



EUROPEAN COMMISSION
DG Competition

Case M.8831 – MONDI / POWERFLUTE

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

Article 22
Date: 14/03/2018



EUROPEAN COMMISSION

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PUBLIC VERSION

Spanish National Authority for
Markets and Competition
Barquillo, 5, 28004 Madrid
Spain

Subject: **Case M.8831 – MONDI / POWERFLUTE**
Request for referral by the Finnish Competition and Consumer
Authority to the Commission pursuant to Article 22(1) of Council
Regulation (EC) No. 139/2004¹ and Article 57 of the Agreement on the
European Economic Area²

Ref.: Letter of 22 February 2018 (received on 26 February 2018) by the Comisión Nacional de los Mercados y la Competencia, the competent Competition Authority of Spain.

Dear Sir or Madam,

1. INTRODUCTION

- (1) With the above-mentioned letter the Kingdom of Spain ("Spain") formally joins, pursuant to Article 22(2) of the Merger Regulation, the request of the Republic of Finland ("Finland") of 6 February 2018 to the Commission to examine, in application of Article 22(3) of Council Regulation (EC) No 139/2004 ("the Merger Regulation"), the concentration whereby Mondi Finland Services Oy (belonging to the Mondi Group – "Mondi") acquires sole control over Powerflute Holdings Oy ("Powerflute") by way of purchase of shares (the "Transaction"). Mondi is hereafter referred to as the "Notifying Party" and together with Powerflute as the "Parties".
- (2) Pursuant to Article 22(1) of the Merger Regulation, one or more Member States may request the Commission to examine any concentration as defined in Article 3 of the Merger Regulation that does not have a Union dimension within the

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").

meaning of Article 1 of the Regulation but affects trade between Member States and threatens to significantly affect competition within the territory of the Member State or States making the request. Such a request must be made within 15 working days of the date of the notification of the concentration, or if notification is not required, otherwise made known to the Member State. Pursuant to Article 22(2) of the Merger Regulation, any other Member State may join the initial request within a period of 15 working days of being informed by the Commission of the initial request. Pursuant to Article 6(3) of Protocol 24 to the EEA Agreement, any EFTA State may join the request within a period of 15 working days from the day on which the Commission informed the EFTA Surveillance Authority of the initial request.

- (3) In the present case, Mondi notified the above-mentioned concentration to the Finnish Competition and Consumer Authority (the "FCCA") on 17 January 2018. On 6 February 2018, the Commission received a referral request from Finland pursuant to Article 22(1) of the Merger Regulation. In accordance with Article 22(2) of the Merger Regulation, the Commission informed the competent authorities of the other Member States, the EFTA Surveillance Authority and the undertakings concerned of the request on 7 February 2018.
- (4) On 22 February 2018, thus within the time limit foreseen in Article 22(2) of the Merger Regulation, Spain – via the competent competition authority of Spain, the the Comisión Nacional de los Mercados y la Competencia ("CNMC") - has decided to join Finland's referral request.³

2. THE PARTIES AND THE OPERATION

- (5) Mondi is a vertically integrated global packaging and paper group. It is mainly active in the manufacturing of packaging paper, converted paper products and uncoated fine paper. Mondi also produces extrusion-coated materials.
- (6) Powerflute operates an integrated pulp and paper mill in Kuopio, Finland and is mainly active in the production of semi-chemical fluting, a material used to manufacture corrugated packaging. Furthermore, it is also active in the procurement of wood via its subsidiary Harvestia Oy.
- (7) Pursuant to the share purchase agreement entered into by the Parties on 22 December 2017, Mondi will acquire 100% of the shares in Powerflute. As the Transaction will result in Mondi acquiring sole control over Powerflute, it constitutes a concentration within the meaning of Article 3 of the Merger Regulation. Given the respective turnovers of the undertakings concerned however, the concentration would not have a Union dimension within the meaning of Article 1 of the Merger Regulation.

³ In this context, it can be noted that the Commission understands that a large proportion of Powerflute's sales within the EEA are to Spain, ultimately mainly for fruit and vegetable packaging.

3. ASSESSMENT OF THE LETTER

- (8) In addition to the procedural requirement that a Member State should in accordance with Article 22(2) of the Merger Regulation join the initial referral request within a period of 15 working days of being informed by the Commission of the initial request, Article 22(3) of the Merger Regulation provides that the Commission may decide to examine the concentration where it considers that the concentration will (i) affect trade between Member States and (ii) threaten to significantly affect trade within the territory of the Member State or States making the request.⁴

Procedural criteria

- (9) As to the procedural condition, on 7 February 2018 the Commission informed the competent authorities of the other Member States, the EFTA Surveillance Authority and the undertakings concerned of the referral request of the FCCA. The Commission received the CNMC's letter stating Spain's request to join the referral request on 26 February 2018.
- (10) Therefore, Spain joined the referral request within 15 working days following the date on which it was informed by the Commission of the referral request, and thus within the deadline of Article 22(2) second indent of the Merger Regulation.

Substantive criteria

Effect on trade between Member States

- (11) Regarding the first substantive criterion, paragraph 43 of the Commission's Notice on Case Referral in respect of concentrations ("Referral Notice")⁵, provides that a concentration fulfils this requirement to the extent that it is liable to have some discernible influence on the pattern of trade between Member States.
- (12) The Parties' activities overlap with regard to the production and sale of semi-chemical fluting ("SCF"). The FCCA argues that the Transaction is likely to affect trade between Member States as the markets in which both Parties are active are to be defined as at least EEA-wide and because the Parties are active throughout the EEA with Powerflute making the majority of its sales outside of Finland.
- (13) The Commission has previously consistently defined the market for corrugated case materials⁶ to be at least EEA-wide in scope.⁷ Moreover, it is clear that SCF products are bought and sold cross-border within the EEA. All SCF producers are located in the Nordics and Poland whilst customers are spread across the EEA.

⁴ See also Commission Notice on Case Referral in respect of Concentrations, paragraphs 42-44.

⁵ OJ, C56, 5.3.2005, p.2.

⁶ Corrugated case materials include liners and fluting.

⁷ See cases COMP/M.7558 – *DS Smith/Duropack*; para. 9; COMP/M.6512 – *DS Smith/SCA Packaging*, para. 57; COMP/M.3935 – *Jefferson Smurfit/Kappa*, para. 19; IV/M.499 – *Jefferson Smurfit/Saint Gobain*, para. 15.

The Parties do not contest that the market is at least EEA-wide (in fact arguing for a world-wide market) and as such do not contest that the first substantive criterion is met.

- (14) Based on the information available at this stage, the Commission therefore considers, without prejudice to the outcome of its investigation, that the concentration affects trade between Member States. Therefore, the first substantive criterion of Article 22(1) is fulfilled.

Threat to significantly affect competition within the territory of the Member States making the request

- (15) Regarding the second criterion, paragraph 44 of the Commission's Notice on Case Referral in respect of concentrations ("the Referral Notice")⁸ provides that a referring Member State should demonstrate that, based on a preliminary analysis, there is a real risk that the transaction may have a significant adverse effect on competition and thus deserves close scrutiny, without prejudice to the outcome of a full investigation.
- (16) Mondi's submission contesting the referral concentrates on this second criterion. Mondi in essence submits that any threat potentially posed by the Transaction which could significantly affect competition within the meaning of Article 22(1) must be assessed within the territory of Finland, so that a threat that the Transaction might significantly affect competition elsewhere in the EEA cannot be taken into account in the Commission's assessment of the FCCA's referral request. Further to this, the Parties conclude that as the combined market share of the Parties is only [10-20] - [10-20]% in Finland and the overlap in Finland is limited due to Mondi's limited market share in Finland, there cannot be a significant threat to competition in Finland, thus resulting in Finland's referral request being inadmissible.
- (17) According to the FCCA's request for referral, the Parties' combined capacity market share on an EEA-wide market for SCF would be [30-40] - [30-40]% (increment of [10-20] - [20-30]%).⁹ In Finland the combined market share is estimated at [10-20] - [20-30]%¹⁰ (with minimal increment). The FCCA argues that the Transaction would lead to a reduction of the number of suppliers of SFC from three to two in Finland and from four to three in the EEA.
- (18) The FCCA furthermore submits that new entry is unlikely on this market, so that the already concentrated market will become even more concentrated, with effectively only three players controlling [90-100] - [90-100]% of the EEA market.

⁸ OJ C 56, 05.03.2005, p. 2.

⁹ This figure may however be understated as competitors' production appears to be lower than estimated by the Parties and includes non-merchant market sales.

¹⁰ This figure may be understated as it is based on a SCF market including captive sales, however these sales might represent a much larger proportion of certain market players' overall sales than is the case for the Parties ([Confidential information regarding Mondi's commercial strategy] of Mondi's total SCF sales are captive sales).

- (19) According to the FCCA, the Transaction may also lead to vertical non-coordinated effects as it will reduce the number of non-vertically integrated suppliers of SFC from two to one. The non-integrated producers of corrugated packaging (downstream competitors of Mondi) are reliant on SFC suppliers. It is argued that given that the merged entity will be vertically integrated, it will post-transaction (i) prioritise its own corrugated packaging production over its downstream competitors' in the event of a supply shock; and (ii) it will have an ability and incentive to engage in input foreclosure, in order to drive out non-vertically integrated competitors from the downstream market.
- (20) Finally, the FCCA considers that given that the market for SCF is EEA-wide, any negative effect on that market will also affect Finland. In this context the FCCA notes that the fact that the market is EEA-wide instead of national implicates that the conditions of competition are sufficiently homogenous within the EEA. This, in turn, implicates that a possible price rise in the upstream market for SCF on the EEA level would affect the Finnish corrugated product manufacturers who purchase SCF from both Finnish and European producers. Accordingly, a price rise in the downstream market for manufacturing of corrugated products made from SCF would affect Finnish customers purchasing CMM products from Finnish and European manufacturers. There is therefore nothing to support a conclusion that the Finnish customers would not be affected by a possible price rise on the EEA-wide market.
- (21) It should be also noted that the FCCA received several complaints from both competitors and customers of the Parties located within and outside of Finland.
- (22) Based on the information submitted by both the FCCA and Mondi, the Commission considers that there is a real risk that the concentration threatens to significantly affect competition within the EEA and as such within the territory of Finland and Spain as well. The Commission notes that this conclusion is without prejudice to its market investigation, given that at this stage of the procedure, due to lack of jurisdiction and in light of the strict deadlines that it must respect, it does not have the necessary investigative powers to conduct an in-depth competitive assessment.
- (23) First, the Commission considers that the EEA-wide market for SCF is rather concentrated, with only four players – namely Mondi, Powerflute, Stora Enso and BillerudKorsnäs (the remaining players being marginal with [0-5]% market share). The Parties' combined market share is [30-40] - [30-40]%, the proposed transaction would therefore almost double Mondi's market penetration. Moreover, the transaction creates a rather symmetrical market with three players having roughly similar market positions. This creates a *prima facie* risk of price rises resulting from horizontal non-coordinated effects.
- (24) Second, the Commission agrees with the FCCA that the proposed transaction seems to remove one of the only two non-vertically integrated SCF suppliers from the market (Mondi and Stora Enso are vertically integrated players). This creates a *prima facie* risk of input foreclosure, in particular in market situations where demand outstrips supply. Mondi does not contest that this is the current market dynamics in the EEA.

- (25) Mondi has argued that even if there were a risk of threat to competition at EEA-level, this is not sufficient and a threat has to be found that is confined to Finland. The Commission agrees with the FCCA in that since the relevant geographic market is at least EEA-wide, a threat to competition in the EEA inherently supports a presumption that competition is also threatened in Finland or in Spain and that any price rise at the EEA level would affect prices negatively also in Finland and in Spain.
- (26) In any event, on a subsidiary note, the Commission considers that even on a narrower national market, there is a real risk that the transaction may have a significant adverse effect on competition given the highly concentrated nature of the Finnish market. Indeed, there are only three players present in Finland, with the incumbent Stora Enso having an estimated market share of [80-90] - [90-100]%. Whilst Mondi is small in Finland, it is nevertheless and actual and certainly a potential supplier of SCF.
- (27) Based on the above, *prima facie* competition concerns in the EEA and hence in Finland and in Spain, cannot be excluded at this stage and further investigation of the possible effects of the Transaction is needed in order to exclude any anti-competitive impact.

Appropriateness of the referral

- (28) Based on the above information, the two legal requirements for an Article 22 referral request are met. Also, the Commission appears to be better placed to review the Transaction.
- (29) First, the Commission considers that given the at least EEA-wide scope of the SCF market, it would have more investigative powers to assess the possible impact of the Transaction, as the market investigation will have to include market participants from jurisdictions of other Member States than Finland, where the Transaction would not otherwise be notified.
- (30) Second, the Commission has extensive experience in investigating mergers in the corrugated packaging sector (albeit not specifically in SCF).¹¹
- (31) Finally, the other Member States had until 28 February 2018 to decide whether to join the referral request. On 26 February 2018, the Commission received confirmation from the Spanish National Commission on Markets and Competition that Spain joins the initial referral request of Finland. It should be noted that Spain is the EEA's largest fruit and vegetable market, with a lot of demand for corrugated packaging.
- (32) In light of the above, the present concentration falls under one of the categories of cases referred to in paragraph 45 of the Referral Notice. As such, the Commission

¹¹ See for example M.7558 – DS Smith / Duropack; M.6512 – DS Smith / SCA Packaging; M.3935 – Jefferson Smurfit / Kappa; M.2243 – Stora Enso / Assidomän / JV; M.2032 – SCA Packaging / Metsä Corrugated; M.1418 – SCA Packaging, Rexam.

has concluded that, in the present circumstances, the potential risks to competition caused by the transaction would be best addressed at the EEA level. Therefore, the present concentration is an appropriate one for referral to the Commission pursuant to Article 22 of the Merger Regulation.

4. CONCLUSION

- (33) For the above mentioned reasons, the Commission has concluded that the Letter by the CNMC stating Spain's request to join the initial referral request made by the FCCA meets the procedural requirements laid down in Article 22(2) of the Merger Regulation. Moreover, the requirements laid down in Article 22(3) of the Merger Regulation are also met. Therefore, the Commission has decided to examine the concentration by which Mondi acquires sole control over Powerflute. This decision is based on Article 22(3) of the Merger Regulation and Article 57 of the EEA Agreement.

For the Commission

(Signed)

Margrethe VESTAGER

Member of the Commission