

***Case No IV/M.871 -
UPM-KYMMENE /
FINNPAP***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 21/02/1997

*Also available in the CELEX database
Document No 397M0871*



Brussels, 21.02.1997

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

Registered with advice of delivery.

To the notifying parties

**Subject: Case No IV/M. 871 - UPM-Kymmene/Finnpap
Notification of 21 January 1997 pursuant to Article 4 of Council Regulation
(EEC) No 4064/89**

- 1 On 21 January 1997 UPM-Kymmene notified an operation involving the acquisition by UPM-Kymmene of the outstanding shares of Finnpap Ltd. from Metsä-Serla Oy and Myllykoski Oy.
- 2 After examination of the notification, the Commission has concluded that the notified operation falls within the scope of Council Regulation No 4064/89 and does not raise serious doubts as to its compatibility with the common market and the functioning of the EEA agreement.

I THE PARTIES

- 3 UPM-Kymmene (Finland) is the holding company for a group of companies internationally active primarily in the forest product industry, in particular in the production and sale of printing paper, office and packaging paper and plywood and sawn timber.
- 4 Finnpap Ltd (Finland) is the legal entity into which Finnpap Marketing Association was transformed on 3 January 1997. Finnpap Marketing Association was founded by several Finnish paper companies in 1918 for the purpose of selling and marketing their paper on world markets. Over the years it has undergone various changes and by the beginning of 1996, Finnpap consisted of only three companies, UPM, Metsä-Serla and Myllyloski.

II THE OPERATION

5 As a result of the Repola/Kymmene⁽¹⁾ merger clearance by the Commission in October 1995, in which the parties committed to cease joint selling and marketing of their paper products through Finnpap, the members of Finnpap signed a Share Purchase and Transfer Agreement on 14 January 1997. Following this agreement Metsä-Serla and Myllykoski would sell their 21% and 12% share holdings, respectively, in Finnpap to UPM-Kymmene which holds the remaining 67% shares. Therefore, UPM-Kymmene will acquire 100% and thus sole control of Finnpap Ltd, including a number of individual sales companies which will remain wholly-owned subsidiaries of Finnpap Ltd.

III CONCENTRATION

6 Despite the fact that UPM-Kymmene, prior to the implementation of the transactions, held more than the majority of the share capital, Finnpap is currently jointly controlled by UPM-Kymmene, Metsä-Serla and Myllykoski as all strategic business decisions (appointment of Finnpap's management, budget and investment and financial plan) can only be taken unanimously by the Board of Directors following Finnpap's Rules of Association.

7 After the implementation of the Share Purchase and Transfer Agreement referred to above UPM-Kymmene will hold 100% of the shares of Finnpap Ltd. This amounts to a change from joint to sole control on Finnpap. Therefore, the proposed transaction constitutes a concentration within the meaning of Article 3(1)(b) of Council Regulation No 4064/89.

IV COMMUNITY DIMENSION

8 The undertakings concerned have a combined aggregate worldwide turnover in excess of 5,000 million ECU (UPM-Kymmene 8,950 million ECU and Finnpap 612 million ECU, following their latest reports and accounts). The aggregate Community-wide turnover of each of the two undertakings concerned is more than ECU 250 million (UPM-Kymmene 6560 million ECU and Finnpap 542 million ECU). Neither UPM-Kymmene nor Finnpap achieved more than two thirds of their turnover in any Member State of the EU. Therefore, the operation has Community dimension, but does not constitute a cooperation case under the EEA Agreement, pursuant to Article 57 of that Agreement.

V COMPATIBILITY WITH THE COMMON MARKET

A. Relevant product markets

9 The notifying parties have identified the following paper products which UPM-Kymmene markets through Finnpap: newsprint, magazine paper and sack paper. Newsprint is generally defined as paper containing not less than 65% mechanical pulp

⁽¹⁾ Case No IV/M.646 - Repola/Kymmene, decision of 30 October 1995.

by weight and is mainly used for the publication of newspapers. Magazine paper is used for the printing of magazines, catalogues, inserts and general advertising material. Sack paper is strong brown paper made from virgin pulp or recycled fibre and is used for the production of paper sacks.⁽¹⁾ However, it is not necessary to further delineate the relevant product markets because, even in the narrowest product market definition the proposed operation would not significantly impede effective competition in the EEA or any substantial part of that area. Indeed, there are no affected markets within the meaning of Form CO.

B. Relevant geographic markets

- 10 The notifying parties have stated that the relevant geographic markets for newsprint, magazine paper and sack paper are at least EEA-wide which were also recognized by the Commission in the previous Repola/Kymmene case.⁽¹⁾ However, it is not necessary further to delineate the relevant geographic markets because, in all alternative geographic market definitions considered, effective competition would not be significantly impeded in the EEA or any substantial part of that area.

C. Assessment

- 11 During 1996 Metsä-Serla and Myllyloski withdrew their activities from Finnpap and thus Finnpap consists at present only of the assets and the limited personnel necessary for the marketing and sales of UPM-Kymmene paper products. In practical terms this means that UPM-Kymmene will purchase its own sales network. Thus, the proposed concentration will not lead to any addition in market shares, either horizontally or vertically, on any of the product markets involved. Consequently, the concentration is not considered to have any impact on UPM-Kymmene's market position which has also in general been confirmed by the competitors and customers of the parties consulted by the Commission. Therefore, the proposed concentration does not create or strengthen a dominant position as a result of which effective competition would be significantly impeded in the EEA or any substantial part of that area.
- 12 Moreover, the proposed concentration is a fulfilment of a commitment ensuring the full and complete separation of the sales and marketing functions of the members of Finnpap. The other members will henceforth market their own products individually and thus the former joint sales on the Finnish market will cease.

VI. ANCILLARY RESTRAINTS

- 13 The parties have requested that the following provision relating to EDP (Electronic Data Processing), if a restriction to competition, be considered as ancillary to the concentration.
- 14 Currently, UPM-Kymmene is establishing its own internal sales company system in order to handle data with regard to order handling, invoicing, bookkeeping and reporting. However, not all markets have yet been integrated into the existing Kymmene system, in particular the markets outside Western Europe, and thus some data continues

⁽²⁾ See also case No IV/M.646 - Repola/Kymmene, decision of 30 October 1995.

⁽³⁾ Case No IV/M.646 - Repola/Kymmene, decision of 30 October 1995.

to be accessible only via the former Finnpap data system which is now being "hosted" by an EDP company set up between Metsä-Serla, Myllykoski and an expert partner. Therefore, the parties have agreed that UPM-Kymmene has a right to access computer data, e.g. relating to invoicing and order handling, with regard to UPM-Kymmene customers for those markets formerly handled by Finnpap and which have not yet been integrated for a transitional period until October 1997 when the UPM-Kymmene system is envisaged to be completed. This transitional cooperation can be considered as a necessary element of the separation of the sales and marketing activities of the Finnpap shareholders.

- 15 In so far as this provision amounts to a restriction to competition it is directly related to and necessary for the successful implementation of the concentration. It can therefore be considered ancillary to the concentration.

VII. CONCLUSION

- 16 For the above reasons, the Commission has decided that the proposed concentration does not raise serious doubts as to its compatibility with the common market and with the functioning of the EEA Agreement.
- 17 The Commission has therefore decided not to oppose the notified operation and to declare it compatible with the common market and the with functioning of the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of Council Regulation (EEC) No 4064/89.

For the Commission,