



EUROPEAN COMMISSION  
DG Competition

***Case M.8915 – DS SMITH / EUROPAC***

Only the English text is available and authentic.

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

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Decision on the implementation of the commitments  
Purchaser approval  
Date: 24/05/2019



## EUROPEAN COMMISSION

Brussels, 24.5.2019  
C(2019) 4036 final

### **PUBLIC VERSION**

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 Where possible the information omitted has been replaced by ranges of figures or a general description.

### **To the notifying party**

Dear Sir/Madam,

**Subject: Case M.8915 – DS SMITH / EUROPAC  
Approval of International Paper Company as purchaser of Europac  
Cartao Ovar, S.A, DS Smith Packaging Normandie and DS Smith  
Packaging Normandie (Cabourg) following your letter of 24 April 2019  
and the Trustee’s opinion of 13 May 2019**

#### **1. FACTS AND PROCEDURE**

1. By decision of 14 November 2018 (“the Decision”) based on Article 6(1)(b) in connection with Article 6(2), the Commission declared the operation by which DS Smith plc (“DSS” or the “Notifying Party”) acquired sole control over Papeles y Cartones de Europa, S.A. (“Europac”) within the meaning of Article 3(1)(b) of the Merger Regulation by way of purchase of shares (the “Transaction”)<sup>1</sup> compatible with the internal market following modification by DSS, subject to conditions and obligations (the “Commitments”). DSS and Europac are referred to as the “Parties”.
2. Under Section B of the Commitments, DSS committed to divest, or procure the divestiture of an entire box plant (“DSS Normandie Torigni”) as well as an entire

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<sup>1</sup> Publication in the Official Journal of the European Union No C 353, 2.10.2018, p. 4.

sheet plant (“DSS Normandie Cabourg”, together, “DSS Normandie”), and Europac’s Ovar box plant (“Ovar”) (together with DSS Normandie, the “Divestment Businesses”) by the end of the Trustee Divestiture Period as a going concern to a purchaser or purchasers and on terms of sale approved by the Commission in accordance with the procedure described in paragraph 17 of these Commitments.

3. In particular, the Commitments provide that the Divestment Businesses shall include all assets and staff that contribute to the current operation or are necessary to ensure its viability and competitiveness. More precisely:
  - i. All tangible assets necessary for the production, servicing and sale of all products and product lines manufactured in the Divestment Businesses;
  - ii. A non-exclusive, non-transferrable, royalty-free, perpetual licence for any intangible asset that is necessary for the development, production, servicing and sale of the products currently manufactured at the Divestment Businesses;
  - iii. All licences, permits and authorisations necessary to produce the products manufactured at the Divestment Businesses to the extent transferrable under applicable law;
  - iv. All external customer contracts relating to the products manufactured at the Divestment Businesses – with the exception of five contracts for DSS Normandie –, and all other external contracts, agreements, leases and commitments necessary for the Divestment Businesses;
  - v. All customer accounts, orders and credit records or portions thereof relating to the products manufactured at the Divestment Businesses – with the exception of those relating to the five contracts for DSS Normandie.
  - vi. The Personnel and Key Personnel, to the extent still employed on the Effective Date.
4. The Commitments require that DSS finds a Purchaser and enters into (a) final binding sale and purchase agreement(s) for the sale of the Divestment Business within a period of [...] from the adoption date of the Decision. If DSS has not entered into such an agreement by then, it will grant a Divestiture Trustee an exclusive mandate to sell the Divestment Business in accordance with the Commitments.
5. By letter of 24 April 2019, DSS proposed International Paper Company (“International Paper” or the “Purchaser”)<sup>2</sup> for approval by the Commission as purchaser of the entire Divestment Business, and submitted the proposed Sale and Purchase Agreements for each of Ovar and DSS Normandie<sup>3</sup> (the “Proposed Agreements”).

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<sup>2</sup> Concretely, DSS proposed International Paper Container (France) Holding SAS as purchaser of DSS Normandie and I.P. Container Holdings (Spain), S.L.U. as purchaser of Ovar. Both companies are subsidiaries of International Paper.

<sup>3</sup> For DSS Normandie, as under French employment law worker’s council approval is needed before entering into a binding agreement, a put option was put forward constituting an irrevocable, firm and binding obligation for International Paper to purchase DSS Normandie on the terms and subject to the

6. In addition, DSS submitted that at completion and under the terms and conditions of the Proposed Agreements, certain Transitional Services and Supply Agreements (the “TSAs”) would also be entered into. Concretely:
  - i. [...];
  - ii. [...];
7. [...].
8. By letter of 14 May 2019, Advolis SA (“Advolis”), the appointed Monitoring Trustee, (the “Trustee”) has submitted its reasoned opinion on International Paper’s suitability as a purchaser (the “Reasoned Opinion”). In this Reasoned Opinion, the Trustee indicated that International Paper fulfils the criteria of the purchaser requirements in section D of the Commitments. In this Reasoned Opinion, the Trustee also concluded that, on the basis of the Proposed Agreements, the Divestment Business would be sold in a manner consistent with the Commitments.

## **2. ASSESSMENT OF THE PROPOSAL**

9. International Paper is a global and leading paper and packaging company active in the production of renewable fibre-based packaging, pulp and paper products, including coated and uncoated paperboard, containerboard, and corrugated packaging.
10. International Paper is headquartered in Memphis, Tennessee (United States) but also has production facilities in the EEA, namely in France, Italy, Poland and Spain. More specifically, International Paper operates a recycled containerboard mill close to Madrid, Spain, and a total of 16 facilities for the supply of corrugated boxes in France (4), Italy (4) and Spain (8). International Paper is active in the manufacturing and supply of corrugated sheets and cases mainly in France, Italy and Spain, including in heavy-duty cases mainly in Spain and, to a very limited extent, in France.
11. International Paper generated over USD 23 billion net sales in 2018, broken down geographically as follows: North America (USD 18.8 billion), Latin America (USD 1.2 billion), EMEA (USD 3.2 billion) and India (USD 0.2 billion).
12. In order to be approved by the Commission, the Purchaser must fulfil the following criteria<sup>4</sup>:
  - i. The Purchaser shall be independent of and unconnected to the Parties and their Affiliated Undertakings (this being assessed having regard to the situation following the divestiture).
  - ii. The Purchaser shall 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 Parties and other competitors. In addition, the Purchaser shall have existing activities in the

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conditions set forward in the proposed Sale and Purchase Agreement. Both the put option and proposed Sale and Purchase Agreement were submitted.

<sup>4</sup> As per Paragraph 16 of the Commitments.

paper industry, including (but not limited to) activities in the production of corrugated case materials and/or corrugated sheet and/or corrugated case;

- iii. The acquisition of the Divestment Business by the Purchaser must neither be likely to create, in 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. In particular, the Purchaser must reasonably be expected to obtain all necessary approvals from the relevant regulatory authorities for the acquisition of the Divestment Business

**(a) Independence from the Parties**

13. The Notifying party submits that International Paper is independent from both DSS and Europac and satisfies the first of the Purchaser Requirements. More specifically, the Notifying Party submits that:
  - i. DSS group does not own any shares or have any direct or indirect interest in the International Paper, whether on the basis of rights, contracts or any other means. Similarly, International Paper has no direct or indirect interest in DSS;
  - ii. Other than the TSAs [...] referred to above, International Paper has no commercial links to DSS or Europac.
14. In its Reasoned Opinion, the Trustee has ascertained that DSS does not own any shares of have any direct or indirect interest in International Paper, or vice versa.
15. It notes that BlackRock holds minority shareholdings in both DSS and International Paper. However, BlackRock acts as a passive asset manager and has no active role in the governance of DSS and International Paper.
16. The Trustee has further indicated that any commercial links between DSS and International Paper, such as the TSAs [...], will not have a negative influence on the incentives of International Paper to compete with DSS and are consistent with the Commitments.
17. As such, the Trustee concluded that International Paper is independent of and unconnected to either of the Parties.
18. In light of all the above, the Commission takes the view that International Paper is independent and unconnected to the Parties and their Affiliated Undertakings and, therefore, meets this Purchaser criterion set out in section 16(i) of the Commitments.

**(b) Financial resources, proven expertise (including having existing activities in the paper industry, including (but not limited to) activities in the production of corrugated case materials and/or corrugated sheet and/or corrugated case) and incentive to maintain and develop the Divested Business as a viable and active competitor**

19. The Notifying Party submits that International Paper has the financial resources to maintain and develop the Divestment Businesses. [...] In addition, International Papers also has extensive experience in the paper industry. Indeed, it is a global

producer of renewable fibre-based packaging, pulp and paper, serving more than 25,000 customers in over 150 countries and territories, including in the EEA where it operates 17 production facilities. Finally, the Notifying Party puts forward that International Paper continuously invests in innovation and research and development in relation to its activities in the EEA, both into new packaging solutions and to optimise current solutions.

20. According to the Reasoned Opinion of the Trustee, International Paper has the (i) financial resources, (ii) proven expertise and (iii) incentive to maintain and develop the Divestment Businesses as a viable and active competitive force in competition with DS Smith and other competitors on the market.

i. First, International Paper is a major producer of renewable fibre-based packaging, pulp and paper serving more than 25 000 customers worldwide. It is listed on the New York Stock Exchange and exhibits a good financial position with 2018 revenues and net earnings exceeding USD 23 billion and USD 2 billion respectively.

ii. Second, International Paper is the largest pulp and paper company in the world with three core businesses: industrial packaging, paper and cellulose fibres. The company is present in 24 countries and benefits from an established presence in Europe in corrugated packaging and paper. The company operates 17 plants in Europe (in each of France, Italy, Spain and Poland).

iii. [...].

21. In light of all the above, the Commission takes the view that International Paper has the financial resources, proven expertise - including having existing activities in the paper industry, including (but not limited to) activities in the production of corrugated case materials and/or corrugated sheet and/or corrugated case - and incentive to maintain and develop the Divestment Business as a viable and active competitive force in competition with DS Smith and other competitors on the market, and therefore meets this Purchaser criterion set out in section 16(ii) and (iii) of the Commitments.

**(c) Absence of prima facie competition problems and risk of delay to implementation of the Commitments**

22. The Notifying Party submits that the acquisition of the Divestment Business by International Paper will not create any competition concerns, in particular because (i) the acquisition of DSS Normandie will result in modest combined sales shares as well as limited increments, and (ii) with regard to Ovar, International Paper has no presence in the relevant local areas around Ovar.

23. The Notifying Party submits that the acquisition of DSS Normandie by International Paper is subject to review under the national competition rules of France. No equivalent review is required for the acquisition of Ovar.

24. In its Reasoned Opinion, the Trustee indicated that it considers that the acquisition of the Divestment Businesses by International Paper will not create any *prima facie* competition concerns. Particularly, the Trustee indicated that the acquisition of the Ovar plant will not create competition concerns on the basis that International Paper is

not present in Portugal nor in the relevant local area around Ovar, either for sheets or cases. As regards France, the Trustee indicated that the acquisition of DSS Normandie will not create any competition concerns as production shares for sheets and boxes would be the highest within a radi of 200 km but would remain limited, to below 25%.

25. With regard to regulatory requirements for the acquisition of DSS Normandie, the Trustee indicates that the French competition authority can be expected to clear the transaction in a timely fashion, so that there is no risk of delay.
26. In its Decision of 14 November 2018, the Commission analysed the Transaction on the basis of the narrowest plausible markets, comprising on the one hand conventional sheets (and cases) and on the other heavy-duty sheets (and cases). As regards geographic market definition, the Commission considered the geographic scope to be local, comprising a radius of 400 km for conventional sheets and 300 km for conventional cases. For heavy-duty sheets, it took into account the fact that heavy-duty sheets might have a wider transport radius.
27. With regard to Ovar, the Commission considers that as International Paper is not currently active on any of the product or geographic markets where Ovar is active, the acquisition of Ovar by International Paper will not generate any horizontal overlaps or vertical links based on the market definitions adopted by the Commission in its Decision. The Commission therefore concludes that the acquisition of the Divestment Business by International Paper does not raise *prima facie* competition concerns with regard to Ovar.
28. As regard DSS Normandie, the Commission acknowledges that International Paper is active on the product and geographic markets where the DSS Normandie plants are active, so that, the acquisition of DSS Normandie by International Paper will generate horizontal overlaps and vertical links.
29. Concretely, both International Paper and DSS Normandie Torigni are active in the manufacture and supply of conventional sheets and conventional cases in the same geographic market. Therefore, the acquisition would give rise to horizontal overlaps and a vertical link. In addition, both International Paper and DSS Normandie Cabourg are active in relation to the manufacture and supply of conventional cases in the same geographic market, so that pursuant to the Transaction a horizontal overlap would also arise in this regard.<sup>5</sup> However, all combined market shares remain limited so that no affected markets arise.<sup>6</sup> The Commission also notes that according to the Trustee report, even on a narrower geographic radius than the one adopted by the Commission in its Decision (i.e. on the basis of a radius of 200km), the combined market share of International Paper and DSS Normandie would remain below 25%. The Commission therefore concludes that the acquisition of DSS Normandie by International Paper *prima facie* does not raise competition concerns.

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<sup>5</sup> No overlaps arise in relation to either heavy-duty sheets or cases, or for conventional sheets with respect to DSS Normandie Cabourg.

<sup>6</sup> Concretely, as regards DSS Normandie Torigni, the Notifying Party estimates the combined production market shares to be (i) for conventional sheets within a 400 km radius [0-5]% (increment [0-5]%), (ii) for conventional cases within a 300 km radius [5-10]% (increment [0-5]%). With regard to DSS Normandie Cabourg, the combined production market shares in relation to conventional cases within a radius of 300 km would amount to [5-10]% ([0-5]% increment).

30. With respect to the time-period within which the proposed divestment can be implemented, the Commission notes that the acquisition of DSS Normandie by International Paper needs to be notified to the French competition authority. In view of the applicable merger review procedure, the Commission considers that it is unlikely that this will result in considerable delays to the implementation of the commitments.
31. This *prima facie* assessment is based on the information available to the Commission for the purpose of this buyer approval and does not prejudge the competition assessment of the acquisition of the Divestment Businesses by International Paper by a competent competition authority under applicable merger control rules.

**(d) The Divestment Business is being sold in a manner consistent with the Commitments**

32. As indicated by the Trustee in the Reasoned Opinion, the Proposed Agreements duly reflect the sale of the entirety of the Divestment Business to International Paper. The Commission concludes, therefore, that the Divestment Business is being sold in a manner consistent with the Commitments including their objective to bring about a lasting structural change in the market.

**3. CONCLUSION**

33. On the basis of the above assessment, the Commission approves International Paper as a suitable purchaser for the above-mentioned reasons.
34. On the basis of the Proposed Agreements, the Commission further concludes that the Divestment Business is being sold in a manner consistent with the Commitments.
35. This decision only constitutes approval of the proposed purchaser identified herein and of the Proposed Agreements. This decision does not constitute a confirmation that DSS has complied with its Commitments.
36. This decision is based on paragraph 17 of the Commitments attached to the Commission Decision of 14 November 2018.

*For the Commission*

*(Signed)*  
*Johannes LAITENBERGER*  
*Director-General*