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 Where possible the information omitted has been replaced by ranges of figures or a general description.

Mayr-Melnhof Karton AG
Brahmsplatz 6
A-1040 Vienna
Austria

Subject: **Case M.10206 — Mayr-Melnhof Karton/International Paper (Poland) Commission decision pursuant to Article 6(1)(b) of Council Regulation No 139/2004[1] and Article 57 of the Agreement on the European Economic Area[2]**

Dear Sir or Madam,

(1) On 14 June 2021, the European Commission received notification of a proposed concentration pursuant to Article 4 of the Merger Regulation and following a referral pursuant to Article 4(5) of Council Regulation (EC) No 139/2004 by which Mayr-Melnhof Cartonboard International GmbH (Austria), belonging to the group Mayer-Melnhof Karton AG ("MM" or the "Notifying Party") intends to acquire within the meaning of Article 3(1)(b) of the Merger Regulation control of the whole of Internal Paper (Poland) Holding Sp.z.o.o. (together with its subsidiaries "IP Poland", Poland) (the "Transaction")[3]. MM and IP Poland are designated as the "Parties".

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 244, 22.6.2021, p. 25.

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1. THE PARTIES

(2) MM is a producer of both cartonboard, in particular folding box board ("FBB") and packaging products, in particular folding cartons (also referred to as "folding boxes"). To a limited extent, MM also produces (mechanical) pulp. MM is based in Vienna, Austria, and is active worldwide. On 11 June 2021, the Commission approved the acquisition by MM of Kotkamills, a cartonboard manufacturer based in Finland.[4]

(3) IP Poland operates an integrated pulp and paper plant in Kwidzyn, Poland. Its products comprise uncoated woodfree paper, FBB, kraft paper and pulp. The focus of IP Poland's business activities is Europe.

2. THE OPERATION

(4) The Transaction consists of the acquisition of 100% of the shares in, and sole control over, IP Poland by MM. The Transaction therefore is a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

3. UNION DIMENSION

(5) On 30 March 2021, the Commission received, by means of a reasoned submission, a referral request pursuant to Article 4(5) of the Merger Regulation with respect to the Transaction.

(6) The Commission transmitted this submission to all Member States on 30 March 2021. The Member States competent to examine the concentration[5] did not express their disagreement to the request of referral within 15 working days.

(7) The case is therefore deemed to have an EU dimension.

4. MARKET DEFINITION

(8) The Parties' activities overlap with regard to the production and supply of cartonboard and pulp. Moreover, MM is active in the production and supply of folding boxes, which are made out of cartonboard. Therefore, this section will assess the market definition of (i) cartonboard, (ii) pulp and (iii) folding boxes.

4.1. Cartonboard

(9) Cartonboard is the main raw material used to manufacture folding cartons. A first broad distinction can be made between cartonboard for liquid packaging ("LPB") and cartonboard for non-liquid packaging (NLPB").[6] Within non-liquid packaging board, a distinction is normally made between four main categories of cartonboard: white lined chipboard ("WLC") which is made from recycled fibre; solid bleached

4 M.10122 Mayr-Melnhof Karton / Kotkamills.

5 According to the Parties, the Transaction would have been subject to merger control review under the national laws of Austria, Germany, Poland, the Czech Republic, Hungary and Lithuania.

6 Form CO, paragraph 95.

sulphate board ("SBB" or "SBS"); solid unbleached sulphate board ("SUS"); and FBB, which are all made from virgin fibre.[7]

(10) In some cases, large brand-owners procure cartonboard directly from manufacturers by means of tenders, and then separately procure conversion services to produce their boxes.

(11) As regards cartonboard, MM only manufactures and sells FBB and WLC and IP Poland only manufactures and sells FBB. Therefore, the only horizontal overlap as regards cartonboard between the Parties' activities is in FBB.[8]

4.1.1. Product market

4.1.1.1. The Commission's decisional practice

(12) Cartonboard is the main raw material for the manufacturing of cartons. It is made from cellulose fibres that are produced either from timber (pulp) or by reusing recovered fibre. A combination of the two can be used and there are various types of fibre that produce different characteristics.

(13) The Commission has in the past considered a distinction between FBB, WLC, SBS, SUS as well as coated natural kraft ("CNK") in its case practice[9], but has ultimately left this open. The Commission in its most recent decision concerning the FBB market also considered but ultimately left open whether the market for the supply of cartonboard could potentially be sub-segmented on the basis of relevant end-application i.e. food, pharmaceuticals, tobacco, cosmetics, graphical and "other non-food" or by sub-grade of FBB i.e. GC1 and GC2.[10]

4.1.1.2. The Notifying Party's view

(14) The Notifying Party submits that the main different types of cartonboard are FBB, WLC, SBS and SUS. According to the Notifying Party, the relevant market comprises all types of cartonboard, for the following reasons.

(15) From a demand-side perspective, customers can switch to a significant degree between the various types of cartonboard, and often do so.[11] From a supply-side perspective, there is significant supply-side substitutability between LPB on the one hand and (certain) non-liquid cartonboard grades on the other. This applies in particular to FBB. Generally, FBB can be, and is, also produced on machines used for LPB (by contrast, the same flexibility does not exist in the other direction). Supply-side substitution also exists between FBB and other NLPB grades.[12]

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7 Form CO, paragraph 98.

8 Both Parties also sell pulp, but MM sells mechanical pulp whereas IP Poland sells chemical pulp. These are not affected markets and will not be considered further in the horizontal competitive assessment.

9 M.8421 - Westrock/MPS, paras. 6-8; M.4057 - Korsnäs/Assidoman Cartonboard, paras. 13 and 22; M.1225 - Enso/Stora, paras. 18, 42 and 43.

10 M.10122 - Mayr-Melnhof Karton / Kotkamills, paragraph 25.

11 Form CO, paragraph 166.

12 Form CO, paragraph 166.

(16) The Notifying Party further argues that, even if FBB is considered separately, the market should not be further sub-segmented, e.g. on the basis of different end-uses or grades/qualities. The characteristics of FBB do not significantly vary depending on end-use applications or grades, and customers can use the same type of FBB for a variety of different end-uses.[13]

4.1.1.3. The Commission's assessment

(17) The Commission's market investigation supported the findings in the Commission's recent M.10122 MM/Kotkamills decision. In particular, from a supply-side perspective, competitors indicated that while the type of fibre and fibre preparation was different according to the categories of cartonboard (notably WLC has a very different fibre preparation to the other categories),[14] the remainder of the production process was similar. Adjustments can be made to the board machine, according to the category of cartonboard being manufactured.[15]

(18) However, from a demand-side perspective, a majority of respondents indicated that the different categories of cartonboard were not all substitutable, although this typically depended on the end application.[16] Examples of different end applications could include, packaging for food, pharmaceuticals, cosmetics or cigarettes.[17] For example, one customer noted that "*Generally, in the normal course of business, the answer is no. There may be limited occasions where board types could be substituted […]. The board grades have differing technical, physical, visual and commercial characteristics, rendering them fit for a certain purpose for certain applications and not for fit for purpose for others*."[18] A competitor similarly noted that: "*It is very much depending on the end use segment. For some of them all can be used, for some, only selected ones. Also the price/m2 factor is decisive. There can be a big difference e.g. in between SBS and WLC*."[19]

(19) A majority of respondents also highlighted that different end uses required specific types of cardboard, with food packaging in particular requiring virgin-fibre grade cartonboard where food contact was required. For example, one competitor noted that: "*Some difference exists for the grades used for tobacco packaging. Due to a specific printing method and high-speed packing lines not all FBB products are suitable for tobacco packaging. WLC cannot normally be used in applications that are in direct contact with food without an additional barrier as the recycled fibers may create a risk of food contamination*."[20]

(20) The market investigation therefore tended to support the Commission's previous practice to consider a distinction between the different categories of cartonboard (FBB, WLC, SBS, SUS).

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13 Form CO, paragraph 166.

14 Replies to questions 8 and 10 of Questionnaire to competitors.

15 Replies to questions 8 and 10 of Questionnaire to competitors.

16 Replies to questions 6 and 8 of Questionnaire to customers and replies to questions 8 and 9 of Questionnaire to competitors.

17 Form CO, paragraph 167.

18 Replies to questions 6 and 8 of Questionnaire to customers.

19 Replies to questions 8 and 9 of Questionnaire to competitors.

20 Reply to questions 8 and 11 of Questionnaire to competitors.

(21) Within the category of FBB, there are different sub-grades, namely GC1 and GC2. These terms are derived from the DIN Standard 193030 "Paperboard – Terms and Grades" that defines different grades of paperboard based on the surface treatment, the main finish and the colour or bulk.[21] GC1 is a fully coated board with a coated reverse and GC2 is a fully coated board with an uncoated reverse.[22] GC1 is brighter in appearance, more expensive and tends to be used for more luxury applications and for good quality printing results and GC2 is less bright and a little cheaper, and tends to be used for cheaper applications such as food packaging.[23] The different sub-grade of FBB used may therefore vary according to the different end application. Different end applications could include: food, tobacco and pharmaceutical applications.[24]

(22) The market investigation results were however mixed regarding the question of whether there should be separate product markets according to the type of sub-grade of FBB, or according to the type of end-application. While a majority of customers said that there were specific end-applications that required a specific sub-grade of FBB, the reasons given for this differed. Some converters referred to the fact that their own customers specified the sub-grade to be used, while others referred to the particular function of the packaging. For example, one customer noted that: "*E.g. in case one would like to print on the reverse side of a board, one might want to have the board pigment coated also on the reverse side. In case one would like to put in hot liquid, the board needs to fulfill this temperature requirement etc*."[25] The replies did not indicate a consensus around any possible further distinctions within FBB; the needs of each customer varied. For example, one converter noted: "*Some end customer prefer a special board for their product it could be product safety, product appearance or price and other commercial/operational demands that defines the need*."[26] The responses in the market investigation therefore tend to indicate that customer preferences drive the type of FBB and these can vary from customer to customer.

(23) The majority of competitors in the market investigation however confirmed that it would be possible to switch between production of GC1 and GC2 without significant investments of time or cost and that the production process was similar. However, it is easier to switch from GC1 to GC2 than vice-versa. As noted by one competitor: "*Switching from GC2 or FSB to GC1 typically requires an investment into a reverse side coater (if the machine does not already have one), but the technical properties of GC1 (white reverse) can also be achieved through adjusting the pulps in the middle and reverse layer*";[27] and "*If the machine does not have a coating unit on reverse side the investment could be 5-10 M€*."[28]

(24) For the purpose of this decision, as in M.10122 MM/Kotkamills, the exact product market definition can be left open between an overall market for cartonboard or

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21 Form CO, paragraph 99.

22 Form CO, paragraph 99.

23 Replies to question 8 and 13 of Questionnaire to competitors and replies to questions 10 and 11 of Questionnaire to customers.

24 Form CO, paragraph 217.

25 Reply to question 11 of Questionnaire to customers.

26 Reply to questions 6 and 9 of Questionnaire to customers.

27 Reply to question 8 and 16 of Questionnaire to competitors.

28 Reply to question 8 and 16 of Questionnaire to competitors.

FBB, and between an overall FBB market or sub-segments for FBB according to end use or sub-grade of FBB. This is because the Transaction does not raise serious doubts as to its compatibility with the internal market or the functioning of the EEA Agreement under any plausible market definition.

(25) In conclusion, the Commission will analyse the effects of the Transaction both on the overall FBB market and also on the basis that the market for FBB is segmented either by end-application i.e. food, pharmaceuticals, tobacco, cosmetics, graphical and "other non-food", or by sub-grade of FBB i.e. GC1 and GC2. No affected markets arise considering an overall cartonboard market and so this will not be analysed further in this decision.

4.1.2. Geographic market

4.1.2.1. The Commission's decisional practice

(26) The Commission has previously defined the market for FBB as at least EEA-wide, including in its most recent decisions concerning the FBB market.[29]

4.1.2.2. The Notifying Party's view

(27) The Notifying Party considers the market for cartonboard to be at least EEA-wide and potentially worldwide, for the following reasons:

(28) First, FBB is traded cross-border within the EEA (and beyond). Within the EEA, FBB production sites in Finland and Sweden account for 71% of the EEA-wide maximum production capacity of FBB. At the same time, Finland and Sweden correspond to only 2% of the EEA demand for FBB in 2019.[30]

(29) Second, European cartonboard producers also face significant competitive pressure from outside the EEA. Producers outside Europe fulfil approximately 10-12% of the European demand for FBB.[31]

(30) Third, each of the Parties' sales distribution supports the existence of significant cross-border trade across the EEA (and beyond). [Share]% of MM's EEA-wide FBB sales are delivered outside of its countries of production (ie. Germany, Netherlands and Slovenia). [Share] IP Poland's worldwide FBB sales are also made outside of Poland.[32]

(31) However, the Notifying Party submits that the exact market definition can be left open between EEA-wide and global since no significant impediment of effective competition is to be expected even by the narrowest definition.

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29 M.10122 - Mayr-Melnhof Karton/Kotkamills, paragraphs 33-34, M.8951 – Suzano Papel e Celulose/Fibria Celulose, paragraph 82 and M.8421 –Westrock/MPS, paragraph 28.

30 Form CO, paragraph 183.

31 Form CO, paragraph 188.

32 Form CO, paragraph 185.

4.1.2.3. The Commission's assessment

(32) The Commission's market investigation supported the findings in the Commission's recent M.10122 MM/Kotkamills decision. In particular, the vast majority of customers confirmed that their suppliers were located in the EEA or worldwide,[33] with a majority of competitors also confirming that their customers were located at either EEA or worldwide level.[34] Similarly, the majority of both customers and competitors indicated that they either requested bids, or participated in bids, at least at EEA level, if not worldwide.[35] While a majority of respondents confirmed that transport costs were however significant in the EEA,[36] the results of the market investigation indicate that this has not prevented customers from sourcing, and competitors from supplying, across the EEA and beyond.

(33) For the purpose of this decision, as in M.10122 MM/Kotkamills, the exact geographic market definition can be left open between EEA-wide and worldwide as the Transaction does not raise serious doubts as to its compatibility with the internal market or the functioning of the EEA Agreement under any of these two plausible market definitions.

(34) In conclusion, the Commission will analyse the effects of the Transaction on the basis that the market for FBB is EEA-wide. No affected markets arise at worldwide level so this will not be analysed further in this decision.

4.2. Pulp

4.2.1. Product market

4.2.1.1. The Commission's decisional practice

(35) The Commission has in the past considered different markets based on distinctions between "virgin fibre vs recycled fibre pulp", "chemical vs mechanical pulp", "dissolving pulp vs other types of chemical wood pulp", "Fluff pulp vs other types of chemical wood pulp", "bleached vs unbleached wood pulp", "hardwood vs softwood pulp", and "Bleached Eucalyptus Kraft Pulp ("BEKP") vs other types of hardwood pulp". The exact market definition was ultimately left open.[37]

4.2.1.2. The Notifying Party's view

(36) The Parties submit that the exact definition of the relevant pulp market can be left open in the present case since the Transaction does not give rise to competition concerns under any plausible market definition.

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33 Replies to questions 6 and 17 of Questionnaire to customers.

34 Replies to questions 8 and 17 of Questionnaire to competitors.

35 Replies to questions 8 and 18 of Questionnaire to competitors and replies to questions 6 and 18 of Questionnaire to customers.

36 Replies to questions 8 and 19 of Questionnaire to competitors and replies to questions 6 and 19 of Questionnaire to customers.

37 M.6682 - Kinnevik/Billerud/Korsnäs, M.8951 – Suzano Papel e Celulose/Fibria Celulose.

4.2.1.3. The Commission's assessment

(37) The Commission considers that the exact market definition can be left open since no competition concerns arise under any plausible market definition. For the purpose of this Decision, the Commission will analyse the effects of the Transaction on the plausible markets for (i) pulp, (ii) chemical pulp, (iii) mechanical pulp, (iv) bleached pulp, (v) unbleached pulp, (vi) hardwood pulp, and (vii) softwood pulp.[38]

4.2.2. Geographic market

4.2.2.1. The Commission's decisional practice

(38) The Commission has in the past considered it to be at least EEA-wide in scope, but ultimately left the exact definition of the relevant geographic market open.[39]

4.2.2.2. The Notifying Party's view

(39) The Parties submit that the exact definition of the relevant geographic market can be left open also in the present case.

4.2.2.3. The Commission's assessment

(40) The Commission considers that the exact market definition can be left open since no competition concerns arise under any plausible market definition. For the purpose of this Decision, the Commission will analyse the effects of the Transactions on an EEA-wide and a worldwide market.

4.3. Folding boxes

4.3.1. Product market

4.3.1.1. The Commission's decisional practice

(41) In previous cases, the Commission has defined folding boxes as multi-layered paperboard cartons which are printed/coated and cut into carton blanks. The carton blanks also incorporate creases, which enable the carton to be formed for packaging the customer's product. Folding boxes can be used to pack a wide range of products, such as cosmetics, tobacco, pharmaceuticals, etc. The Commission established that these products have different requirements for packaging, therefore the folding box market could be further subdivided by end-use application.[40] In its most recent decision, the Commission ultimately left open whether the market for folding boxes should be further segmented by end-use and considered separate markets for packaging for (i) food, (ii) beverages, (iii) tobacco, (iv) cosmetics and personal hygiene, (v) pharmaceuticals, and (vi) household.[41]

38 The Parties are not active in other types of pulp. Form CO, Table 16.

39 M.8951 – Suzano Papel e Celulose/Fibria Celulose, paras.67 et seq.

40 M.8421 – Westrock/MPS, para 6 and cases cited therein.

41 M.10122 – MM/Kotkamills, para 39.

4.3.1.2. The Notifying Party's view

(42) The Notifying Party submits that the exact definition of the product market can be left open in the present case since the Transaction does not give rise to competition concerns based on any plausible market definition.[42]

4.3.1.3. The Commission's assessment

(43) The Commission's market investigation supported the findings in the Commission's recent M.10122 MM/Kotkamills decision. In particular, in the market investigation, a majority of respondents replied that production processes of folding boxes differ depending on the end-application.[43] However, a majority of respondents also replied that it is feasible both economically and technically to switch production of folding boxes for one end-application to another end-application.[44] There are some exceptions where switching is not possible in the short-term. Notably, several respondents mentioned that this is the case when producing folding boxes for the food and pharmaceutical sectors where special certification and approval systems require time (in addition to switching the production process, where required). Overall, the market investigation did not provide clear evidence for the definition of an overall market for folding boxes, nor for separate markets for folding boxes per end-use.

(44) In case the folding box market was further segmented by end-use, the relevant end-uses appear to be (i) food, (ii) beverages, (iii) tobacco, (iv) cosmetics and personal hygiene, (v) pharmaceuticals, and (vi) household. These segments account for [share]% of MM's folding carton sales.[45] The respondents in the market investigation also mentioned these sub-segments when asked for which end-applications they produce folding boxes.[46]

(45) Overall, the market investigation did not provide clear evidence for the definition of an overall market for folding boxes, nor for separate markets for folding boxes per end-use.

(46) For the purpose of this decision the exact product market definition can be left open between an overall market for folding boxes and sub-segments for (i) food, (ii) beverages, (iii) tobacco, (iv) cosmetics and personal hygiene, (v) pharmaceuticals, and (vi) household, as the Transaction does not raise serious doubts as to its compatibility with the internal market or the functioning of the EEA Agreement under any plausible market definition.

(47) In conclusion, the Commission will analyse the effects of the Transaction both for an overall market for folding boxes and separate segments by end-application, notably folding boxes for the end-uses (i) food, (ii) beverages, (iii) tobacco, (iv) cosmetics and personal hygiene, (v) pharmaceuticals, and (vi) household.

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42 Form CO, paragraph 200.

43 Replies to question 6 and 15 of Questionnaire to customers.

44 Replies to question 6 and 15 of Questionnaire to customers.

45 Form CO, footnote 60.

46 Replies to question 14 of Questionnaire to customers.

4.3.2. Geographic market

4.3.2.1. The Commission's decisional practice

(48) In the past, the Commission left open whether the market for folding boxes is national or EEA-wide, based on the level at which sourcing of folding cartons takes place.[47]

4.3.2.2. The Notifying Party's view

(49) The Notifying Party submits that customers source folding cartons from suppliers across Europe (and beyond) and there are no particular barriers to cross-border trading in folding cartons. Therefore, individual national markets would not adequately reflect the competitive dynamics in the folding cartons market. Consequently, the Transaction should be analysed on the basis of an (at least) EEA-wide market for folding cartons.[48]

4.3.2.3. The Commission's assessment

(50) The Commission's market investigation supported the findings in the Commission's recent M.10122 MM/Kotkamills decision. In particular, in the market investigation, a minority of suppliers replied that their customers of folding boxes are located in the same country as their folding box production. The largest group of customers supply folding boxes at cross-border regional level, i.e. beyond their own country, followed by several customers who supply in all EEA-countries and some who supply at worldwide level.[49] Notably, none of the respondents who replied only participate in tenders in their own country. A vast majority of respondents participate in tenders at EEA-level and some at worldwide level, which indicates that the market for folding boxes has moved further towards an (at least) EEA-wide market.[50] Although a majority of respondents consider that transport costs for folding boxes are significant,[51] this does not appear to limit sales to other national markets.

(51) In any case, for the purpose of this decision the exact geographic market definition can be left open as the Transaction does not raise serious doubts as to its compatibility with the internal market or the functioning of the EEA Agreement under any plausible market definition.

(52) In conclusion, the Commission will analyse the effects of the Transaction on the market for folding boxes at EEA and national level.

5. COMPETITIVE ASSESSMENT

(53) The Transaction gives rise to horizontally affected markets in the plausible markets for the overall supply of FBB ([20-30]%) and further possible sub-markets for food applications ([20-30]%), pharma applications ([20-30]%), cosmetic applications ([20-30]%) and graphical applications ([20-30]%) and one other affected market in

47 M.8421 - Westrock/MPS, paras 29 et seq.

48 Form CO, paragraph 202.

49 Replies to question 6 and 20 of Questionnaire to customers.

50 Replies to question 6 and 21 of Questionnaire to customers.

51 Replies to question 6 and 22 of Questionnaire to customers.

the plausible market for the supply of GC2 (a type of FBB) ([30-40]%) at EEA level. The Commission does not consider it necessary to analyse separately these plausible markets as the conditions of competition and the position of the Parties in all of these markets are similar.

(54) Moreover, MM is active in the production and supply of folding boxes, which are made out of cartonboard. This vertical link gives rise to several vertically affected markets, as MM's market share in the market for GC2 is [30-40]% at EEA level. As the Parties are also active in pulp (with a combined market shares of <15% at EEA level) which is an input for GC2, this results in further vertically affected markets. Moreover MM's market shares in the downstream markets for folding boxes for the cosmetics and personal hygiene industry in Poland, folding boxes for the pharma industry in France and folding boxes for the tobacco industry in Germany exceed 30% (with <35%, <40% and <50% respectively).

5.1. Assessment of horizontally affected markets

(55) According to the Commission's Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings ("Horizontal Merger Guidelines")[52], mergers between actual or potential competitors can result in horizontal non-coordinated effects which are harmful to competition.[53] The Horizontal Merger Guidelines list a non-exhaustive number of factors which can influence whether or not significant horizontal non-coordinated effects are likely to result from a merger, such as the large market shares of the merging firms, the fact that the merging firms are close competitors and the limited possibilities for customers to switch suppliers.[54]

5.1.1. The Notifying Party's view

(56) The Notifying Party submits that the Transaction does not raise competition concerns with regard to the supply of FBB, its further possible sub-markets and the supply of GC2 in the EEA for the following reasons.

(57) First, the Parties' combined market shares remain moderate post-merger.[55] The current market leaders (Stora Enso and Metsä Board) have higher market shares in terms of revenue in the market for the supply of FBB [56] and its submarkets for the supply of FBB for food applications, pharma applications and cosmetic

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52 OJ C 31, 05.02.2004.

53 See Horizontal Merger Guidelines, paragraph 24: "*A merger may significantly impede effective competition in a market by removing important competitive constraints on one or more sellers who consequently have increased market power. The most direct effect of the merger will be the loss of competition between the merging firms. For example, if prior to the merger one of the merging firms had raised its price, it would have lost some sales to the other merging firm. The merger removes this particular constraint. Non-merging firms in the same market can also benefit from the reduction of competitive pressure that results from the merger, since the merging firms' price increase may switch some demand to the rival firms, which, in turn, may find it profitable to increase their prices. The reduction in these competitive constraints could lead to significant price increases in the relevant market*".

54 Horizontal Merger Guidelines, paragraph 26 et seq.

55 Form CO, paragraph 221.

56 Form CO, paragraph 216.

applications.[57] In the submarket for the supply of FBB for graphical applications, Stora Enso would have slightly lower market shares;[58] in the submarket for the supply of GC2, Stora Enso and Metsä Board would have slightly lower market shares.[59]

(58) Second, the Parties are not close competitors since (i) they offer different FBB product portfolios;[60] (ii) they do not compete closely in tenders organised by customers;[61] and they consider Metsä Board and Stora Enso as their real rivals and close substitutes.[62]

(59) Third, the Transaction does not result in the elimination of an important competitive force, as IP Poland does not influence the competitive process to a greater extent than their respective market shares would suggest. The competitive constraints on the Parties come primarily from Metsä Board and Stora Enso.[63]

(60) Fourth, switching costs/times are generally low/short in the market, as contract durations are usually short, namely in the range of three months for converters and one year for end-users.[64]

(61) Finally, suppliers in the EEA have spare capacity and there are various other sources for significant additional (potential) capacity in the market. Any attempt of increasing prices by reducing supply post-merger would, therefore, immediately be met by an increase in supply by competitors.[65]

5.1.2. The Commission's assessment

(62) On the basis of the information available to it and in the light of the results of the market investigation, the Commission considers that the Transaction is unlikely to raise competition concerns for the following reasons.

(63) First, the Parties have combined market shares below or only slightly above [20-30]% in all plausible markets except GC2, as shown in Tables 1 – 6 below.[66] Post-Transaction, the Parties' combined market share will be [20-30]% in the overall FBB market in the EEA, between [20-30]% in the production and supply of FBB for food, pharmaceutical, cosmetic and graphical applications in the EEA. The Parties' combined market share would be [30-40]% in the production and supply of GC2 in the EEA.

57 Form CO, Annex 6.4-1.
58 Form CO, Annex 6.4-1.
59 Response to RFI 3 of 24 June 2021.
60 Form Co, paragraph 224.
61 Form CO, paragraph 227.
62 Form CO, paragraph 235.
63 Form CO, paragraph 239.
64 Form CO, paragraph 242.
65 Form CO, paragraph 244 et seq.
66 All the market shares presented in this Decision are calculated by volumes sold. The Commission notes that, given the high capacity utilisation rates of most of the FBB suppliers (including the Parties) and Metsä Board's plans to expand capacity in the short term (see recital (68)), the Parties' combined capacity market shares would not be materially higher than their sales market shares.

Table 1: Market shares in the overall production and supply of FBB in the EEA

	2020		2019		2018	
	Volume (kt)	**Market share**	**Volume (kt)**	**Market share**	**Volume (kt)**	**Market share**
MM	[…]	[10-20]%	[…]	[10-20]%	[…]	[10-20]%
IP Poland	[…]	[5-10]%	[…]	[5-10]%	[…]	[5-10]%
Combined	**[…]**	**[20-30]%**	**[…]**	**[20-30]%**	**[…]**	**[20-30]%**
Stora Enso	[…]	[20-30]%	[…]	[20-30]%	[…]	[20-30]%
Metsä Board	[…]	[20-30]%	[…]	[30-40]%	[…]	[30-40]%
Iggesund	[…]	[5-10]%	[…]	[5-10]%	[…]	[5-10]%
Reno de Medici	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
Pankaboard	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
Others	[…]	[10-20]%	[…]	[10-20]%	[…]	[10-20]%
Estimated total	[…]	100%	[…]	100%	[…]	100%

Source: Form CO, Table 18.

Table 2: Market shares in the production and supply of FBB for food applications in the EEA

	2020		2019		2018	
	Volume (kt)	**Market share**	**Volume (kt)**	**Market share**	**Volume (kt)**	**Market share**
MM	[…]	[20-30]%	[…]	[20-30]%	[…]	[10-20]%
IP Poland	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
Combined	**[…]**	**[20-30]%**	**[…]**	**[20-30]%**	**[…]**	**[20-30]%**
Stora Enso	[…]	[20-30]%	[…]	[20-30]%	[…]	[20-30]%
Metsä Board	[…]	[20-30]%	[…]	[30-40]%	[…]	[30-40]%
Pankaboard	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%

	2020		2019		2018	
	Volume (kt)	**Market share**	**Volume (kt)**	**Market share**	**Volume (kt)**	**Market share**
Others	[…]	[20-30]%	[…]	[20-30]%	[…]	[10-20]%
Estimated total	[…]	100%	[…]	100%	[…]	100%

Source: Form CO, Annex 6.4-1

Table 3: Market shares in the production and supply of FBB for pharma applications in the EEA

	2020		2019		2018	
	Volume (kt)	**Market share**	**Volume (kt)**	**Market share**	**Volume (kt)**	**Market share**
MM	[…]	[10-20]%	[…]	[10-20]%	[…]	[10-20]%
IP Poland	[…]	[10-20]%	[…]	[10-20]%	[…]	[10-20]%
Combined	**[…]**	**[20-30]%**	**[…]**	**[20-30]%**	**[…]**	**[20-30]%**
Stora Enso	[…]	[20-30]%	[…]	[20-30]%	[…]	[20-30]%
Metsä Board	[…]	[30-40]%	[…]	[30-40]%	[…]	[30-40]%
Reno de Medici	[…]	[5-10]%	[…]	[5-10]%	[…]	[5-10]%
Pankaboard	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
Others	[…]	[10-20]%	[…]	[10-20]%	[…]	[10-20]%
Estimated total	[…]	100%	[…]	100%	[…]	100%

Source: Form CO, Annex 6.4-1

Table 4: Market shares in the production and supply of FBB for cosmetic applications in the EEA

	2020		2019		2018	
	Volume (kt)	**Market share**	**Volume (kt)**	**Market share**	**Volume (kt)**	**Market share**
MM	[…]	[5-10]%	[…]	[5-10]%	[…]	[0-5]%

	2020		2019		2018	
IP Poland	[…]	[10-20]%	[…]	[10-20]%	[…]	[10-20]%
Combined	[…]	[20-30]%	[…]	**[10-20]%**	[…]	**[10-20]%**
Stora Enso	[…]	[20-30]%	[…]	[20-30]%	[…]	[20-30]%
Metsä Board	[…]	[20-30]%	[…]	[30-40]%	[…]	[30-40]%
Iggesund	[…]	[10-20]%	[…]	[10-20]%	[…]	[10-20]%
Others	[…]	[10-20]%	[…]	[10-20]%	[…]	[5-10]%
Estimated total	[…]	100%	[…]	100%	[…]	100%

Source: Form CO, Annex 6.4-1

Table 5: Market shares in the production and supply of FBB for graphical applications in the EEA

	2020		2019		2018	
	Volume (kt)	**Market share**	**Volume (kt)**	**Market share**	**Volume (kt)**	**Market share**
MM	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
IP Poland	[…]	[20-30]%	[…]	[20-30]%	[…]	[20-30]%
Combined	**[…]**	**[20-30]%**	**[…]**	**[20-30]%**	**[…]**	**[20-30]%**
Stora Enso	[…]	[20-30]%	[…]	[20-30]%	[…]	[20-30]%
Metsä Board	[…]	[20-30]%	[…]	[20-30]%	[…]	[20-30]%
Pankaboard	[…]	[0-5]%	[…]	[5-10]%	[…]	[5-10]%
Others	[…]	[20-30]%	[…]	[20-30]%	[…]	[20-30]%
Estimated total	[…]	100%	[…]	100%	[…]	100%

Source: Form CO, Annex 6.4-1

Table 6: Market shares in the production and supply of GC2 in the EEA

	2020		2019		2018	
	Volume	**Market**	**Volume**	**Market**	**Volume**	**Market**

	2020		2019		2018	
	(kt)	**share**	**(kt)**	**share**	**(kt)**	**share**
MM	[…]	[20-30]%	[…]	[20-30]%	[…]	[20-30]%
IP Poland	[…]	[5-10]%	[…]	[5-10]%	[…]	[5-10]%
Combined	**[…]**	**[20-30]%**	**[…]**	**[20-30]%**	**[…]**	**[20-30]%**
Stora Enso	[…]	[20-30]%	[…]	[20-30]%	[…]	[20-30]%
Metsä Board	[…]	[20-30]%	[…]	[20-30]%	[…]	[20-30]%
Iggesund	[…]	[5-10]%	[…]	[5-10]%	[…]	[5-10]%
Others	[…]	[10-20]%	[…]	[10-20]%	[…]	[10-20]%
Estimated total	[…]	100%	[…]	100%	[…]	100%

Source: Response to RFI 3 of 24 June

(64) Second, the Parties are not particularly close competitors. The Commission notes that the majority of customers do not invite both Parties to bid for the same tender.[67] Moreover, the majority of customers and competitors replying to the market investigation indicated that the Parties' closest competitors are Metsä Board and Stora Enso.[68] According to both customers and competitors, IP Poland's FBB products are of higher quality, whereas MM offers a wider range of products.[69]

(65) Third, as indicated in Tables 1 to 6, there are a number of credible alternatives to the Parties that will remain active post-merger in the market for the supply of FBB and its sub-segments. These include several sizeable players such as Metsä Board and Stora Enso. Moreover, most of the customers who replied to the market investigation indicated that there are several suppliers able to provide them with the same volumes as both Parties for their EEA consumption of FBB, including Stora Enso, Metsä Board, Iggesund, La Rochette,[70] Pankaboard and APP.[71] In reply to the market investigation, some customers indicated that Iggesund, La Rochette, Pankaboard and APP account for a significant share of the volumes of FBB purchased, being in some instances their most important supplier.[72] Moreover, the majority of the customers

67 Only a minority of competitors and customers indicated that the Parties are each other's third and fourth closest competitors. Replies to question 36 of Questionnaire to customers.

68 Replies to questions 33 and 34 of Questionnaire to customers and questions 34 and 35 of Questionnaire to competitors.

69 Replies to question 35 of Questionnaire to customers and replies to question 36 of Questionnaire to competitors.

70 Previously owned by Reno de Medici, this mill producing FBB was sold in the meantime.

71 Replies to question 37 of Questionnaire to customers.

72 Replies to question 24 of Questionnaire to customers.

indicated that there would be sufficient suppliers should the merged entity stop supplying FBB.[73]

(66) Fourth, although there is a qualification process required to switch FBB suppliers,[74] the vast majority of the customers who replied to the market investigation indicated that they already multisource from various FBB suppliers, mostly in order to secure supply and not to depend on a single supplier.[75] Therefore, if a given customer were to stop sourcing from one of its suppliers, it could start the qualification process with a new supplier while sourcing from existing qualified suppliers.

(67) Fifth, although half of the competitors who replied to the market investigation indicated that there are significant barriers to enter the FBB market, such as environmental permits, building a new mill and building customer relationships (including the qualification process),[76] the majority of competitors identified market players having entered the FBB market in the previous years such as Kotkamills and Sappi.[77] Moreover, KAMA (Russia) confirmed that it is entering the market in 2021.[78]

(68) Sixth, although the market investigation revealed that most of the FBB suppliers have high capacity utilisation rates,[79] competitors indicated that new capacity would come to the market in the short term. In addition to KAMA in Russia, Dobrush (Belarus) will start operating a new machine later in 2021.[80] Moreover, several competitors replied that the market is balanced or there is over capacity.[81] The majority of respondents submitted that the market for the supply of FBB is expected to grow steadily in the coming years.[82] In this regard, there are some plans by competitors to expand capacity in the short term, including Metsä Board by 2023.[83]

(69) Seventh, as regards the impact of the Transaction, although a number of customers indicated that prices might rise and competition might decrease post-Transaction,[84] these concerns were not justified and were not supported by other elements derived from the market investigation since the Parties are not close competitors and there are a number of credible alternative suppliers.

5.1.3. Conclusion

(70) In view of the above, the Commission concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market and the functioning of the EEA Agreement in relation to the overall supply of FBB, the supply of FBB for food applications, the supply of FBB for pharma applications, the supply of FBB for

73 Replies to question 43 of Questionnaire to customers.
74 Replies to question 29 of Questionnaire to customers.
75 Replies to question 26 of Questionnaire to customers.
76 Replies to question 25 of Questionnaire to competitors.
77 Replies to question 26 of Questionnaire to competitors.
78 Replies to question 1 of Questionnaire to competitors.
79 Replies to question 28 of Questionnaire to competitors.
80 Replies to question 27.1 of Questionnaire to competitors.
81 Replies to question 28 of Questionnaire to competitors.
82 Replies to question 33 of Questionnaire to competitors.
83 Replies to question 29 of Questionnaire to competitors.
84 Replies to question 44 of Questionnaire to customers.

cosmetic applications and the supply of FBB for graphical applications and the supply of GC2 in the EEA.

5.2. Assessment of vertically affected markets

(71) According to the Commission's Guidelines on the assessment of non-horizontal mergers under the Council Regulation on the control of concentrations between undertakings ("Non-horizontal Merger Guidelines"), foreclosure effects may occur where actual or potential rivals' access to supplies or markets is hampered or eliminated as a result of the merger, thereby reducing these companies' ability and/or incentive to compete.[85]

(72) In assessing the likelihood of an anticompetitive *customer foreclosure* scenario, the Commission examines: first, whether the merged entity would have the ability to foreclose access to downstream markets by reducing its purchases from its upstream rivals; second, whether it would have the incentive to reduce its purchases upstream; and third, whether a foreclosure strategy would have a significant detrimental effect on consumers in the downstream market.[86]

(73) In assessing the likelihood of an anticompetitive *input foreclosure* scenario, the Commission examines: first, whether the merged entity would have, post-merger, the ability to substantially foreclose access to inputs; second, whether it would have the incentive to do so; and third, whether a foreclosure strategy would have a significant detrimental effect on competition downstream.

(74) In addition to the Parties' activities in the FBB market, MM is active in the production and sale of folding boxes, which are made of FBB and other types of cartonboard. This vertical link thus gives rise to the following vertically affected markets as set out in Table 7 below.

Table 7: Overview of vertically affected markets

Market where the Parties' shares exceed 30%	**Combined market shares in the market where market shares exceed 30%**	**Relevant upstream/downstream market(s)**	**Combined market shares in the relevant upstream/downstream market**
GC2 (EEA)	[30-40]%	*Downstream:* Folding boxes (EEA) Folding boxes for food packaging Folding boxes for	 [10-20]% [10-20]% [0-5]%

85 Non-horizontal Merger Guidelines, paragraph 18.

86 Non-horizontal Merger Guidelines, para.59.

Market where the Parties' shares exceed 30%	Combined market shares in the market where market shares exceed 30%	Relevant upstream/downstream market(s)	Combined market shares in the relevant upstream/downstream market
		beverage packaging	[5-10]%
		Folding boxes for cosmetics and personal hygiene packaging	[5-10]%
		Folding boxes for pharmaceuticals packaging	[20-30]%
		Folding boxes for tobacco packaging	[10-20]%
		Folding boxes for household packaging	<30% in all 99 national markets
		Sub-segments for national markets (see Annex I)	
GC2	[30-40]%	*Upstream:*	
		Pulp (EEA or worldwide)	<15%
		Chemical pulp (EEA or worldwide)	<5%
		Mechanical pulp (EEA or worldwide)	<15%
		Bleached pulp (EEA or worldwide)	<20%
		Unbleached pulp (EEA or worldwide)	<20%
		Softwood pulp (EEA or	<20%

Market where the Parties' shares exceed 30%	Combined market shares in the market where market shares exceed 30%	Relevant upstream/downstream market(s)	Combined market shares in the relevant upstream/downstream market
		worldwide) Hardwood pulp (EEA or worldwide)	<20%
Folding boxes for cosmetics and personal hygiene industry in Poland	<35%	*Upstream:* FBB (EEA) FBB for cosmetic applications (EEA) GC2 (EEA)	 [20-30]% [20-30]% [30-40]%
Folding boxes for pharmaceuticals packaging in France	<40%	*Upstream:* FBB (EEA) FBB for pharma applications (EEA) GC2 (EEA)	 [20-30]%[20-30]% [30-40]%
Folding boxes for tobacco packaging in Germany[87]	<50%	*Upstream:* FBB (EEA) GC2 (EEA)	 [20-30]% [30-40]%

Source: Form CO, Annex 6.4-1, Response to RFI 3 of 24 June, Response to RFI 4 of 28 June, Response to RFI 5 of 13 July.

(75) Table 8 below illustrates the competitive landscape in the downstream market for the sale of folding boxes in the EEA, as well as the segments by end-application in Tables 9-14:

87 As IP Poland does not produce FBB for the tobacco industry, the vertical relationship of this segment is pre-existing and does not change as a result of the Transaction. This vertical link is therefore not analysed further as it is not merger-specific.

Table 8: Folding boxes – EEA (2018-2020)

	2018		2019		2020	
	Revenue (m EUR)	**Market share**	**Revenue (m EUR)**	**Market share**	**Revenue (m EUR)**	**Market share**
MM	[…]	[10-20]%	[…]	[10-20]%	[…]	[10-20]%
Graphic Packaging	[…]	[5-10]%	[…]	[5-10]%	[…]	[5-10]%
AR Packaging	[…]	[5-10]%	[…]	[5-10]%	[…]	[5-10]%
Westrock	[…]	[5-10]%	[…]	[5-10]%	[…]	[5-10]%
van Genechten	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
Amcor	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
Edelmann	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
DS Smith	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
Essentra	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
Autajon	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
STI	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
Others[88]	[…]	[50-60]%	[…]	[50-60]%	[…]	[50-60]%
Estimated total	[…]	100%	[…]	100%	[…]	100%

Source: Response to RFI 4 of 28 June 2021

88 According to the Notifying Party, a large portion of the market is accounted for by a very high number of medium-sized or smaller players. These are consolidated in the "others" category in the table below and include (but are not limited to) Hammer Verpackungswerke (GE), Baypack (GE), Cardbox (AT), FP Pack (FR), Posson Packaging (FR), Glossop Cartons (UK), Qualvis (UK), Dot2dot (PL), Dako (PL), and Bestprint (RO), each with market shares below -[0-5]%. Reply to RFI 4 of 28 June 2021.

Table 9: Folding boxes for tobacco packaging – EEA (2018-2020)

	2018		2019		2020	
	Revenue (m EUR)	**Market share**	**Revenue (m EUR)**	**Market share**	**Revenue (m EUR)**	**Market share**
MM	[…]	[30-40]%	[…]	[20-30]%	[…]	[20-30]%
Amcor	[…]	[30-40]%	[…]	[30-40]%	[…]	[30-40]%
AR Packaging	[…]	[20-30]%	[…]	[20-30]%	[…]	[20-30]%
Persiehl	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
PMI own production	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
Yuri Gagarin	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
Gundlach	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
Grafobal	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
Right Pack	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
Unipack	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
Bernholz Verpackungen	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
Others	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
Estimated total	[…]	100%	[…]	100%	[…]	100%

Source: Response to RFI 4 of 28 June 2021

Table 10: Folding boxes for pharmaceuticals packaging – EEA (2018-2020)

	2018		2019		2020	
	Revenue (m EUR)	**Market share**	**Revenue (m EUR)**	**Market share**	**Revenue (m EUR)**	**Market share**
MM	[…]	[5-10]%	[…]	[5-10]%	[…]	[5-10]%
Faller	[…]	[5-10]%	[…]	[5-10]%	[…]	[5-10]%

	2018		2019		2020	
	Revenue (m EUR)	**Market share**	**Revenue (m EUR)**	**Market share**	**Revenue (m EUR)**	**Market share**
Edelmann	[…]	[5-10]%	[…]	[5-10]%	[…]	[5-10]%
Essentra	[…]	[5-10]%	[…]	[5-10]%	[…]	[5-10]%
LGR	[…]	[5-10]%	[…]	[5-10]%	[…]	[5-10]%
Westrock	[…]	[5-10]%	[…]	[5-10]%	[…]	[5-10]%
AR Packaging	[…]	[0-5]%	[…]	[0-5]%	[…]	[5-10]%
Autajon	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
Kroha	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
Graphic Packaging	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
Rattpack	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
Others[89]	[…]	[50-60]%	[…]	[50-60]%	[…]	[50-60]%
Estimated total	[…]	100%	[…]	100%	[…]	100%

Source: Response to RFI 4 of 28 June 2021

Table 11: Folding boxes for beverage packaging – EEA (2018-2020)

	2018		2019		2020	
	Revenue (m EUR)	**Market share**	**Revenue (m EUR)**	**Market share**	**Revenue (m EUR)**	**Market share**
MM	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
Graphic Packaging	[…]	[40-50]%	[…]	[40-50]%	[…]	[40-50]%
Westrock	[…]	[30-40]%	[…]	[30-40]%	[…]	[30-40]%

89 See footnote 88.

	2018		2019		2020	
	Revenue (m EUR)	**Market share**	**Revenue (m EUR)**	**Market share**	**Revenue (m EUR)**	**Market share**
Van Genechten	[…]	[5-10]%	[…]	[5-10]%	[…]	[5-10]%
STI	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
DS Smith	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
Seda	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
AR Packaging	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
Model	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
Smurfit	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
Mondi	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
Others	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
Estimated total	[…]	100%	[…]	100%	[…]	100%

Source: Response to RFI 4 of 28 June 2021

Table 12: Folding boxes for food packaging – EEA (2018-2020)

	2018		2019		2020	
	Revenue (m EUR)	**Market share**	**Revenue (m EUR)**	**Market share**	**Revenue (m EUR)**	**Market share**
MM	[…]	[10-20]%	[…]	[10-20]%	[…]	[10-20]%
Graphic Packaging	[…]	[5-10]%	[…]	[5-10]%	[…]	[5-10]%
Westrock	[…]	[5-10]%	[…]	[5-10]%	[…]	[5-10]%
AR Packaging	[…]	[0-5]%	[…]	[5-10]%	[…]	[5-10]%
Van Genechten	[…]	[0-5]%	[…]	[5-10]%	[…]	[5-10]%

	2018		2019		2020	
	Revenue (m EUR)	**Market share**	**Revenue (m EUR)**	**Market share**	**Revenue (m EUR)**	**Market share**
DS Smith	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
STI	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
Autajon	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
Model	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
Persiehl	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
Grafobal	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
Others90	[…]	[60-70]%	[…]	[60-70]%	[…]	[50-60]%
Estimated total	[…]	100%	[…]	100%	[…]	100%

Source: Response to RFI 4 of 28 June 2021

Table 13: Folding boxes for household packaging – EEA (2018-2020)

	2018		2019		2020	
	Revenue (m EUR)	**Market share**	**Revenue (m EUR)**	**Market share**	**Revenue (m EUR)**	**Market share**
MM	[…]	[10-20]%	[…]	[10-20]%	[…]	[10-20]%
Graphic Packaging	[…]	[0-5]%	[…]	[5-10]%	[…]	[5-10]%
Westrock	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
AR Packaging	[…]	[0-5]%	[…]	[0-5]%	[…]	[5-10]%
Van Genechten	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
DS Smith	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
STI	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%

90 See footnote 88.

	2018		2019		2020	
	Revenue (m EUR)	**Market share**	**Revenue (m EUR)**	**Market share**	**Revenue (m EUR)**	**Market share**
Autajon	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
Model	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
Persiehl	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
Grafobal	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
Others[91]	[…]	[60-70]%	[…]	[60-70]%	[…]	[60-70]%
Estimated total	[…]	100%	[…]	100%	[…]	100%

Source: Response to RFI 4 of 28 June 2021

Table 14: Folding boxes for cosmetics and personal hygiene packaging – EEA (2018-2020)

	2018		2019		2020	
	Revenue (m EUR)	**Market share**	**Revenue (m EUR)**	**Market share**	**Revenue (m EUR)**	**Market share**
MM	[…]	[5-10]%	[…]	[5-10]%	[…]	[5-10]%
Edelmann	[…]	[5-10]%	[…]	[5-10]%	[…]	[5-10]%
AR Packaging	[…]	[5-10]%	[…]	[5-10]%	[…]	[5-10]%
Essentra	[…]	[5-10]%	[…]	[5-10]%	[…]	[5-10]%
Autajon	[…]	[5-10]%	[…]	[5-10]%	[…]	[5-10]%
DS Smith	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
Graphic Packaging	[…]	[5-10]%	[…]	[5-10]%	[…]	[5-10]%
Westrock	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%

91 See footnote 88.

	2018		2019		2020	
	Revenue (m EUR)	**Market share**	**Revenue (m EUR)**	**Market share**	**Revenue (m EUR)**	**Market share**
STI	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
Van Genechten	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
Others92	[…]	[40-50]%	[…]	[40-50]%	[…]	[40-50]%
Estimated total	[…]	100%	[…]	100%	[…]	100%

Source: Response to RFI 4 of 28 June 2021

(76) As the tables indicate, the transaction gives rise to 22 vertically affected markets at EEA level, and an additional 99 vertically affected when considering national markets for the downstream market for folding boxes (see Annex I).

(77) The Parties' combined market shares in FBB overall, as well as for potential sub segments of the FBB market, remain below 30%, with the exception of GC2 where the Parties' combined market shares is [30-40]%. For any other plausible definition of the FBB market, the Parties' market shares do not reach 30%.[93] Therefore, input foreclosure seems unlikely for FBB or any sub-segment of FBB, as the Parties do not represent a sufficiently important source of inputs. This Decision will discuss in more detail why input foreclosure also does not seem likely in the market for GC2 in the EEA, where the Parties' combined market share is [30-40]%.

(78) As for the downstream markets for folding boxes, MM's market shares in all plausible markets for folding boxes remain below 30%, with the exception of three markets in which MM's market share exceeds 30% on a national level if segmented by end-application. For the remaining downstream markets, MM's market shares remain below 30% even under the narrowest plausible product and geographic market definition. Therefore, customer foreclosure does not seem likely, as MM does not represent a sufficiently important customer in the downstream market. This Decision will discuss in more detail why customer foreclosure also does not seem likely in the markets for folding boxes for cosmetics and personal hygiene packaging in Poland, for pharmaceuticals packaging in France and for tobacco packaging in Germany, where market shares of MM exceed 30% in these downstream markets.

(79) As the Parties are also active in pulp, an input to GC2 where the Parties' combined market shares reach [30-40]%, this Decision will also discuss customer foreclosure for this vertical relationship. In the market for pulp, the Parties' combined market

92 See footnote 88.

93 The Non-Horizontal Merger Guidelines note that Commission is unlikely to find concern in non-horizontal mergers where the market share post-merger of the new entity in each of the markets concerned is below 30% (Non-Horizontal Merger Guidelines, para 25).

shares for pulp remain below 20% under any plausible product and geographic market definition. Therefore, input foreclosure does not seem likely, as the merged entity does not represent a sufficiently important source of inputs.

5.2.1. No input foreclosure for folding box producers as a result of the Parties' activity in GC2

5.2.1.1. The Notifying Party's view

(80) The Notifying Party submits that input foreclosure concerns as a result of the Transaction can be excluded, given that the merged entity will not have market power in the FBB market and will lack the ability to foreclose competitors from access to FBB. The Parties' combined market share in FBB will remain below 25% and large competitors with much broader capacity and product offering, especially Metsä Board and Stora Enso, will remain in the market. In contrast, IP Poland only offers a limited product offering which other FBB suppliers could easily replicate.[94]

5.2.1.2. The Commission's assessment

(81) The Commission considers that input foreclosure for folding box producers as a result of the Parties' activity in GC2 appears unlikely to arise, for the following reasons.

(82) First, the Parties do not have the *ability* to foreclose access to GC2, as this would require a significant degree of market power in the upstream market.[95] However, the Parties' market shares in the upstream markets for GC2 only just reach [30-40]% and a number of strong competitors are active in GC2 production (see table 6), limiting the Parties' ability to succeed with an input foreclosure strategy. In the market investigation, a majority of customers replied that in case MM stopped supplying GC2 to them, they would still have sufficient alternative suppliers to source GC2.[96] As customers multisource (see paragraph (66)), they could react to price increases by increasing their orders from their other suppliers. While the market for FBB in the EEA is currently operating at close to full capacity, the market investigation indicated that new capacity will come to the market in the short term (see paragraph (68)). Moreover, as explained in paragraph (23), there is a high degree of supply-side substitutability, so that not only the current competitors active in GC2 could supply customers, but also some GC1 suppliers could switch their production to produce more GC2.

(83) Second, the Parties do not have the *incentive* to foreclose access to GC2 in the downstream market, as MM would give up its sales to customers for FBB in case it stopped supplying competing firms downstream, which are an essential part of business strategy. Customers could also retaliate and stop buying other types of FBB or cartonboard from MM in case it stopped supplying GC2. Given that MM has sold more than [share]% of its FBB to third parties in the past three years,[97] it seems unlikely that MM would give up these sales.

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94 Form CO, paragraph 264.

95 Non-horizontal Merger Guidelines, paragraph 35.

96 Replies to question 43 of Questionnaire to competitors.

97 Form CO, paragraph 11.

(84) In view of the above, the Commission considers that the Parties will likely have neither the ability, nor the incentive to foreclose access to GC2. Even if MM stopped supplying GC2 to other folding box manufacturers or converters downstream, a foreclosure strategy would have no detrimental *effects* on competition in these downstream markets, as a number of strong competitors remain active in the upstream GC2 market (see Section 5.1.2).

5.2.2. No customer foreclosure for competing FBB producers as a result of MM's activity in national folding box markets

5.2.2.1. The Notifying Party's view

(85) The Notifying Party further submits that customer foreclosure concerns as a result of the Transaction can be excluded, given the intense competition in the folding box market in the EEA. MM accounts for a limited share of FBB demand with a market share of [10-20]% in the EEA folding box market in 2020. FBB suppliers have and will continue to have the ability to sell cartonboard to a large number of converters, brand owners and merchants.[98]

(86) Moreover, the Transaction will enable MM to supply FBB to brand-owners, which request large back-up machines or have other specific needs and therefore predominantly source from the two industry leaders, Stora Enso and Metsä Board. According to the Notifying Party, the Transaction will therefore increase competition in deliveries to brand-owners.[99]

5.2.2.2. The Commission's assessment

(87) The Commission considers that customer foreclosure for competing FBB producers as a result of MM's activity in national folding box markets appears unlikely to arise, for the following reasons.

(88) First, the Parties do not have the *ability* to foreclose access to customers in the downstream markets for folding boxes for cosmetics and personal hygiene packaging in Poland, for pharmaceuticals packaging in France and for tobacco packaging in Germany, as this would require a significant degree of market power in the downstream market.[100] Although MM's market shares exceed 30% in these three markets, MM faces competition from numerous strong competitors active in the folding box market in other countries and sub-segments (see tables 8-14). Given that FBB producers sell throughout the EEA (see paragraph (32)), they do not depend on sales in a particular country or sub-segment. Also most folding box producers who replied to the market investigation are active in all sub-segments and participate in tenders throughout the EEA (see paragraph (50)), so significant competitive constraints exist which limit MM's ability to successfully engage in customer foreclosure. Finally, in the market investigation, a vast majority stated that in case MM stopped buying from them, they would still have sufficient customers for all types of FBB.[101] According to one competitor "*The European converter industry is*

98 Form CO, paragraph 265.

99 Form CO, paragraph 266.

100 Non-horizontal Merger Guidelines, paragraph 61.

101 Replies to question 37 of Questionnaire to competitors.

still very fragmented and there would be several alternative sources of demand left."[102]

(89) Second, the Parties also do not have the *incentive* to foreclose access to customers in the downstream markets for folding boxes for cosmetics and personal hygiene packaging in Poland, for pharmaceuticals packaging in France and for tobacco packaging in Germany. In the unlikely event that MM stopped buying inputs from other FBB producers for its production of folding boxes for cosmetics and personal hygiene packaging in Poland, for pharmaceuticals packaging in France and for tobacco packaging in Germany, it would be at risk of supply interruptions, as it would depend on one supply source. As explained in paragraph 17(66), customers of FBB multi-source to prevent such dependency. In view of the above, the Commission considers that the Parties will likely have no ability, nor an incentive, to foreclose access to customers in the downstream markets for folding boxes for cosmetics and personal hygiene packaging in Poland, for pharmaceuticals packaging in France and for tobacco packaging in Germany. Even in case MM stopped sourcing FBB for its production of folding boxes for cosmetics and personal hygiene packaging in Poland, for pharmaceutical packaging in France and for tobacco packaging in Germany from other competitors upstream, a foreclosure strategy would have no detrimental *effects* on competition in the downstream folding box market. Upstream FBB suppliers could locate alternative customers in Poland, France and Germany (not only in cosmetics and hygiene packaging, pharmaceuticals packaging and tobacco packaging but other sectors) and also in other EEA countries.

5.2.3. No customer foreclosure for competing pulp producers as a result of the Parties' activity in GC2

(90) The Commission considers that customer foreclosure concerns appear unlikely to arise even under the narrowest plausible product and geographic market definition, as the Parties do not have the *ability* to foreclose access to customers in the downstream markets for GC2, as this would require a significant degree of market power in the downstream market.[103] Although MM's market shares reach [30-40]% in the market for GC2, MM faces competition from numerous strong competitors active in GC2 production (see table 6) to which pulp producers can sell. Moreover, pulp suppliers do not depend on sales to GC2 producers, but can sell to cartonboard manufacturers producing products other than GC2. In an overall cartonboard market, the Parties' market share remains below 20%,[104] indicating that they do not have the required market power to foreclose pulp manufacturers from access to the cartonboard market.

5.2.4. Conclusion on customer and input foreclosure in relation to folding boxes and FBB

(91) In view of the above, the Commission concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market and the functioning of the EEA Agreement in relation to the vertical links between markets for FBB upstream and markets for folding boxes downstream, under any plausible geographic and product market definition.

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102 Non-confidential reply to question 37.1 of Questionnaire to competitors.

103 Non-horizontal Merger Guidelines, paragraph 61.

104 Form Co, Table 14.

5.3. Assessment of coordinated effects

(92) A merger in a concentrated market may significantly impede effective competition, through the creation or a strengthening of a collectively dominant position, by increasing the likelihood that firms are able to coordinate their behaviour and raise prices, without entering into an agreement or concerted practice within the meaning of Article 101 TFEU. A merger may also make coordination easier, more stable or more effective for firms which were coordinating prior to the merger, either by making the coordination more robust or by permitting firms to coordinate on even higher prices.[105]

5.3.1. The Notifying Party's view

(93) The Notifying Party submits that the conditions for coordinated effects are not met, in particular due to the characteristics of the FBB market.[106] It argues that FBB is a highly competitive product segment which is undergoing significant growth, driven primarily by the switch from plastic to cartonboard for consumer packaging and cannot therefore lead to a stable economic environment.[107] The Notifying Party also submits that there is a lack of symmetry between the players in the market: MM Group and IP Poland are very different to the market leaders Stora Enso and Metsä Board in terms of capacity, capacity utilisation, cost structure, level of vertical integration, product range and the geographic presence, amongst other factors.[108] There is a lack of market transparency, due to the fact that supply contracts in the FBB industry are typically concluded on the basis of bilateral negotiations. Cartonboard producers do not know their competitors' prices and in any event, cartonboard producers charge different prices to different customers, depending also on the particular product specifications. The methodology for applying discounts also varies depending on the customer or size of the contract.[109] Finally, the Notifying Party submits that IP Poland is not an industry "maverick" with a history of preventing or disrupting coordination.[110]

5.3.2. The Commission's assessment

(94) The Commission does not consider that the Transaction gives rise to serious doubts on the basis of horizontal coordinated effects for the reasons set out below.

(95) First, the Commission observes that the FBB market has been subject to relatively recent new entry and, due in particular to the shift from plastic to more sustainable sources of packaging, has been growing and will continue to grow. For example, one respondent in the market investigation noted that: "*FBB is the most common paperboard used in Europe and its consumption, according to CEPI public statistics, has been steadily increasing year by year in the last 10 years. It is generally expected that it will grow even further. This is felt not only in the order inflow from our customers but also, in a much wider perspective, for example from EU Green Deal initiative and increasing public awareness for more sustainable*

105 Horizontal Merger Guidelines, paragraph 39.
106 Form CO, paragraph 251.
107 Form CO, paragraph 252.
108 Form CO, paragraph 253.
109 Form CO, paragraph 254.
110 Form CO, paragraph 255.

packaging solutions. Discussions regarding replacing plastic packaging with more environmental friendly alternatives has become also a political topic (for example, banning of Single-Use plastic straws & cutlery, plates & cups) , which is why, it is expected that in those segments where plastic foils & packaging are widely used, will be gradually replaced by paper & board, further facilitating the growth of FBB."[111] It is also in the context of the transition from plastic to cartonboard packaging that certain market players have been identified as particularly innovative, for example Kotkamills (part of MM) was observed to be "*innovative with barrier coatings*"[112] which is used for example in the manufacture of paper cups. No evidence surfaced during the market investigation suggesting a particularly stable economic environment, which would render coordination more likely.

(96) Second, there is no evidence in the Commission's file showing that the market is particularly transparent, making it easier for market players to monitor deviations. For instance, contracts are normally negotiated on a bilateral basis with customers.[113] These negotiations are confidential and competitors do not therefore have insight regarding the terms concluded by their competitors.[114]

(97) Third, in the market investigation no customer raised concerns based on actual or potential coordination. Moreover, there is no evidence in the file indicating that any deterrent strategy would be particularly effective.

(98) In view of the above, the Commission concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market and the functioning of the EEA Agreement in relation to horizontal coordinated effects.

6. CONCLUSION

(99) 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
Executive Vice-President

111 Reply to question 23 and question 30 of Questionnaire to customers.

112 Reply to question 35 of Questionnaire to customers.

113 Replies to question 28 of Questionnaire to customers and replies to question 21 of Questionnaire to competitors.

114 Replies to questions 20 and 22-24 of Questionnaire to competitors.

Annex I – MM's market shares in the downstream markets for folding boxes at national level (2020)

EEA country	Folding boxes (all end-uses)	Folding boxes for food	Folding boxes for tobacco	Folding boxes for pharma	Folding boxes for cosmetics and personal hygiene	Folding boxes for household
Austria	[5-10]%	<20%	<30%	<5%	<5%	<10%
Belgium	[10-20]%	<15%	-	-	<15%	-
Bulgaria	<30%	<30%	-	-	<30%	-
Croatia	<30%	<30%	<10%	-	-	-
Czech Republic	<30%	<30%	<30%	-	<30%	<30%
Denmark	<30%	<30%	-	-	-	<30%
Finland	<30%	-	-	-	-	-
France	[10-20]%	<15%	<30%	<40%	<30%	<10%
Germany	[10-20]%	<15%	<50%	<10%	<5%	<15%
Greece	<30%	<30%	<5%	-	-	-
Hungary	<30%	<30%	<30%	<30%	<30%	<30%
Ireland	<30%	<30%	-	<30%	-	<30%
Italy	[0-5]%	<5%	<30%	<5%	<5%	<10%
Lithuania	<30%	<30%	<30%	-	-	-
Luxembourg	<30%	-	<30%	-	-	-
Netherlands	[0-5]%	<5%	<30%	-	<10%	<10%
Norway	<30%	-	-	-	-	-
Poland	[10-20]%	<20%	<30%	<5%	<35%	<20%
Portugal	<30%	-	<15%	-	-	<30%
Romania	<30%	<30%	<20%	-	<30%	<30%
Slovakia	<30%	<30%	-	-	<30%	<30%

EEA country	Folding boxes (all end-uses)	Folding boxes for food	Folding boxes for tobacco	Folding boxes for pharma	Folding boxes for cosmetics and personal hygiene	Folding boxes for household
Slovenia	<30%	-	-	-	<30%	-
Spain	[5-10]%	<5%	<20%	<5%	<5%	<15%
Sweden	<30%	<30%	-	-	<30%	-
UK	[5-10]%	<10%	-	<5%	<5%	<30%

Source: Form CO, Annex 6.4-5, Reply to RFI 4 of 28 June 2021