necessary to have a so called high consistency refining unit and an extensible unit available on the same machine for sack paper production."* And Alier stated that *"sack paper is more demanding in terms of mechanical specification. So the changes mean important modifications at machine level and also at preparation line."*⁸³ The Notifying Party estimates that a Clupak machine would cost around EUR [...] but the results of the market investigation indicate that the price would be around the upper limit of the estimate. Furthermore, the majority of the competitor responses to the market investigation indicate that white MF/UG kraft paper producers would not have the incentive to start producing white sack kraft paper unless there would be a price increase, but even a non-temporary 5-10% price increase would not lead to a switch of production.⁸⁴ The Pöyry study also includes the analysis of a potential switch from white MF/UG kraft paper to white sack kraft paper, but it limits its analysis to Mondi, whose incentives have already been discussed.
125. As regards the possibility of switching from the production of brown kraft paper to the production of white sack kraft paper, brown paper producers (both for sack and MF/UG) who replied to the Commission's market investigation said that even in the event of a non-temporary 5-10% price increase in white sack kraft paper, they would not enter this segment due to other cost structure constraints.⁸⁵
126. One of these constraints relates to the potential disadvantage faced by these producers as a result of not having an integrated supply of bleached pulp which is the key input in the production of white sack kraft paper. Although bleached pulp is widely available on the market, according to several competitors a company sourcing bleached pulp from the market is subject to more price volatility than companies producing bleached pulp in-house. The Parties have their own supply of bleached pulp whereas as many producers of brown sack or brown MF/UG would have to resort to purchasing bleached pulp from the market in order to switch production volumes to the production of white sack kraft paper. As explained by Canfor *"brown sack paper producers which are non-vertically integrated and which do not own a bleaching unit would have little or no interest in switching their production to white sack paper. This is because having to acquire bleached*

and the results of the market investigation do not indicate that the Commission's competitive assessment of the effects of the proposed transaction should change in light of a potential competitive constraint from plastic regarding white sack kraft paper.

⁸³ Replies to question 22 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Competitors, dated 11 October 2012.

⁸⁴ Replies to questions 23 and 24 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Competitors, dated 11 October 2012.

⁸⁵ Replies to the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Competitors, dated 25 October 2012.

pulp from a third supplier in the open market constrains their profit margin making it less attractive when compared with the margins derived from the sales of brown sack paper. On the other hand, acquiring a bleaching unit can represent a considerable financial investment not accessible to the majority of the market players."⁸⁶ The Notifying Party's internal documents also confirm that market pulp is a source of volatility. For example, one such document states that [...]."⁸⁷

127. Furthermore, while some brown sack kraft paper producers indicated that although they could theoretically switch part of their production to white sack kraft paper following a non-temporary 5-10% price increase, in practice they would not switch their own volumes in response to such a price increase in white sack kraft paper. This was due either to the fact that they must be able to internally use their production of unbleached pulp in order to remain efficient, or that they see no reason to shift from their current profitable business area into a new one which would potentially require additional investments (some have suggested a need for an investment of up to EUR 10 million and a timeframe of one to two years) or the need to familiarise themselves with a new customer base and risk losing existing customers.⁸⁸ In any event, the volumes that these producers indicated could even be subject to such a switch were limited.
128. The only recent example of entry into the production of white sack paper from brown sack paper is Smurfit Kappa's entry into this segment in 2008. However, that entry was prompted by the particular circumstances of the company at the time, which were not directly related to particular incentives to enter into the production of white sack kraft paper. The entry related to the completion of an upgrade of one of Smurfit Kappa's machines which consequently increased its capacity.⁸⁹ The market investigation indicated that the conditions and context of other contemporaneous potential examples of entry pointed to by the Notifying Party are not sufficiently certain to materialize.
129. The Pöyry study submitted by the Notifying Party analyses the incentives that brown sack kraft paper producers would have if the price of white sack kraft paper were to increase 5% on a non-temporary basis. In particular, the study compares the margins of a number of companies pre- and post-price increase, concluding that, post-price increase, [...] margins in white sack kraft paper would be higher than their margins for brown sack kraft paper. However, [...] white sack kraft paper potential margins prior to the price increase are already higher than those for brown sack kraft paper, which suggests that as discussed there are other barriers which discourage the switch. As regards [...], its incentives have been discussed. With respect to [...], the results of the market investigation have indicated that such companies would not have either the

⁸⁶ Minutes of the 24 October 2012 conference call with Canfor.

⁸⁷ Presentation to Billerud's board dated 6 June 2012.

⁸⁸ Replies to the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Competitors, dated 25 October 2012.

⁸⁹ Minutes of the 23 October 2012 conference call with Smurfit Kappa.

ability or the incentive to switch production from brown to white sack kraft paper following a 5-10% non-temporary price increase in white sack kraft paper.⁹⁰

130. Overall, the results of the market investigation show that it is unlikely that a sufficient number of brown paper producers would be likely to switch a sufficient amount of volume in order to exert a sufficient and timely constraint on the merged entity.
131. Regarding the possibility of switching production from kraftliner to white sack kraft paper, replies to the Commission's market investigation indicated that this could involve very high entry barriers. Mondi said it has a swing machine on which it produces either sack kraft paper or kraftliner depending on market conditions. However, replies from other competitors suggest that Mondi's situation is specific to Mondi and that in general such a switch would require major investments related to technical changes. Competitors also indicated that there is a risk of unstable production and low quality. Furthermore, competitors have stated that historically price/margins for kraftliner have been higher than those for sack kraft paper. In addition, some competitors have stated that a non-temporary 5%-10% price increase in sack paper would not be sufficient to induce a kraftliner manufacturer to begin producing kraft sack paper.⁹¹
132. Finally, the Notifying Party also argues that fine paper producers constrain suppliers in the white sack kraft paper market. Fine paper is mainly printing and writing papers of high quality, used for example in office applications, commercial print (e.g. brochures and advertising materials). Regarding the possibility of switching production from fine paper to white sack kraft paper,⁹² replies to the Commission's market investigation indicated that this would also involve very high entry barriers. For example, as explained by Mondi *"the production of fine paper uses a different set-up and pulp input with regards to the paper machines and pulp input of kraft papers."*⁹³ While the costs of switching from the production of fine paper to kraft paper may again be different for each producer, the vast majority of competitors considered that such a switch would require significant investments in equipment.
133. One fine paper producer, Lenzing, said that it would only consider entering the market for the supply of white sack kraft paper if (i) the markets were growing; (ii) it had spare capacity and (iii) it was able to make the investment.

⁹⁰ In particular as regards [...], the company has recently been considering a potential investment aiming at enlarging and technically upgrading its facilities in order to create the necessary conditions to allow for the simultaneous production of white and brown pulp, but this decision is now on hold due to legal and financial constraints. According to these plans, in any event the mill would have been able to start production of white pulp only in 2017/18. Minutes of the 7 November 2012 conference call with [...].

⁹¹ Replies to questions 16-18 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Competitors, dated 11 October 2012.

⁹² This potential source of additional volumes is also mentioned in the Pöyry report, but the study does not substantiate the claim.

⁹³ Reply to question 19 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Competitors - (Q. 1), dated 11 October 2012.

134. Another fine paper producer, Lecta, said that *"a switch to white sack kraft paper would require a very high investment [10-50] EUR million to be competitive, since many parts of the company's machines would need to be changed. [...] Furthermore, this cost estimate relates to rebuilding the machine and does not take account of the time and investment necessary to look for a market for these new products. Cost and length of time vary from machine to machine."* In addition, when there is more than one machine at a site all machines *"are connected and converting only one machine would not work since the connecting circuits would need to be isolated to ensure no mixing of most kinds of kraft pulp and chemical pulp."*⁹⁴
135. Furthermore, some competitors have indicated that in particular a 5-10% price increase would not be sufficient to induce a fine paper producer to begin producing kraft sack paper given the substantial investments required.
136. In light of the evidence analysed in the market investigation, the Commission considers that fine paper producers would at least not have the incentive to switch sufficient volumes to white sack kraft paper in order to constrain the merged entity.
137. Overall, the Commission therefore considers that the potential entry into the white sack kraft paper market from producers of white MF/UG kraft paper, brown sack kraft paper, brown MF/UG kraft paper, kraftliner and fine paper would not be sufficiently likely and timely to significantly constrain the merged entity.⁹⁵

(iv) Countervailing buyer power

138. The Commission does not consider that customers in white sack kraft have strong buyer power with the potential exception of Mondi (who is also a competitor in white sack kraft paper). The majority of customers who have raised concerns are smaller, often family-owned European converting businesses who have limited buyer power.
139. As regards Mondi, and the Notifying Party's argument that Mondi alone, [...], could constrain the Parties post-transaction, the Commission considers that although Mondi may have buyer power, this relates to the fact that Mondi is a vertically integrated competitor/customer who is able to increase its own white sack kraft production to satisfy its converting needs in the event of a price rise.
140. Any buyer power attributed to Mondi would not, however, in the Commission's view, prevent the merged entity from raising prices vis-à-vis its other customers who are very unlikely to have the ability to vertically integrate upstream or find alternative suppliers. In this sense, the Commission refers to paragraph 67 of the Horizontal Merger Guidelines which specifically states that countervailing buyer power cannot be found to sufficiently off-set potential adverse effects of a merger if it only ensures that a particular segment of customers, with particular bargaining strength, is shielded from significantly higher prices or deteriorated conditions after the merger.

(v) Conclusion on white sack kraft paper

⁹⁴ Minutes of the 8 November 2012 conference call with Lecta.

⁹⁵ The conclusion also applies to companies based outside the EEA, such as Klabin or Georgia Pacific.

141. Overall, the Commission considers that the Parties' high combined EEA market share in white sack kraft paper, the fact the Parties are each other's closest (or at the very least close if not the closest) competitors in white sack kraft paper in the EEA, customers' limited countervailing buyer power, and the limited competitive constraint imposed by existing and potential entrants on the EEA market for white sack kraft paper on the Parties post-transaction raises serious doubts as to the compatibility of the transaction with the internal market in relation to the supply of white sack kraft paper.
142. Indeed, the Commission considers that the transaction would risk leading to the creation or strengthening of a dominant position for the merger entity in white sack kraft paper. Moreover, given the limitations on producers to simply increase volumes without making a focus switch from one paper type to another, the Commission considers there is a risk that as long as there is demand for the other paper types, any increase in white sack kraft paper prices by the merged entity could be followed by other remaining producers thus leading to an overall price increase in the market.

V.2.4. White MF/UG kraft paper

A. The Notifying Party's views

143. In relation to white MF/UG kraft paper, the Notifying Party argues that the overall assessment is similar to that for white sack kraft paper. Notably, it argues that (i) white MF/UG kraft paper competitors in the EEA could readily increase their sales, (ii) recycled MF/UG kraft paper producers could produce white MF/UG kraft paper without further investment, (iii) white MF/UG kraft paper faces substantial competition from white MG paper with particular grammage and surface characteristics, (iv) imports into the EEA could increase, and (v) entry from fine paper suppliers is expected.
144. First, as regards competition from current white MF/UG kraft paper suppliers, the merged entity would face substantial competition from Mondi, which has a market share of [20-30]%. According to the Notifying Party, six of the nine machines which Mondi currently allocates to the production of fine paper would also be suitable for supplying MF/UG paper. Furthermore, the three next largest competitors in this segment (Iberpapel with [0-5]%, Crown Van Gelder with [0-5]% and Lenzing with [0-5]%) would have considerable scope to increase their production capacity since they diversified into the supply of white MF/UG kraft paper from the supply of fine paper. According to the Notifying Party, such entry did not require an appreciable investment since fine paper and MF products can be manufactured on the same paper machines.
145. Furthermore, the Notifying Party submits that Heinzl recently invested in a new paper machine at its mill in Pöls, Austria, with a capacity of [...] ktpa, thereby increasing its capacity by [...] ktpa. This machine would produce both white MG and MF/UG kraft paper and production would be expected to commence in the fourth quarter of 2013.
146. Second, the Notifying Party argues that Alier and Cartiera del Chiese, both suppliers of recycled sack and MF/UG paper, could switch easily to producing white MF/UG kraft paper without any substantial investment by sourcing white market pulp or white clippings as raw material. This switch would account for an extra [...] ktpa of capacity into the white MF/UG kraft paper market.

147. The Notifying Party argues that the effectiveness of a potential production swing scenario in response to differences in profit margins is confirmed by Korsnäs' own production trends over the last three years. [...]
148. Third, the Notifying Party submits that for certain grammages and surface characteristics, notably for the “form and fill” flour and sugar applications as well as for fashion bags, white MF/UG kraft paper faces substantial competition from white MG kraft paper.⁹⁶ In this context, according to the Notifying Party various customers swing frequently between the purchase of white MF kraft paper and white MG kraft paper (e.g. Fiorini, Poligrafica and Sentrex).
149. Fourth, the Notifying Party argues that current non-EEA sales could be diverted to the EEA should conditions be favourable and therefore post transaction any hypothetical white MF/UG kraft paper price increase by the merged entity would be constrained by a potential increase of imports into the EEA.⁹⁷ The Notifying Party submits that though market prices in North and South America for papers comparable to white MF/UG kraft paper are around 5-10% lower than in Europe, there are important differences in end-use between Europe and the Americas, which makes a price comparison difficult.⁹⁸ Furthermore, the Notifying Party argued that in Asia, with the exception of Japan where prices are in line with Europe, white MF/UG kraft paper is of little importance since plastic is the commonly used packaging material. Therefore the Notifying Party argues that, as for white sack kraft paper, price levels of white MF/UG kraft paper in the EEA are at least as interesting to a non-EEA producer as those in other regions. Furthermore, non-EEA producers are highly cost competitive on a delivered basis when selling into the EEA.
150. The Notifying Party illustrates this argument with the Russian Troitskaya paper mill a joint venture between Ahlström and Russian Continental Management, which allegedly would have increased its capacity from 30 ktpa to 50 ktpa in 2007, and with Ilim which would increasingly be selling white MF/UG kraft paper in the EEA.
151. Fifth, the Notifying Party considers that further entry from fine paper producers can be expected given that several small to medium-sized fine paper producers struggle to remain profitable in the fine market paper market, which is characterised by large volumes, low margins and economies of scale. This possibility would be illustrated by Ilim Pulp (Russia), with a total fine paper capacity of [...] ktpa, and Lecta, the fifth largest fine paper player, which would now be in the process of, or considering, entering the white MF/UG business. According to the Notifying Party, there are currently about 90 fine paper

⁹⁶ On the other hand, carrier bags intended for heavy goods (namely grocery bags) require strength properties which MG paper does not have. According to the Notifying Party, EEA sales of white MG paper ([...] ktpa) are twice the EEA sales of white MF paper.

⁹⁷ The viability of trade would be confirmed by the fact that in 2011 Billerud exported around [...] % of its EEA white MF/MG production to outside the EEA ([...] kt).

⁹⁸ According to the Notifying Party, in the Americas white MF/UG kraft paper is used mainly in flexible packaging and for simpler sack applications, which requires paper of lower grammage than the main applications in Europe, such as carrier bags and consumer packaging of flour or sugar.

machines in Europe which would be suitable for swinging production to kraft paper.⁹⁹ In support of this argument, the Pöyry study submitted by the Notifying Party indicates that Iberpapel, Crown van Gelder Lenzing and Ilim would have the incentive to switch their fine paper production into the production of white MF/UG kraft paper already prior to the proposed transaction.

152. The Notifying Party also supplied a number of internal documents in order to show that there has been new entry, or there is potential new entry, into white MF/UG kraft paper, with new entry representing more than twice the sales of Korsnäs. The Notifying Party notes that this has been a concern in particular for Billerud for quite some time.¹⁰⁰

B. The Commission's assessment

(i) The Parties' leading position in the market

153. The total market size for white MF/UG kraft paper amounts to sales of EUR 218 million and 246 ktpa in volume in the EEA. The Parties' combined market share would be [60-70]% in volume (Billerud: [50-60]%, Korsnäs: [5-10]%) with only one other relatively strong competitor (Mondi with [20-30]%) although there are a number of smaller players (Iberpapel and Crown van Gelder both with [0-5]% and Lenzing with [0-5]%).
154. The proposed transaction therefore results in the merger of the number one and number three players in Europe in white MF/UG kraft paper with the remaining competitors, with the exception of Mondi (who sells the majority of its production to the merchant market), having significantly smaller market shares. The Parties' combined market share alone, in the context of the total market structure, therefore gives a first indication of a dominant market position.
155. Again, as in relation to white sack kraft paper, Billerud's recent acquisition of the UPM-Kymmene kraft paper business earlier in 2012 already strengthened Billerud's market position in relation to white MF/UG kraft paper. In particular, in 2011 the former UPM Pietarsaari mill produced [...] kt of white MF/UG kraft paper, which amount to [...] % of Billerud's total sales.
156. While most of the competitors have not raised concerns, the majority of the customers who replied to the Commission's market investigation raised concerns in relation to white MF/UG kraft paper due to the small number of remaining competitors. For example, one customer stated that the proposed transaction would reduce competition because the remaining potential suppliers would be few and this would result in the merged entity having an extremely dominant position in the EEA. Furthermore, the merged entity's post-transaction dominant position would allow it to increase prices disproportionately.¹⁰¹ One customer said that, as a result of the proposed transaction,

⁹⁹ The Notifying Party considers that fine paper machines in a capacity range of [...] ktpa are suitable for this swinging, as they are not too small to be inefficient but also not so big as to lose flexibility or risk flooding the segment where sales are made.

¹⁰⁰ Notifying Party's submission of 29 October 2012.

¹⁰¹ Reply to question 37.5 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Customers – (Q. 2), dated 8 October.

"Billerud will impose its prices" while according to another "*Service will decline, prices will go up, and the market will have less choice*".¹⁰²

157. Generally, customers have indicated that Mondi is the closest competitor to the Parties though Crown van Gelder and Iberpapel were also listed as potential alternatives for the supply of white MF/UG kraft paper. In addition, some customers have also indicated that Billerud is the closest competitor to Korsnäs following its acquisition of the UPM mills. This underlines the fact that the market structure for white MF/UG kraft paper is very concentrated and that the transaction would effectively create a market leader with only one relatively strong competitor. Indeed, as explained, the HHI levels are very high indicating a concentration level of over 4,000 prior to the proposed transaction and over 5,300 after its conclusion with a "delta" of over 1,200.
158. In conclusion, the Commission considers that the Parties' high combined EEA market share in white MF/UG kraft paper, as well as the fact that with the exception of Mondi, which is vertically integrated, all existing competitors in the EEA are very small with less than 5% market shares, clearly point in the direction of the transaction leading to the creation or strengthening of a dominant position for the merged entity in white MF/UG kraft paper.

(ii) Competition from current competitors

159. As in white sack kraft paper, the replies to the Commission's market investigation in relation to white MF/UG kraft paper have also shown that current competitors in this segment are capacity constrained and could not simply increase their production of white MF/UG kraft paper without re-balancing their product portfolio and switch volumes of other types of paper into white MF/UG kraft paper. The only exception would be Mondi, but as explained customers have raised concerns in respect of potentially having to source from Mondi given that the company is also a direct competitor to these customers. There is a recent example of a capacity expansion by a producer of white MF/UG kraft paper, the Austrian company Heinzl, who is in the process of expanding its production capacity from 13.5 ktpa to 80 ktpa. This capacity is split between MG kraft paper and MF/UG kraft paper with a clear focus on MG kraft paper. The expansion has required an investment of EUR 115 million and the company plans to start production in October 2013, i.e. within a year and half of its decision to expand.¹⁰³ This example illustrates the investment and time requirements for capacity expansion.
160. Regarding a potential switch by current suppliers of white MF/UG kraft paper from other kraft paper products into white MF/UG kraft paper, as in relation to white sack kraft paper, the Commission notes that each competitor is constrained by a different set of facts. The cost structures of each competitor are different, as are their portfolios and the balances between different paper types in their portfolios.

¹⁰² Reply to question 37 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Customers – (Q. 2), dated 8 October.

¹⁰³ Heinzl's replies to questions 39 and 48 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Competitors - (Q. 1), dated 11 October 2012.

161. The replies to the Commission's market investigation clearly indicated that a switch requiring the re-balancing of current product portfolios by most existing competitors is unlikely. Competitors submit that a non-temporary 5-10% price increase in white MF/UG kraft paper would not lead them to switch volumes from brown MF/UG kraft paper or sack kraft paper into the production of white MF/UG kraft paper.¹⁰⁴
162. As mentioned in relation to white sack kraft paper, white MF/UG kraft paper competitors who replied to the market investigation have indicated that the margins in the various segments of kraft paper are not static. In addition, documents submitted by the Notifying Party show that the Parties' margins for white sack kraft paper, brown sack kraft paper, white MF/UG kraft paper and brown MF/UG kraft paper [...]
163. As regards the Notifying Party's arguments that existing non-EEA suppliers would, in the event of a non-temporary price increase, divert volumes to the EEA, the replies to the Commission's market investigation indicated that such scenario is unlikely and non-EEA producers have no intention of switching volumes to satisfy European needs. For example, Klabin has clearly stated that it is not able to supply white MF/UG kraft paper to the EEA. In fact, Klabin is completely focused in the paper production and converting business in Brazil and its stated long term strategic plan does not include the internationalization of its business.¹⁰⁵ Another ex-EEA producer of white MF/UG kraft paper, Georgia-Pacific, sells less than 1% of its total sales into the EEA and although it does produce white MF/UG kraft paper, has stated that it does not make significant production decisions regarding the configuration and usage of its Palatka, Florida facilities based on an analysis of demand in the EU/EEA.¹⁰⁶

(iii) Entry from potential competitors

164. As regards potential new entry from competitors not active in white MF/UG kraft paper, the Commission again considered this potential entry not only from producers of brown sack kraft paper or brown MF/UG kraft paper, but also from producers of MG kraft paper and fine paper.¹⁰⁷

¹⁰⁴ Replies to the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Competitors, dated 25 October 2012.

¹⁰⁵ Klabin's reply to question 32.1 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Competitors for the purpose of market testing the 6 November 2012 Commitments, dated 7 November 2012.

¹⁰⁶ Georgia-Pacific's reply to question 1 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Competitors, dated 25 October 2012, and Georgia-Pacific's reply to question 5 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Competitors, dated 11 October 2012.

¹⁰⁷ The Notifying Party also argued that kraft paper faces the substantial competition from plastic at the end user level. Although some market investigation respondents indicated that for certain end uses plastic could also be used, the Commission considers that the evidence provided by the Notifying Party is not conclusive and the results of the market investigation do not indicate that the Commission's competitive assessment of the effects of the proposed transaction should change in light of a potential competitive constraint from plastic regarding white MF/UG kraft paper.

165. Regarding the possibility of switching from the production of brown sack kraft paper or brown MF/UG kraft paper to the production of white MF/UG kraft paper, brown paper producers who replied to the Commission's market investigation said that, even in the event of a non-temporary 5%-10% price increase in white MF/UG kraft paper, they would not enter this segment due to the lack of any incentive to do so. First, the majority of potential entrants are capacity constrained.
166. Second, as explained with respect to white sack kraft paper, producers who do not have an integrated bleached pulp operation are at a disadvantage and their incentives to enter the production of white MF/UG kraft paper are likely to be more limited due to the risks related to bleached pulp price volatility. Canfor explains that "*having to acquire bleached pulp from a third supplier in the open market constrains their profit margin*" and "*acquiring a bleaching unit can represent a considerable financial investment not accessible to the majority of the market players.*"¹⁰⁸ In addition, as explained by Georgia-Pacific, "*Most mills cannot efficiently complete this transition [from brown to white] without adding bleaching capability (which is expensive)*".¹⁰⁹ The Pöyry study submitted by the Notifying Party indicates that the cost of such unit would be around [...], but the results of the market investigation indicate that the installation cost is higher and could be up to EUR 10 million.
167. As regards Canfor, who is not active in white MF/UG kraft paper, the reasoning applied regarding white sack kraft paper applies to its expansion into white MF/UG kraft paper in Europe. Therefore, the Commission considers that such a scenario is unlikely.
168. Third, changing between bleached and unbleached pulp can also result in costs and time delays. While some paper producers explained that such a switch is technically possible and could be relatively quickly done, this may depend on each producer's particular situation relating to its equipment and products. As explained by one producer of brown sack kraft paper, exchanging pulp from brown to white requires a long shutdown time to clean the machine and could cause production losses and production cost increases.¹¹⁰
169. Regarding the possibility of switching from MG kraft paper to white MF/UG kraft paper, some current MG kraft paper producers could carry out such a switch with relative ease. However, the market investigation does not give sufficient clarity as to whether volumes that might be the object of any switch would be of a sufficient size to effectively constrain the merged entity post-transaction.
170. Regarding the possibility of switching production from fine paper to white MF/UG kraft paper, those fine paper producers who replied to the Commission's investigation indicated that whilst some fine paper producers could switch to producing white MF/UG kraft paper (and indeed some fine paper producers have recently entered this

¹⁰⁸ Minutes of the 24 October 2012 conference call with Canfor.

¹⁰⁹ Georgia-Pacific's reply to question 30 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Competitors, dated 11 October 2012.

¹¹⁰ Replies to question 30 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Competitors, dated 11 October 2012

market¹¹¹), the extent to which each fine paper producer could and would be likely to do so varies according to their existing paper machines and the specific investments each fine paper producer would have to make.

171. For example, one fine paper producer stated that pulp used for most kraft papers is different (chemical pulp) and that it is not possible to operate production lines within one mill without isolating the different production lines using different pulp since different pulp or the waste created cannot be mixed. Such isolation would create additional costs to the adaptation/rebuilding of the machine itself to produce white sack kraft paper or white MF/UG kraft paper.¹¹² Although some fine paper producers did indicate that switching to white MF/UG kraft paper could be carried out relatively easily, none of them could quantify the exact level of investments needed, nor the efficiency losses they might incur, nor indeed suggested that they were considering such a switch or were likely to consider such a switch in the short-term even if white MF/UG kraft paper prices were to rise.
172. As regards Heinzl and its current plans to start supplying white MF/UG kraft paper in the last quarter of 2013, the current plans foresee a production volume which the Commission considers is not sufficient to impose a significant constraint on the merged entity. Furthermore, the market investigation indicated that the conditions and context of other contemporaneous potential examples of entry pointed to by the Notifying Party are not sufficiently certain to materialize.
173. Overall, although there has been some recent entry by fine paper producers into the market for white MF/UG kraft paper and there are clear indications of upcoming increased capacity allocated to this market e.g. by Heinzl or indeed potential for a few others to switch, the Commission has serious doubts as to whether these volumes would be sufficient or indeed be carried out in a sufficiently swift manner to constrain the merged entity post transaction. This is also in light of the fact that in general fine paper producers contacted during the Commission's market investigation have stated that they would not have a sufficient incentive to enter the production of white MF/UG kraft paper or at least to switch significant volumes to the production of white MF/UG kraft paper.

(iv) Countervailing buyer power

174. The Commission does not consider that customers in white MF/UG kraft have strong buyer power except for Mondi. The majority of customers who have raised concerns are smaller European converting businesses who have limited buyer power.
175. Even considering Mondi's buyer power, or if there was a group of customers who would have buyer power, *quod non*, this would not in the Commission's view prevent the merged entity from raising prices vis-à-vis its other customers who are unlikely to find alternative suppliers with sufficient volumes. In this sense the Commission refers to paragraph 67 of the Horizontal Merger Guidelines which specifically state that

¹¹¹ Crown van Gelder, Iberpapel and Lenzing. [...].

¹¹² Minutes of conference call with a fine paper producer dated 8 November 2012.

countervailing buyer power cannot be found to sufficiently off-set potential adverse effects of a merger if it only ensures that a particular segment of customers, with particular bargaining strength, is shielded from significantly higher prices or deteriorated conditions after the merger.

(v) Conclusion on white MF/UG kraft paper

176. Overall therefore, the Commission considers that even if some increased capacity is planned for the market and a few fine paper producers could switch with relative ease, the Parties' high combined EEA market share in white MF/UG kraft paper, customers' limited countervailing buyer power and the questionable competitive constraint imposed by existing and potential entrants on the EEA market for white MF/UG kraft paper on the Parties post-transaction raises serious doubts as to the compatibility of the transaction with the internal market in relation to the supply of white MF/UG kraft paper. Indeed, the Commission considers that the transaction would risk leading to the creation or strengthening of a dominant position for the merger entity in white MF/UG kraft paper.

V.3. CCM

177. Billerud's activities encompass both kraftliner and fluting (although fluting is a considerably larger product for Billerud than kraftliner). Korsnäs, on the other hand, only sells white top kraftliner. Billerud also manufactures this product, meaning that the overlap between the Parties' activities is limited to this segment of the overall CCM market. In addition, Billerud provides off-line coating services at its Karlsborg (north Sweden) facility, relating to white top kraftliner manufactured by a third party producer.
178. The Parties' combined market share on a volume basis on an EEA wide market for CCM is [0-5]% (Billerud: [0-5]% and Korsnäs [0-5]%) and the increment is less than [0-5]%. Even on a hypothetical market for kraftliner and s/c fluting, the Parties' combined market share is moderate at [10-20]% (Billerud: [10-20]% and Korsnäs: [0-5]%). On the narrowest possible market for the supply of white top kraftliner the Notifying Party estimates their combined market share to reach [30-40]% in the EEA (Billerud: [10-20]% and Korsnäs [10-20]%).
179. The Notifying Party submits that since the combined market share on an overall CCM market in the EEA would be less than [5-10]% with an increment of less than [0-5]%, the transaction will not lead to any significant change in the market structure. Furthermore, there is strong competition in the EEA from both EEA and non-EEA suppliers, including those active in the area of white top kraftliner. Such competitors include Smurfit Kappa, SCA, Metsä Board and Mondi (importing into the EEA from its mill in Syktyvkar, Russia).
180. The Commission considers that given that even on the narrowest possible market definition for white top kraftliner in the EEA, the combined market share remains modest at around [30-40]% and there remain a number of competitors active in the production of

white top kraftliner, the proposed transaction does not raise serious doubts regarding the supply of CCM (or indeed white top kraftliner) in the EEA.¹¹³

V.4. LPB

181. In the EEA, Korsnäs supplies primarily LPB in the sense that LPB represents approximately [50-60]% of its EEA turnover. Korsnäs supplies various types of LPB as well as, to a limited extent, liquid bag paper. Billerud's sales of LPB (including both rigid LPB and liquid bag paper) in the EEA [...]. This includes small volumes of LPB for the production of small tetrahedral packages for e.g. coffee milk ([...] EUR in 2011) and liquid bag paper ([...] EUR in 2011). Billerud also sells [...].
182. The Parties' combined market share in the market for the supply of LPB in the EEA by volume would be [30-40]% (Billerud: [0-5]% and Korsnäs: [30-40]%). The increment is therefore *de minimis*. Furthermore, the Notifying Party considers that the combined entity would post-merger continue to face competition from players such as Stora Enso (with an estimated market share of [60-70]%) as well as actual and potential competition from importers such as Klabin (Brazil) and International Paper/Sun Paper (China). Finally, the Notifying Party submits that the LPB market is characterised by the presence of a small number of very powerful converter customers such as Tetra Pak who are able to support new entry should they wish to do so.
183. The market investigation raised one isolated concern in relation to the supply of LPB. This relates to the removal of Billerud as a potential competitive force on the market for the supply of LPB in particular for aseptic packaging in the EEA through expansion and increased production volumes. The complainant has submitted imports are not a real alternative given that imported LPB is heavier and of poorer quality than that available from producers in the EEA. The complainant also raised the concern that the proposed transaction would lead to a duopoly in the supply of LPB between Stora Enso and the merged entity.
184. The Commission considers that given the *de minimis* increment added by Billerud, the only situation in which a competition concern could arise would be if Billerud was about to expand its LPB operations and thus the merger would have the effect of removing a potential significant competitor from the market. However, following analysis of Billerud's internal contemporaneous documents, the Commission found no evidence of [...]. Moreover, [reference to customer significant buyer power]. Billerud's internal documents show that it has [...]¹¹⁴
185. As regards arguments that the merger would result in or enforce a duopoly between Stora Enso and the merged entity, the Commission notes that Stora Enso will remain significantly larger than the merged entity and the transaction does not in effect change the market share proportions. Furthermore, it is difficult to see how the merger could create

¹¹³ The market investigation raised one isolated customer concern in relation to white top kraftliner. This concern related to the fact that post-transaction, Billerud might no longer provide a coating service for its competitors and as a result there would remain only two producers of this coated white top kraftliner, namely Billerud/Korsnäs and M-Real (which the complainant argued had its own coating facility).

¹¹⁴ [...].

more symmetry between Stora Enso and the merged entity in relation to LPB merely because the transaction enlarges the merged entity's product portfolio. Given that the merger will result in only a *de minimis* increment, it cannot lead to any significant change in the market structure or indeed increase symmetry between Korsnäs and Stora Enso as regards LPB.

186. In light of the above, the Commission considers that the proposed transaction does not raise serious doubts regarding the supply of LPB in the EEA.

V.5. Wood pulp

187. Korsnäs does not supply pulp to the open market and there is currently no supply relationship between Billerud and Korsnäs [...]. Korsnäs purchases approximately [0-5]% of its total wood pulp consumption on the open market and produces the rest of its needs internally. Billerud sells wood pulp on the open market but its market share remains below [5-10]% under any plausible market definition. It also purchases some wood pulp on the open market (in 2011, it purchased just under [0-5]% of its requirements).
188. The Notifying Party submits that there will be no material effect on suppliers of wood pulp as the Parties' combined position as purchasers of pulp is not such that the combined entity will be able to significantly leverage their position against suppliers of wood pulp (their purchases representing less than [0-5]% of the total market). Furthermore, purchasers have access to supplies of pulp from other, larger players such as Fibria (c. [10-20]% EEA market share), Södra Cell AB (c. [5-10]% EEA market share), Metsä Fibre (c. [5-10]% EEA market share) and ENCE (c. [5-10]% EEA market share).
189. Even on the assumption that the combined entity would seek to minimise its purchases of pulp from third parties, by replacing third party pulp purchases with the excess pulp production of Billerud, such a reduction in purchases would represent only a small proportion of total demand, and is unlikely to have any material effect on suppliers.
190. Therefore, the Commission considers that the proposed transaction does not raise serious doubts regarding the supply of wood pulp in the EEA.

V.6. Purchase and sale of wood

191. The Parties' combined market share in the purchase of wood is 7% on a Nordic/Baltic market level (Billerud: [0-5]% and Korsnäs: [0-5]%). The Parties' combined market share for the sale of wood in the same region would be just over [0-5]%.
192. In fact, the only horizontally affected market would arise as a result of the proposed transaction is on the hypothetical market for the purchase of pulpwood (i.e. wood used for the production of pulp) in Sweden, where the Parties' combined share of purchases would be just under [20-30]%. However the Notifying Party argues that the Commission has previously defined the market for the acquisition of pulpwood to be regional (wider than national), that imports represent a large part of domestic consumption (around 15%), the wood purchased from a Swedish supplier may originate from another country and in fact be an import thus overstating the Parties' Swedish purchases, and last, the Parties operate only [...] pulp mills out of a total of 35 located in Sweden which means that even if the Parties represent a not insignificant proportion of total purchases within Sweden, sellers have access to a large number of alternative outlets, even within Sweden.

193. During the market investigation, the Commission received one isolated concern relating to the purchase of wood by the merged entity post transaction. However, the Commission considers that even on the narrowest possible product and geographic market definition (i.e. purchase of pulpwood in Sweden), wood suppliers would have alternative customers even if the merged entity stopped purchasing from them as a result of changed purchasing patterns. The Commission does not consider there to be any evidence that a narrower than national geographic market definition would be plausible.
194. Finally, although no vertically affected market arises as a result of the proposed transaction, the Commission notes that there is an existing supply relationship between the Parties in relation to the supply and purchase of wood [...] The supply in question is however limited.¹¹⁵
195. In conclusion, the Commission considers that the proposed transaction does not give rise to any concerns related to the purchase and supply of wood.

VI. COMMITMENTS

VI.1. Procedure

196. Where a concentration raises serious doubts which could lead to a significant impediment to effective competition, the Parties to a transaction may seek to modify the concentration so as to address the serious doubts identified by the Commission with a view to having the merger cleared.
197. In order to address the concerns identified following the first phase market investigation in the markets for white sack kraft paper and white MF/UG kraft paper in the EEA, and therefore render the concentration compatible with the internal market, the undertakings concerned submitted commitments pursuant to Article 6(2) of the Merger Regulation on 6 November 2012 (the "6 November 2012 Commitments"). The Commission launched a market test of this set of commitments on 7 November 2012 to gather the views of relevant market participants on their effectiveness and their ability to restore effective competition in the markets where competition concerns were identified (the "market test").
198. In light of the results of the market test, the Notifying Party submitted a revised set of commitments on 21 November 2012 (the "Final Commitments").
199. The Commission assessed these commitments and their ability to eliminate the competition concerns in line with its Notice on remedies acceptable under Council Regulation (EC) No 139/2004 and under Commission Regulation (EC) No 802/2004 (the "Remedies Notice").¹¹⁶

¹¹⁵ [...].

¹¹⁶ OJ C 267, 22.10.2008, p.1.

VI.2. Description of the 6 November 2012 Commitments

200. To address the serious doubts raised by the Commission with regard to white sack kraft paper and white MF/UG kraft paper, on 6 November 2012 the Notifying Party proposed to divest Korsnäs' white sack kraft paper and white MF/UG kraft paper machine situated in Gävle, Sweden ("PM2"), as well as the associated manufacture and sales assets, such as trade names and intellectual property rights, personnel and customer goodwill (hereafter the "Divestment Business"). PM2 is the only paper machine on which Korsnäs manufactures the products concerned. Korsnäs also owns other paper machines in Gävle and in Frövi, Sweden, all of which are dedicated to other paper products and pulp. Kinnevik (through Korsnäs) will retain its interest in those other assets, which are not part of the proposed commitments.
201. According to the 6 November 2012 Commitments, the Divestment Business would include the following:
- (a) All tangible and intangible assets (including trade names) which contribute to the current operation or are necessary to ensure the viability and competitiveness of the Divestment Business;
 - (b) All contracts, leases, commitments and customer orders of the Divestment Business;
 - (c) All customer, credit and other records of the Divestment Business;
 - (d) All personnel currently fully employed within the Divestment Business, including the personnel deemed key for maintaining the viability and competitiveness of the Divestment Business;
 - (e) The benefit, at the option and discretion of the purchaser, of a number of contractual arrangements under which the merged entity would supply products or services to the Divestment Business, including transitional services (for up to [...]), pulp (for up to [...]), steam, water, pressurised air, chemicals, access to storage, maintenance and site services (all for up to [...]); [...];
 - (f) A contract giving access to the merged entity to one of the two "re-winders" which are part of the Divestment Business and located at its site, as this equipment is common to the whole Gävle facility;
 - (g) The supply of electricity for up to [...];
 - (h) A long-term lease for [...] years between the merged entity and the purchaser for the building in which PM2 is located.
202. According to the 6 November 2012 Commitments, the Divestment Business would not include:
- (a) The "Korsnäs" name and any rights thereto; and
 - (b) Any resources, contracts or know-how specifically relating to the small volumes of [...] that has also been produced on PM2.

VI.3. Results of the market test of the 6 November 2012 Commitments

VI.3.1. The scope of the proposed commitments

203. The majority of the respondents to the market test were positive with respect to the suitability of the 6 November 2012 Commitments to remove the competition concerns with regard to white sack kraft paper and white MF/UG kraft paper.¹¹⁷
204. In particular, the respondents to the market test were of the view that the commitments would be viable and that a suitable purchaser would be able to effectively compete in the supply of white sack kraft paper and white MF/UG kraft paper on a lasting basis.¹¹⁸ Moreover, the respondents also viewed the commitments to be sufficiently clear.¹¹⁹
205. As regards the additional contractual arrangements to be concluded between the merged entity and the purchaser, respondents in general deemed the duration and terms of the supply agreements proposed by the Notifying Party to be sufficient and acceptable with the potential exception of the pulp supply agreement.¹²⁰
206. With respect to the pulp supply agreement, various competitors noted that a duration of [...]years may be insufficient and that a longer pulp supply agreement could further strengthen the viability and effectiveness of the Divestment Business. It was also argued by one competitor that the price should pass the risk of variances in the pulp production costs to the merged entity.
207. Regarding the other agreements, some competitors pointed out that the purchaser should have the possibility to terminate such long-term agreements before their expiration date in order to give the purchaser the necessary flexibility to transfer the machine to another

¹¹⁷ More specifically, 10 out of 12 paper producers stated that the proposed commitments were suitable to remove competition concerns with regard to white sack kraft paper and 11 out of 13 paper producers stated that the proposed commitments were suitable to remove competition concerns with regard to white MF/UG kraft paper. As regards customers 8 out of 15 stated that the proposed commitments were suitable to remove competition concerns with regard to white sack kraft paper and 10 out of 14 stated that the proposed commitments were suitable to remove competition concerns with regard to white MF/UG kraft paper.

¹¹⁸ Replies to questions 3, 4 and 5 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Customers for the purpose of market testing the 6 November 2012 Commitments, dated 7 November 2012, and replies to questions 3 and 4 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Competitors for the purpose of market testing the 6 November 2012 Commitments, dated 7 November 2012.

¹¹⁹ Replies to question 6 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Customers for the purpose of market testing the 6 November 2012 Commitments, dated 7 November 2012, and replies to question 5 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Competitors for the purpose of market testing the 6 November 2012 Commitments.

¹²⁰ Replies to questions 19 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Customers for the purpose of market testing the 6 November 2012 Commitments, dated 7 November 2012, and replies to questions 9-16 and 29 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Competitors for the purpose of market testing the 6 November 2012 Commitments, dated 7 November 2012.

mill if necessary or to source these inputs from elsewhere should this become more cost effective.¹²¹

208. A few customers also questioned whether the purchaser would be truly independent from the merged entity were it to remain at the Gävle site and source all the various products and services from the merged entity.¹²²
209. Competitors, however, indicated that in their view keeping the paper machine within the Gävle mill would not harm the viability and effectiveness of the Divestment Business.¹²³ According to some respondents the relocation of the paper machine could translate into a considerable loss of efficiency and productiveness due to the inherent disruption of the production lines and customer relationships for a period that could extend up to 18 months. Furthermore, such relocation would make the purchaser incur in additional costs which could amount to EUR 10 million (about 10% of the cost of a new machine).¹²⁴

VI.3.2. Purchaser criteria and interest from potential purchasers to acquire the Divestment Business

210. As regards the type of the purchaser which would be suitable to acquire and develop the Divestment Business, the market test indicated that the Divestment Business should be acquired by a company already active in the paper industry. Some respondents highlighted the fact that a financial investor would not be a suitable purchaser as it would lack the necessary know-how and experience and would not be a long-term strategically driven player. The market test also revealed some examples where the business had deteriorated following purchase by a financial investor. On the other hand, some respondents also pointed to examples of successful paper businesses owned by financial investors (indeed, Korsnäs is currently owned by the Notifying Party who is a financial investor).¹²⁵

¹²¹ Replies to questions 6-15 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Competitors for the purpose of market testing the 6 November 2012 Commitments, dated 7 November 2012.

¹²² Replies to the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Customers for the purpose of market testing the 6 November 2012 Commitments, dated 7 November 2012.

¹²³ Replies to question 16 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Competitors for the purpose of market testing the 6 November 2012 Commitments, dated 7 November 2012.

¹²⁴ Minutes of 14 November 2012 conference call with paper producer.

¹²⁵ Replies to questions 15-18 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Customers for the purpose of market testing the 6 November 2012 Commitments, dated 7 November 2012, and replies to questions 25-28 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Competitors for the purpose of market testing the 6 November 2012 Commitments, dated 7 November 2012.

211. Finally, the respondents to the market test were of the view that the proposed commitments would attract suitable purchasers.¹²⁶ This is also confirmed by the fact that a number of respondents indicated that they would be interested in buying the Divestment Business.¹²⁷

VI.4. Final Commitments

212. The Commission informed the Notifying Party of the results of the market test and of its own views on 16 November 2012. To address the shortcomings identified by the Commission, the Notifying Party offered a revised set of commitments on 21 November 2012.

213. The main amended features of the Final Commitments include the following:

(a) The purchaser shall have a presence in the paper or packaging board industry (including in, but not limited to, the manufacturing or converting, but in the latter case not relating to sack kraft or MF/UG kraft papers);

(b) The purchaser shall have the right to terminate the transitional agreements with six months' notice, and the remaining supply and service provision agreements with [...] notice;

(c) The [...] taken into account to calculate the price of the supply agreements will be negotiated between the merged entity and the purchaser, under the supervision of the monitoring trustee to ensure that [...];

(d) The monitoring trustee shall ensure that the methodology by which the [...] is calculated is reasonable, taking into account the [...] as well as the [...] in the paper manufacturing industry in general;

(e) The monitoring trustee shall also in particular review and approve proposed agreements between the merged entity and the purchaser for the supply of inputs for PM2 (such as pulp, steam, water, pressurised air and electrical energy), for the use of joint infrastructure, for the provision of site services, maintenance services and/or transitional services, for the allocation of environmental rights, for granting access to the re-winders, as well as for the coordination of the production at PM2 with the rest of the mill in terms of maintenance shutdown, to ensure compliance of such agreements with the commitments;

¹²⁶ Replies to question 20 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Customers for the purpose of market testing the 6 November 2012 Commitments, dated 7 November 2012, and replies to question 30 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Competitors for the purpose of market testing the 6 November 2012 Commitments, dated 7 November 2012.

¹²⁷ Replies to question 22 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Customers for the purpose of market testing the 6 November 2012 Commitments, dated 7 November 2012, and replies to question 32 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Competitors for the purpose of market testing the 6 November 2012 Commitments, dated 7 November 2012.

(f) As regards the mentioned agreements for site services, the monitoring trustee will ensure in particular that these agreements include appropriate safeguards to maintain confidentiality, as foreseen under clause 2.16 of the Schedule to the commitments;

(g) As regards the pulp supply agreement, at the option of the purchaser, for a duration of [...] the merged entity will supply the purchaser a volume [...] up to the current annual requirement of PM2,[...]; at the end of this period, the merged entity will for [...] supply the purchaser with up to the same volume [...];

(h) Regarding the building lease, the rent payable under such lease shall be based on the merged entity's cost, consisting of direct costs relating to the building such as normal maintenance, real estate tax or heating, as well as a reasonable amount of common real estate costs for the Gävle mill site, such as snow removal and others;

(i) The agreement for the supply of electricity is also made optional upon the purchaser; and

(j) The purchaser shall have the right to relocate PM2 to another location, provided that the purchaser so wishes and bears all costs related thereto.

VI.5. Commission's assessment of the Final Commitments

VI.5.1. Legal test for acceptability of commitments offered in Phase I

214. Under the Merger Regulation, the Commission has the power to accept commitments that are deemed capable of rendering the concentration compatible with the common market so that they will prevent a significant impediment of effective competition.

215. As indicated in point 9 of the Remedies Notice,¹²⁸ the commitments have to eliminate the competition concerns entirely and have to be comprehensive and effective from all points of view. The Commission considers, inter alia, the type, scale and scope of the remedies by reference to the structure and the particular characteristics of the market in which these serious doubts arise.

216. In merger cases, divestment commitments having a structural effect on the market are typically preferable.¹²⁹ In the case of a divestment, it is important that the divested activities consist of a viable business which, if operated by a suitable purchaser, can compete effectively with the merged entity on a lasting basis.

217. In Phase I, commitments must clearly dispel all serious doubts.¹³⁰ It is also settled case law that in assessing whether the remedies constitute a direct and sufficient response capable of dispelling serious doubts, the Commission enjoys a broad discretion.¹³¹ In its

¹²⁸ OJ C 267, 22.10.2008, p.1.

¹²⁹ Remedies Notice, paragraph 15.

¹³⁰ Remedies Notice, paragraph 81.

¹³¹ Case T-177/04 *easyJet v Commission* [2006] ECR II-1931, paragraph 128 ff.

analysis the Commission relies on responses to the market test of remedies, submission of the Parties as well as additional evidence on the file.

VI.5.2. Suitability of the proposed commitments to remedy serious doubts in this case

218. In the present case, the Commission considers that the Final commitments are suitable to remove the serious doubts raised regarding the markets for white sack kraft paper and white MF/UG kraft paper. The Final Commitments would remove the entire overlap arising from the proposed transaction in the supply of white sack kraft paper and white MF/UF kraft paper in the EEA. Thus the scale and scope of the Final Commitments will restore the market structure which exists pre-merger.
219. Since the Divestment Business is not a stand-alone legal entity but forms part of Korsnäs, it has necessarily to be “carved out” of the remaining business. In such “carve out” operations, it is of utmost importance for the viability of the transferred business that it has access to all inputs and other resources, such as R&D or distribution networks, which are necessary for its independent operation.
220. As regards the viability of the Divestment Business and its ability to compete effectively with the merged entity on a lasting basis, the Commission considers that these conditions are in principle met.
221. First, the Divestment Business is a profitable business and consists of Korsnäs' total business in white sack kraft and white MF/UG papers. It would therefore have a structural effect on the market.
222. Second, although the paper machine to be divested is part of a production mill operated by the merged entity and would remain there post-transaction (unless the purchaser opted to relocate the machine), this would not, in the Commission's view, hinder the Divestment Business from being operated independently in a viable and effective manner. In fact, there are a number of such arrangements currently present in the industry.¹³² In particular, the Divestment Business would have the necessary know-how and brands to operate a viable activity on the market on a stand-alone basis since the Divestment Business includes all trade names (except for the Korsnäs reference) and intellectual property rights which contribute to its current operation.
223. Third, in relation to the potential input supply agreements, the Commission does not consider that this structure is likely to affect negatively the effectiveness of the remedy for the following reasons. According to the Notifying Party, the costs related to pulp, electricity, steam, water, pressurised air, chemicals, maintenance and site services, and the building represent about [...] % of Korsnäs' production costs of white kraft sack paper and white MF/UG kraft paper. However, the commitments structure, and in particular the role assigned to the monitoring trustee, would protect the purchaser from having to face inflated costs. Therefore, the merged entity would not be able to reduce the Divestment Business' competitiveness by increasing its costs post-transaction. In addition, though the merged entity might have visibility to the purchaser's costs covered

¹³² There are also Commission precedents in which the parties divested a production facility which remained integrated in the merged entity's production site and where it was foreseen that the merged entity would supply inputs or provide site services to the purchaser. See for example M.4835 – Hexion/Huntsman.

by the input supply agreements, there would still be a sufficient proportion of the costs regarding which the purchaser and the merged entity would compete, for example those regarding [...]. Furthermore, the Notifying Party submitted that costs for pulp and energy (steam and electricity), which represent [...] % of the total costs, are publicly known. This has been confirmed by competitors during the market investigation¹³³ and therefore the parameters of competition which normally exist in the industry would also exist between the merged entity and the purchaser. The Commission therefore considers that the operation of the Divestment Business in premises shared with the merged entity, even with agreements that create long-term relationships between the merged entity and the purchaser would not prevent the development of a new independent competitive force.

224. The Commission also assessed whether a third party would be interested in acquiring a machine which is located in a competitor's mill, or whether relocating the machine would for that reason be necessary and viable. As explained, market test respondents do not consider that operating the paper machine at the Gävle site would have a negative effect on the purchaser's production and independence, and have also explained that relocating the machine might also have economic disadvantages. Considering the above, the Commission is of the view that the Divested Business can operate effectively and efficiently from its current location and that the relocation should be left as an option for the purchaser.
225. For the reasons outlined above, the Final Commitments entered into by the Notifying Party are sufficient to eliminate the serious doubts as to the compatibility of the transaction with the internal market.

VI.5.3. Purchaser criteria

226. As regards the purchaser criteria, the market test indicated that knowledge of the paper industry is essential for any purchaser to acquire the business and run it on a sustainable basis with a longer-term strategy.
227. The Final Commitments address this point since they require that the Divestment Business will be sold to a purchaser who has a presence in the paper or packaging board industry.
228. Any purchaser complying with the specific requirement regarding presence in the paper or packaging board industry will in addition have to comply with the general requirements, such as (i) to be independent from the merged entity, (ii) to have the financial resources, proven expertise and incentive to maintain and develop the Divestment Business as a viable and active competitive force in competition with the merged entity and other competitors, and (iii) neither to be likely to create *prima facie* competition concerns nor to give rise to a risk that the implementation of the Commitments will be delayed, and it must, in particular, reasonably be expected to obtain all necessary approvals from the relevant regulatory authorities for the acquisition of the Divestment Business .

¹³³ For example, see minutes of 14 November 2012 conference call with paper producer.

229. Furthermore, if a purchaser has a significant captive use the Commission may consider that the transfer of the Divestment Business to such a purchaser may not ensure the immediate restoration of effective competition because this might limit the quantities available for the merchant market and therefore the competitive force of the purchaser.

VII. CONDITIONS AND OBLIGATIONS

230. Under the first sentence of the second subparagraph of Article 6(2) of the Merger Regulation, the Commission may attach to its decision conditions and obligations intended to ensure that the undertakings concerned comply with the commitments they have entered into vis-à-vis the Commission with a view to rendering the concentration compatible with the internal market.

231. The fulfillment of the measure that gives rise to the structural change of the market is a condition, whereas the implementing steps which are necessary to achieve this result are generally obligations on the parties. Where a condition is not fulfilled, the Commission's decision declaring the concentration compatible with the internal market and the EEA Agreement no longer stands. Where the undertakings concerned commit a breach of an obligation, the Commission may revoke the clearance decision in accordance with Article 8(6)(b) of the Merger Regulation. The undertakings concerned may also be subject to fines and periodic penalty payments under Articles 14(2) and 15(1) of the Merger Regulation.

232. In accordance with the basic distinction between conditions and obligations described in paragraph 231, the decision in this case is conditional on full compliance with the requirements set out in Section B of the Final Commitments, which constitute conditions, whereas Sections C to F of the Final Commitments constitute obligations on the Notifying Party.

233. The full text of the Final Commitments is annexed to this decision as Annex I and forms an integral part thereof.

VIII. CONCLUSION

234. 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 Section B 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*

Annex I

By hand and by fax: 00 32 2 296 4301

European Commission - Merger Task Force
DG Competition
Rue Joseph II 70 Jozef-II straat
B-1000 BRUSSELS

Case M.6682 – Kinnevik / Korsnäs /Billerud

COMMITMENTS TO THE EUROPEAN COMMISSION

Pursuant to Article 6(2) of Council Regulation (EC) No. 139/2004 as amended ("**the Merger Regulation**"), Investment AB Kinnevik ("**Kinnevik**"), a company incorporated under the laws of Sweden, with its registered office at Skeppsbron 18, SE-103 13 Stockholm and registered with the Swedish Company Register under registry number 556047-9742, hereby provides the following commitments (the "**Commitments**") in order to enable the European Commission (the "**Commission**") to declare the proposed acquisition by Kinnevik of sole control over Billerud ("**the 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.

Whilst Kinnevik is the notifying party in case M.6682, and therefore it is Kinnevik who submits these Commitments and is responsible for their correct implementation, at the time these Commitments are implemented the owner of the Divestment Business is the Combined Entity. Therefore, references in these Commitments to Kinnevik shall be understood to refer also to the Combined Entity where appropriate. In particular, when these Commitments make reference to Kinnevik taking certain action, this should be understood as either Kinnevik taking such action itself or Kinnevik causing the Combined Entity to take such action, as the case may be. Likewise, references to Kinnevik's compliance with the Commitments shall include the Combined Entity's compliance therewith.

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 (EC) No. 139/2004 and under Commission Regulation (EC) No. 802/2004.

Section A. Definitions

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

Affiliated Undertakings: undertakings controlled by the Parties (as defined below) and/or by the ultimate parents of the Parties, whereby the notion of control shall be interpreted pursuant to Article 3 Merger Regulation and in the light of the section on the concept of concentration in the Commission Consolidated Jurisdictional Notice under Council Regulation (EC) No. 139/2004.

Billerud: Billerud AB, a company incorporated under the laws of Sweden, with its registered office at PO Box 703, SE-169 27 Solna, Sweden and registered with the Swedish Company Register under registry number 556025-5001.

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

Combined Entity: the entity comprising Billerud and Korsnäs (which will change its trading name to "BillerudKorsnäs") together to be formed as a result of the implementation of the Concentration.

Divestment Business: manufacture and sale of the Products at Korsnäs' Gävle mill and associated assets personnel, intangible resources, customer goodwill and other resources, that the Parties commit to divest, as set out in the Schedule.

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

Effective Date: the date of adoption of the Decision.

First Divestiture Period: the period of [...] from the Effective Date subject to any extension thereto granted by the Commission pursuant to paragraph 33 of these Commitments.

Hold Separate Manager: the person appointed by Kinnevik for the Divestment Business 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 Business, as listed in the Schedule.

Korsnäs: Korsnäs AB, a company incorporated under the laws of Sweden, with its registered office at Korsnäsvägen 181 - 187, SE-801 81 Gävle, Sweden and registered with the Swedish Company Register under registry number 556023-8338.

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

Parties: Kinnevik, Korsnäs and Billerud (and following implementation of the Concentration, Billerud after name change to BillerudKorsnäs AB).

Personnel: all personnel currently fully employed within the Divestment Business, including Key Personnel, all as listed in the Schedule.

PM2: Paper machine no. 2 at Korsnäs' Gävle mill.

Products: White MF/UG Paper of normal industry standard, of various grammages, and white sack Paper of normal industry standard, of various grammages.

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

Trade Names: the trade names, whether registered or not, under which Korsnäs offers for sale the Products at the date of these Commitments, as set out in the Schedule.

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

Trustee Divestiture Period: the period of [...] from the end of the First Divestiture Period subject to any extension thereto granted by the Commission pursuant to paragraph 33 of these Commitments.

Section B. The Divestment Business

Commitment to divest

1. In order to restore effective competition, Kinnevik commits to divest, or procure the divestiture of the Divestment Business 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 14. To carry out the divestiture, Kinnevik commits to find a purchaser and to enter into a final binding sale and purchase

agreement for the sale of the Divestment Business within the First Divestiture Period. If Kinnevik has not entered into such an agreement at the end of the First Divestiture Period, Kinnevik shall grant the Divestiture Trustee an exclusive mandate to sell the Divestment Business in accordance with the procedure described in paragraph 23 in the Trustee Divestiture Period.

2. Kinnevik shall be deemed to have complied with this commitment if, by the end of the Trustee Divestiture Period, Kinnevik 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 14 and if the closing of the sale of the Divestment Business 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, the Parties 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 Business, 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 Business is no longer necessary to render the proposed concentration compatible with the common market.

Structure and definition of the Divestment Business

4. The present legal and functional structure of the Divestment Business as operated to date is described in the Schedule. The Divestment Business includes the following elements, as further detailed in the Schedule:
 - (a) all tangible and intangible assets (including Trade Names and intellectual property rights insofar as they exist), which contribute to the current operation or are necessary to ensure the viability and competitiveness of the Divestment Business;
 - (b) all contracts, leases, commitments and customer orders of the Divestment Business; all customer, credit and other records of the Divestment Business (items referred to under (a)-(c) hereinafter collectively referred to as "**Assets**");
 - (c) the Personnel;
 - (d) the benefit, should the Purchaser so require and at the option and discretion of the Purchaser [...] of a number of contractual arrangements under which the Combined Entity or Affiliated Undertakings will supply products or services to the Divestment Business, as detailed in the Schedule.

Section C. Related commitments

Preservation of Viability, Marketability and Competitiveness

5. From the Effective Date until Closing, Kinnevik shall preserve the economic viability, marketability and competitiveness of the Divestment Business, in accordance with good business practice, and shall minimise as far as possible any risk of loss of competitive potential of the Divestment Business. In particular Kinnevik 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 Business or that might alter the nature and scope of activity, or the industrial or commercial strategy or the investment policy of the Divestment Business;
 - (b) to make available sufficient resources for the development of the Divestment Business, on the basis and continuation of the existing business plans

- (c) to take all reasonable steps, including appropriate incentive schemes (based on industry practice), to encourage all Key Personnel to remain with the Divestment Business.

Hold-separate obligations of Parties

- 6. Kinnevik commits, from the Effective Date until Closing, to keep the Divestment Business separate from the businesses it is retaining and to ensure that Key Personnel of the Divestment Business - including the Hold Separate Manager - have no involvement in any business retained and vice versa. Kinnevik shall also ensure that the Personnel does not report to any individual outside the Divestment Business.
- 7. Until Closing, Kinnevik shall assist the Monitoring Trustee in ensuring that the Divestment Business is managed as a distinct and saleable entity separate from the businesses retained by the Parties. Kinnevik shall appoint a Hold Separate Manager who shall be responsible for the management of the Divestment Business, under the supervision of the Monitoring Trustee. The Hold Separate Manager shall manage the Divestment Business independently and in the best interest of the business with a view to ensuring its continued economic viability, marketability and competitiveness and its independence from the businesses retained by the Parties.

Ring-fencing

- 8. Kinnevik 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 Business. In particular, the participation of the Divestment Business in a central information technology network shall be severed to the extent possible, without compromising the viability of the Divestment Business. Kinnevik may obtain information relating to the Divestment Business which is reasonably necessary for the divestiture of the Divestment Business or whose disclosure to Kinnevik is required by law.

Non-solicitation clause

- 9. The Parties undertake, subject to customary limitations, not to solicit, and to procure that Affiliated Undertakings do not solicit, the Personnel transferred with the Divestment Business for a period of thirty-six (36) months after Closing.

Due Diligence

- 10. In order to enable potential purchasers to carry out a reasonable due diligence of the Divestment Business, Kinnevik 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 Business, including allowing reasonable access to the Gävle site;
 - (b) provide to potential purchasers sufficient information relating to the Personnel and allow them reasonable access to the Key Personnel.

Reporting

- 11. Kinnevik shall submit written reports in English on potential purchasers of the Divestment Business 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).

12. Kinnevik 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

13. In order to ensure the immediate restoration of effective competition, the Purchaser, in order to be approved by the Commission, must:
 - (a) be independent of and unconnected to the Parties;
 - (b) have the financial resources, a presence in the paper or packaging board industry (including but not limited to manufacture or converting, but in the latter case not of sack or MF/UG paper), proven expertise and incentive to maintain and develop the Divestment Business as a viable and active competitive force in competition with the Parties and other competitors;
 - (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 Business (the before-mentioned criteria for the purchaser hereafter the "**Purchaser Requirements**").
14. The final binding sale and purchase agreement shall be conditional on the Commission's approval. When Kinnevik 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. Kinnevik must be able to demonstrate to the Commission that the purchaser meets the Purchaser Requirements and that the Divestment Business is being sold in a manner consistent with the Commitments. For the approval, the Commission shall verify that the purchaser fulfils the Purchaser Requirements and that the Divestment Business is being sold in a manner consistent with the Commitments. The Commission may approve the sale of the Divestment Business without one or more Assets or parts of the Personnel, if this does not affect the viability and competitiveness of the Divestment Business after the sale, taking account of the proposed purchaser.

Section E. Trustee

I. Appointment Procedure

15. Kinnevik shall appoint a Monitoring Trustee to carry out the functions specified in the Commitments for a Monitoring Trustee. If Kinnevik 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 Kinnevik at that time or thereafter, Kinnevik 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 Divestment Period.
16. 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 the Parties 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 Business, the fee shall also be linked to a divestiture within the Trustee Divestiture Period.

Proposal by Kinnevik

17. No later than one week after the Effective Date, Kinnevik shall submit a list of one or more persons whom Kinnevik 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, Kinnevik shall submit a list of one or more persons whom Kinnevik 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 16 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;
 - (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

18. 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 individual or institution is approved, Kinnevik 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 individual or institution is approved, Kinnevik shall be free to choose the Trustee to be appointed from among the individuals or institutions 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 Kinnevik

19. If all the proposed Trustees are rejected, Kinnevik 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 16 and 19.

Trustee nominated by the Commission

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

II. Functions of the Trustee

21. 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 Kinnevik, 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

22. 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 Business with a view to ensuring its continued economic viability, marketability and competitiveness and monitor compliance by Kinnevik 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 Business, and the keeping separate of the Divestment Business from the business retained by the Parties, in accordance with paragraphs 5 and 6 of the Commitments;
 - (b) supervise the management of the Divestment Business as a distinct and saleable entity, in accordance with paragraph 7 of the Commitments;
 - (c) (i) in consultation with Kinnevik, determine all necessary measures to ensure that Kinnevik 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 Business, in particular strive for the severing of the Divestment Business' participation in a central information technology network to the extent possible, without compromising the viability of the Divestment Business, and (ii) decide whether such information may be disclosed to Kinnevik as the disclosure is reasonably necessary to allow Kinnevik 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 Business and Kinnevik or Affiliated Undertakings;
 - (e) review and approve proposed agreements between the Combined Entity and the Purchaser for the supply of inputs for PM2 (such as pulp, steam, water, pressurised air and electrical energy), for the use of joint infrastructure, for the provision of site services, maintenance services and/or transitional services, for the allocation of environmental rights, for granting access to the re-winders, as well as for the coordination of the production at PM2 with the rest of the mill in terms of maintenance shutdown, to ensure compliance of these agreements with these Commitments.
- (iii) assume the other functions assigned to the Monitoring Trustee under the conditions and obligations attached to the Decision;
- (iv) propose to Kinnevik such measures as the Monitoring Trustee considers necessary to ensure Kinnevik'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 Business, the holding separate of the Divestment Business 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 Business 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 Kinnevik and the Combined Entity 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 Business 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 Kinnevik and the Combined Entity a non-confidential copy at the same time, if it concludes on reasonable grounds that Kinnevik 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 Business after the Sale and as to whether the Divestment Business 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 Business without one or more Assets or not all of the Personnel affects the viability of the Divestment Business after the sale, taking account of the proposed purchaser; and
- (viii) during the period of validity of these Commitments, ensure that the methodology by which the cost of capital referred to in paragraph 2.20 of the Schedule is calculated is reasonable (taking into account the proportionate capital of Korsnäs' Gävle mill as well as cost of capital in the paper manufacturing industry in general).

Duties and obligations of the Divestiture Trustee

- 23. Within the Trustee Divestiture Period, the Divestiture Trustee shall sell at no minimum price the Divestment Business 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 14. 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 Kinnevik and the Combined Entity, subject to Kinnevik's unconditional obligation to divest at no minimum price in the Trustee Divestiture Period.
- 24. 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 Kinnevik and the Combined Entity.

III. Duties and obligations of Kinnevik

- 25. Kinnevik 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 and the Combined Entity's or the Divestment Business' books, records, documents, management or other personnel, facilities, sites and technical information necessary for fulfilling its duties under the Commitments and Kinnevik and the Divestment Business shall provide the Trustee upon request with copies of any document. Kinnevik and the Divestment Business 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.
- 26. Kinnevik shall provide the Monitoring Trustee with all managerial and administrative support that it may reasonably request on behalf of the management of the Divestment Business. This shall include all administrative support functions relating to the Divestment Business which are currently carried out at Korsnäs' headquarters level. Kinnevik 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. Kinnevik 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.

27. Kinnevik 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, Kinnevik shall cause the documents required for effecting the sale and the Closing to be duly executed.
28. Kinnevik 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 Kinnevik 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.
29. At the expense of Kinnevik, the Trustee may appoint advisors (in particular for corporate finance or legal advice), subject to Kinnevik'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 Kinnevik refuse to approve the advisors proposed by the Trustee the Commission may approve the appointment of such advisors instead, after having heard Kinnevik. Only the Trustee shall be entitled to issue instructions to the advisors. Paragraph 28 shall apply mutatis mutandis. In the Trustee Divestiture Period, the Divestiture Trustee may use advisors who served Kinnevik 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

30. 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 Kinnevik to replace the Trustee; or
 - (b) Kinnevik, with the prior approval of the Commission, may replace the Trustee.
31. If the Trustee is removed according to paragraph 30, 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 15-20.
32. Beside the removal according to paragraph 30, 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

33. The Commission may, where appropriate, in response to a request from Kinnevik 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 Kinnevik 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 Kinnevik be entitled to request an extension within the last month of any period.

Brussels, 21 November 2012

.....
duly authorised for and on behalf of
Investment AB Kinnevik

SCHEDULE

1. **The Divestment Business as operated to date has the following legal and functional structure:**
 - 1.1 The Divestment Business comprises the PM2 paper machine in Korsnäs' Gävle paper mill, consisting in the manufacture and sale of the Products from PM2, and including PM2 together with associated assets, personnel, contracts and other resources. The Divestment Business comprises all of Korsnäs' production and sales of the Products.
 - 1.2 The Divestment Business is not incorporated separately. It is currently operated as a unit within Korsnäs.
 - 1.3 The Divestment Business is entirely based in and around the production facility in Korsnäs' Gävle mill, located at Korsnäsverken, SE-801 11 Gävle, Sweden, with both Gävle PM2 and related employees being based there.
 - 1.4 The Divestment Business produces and sells the Products.
 - 1.5 The Divestment Business will be divested in its entirety, with all [...] required for the Purchaser of the Divestment Business to assume PM2's current business activities of manufacturing and supplying the Products.
 - 1.6 At the Purchaser's option and discretion, the Combined Entity will in addition enter into arrangements with the Divestment Business for the supply of inputs for PM2, such as [...] on terms and conditions set out below.
 - 1.7 The Combined Entity will also, at the Purchaser's option and discretion, enter into certain other agreements for matters common to the Gävle mill, such as [...].
 - 1.8 The Purchaser shall have the right to relocate PM2 to another location, provided that he so wishes and bears all costs related thereto, and that the provisions of paragraphs 2.8 to 2.16 regarding notice periods shall apply.
2. The Divestment Business includes the following Assets and Personnel:
 - (a) Tangible assets
 - (i) the following principal pieces of production equipment: [...];
 - (ii) a lease contract for the building housing PM2, as per the attached drawing (cf. Annex 1), including [...]
 - (iii) Inventory kept within the boundaries of the building referred to under (ii) immediately above, including items such as pulp, chemicals, wires and felts, packaging materials, spare parts, work in progress, semi-finished products and finished products.
 - (b) Intangible assets
 - (i) the Trade Names: the Combined Entity will undertake to transfer to the Purchaser (i) any rights held by Korsnäs in the Trade Names, and (ii) undertake towards the Purchaser to cease using the Trade Names. The Trade Names are
 - White MF/UG:** ABC Bale Wrapping
 - ABC Bale Wrapping printed
 - ABC S
 - FB ES
 - FBCX

SF
SF WS
SF-N

White Sack: ABC
ABC Easy Repulpable
FB
FB Easy Repulpable
FB WS
FBC
FBC WS
ULTRA

For the avoidance of doubt, use by the Purchaser of the above Trade Names shall always exclude the denotation "Korsnäs".

- (ii) all Korsnäs' customer records and related documentation as reasonably necessary or relevant (including promotional material, with the "Korsnäs" name covered up), technical specifications and product certificates) relating to the Products will be transferred to the Purchaser. The Combined Entity undertakes to use all reasonable endeavours to obtain the consent of all current customers purchasing the Products of PM2 (as set out in Annex 2) to the transfer from Korsnäs to the Purchaser of their respective customer relationship. For this purpose, the customers shall be informed in writing of the coming into force of the Commitment. Customers who elect to switch shall have their existing agreements novated to the Purchaser and shall be released from any further purchasing obligations from the Combined Entity. To the extent a customer relationship is not manifested in an agreement, the Combined Entity's responsibility under this provision shall be limited to contacting the customer in question with an aim to cause such customer to source the Products from the Purchaser;
 - (iii) as regards supply agreements (including software license agreements to PM2's control systems), in the same way as for customer agreements, all the agreements concerning supply only to PM2 will be transferred to the Purchaser. Agreements for the supply of products used at several paper machines at the mill site will remain with the Combined Entity. The Combined Entity will offer the Purchaser to source such supplies from the Combined Entity during a transitional period, at the end of which the Purchaser will be responsible for securing its own supplies.
- (c) licences, permits and authorisations:
- 2.1 Environmental approvals and other permits relevant to the activity at PM2 are issued for the Gävle mill site as a whole, and hence do not need to be modified to take into account the Purchaser.
- (d) contracts, agreements, leases, commitments and understandings:
- 2.2 There are none save for those referred to elsewhere in this Commitment.
- (e) customer, credit and other records:
- 2.3 All relevant customer, credit and other records relating to the Divestment Business will be transferred to the Purchaser. In the manner described in point (b)(ii) above, the Combined Entity will seek to achieve that all existing trading relationships with customers will remain with the Divestment Business and will continue to be in effect.

(f) Personnel:

- 2.4 The Divestment Business has in total [...] full time employees, all of whom will be transferred with the Divestment Business, provided however that the employees themselves consent to the change of employer. Kinnevik undertakes to take all reasonable steps to encourage all Key Personnel to remain with the Divestment Business.
- 2.5 Of these, [...] employees of the Divestment Business are involved in the manufacture of the Products, while there are [...] sales and marketing personnel and [...] technical customer support personnel.

(g) Key Personnel:

- 2.6 The Key Personnel of the Divestment Business are the following current Korsnäs employees: [...] (Head PM2), [...] (vice Head/Process engineer), [...] (technical customer support) and [...] (Sales manager S&K).

(h) the arrangements for the supply with the following products or services by the Combined Entity or Affiliated Undertakings after Closing:

- 2.7 Certain functions as may be required by the Divestment Business for its activities may, at the option and discretion of the Purchaser, be the subject of agreements between the Combined Entity and the Purchaser. A Master Cooperation Agreement will be entered into between the Combined Entity and the Purchaser to serve as an umbrella for these various arrangements, of which Kinnevik undertakes to offer the Purchaser the following.

Transitional services

- 2.8 At the option and discretion of the Purchaser, the Combined Entity will contract with the Purchaser for certain services which the Purchaser requires during a startup phase. These services vary depending on the nature of the Purchaser's position and at his option, and may comprise:
- (a) human resources: assistance with typical human resources tasks, such as payroll and other HR related services;
 - (b) planning sales, order management, production planning, order handling and finance: normal finance tasks such as billing, accounts receivable etc.;
 - (c) central purchasing: central purchasing of certain products for the whole Gävle mill, which are also used on PM2, including chemicals for paper production: the Purchaser will be invited to participate;
 - (d) technical services for construction work;
 - (e) information services and software licences necessary for sales handling and running PM2;
 - (f) IT and telephony services; and
 - (g) logistics: assistance in organising logistics for supplies of goods produced to the Purchaser's customers (actual deliveries being made by third parties).

The Combined Entity will cooperate with the Purchaser to provide a solution tailored to the Purchaser's requirements. The duration of such a contract will be determined in order to give the Purchaser time to secure the necessary production input and site services for PM2 to become self-sufficient in the areas where this is suitable, but will not be longer than [...]. The Purchaser shall have the right to terminate agreements entered into pursuant to this paragraph with six months' notice.

Pulp

- 2.9 At the option and discretion of the Purchaser, the Combined Entity will contract with the Purchaser for the supply of pulp to the Purchaser, on the following terms. For a duration of [...] from Closing ("**the First Pulp Supply Period**"), the Combined Entity will contract with the Purchaser for the supply to it of a volume [...] up to the current annual requirement of PM2, [...]. At the end of the First Pulp Supply Period, the Combined Entity shall for a period of a further [...] contract with the Purchaser for the supply to it of the aforementioned volume [...]. The Purchaser shall have the right to terminate agreements entered into pursuant to this paragraph with [...] notice.
- 2.10 The Combined Entity will also contract with the Purchaser, at the latter's option and discretion, for access to BT2 (a storage tower outside the PM2 building which is the entry point for incoming pulp to PM2), with pumps and pipes, for a duration of [...] from Closing. The Purchaser shall have the right to terminate agreements entered into pursuant to this paragraph with [...] notice.

Steam

- 2.11 At the option and discretion of the Purchaser, the Combined Entity will contract with the Purchaser for steam to be supplied to PM2 by the Combined Entity. [...] for a duration of [...] from Closing. The Purchaser shall have the right to terminate agreements entered into pursuant to this paragraph with [...] notice.

Water and pressurised air

- 2.12 At the option and discretion of the Purchaser, the Combined Entity will contract with the Purchaser for the supply and disposal of mechanically purified water, chemically purified water, sealing water and sanitary water, dry pressurised air and chemicals to PM2. [...] for a duration of [...] from Closing. The Purchaser shall have the right to terminate agreements entered into pursuant to this paragraph with [...] notice.

Electricity

- 2.13 The supply of electricity to PM2 will, at the option and discretion of the Purchaser, be provided by The Combined Entity in accordance with applicable legislation and regulation. There will also be a mechanism for balance management, so that the Purchaser will only be charged for the electricity it actually uses, for a duration of [...] from Closing. The Purchaser shall have the right to terminate agreements entered into pursuant to this paragraph with [...] notice.

Building

- 2.14 The Combined Entity will enter into a long term lease for [...] from Closing with the Purchaser for the building in which PM2 is located. [...].

The Purchaser shall have the right to terminate agreements entered into pursuant to this paragraph with [...] notice.

Maintenance services

- 2.15 The maintenance personnel and resources in the Gävle mill are common for the whole facility and there is no dedicated maintenance resource for PM2. The Purchaser will be responsible for all maintenance within the walls of the building housing PM2. The Combined Entity will, should the Purchaser so wish, contract with the Purchaser for such maintenance services for a duration of [...] from Closing. [...]. The Purchaser shall have the right to terminate agreements entered into pursuant to this paragraph with [...] notice.

Site services

- 2.16 At the option and discretion of the Purchaser, the Combined Entity will contract with the Purchaser for certain site services which will be provided by the Combined Entity for a duration of [...] from Closing. Such services will include things such as fire protection; security; railway maintenance; construction; transport and logistics within the Gävle site, including access to the Gävle mill's planning system, mill information system, roll administration system, use of other mill warehouses, roll transport and handling services; postal; canteen and warehouse services. They will also cover "access control services" and will require that the Purchaser ensures that all members of its staff, its subcontractors etc. comply with the Combined Entity' rules, principles and procedures for access. [...]. The agreement(s) concluded for site services shall be drawn up in consultation with the Monitoring Trustee to ensure that appropriate safeguards to maintain confidentiality are included. The Purchaser shall have the right to terminate agreements entered into pursuant to this paragraph with [...] notice.

Environmental

- 2.17 In addition to the supply agreements, the parties will also need to enter into an agreement governing the allocation of their environmental rights and obligations. This Ancillary Agreement will also set out the terms on which the Purchaser would operate under existing environmental permits for the Gävle mill site.

Other

- 2.18 Two so-called "re-winders" (omrullningsmaskin) are located within the PM2 building (cf. list above). [...] The Combined Entity will therefore contract with the Purchaser for access to one of the re-winders [...], and such access will be a condition of the sale.
- 2.19 The Combined Entity will agree with the Purchaser on a minimum level coordination of production at PM2 with the rest of the mill, e.g. in terms of maintenance shutdown, in order to ensure operational and technical efficiency.
- 2.20 [...].

3. **The Divestment Business shall not include:**

- 3.1 For the sake of clarity, shall not form part of the Divestment Business:

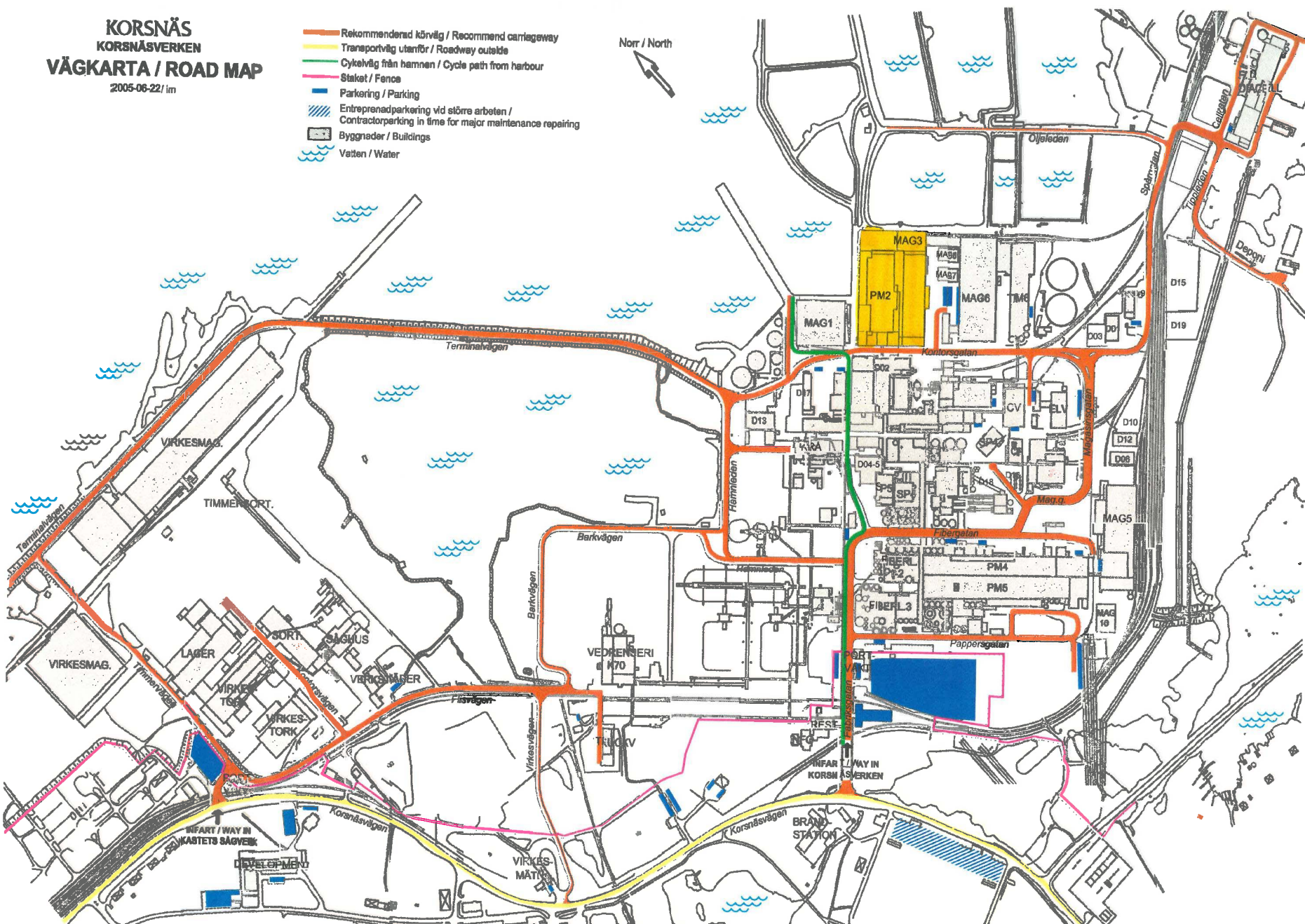
- (i) the "Korsnäs" name and any rights thereto; and
- (ii) any resources, contracts or know-how specifically relating to the [...] that has been produced on PM2.

ANNEX 1

KORSNÄS KORSNÄSVERKEN VÄGKARTA / ROAD MAP 2005-06-22/im

- Rekommenderad körväg / Recommend carriageway
- Transportväg utanför / Roadway outside
- Cykelväg från hamnen / Cycle path from harbour
- Staket / Fence
- Parkering / Parking
- ▨ Entreprenöroparkering vid större arbeten / Contractor parking in time for major maintenance repairing
- Byggnader / Buildings
- ~ Vatten / Water

Norr / North



ANNEX 2

CustNo Customer
[...] [...]

Country CustNo Customer
[...] [...] [...]

Country CustNo Customer
[...] [...] [...]

Country CustNo Customer
[...] [...] [...]

Country
[...]