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Case No COMP/M.7558 - DS SMITH/ DUROPACK

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION

Date: 21/05/2015

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EUROPEAN COMMISSION

Brussels, 21.5.2015
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In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EC) No 139/2004 concerning non-disclosure of business secrets and other confidential information. The omissions are shown thus [...]. Where possible the information omitted has been replaced by ranges of figures or a general description.

PUBLIC VERSION

MERGER PROCEDURE

To the notifying party

Dear Sir/Madam,

**Subject: Case M.7558 – DS Smith/ Duropack
Commission decision pursuant to Article 6(1)(b) of Council Regulation No 139/2004¹ and Article 57 of the Agreement on the European Economic Area²**

(1) On 15 April 2015, the European Commission received notification of a proposed concentration pursuant to Article 4 and following a referral pursuant to Article 4(5) of the Merger Regulation by which DS Smith Plc ("DS Smith", United Kingdom) acquires within the meaning of Article 3(1)(b) of the Merger Regulation control of the whole of Duropack GmbH ("Duropack", Austria) by way of purchase of shares³ (DS Smith and Duropack are designated hereinafter as the "Parties").

1. THE PARTIES

(2) DS Smith is active in the production and supply of corrugated case material, corrugated sheet, corrugated cases and partitions in the EEA.

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

² OJ L 1, 3.1.1994, p.3 ("the EEA Agreement").

³ Publication in the Official Journal of the European Union No C 130, 22.4.2015, p. 12.

- (3) Duropack is active in the production and supply of corrugated case material, corrugated sheet, corrugated cases and partitions in the EEA.

2. THE OPERATION AND THE CONCENTRATION

- (4) The operation consists of DS Smith acquiring 100% of the shares in Duropack. Following the transaction DS Smith will have sole control over Duropack. The proposed transaction therefore constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

3. EU DIMENSION

- (5) The operation does not have a Community dimension within the meaning of the Merger Regulation, because Duropack's EU-wide turnover does not exceed the threshold of EUR 250 million (Article 1(2)(b) of the Merger Regulation) and because Duropack's turnover does not exceed EUR 25 million in any of the Member States in which the Parties' combined aggregate turnover exceeds EUR 100 million (Article 1(3)(c) of the Merger Regulation).
- (6) However, on 12 March 2015, the Commission received a referral request pursuant to Article 4(5) of the Merger Regulation, by which the Notifying Party informed the Commission that the concentration was capable of being reviewed under the national competition laws of at least three Member States (i.e. Austria, Bulgaria, Hungary, Slovakia and Slovenia). The Parties requested therefore that it should be examined by the Commission. None of the Member States concerned objected to the request for referral. As a consequence, the concentration shall be deemed to have an EU dimension pursuant to Article 4(5) of the Merger Regulation.

4. RELEVANT MARKETS AND COMPETITIVE ASSESSMENT

- (7) The Parties' activities overlap in a number of markets along the value chain for the production of corrugated cases. This value chain includes amongst others the supply of paper fibres, the production of corrugated case material (CCM), the conversion of CCM into corrugated sheet and the conversion of corrugated sheet into corrugated cases.

4.1. Market definitions

4.1.1. Corrugated Case Material (CCM)

- (8) CCM (sometimes referred to as “containerboard”) is the main input product for the manufacture of corrugated sheet. The Commission has in the past considered a separate product market for CCM.⁴
- (9) Within the market for the supply of CCM, the Commission has further considered a distinction between kraftliner (i.e. CCM made from virgin fibre) and testliner (i.e. CCM made from recovered fibres).⁵ The Commission has in the past considered the

⁴ COMP/M.3935 - Jefferson Smurfit / Kappa; COMP/M.6512 – DS Smith / SCA Packaging; COMP/M.6682 Kinnevik / Billerud / Korsnäs.

⁵ COMP/M.3935 - Jefferson Smurfit / Kappa; COMP/M.6512 – DS Smith / SCA Packaging.

market for the supply of CCM and its possible sub-segments as at least EEA-wide in scope.⁶ The Parties do not contest this product and geographic market definition. In any case, for the purposes of this decision, the exact scope of the market definition can be left open, as the proposed transaction does not give rise to serious doubts under the narrowest possible market definition.

4.1.2. Corrugated sheet

Product market

- (10) CCM is converted into corrugated sheet in a corrugator by creating fluting (a rippled middle layer of paper), which is combined with liners (flat surface layers which are glued to each side of the fluting).
- (11) The Commission has in the past considered a separate product market for corrugated sheet.⁷ Within the market for corrugated sheet, the Commission has further considered a distinction between conventional corrugated sheet and heavy duty corrugated sheet.⁸ The Parties do not contest this product market definition. In this respect, the market investigation shows that customers do not consider conventional and heavy duty corrugated sheet as substitutable.⁹ Moreover, a number of competitors confirmed that even though standard corrugated sheet can also be produced on production lines for heavy duty corrugated sheet, the opposite is not usually the case.¹⁰ In any case, for the purposes of this decision, the exact scope of the product market definition can be left open, as the proposed transaction does not give rise to serious doubts under the narrowest possible market definition.

Geographic market

- (12) The Commission has in the past considered the market for the supply of corrugated sheet and its possible sub-segments as national or regional in scope with a radius of 300-400 km around the relevant production sites.¹¹ The Parties do not contest this geographic market definition. However, the Parties further note that the territories of Austria, Hungary and Slovakia are smaller than the 300 km radius catchment area under a regional geographic market definition. Therefore, the geographic market definition at national level remains the smallest plausible geographic market for these Member States. The importance of transport costs and necessity to have a supplier at national or even local level in this market has generally been confirmed by the market investigation.¹² In any case, for the purposes of this decision, the exact scope of the geographic market definition can be left open, as the proposed transaction does not give rise to serious doubts under the narrowest possible market definition.

⁶ COMP/M.3935 - Jefferson Smurfit / Kappa; COMP/M.6512 – DS Smith / SCA Packaging.

⁷ COMP/M.3935 - Jefferson Smurfit / Kappa; COMP/M.6512 – DS Smith / SCA Packaging.

⁸ COMP/M.3935 - Jefferson Smurfit / Kappa; COMP/M.6512 – DS Smith / SCA Packaging.

⁹ Response to Question 5 of Questionnaire 1 to Customers.

¹⁰ Response to Question 5 of Questionnaire 2 to Competitors.

¹¹ COMP/M.3935 - Jefferson Smurfit / Kappa; COMP/M.6512 – DS Smith / SCA Packaging.

¹² Response to Question 14 of Questionnaire 2 to Competitors and to Question 14 of Questionnaire 1 to Customers.

4.1.3. Corrugated cases

Product market

- (13) The conversion of corrugated sheet into corrugated cases for sale to end-customers involves printing, slotting and/or die-cutting, folding and gluing and/or stitching corrugated sheet.
- (14) The Commission has in the past considered a separate product market for corrugated cases.¹³ Within the market for the supply of corrugated cases, the Commission has further considered a distinction between conventional corrugated cases, heavy duty corrugated cases and litho-laminated corrugated cases.¹⁴ A strong majority of customers and the majority of competitors responding to the market investigation confirmed that these three types of corrugated cases are not substitutable in terms of price and production.¹⁵ In any case, for the purposes of this decision, the exact scope of the product market definition can be left open, as the proposed transaction does not give rise to serious doubts under the narrowest possible market definition.

Geographic market

- (15) The Commission has in the past considered the market for the supply of conventional corrugated cases as national in scope or regional in scope with a radius [...] * 200-300 km around the relevant production sites.¹⁶ With regard to heavy duty corrugated cases and litho-laminated corrugated cases, the Commission has in the past considered the market to be national in scope.¹⁷ In this respect, the market investigation has confirmed the importance of transport cost in this market, as competitors set out that cost competitiveness is achieved when a supplier is geographically close to the customer. Moreover, the market investigation showed that the majority of customers do not source corrugated cases beyond the national or even local level.¹⁸ In any event, for the purposes of this decision, the exact scope of the geographic market definition can be left open, as the proposed transaction does not give rise to serious doubts under the narrowest possible market definition.

4.2. Competitive Assessment

- (16) The proposed transaction gives rise to horizontally and vertically affected markets.

4.2.1. Horizontal relationships

- (17) The proposed transaction leads to horizontally affected markets (i) in the supply of conventional corrugated sheet in France, (ii) in the supply of conventional corrugated cases in Austria, Bulgaria, Croatia, Slovakia, Slovenia, Estonia, France,

¹³ COMP/M.3935 - Jefferson Smurfit / Kappa; COMP/M.6512 – DS Smith / SCA Packaging.

¹⁴ COMP/M.6512 – DS Smith / SCA Packaging.

¹⁵ Response to Question 6 of Questionnaire 1 to Customers and Response to Question 6 of Questionnaire 2 to Competitors.

* Should read: of

¹⁶ COMP/M.6512 – DS Smith / SCA Packaging.

¹⁷ COMP/M.6512 – DS Smith / SCA Packaging.

¹⁸ Response to Questions 8, 10 and 12 of Questionnaire 1 to Customers.

Lithuania and Sweden, (iii) in the supply of heavy duty corrugated cases in Slovakia and (iv) in the supply of litho-laminated corrugated cases in Hungary.

4.2.1.1. Corrugated sheet

- (18) As regards the supply of conventional corrugated sheet in France, the Parties' combined market share amounts to [30-40]% with a limited increment resulting from Duropack's market share of less than [0-5]%. The Parties' combined market share remains therefore moderate. Moreover, the merged entity would continue to face competition from a number of significant competitors such as Smurfit Kappa ([20-30]%), Gondardennes ([20-30]%) or Prowell ([10-20]%).
- (19) In the light of the above, the Commission concludes that the merged entity would not become an unavoidable trading partner and serious doubts do not arise as a result of the proposed transaction with respect to the supply of conventional corrugated sheet in France.

4.2.1.2. Corrugated cases

Conventional corrugated cases

- (20) The Parties' activities lead to affected markets in the national markets for conventional corrugated cases in Austria, Bulgaria, Croatia, Slovakia, Slovenia, Estonia, France, Lithuania and Sweden. The respective market shares in 2013 are listed in Table 1 below:

Country	DS Smith	Duropack	Combined	Competitor 1	Competitor 2
Austria	[10-20]%	[10-20]%	[20-30]%	[20-30]% (Dunapack)	[10-20]% (Rondo)
Bulgaria	[0-5]%	[30-40]%	[30-40]%	[20-30]% (Dunapack)	[5-10]% (Vitavel)
Croatia	[0-5]%	[30-40]%	[30-40]%	[30-40]% (Dunapack)	[10-20]% (Model)
Slovakia	[10-20]%	[10-20]%	[30-40]%	[10-20]% (Smurfit Kappa)	[5-10]% (Dunapack)
Slovenia	[0-5]%	[70-80]%	[70-80]%	[10-20]% (Dunapack)	[5-10]% (Eurobox)
Estonia	[20-30]%	[0-5]%	[20-30]%	[20-30]% (Stora Enso)	[5-10]% (Smurfit Kappa)
France	[20-30]%	[0-5]%	[20-30]%	[20-30]% (Smurfit Kappa)	[10-20]% (SAICA)
Lithuania	[20-30]%	[0-5]%	[20-30]%	[20-30]% (Stora Enso)	[5-10]% (Smurfit Kappa)
Sweden	[20-30]%	[0-5]%	[20-30]%	[30-40]% (Smurfit Kappa)	[20-30]% (Stora Enso)

Table 1: Market shares of the Parties and competitors.

- (21) In most cases, the Parties' combined market share remains reasonable and the increment brought about by the proposed transaction is limited. Moreover, the market investigation shows that the Parties will continue to face competition from a number of significant competitors in all of these markets, as displayed in Table 1 above.

- (22) With particular regard to Slovenia, where the Parties' combined market share amounts to [70-80]%, the Commission notes that increment is very small, as DS Smith's share in that market amounts only to [0-5]%. This [0-5]% share is entirely made up by imports with DS Smith having no production presence within Slovenia. Moreover, a number of customers indicated during the market investigation that both DS Smith and Duropack were not perceived as particularly aggressive competitors in Slovenia and in general no negative impact is expected by customers as a result of the proposed transaction.
- (23) In light of the above, the Commission concludes that serious doubts do [...] * arise as a result of the proposed transaction with respect to the market for conventional corrugated cases in the above-mentioned countries.

Heavy duty corrugated cases

- (24) The Parties' activities lead to a horizontally affected market in the national markets for heavy duty corrugated cases in Slovakia, where DS Smith has a market share of [10-20]% and Duropack of [20-30]% (combined: [30-40]%).
- (25) The Parties' combined market shares remain moderate in Slovakia. In addition, the market investigation shows that the Parties will continue to face competition from a number of significant competitors, such as Thimm and NEFAB ([10-20]% each) and Mondi ([10-20]%).
- (26) In the light of the above, the Commission concludes that serious doubts do not arise as a result of the proposed transaction with respect to the market for heavy duty corrugated cases in Slovakia,

Litho-laminated corrugated cases

- (27) The Parties submit that their activities lead to a horizontally affected market in the national market for litho-laminated corrugated cases in Hungary.
- (28) The Parties' combined share in the market for litho-laminated corrugated cases in Hungary amounts to [30-40]% with an increment of [0-5]%. The Parties' combined market share remains therefore moderate in Hungary for litho-laminated corrugated cases. In addition, the market investigation shows that the new entity will continue to face competition from a number of large competitors such as STI ([20-30]%), Stora Enso ([20-30]%) or Motivating Graphics ([10-20]%)
- (29) In light of the above, the Commission concludes that serious doubts do not arise as a result of the proposed transaction with respect to the market for litho-laminated corrugated cases in Hungary

4.2.1.3. Market investigation

- (30) In addition to the above, and with regard to all of these markets, the market investigation has confirmed that competitors as well as customers [...] ** not perceive DS Smith or Duropack as particularly aggressive competitors.¹⁹ Moreover,

* Should read: not

** Should read: generally do

for each of the above markets, customers indicated that there are other suppliers apart from the Parties that they could switch to in the short term.²⁰

- (31) Moreover, competitors and customers in general did not expect any negative impact of the transaction, with some mentioning the potential for increased competition and lower prices.²¹

4.2.2. *Vertical relationships*

- (32) The proposed transaction leads to a number of vertically affected markets, (i) for the upstream market of the supply of CCM and the downstream market for the supply of conventional corrugated sheet (in Bulgaria and France), (ii) for the upstream market for the supply of conventional corrugated sheet and the downstream market for the supply of conventional corrugated cases (in Bulgaria, Croatia, Slovakia and Slovenia) (iii) for the upstream market for the supply of conventional corrugated sheet and the downstream market for the supply of litho-laminated corrugated cases (in Hungary) and (iv) the upstream market for the supply of heavy duty corrugated sheet and the downstream market for the supply of heavy duty corrugated cases (in Slovakia).

4.2.2.1. Conventional CCM & Conventional Corrugated sheet

Bulgaria

- (33) The Parties' combined market share in the upstream market for the supply of testliner CCM in the EEA amounts to [10-20]%. Duropack's share in the vertically affected downstream market for conventional corrugated sheet in Bulgaria, on which DS Smith in any event is not active, amounts to [60-70]%. In addition, downstream competitors will continue to account for [30-40]% of the demand in Bulgaria. Moreover, the Parties' upstream competitors are likely to continue to be able to sell their products elsewhere in the EEA-wide market for CCM.

France

- (34) The Parties' combined market share in the upstream market for the supply of testliner CCM in the EEA amounts to [10-20]%. The Parties' combined share in the vertically affected downstream market for conventional corrugated sheet in France amounts to [30-40]%. However, the Parties' downstream competitors will continue to account for [60-70]% of the demand in France. Moreover, the Parties' upstream competitors are likely to continue to be able to sell their products elsewhere in the EEA-wide market for CCM.

¹⁹ Response to Questions 15 and 16 of Questionnaire 2 to Competitors and Response to Questions 16 and 17 of Questionnaire 1 to Customers.

²⁰ Response to Question 15 of Questionnaire 1 to Customers.

²¹ [Should read: Response] to Questions 19-22 of Questionnaire 2 to Competitors and Questions 20-23 of [Should read: Questionnaire] 1 to Customers.

4.2.2.2. Conventional Corrugated sheet & Conventional Corrugated cases

Bulgaria

- (35) Duropack's share in the upstream market for the supply of conventional corrugated sheet in Bulgaria amounts to [60-70]%. The Parties combined share in the downstream markets for conventional corrugated cases in Bulgaria amount to [30-40]%. This overlap is mainly pre-existing, as DS Smith's activities only add a limited market share of [0-5]% to Duropack's activities on the downstream market.
- (36) Moreover, the Parties' downstream competitors are likely to be able to continue to purchase corrugated sheet from other Bulgarian suppliers or from suppliers in neighbouring Member States within the reach of 300-400 km around their production sites. Besides, the Parties already self-supply [...] sheet requirements and therefore do not purchase corrugated sheet from third parties in Bulgaria. Consequently, they would not have the ability to shift demand to their own supplies post-transaction.

Croatia

- (37) Duropack's share in the upstream markets for corrugated sheet in Croatia amounts to [20-30]% for conventional corrugated sheet. The Parties' combined share in the downstream market for all conventional corrugated cases in Croatia amounts to [30-40]%. This overlap is mainly pre-existing, as DS Smith's activities only add a limited market share of [0-5]% to Duropack's activities on the downstream market.
- (38) Moreover, the Parties already self-supply [...] sheet requirements and therefore do not purchase corrugated sheet from third parties in Croatia. Consequently, they would not have the ability to shift demand to their own supplies post-transaction.

Slovakia

- (39) The Parties' combined market share in the upstream market for conventional corrugated sheet in Slovakia amounts to [10-20]%. The Parties' combined share in the vertically-affected downstream market amounts to [30-40]% for conventional corrugated cases. However, the Parties already self-supply [...] sheet requirements and therefore do not purchase corrugated sheet from third parties in Slovakia. Consequently, they would not have the ability to shift demand to their own supplies post-transaction.

Slovenia

- (40) Duropack's share in the upstream market in Slovenia amounts to [10-20]% for conventional corrugated sheet. The [...] ^{*} combined share in the downstream market for conventional corrugated cases in Slovenia amounts to less than [70-80]%. This overlap is mainly pre-existing, as DS Smith's activities only add a limited market share of [0-5]% to Duropack's activities on the downstream market.
- (41) Moreover, the Parties' downstream competitors will continue to account for [20-30]% of the demand, so that the Parties' upstream competitors in the markets for

* Should read: Parties'

corrugated sheet are likely to continue to be able to sell their products. In addition, Duropack is already sourcing the large majority of its input in-house and only purchases approximately [0-5]% of its corrugated sheet needs in Slovenia from third parties.

4.2.2.3. Conventional Corrugated sheet & Litho-laminated Corrugated cases

Hungary

- (42) The Parties' combined market share in the upstream market for conventional corrugated sheet in Hungary amounts to [10-20]%. The Parties' combined share in the vertically affected downstream market for litho-laminated corrugated cases in Hungary amounts to [30-40]%. However, the Parties already self-supply [...] sheet requirements and therefore do not purchase corrugated sheet from third parties in Hungary. Consequently, they would not have the ability to shift demand to their own supplies post-transaction.

4.2.2.4. Heavy duty Corrugated sheet & Heavy duty Corrugated cases

Slovakia

- (43) The Parties' combined market share in the upstream market for heavy-duty corrugated sheet in Slovakia amounts to [10-20]%. The Parties' combined share in the vertically affected downstream market for heavy-duty corrugated cases amounts to [30-40]%. However, the Parties already self-supply [...] sheet requirements and therefore do not purchase corrugated sheet from third parties in Slovakia. Consequently, they would not have the ability to shift demand to their own supplies post-transaction.

4.2.3. Conclusion

- (44) On the basis of the above and the available evidence, the proposed transaction does not raise serious doubts as to its compatibility with the internal market in any of the markets for CCM, corrugated sheet and corrugated cases and their submarkets in the EEA.

5. CONCLUSION

- (45) For the above reasons, the European Commission has decided not to oppose the notified operation and to declare it compatible with the internal market and with the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of the Merger Regulation and Article 57 of the EEA Agreement.

For the Commission

(Signed)

Margrethe VESTAGER

Member of the Commission