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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 Where possible the information omitted has been replaced by ranges of figures or a general description.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
1040 Vienna
Austria

Subject: **Case M.10122 – Mayr-Melnhof Karton / Kotkamills**
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 4 May 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 Mayr-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 Kotkamills Group Oyj (together with its subsidiaries "Kotkamills", Finland)[3] (the "Transaction"). MM and Kotkamills 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 184, 12.05.2021, p. 15.

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.

(3) Kotkamills is a manufacturer of virgin-fibre cartonboard[4] based in Kotka, Finland. Cartonboard (including FBB) accounted for […]% of Kotkamills' sales in 2019. In addition to cartonboard, it also produces Saturating Base Kraft ("SBK")[5] and sawn softwood.

2. THE OPERATION

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

3. UNION DIMENSION

(5) On 22 February 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. The Commission transmitted this submission to all Member States on 24 February 2021. The Member States competent to examine the concentration[6] did not express their disagreement to the request of referral within 15 working days. The notified operation therefore has a Union dimension.

4. MARKET DEFINITION

(6) The Parties' activities overlap with regard to the production and supply of cartonboard. 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 and (ii) folding boxes.

4.1. Cartonboard

(7) 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").[7] 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 Virgin fibre cartonboard is made from cellulose fibres that are produced from timber (pulp).

5 SBK is used as core material for high pressure laminates and is used for end applications such as furniture, worktops, flooring etc., together with other speciality uses such as films, electrical insulators.

6 Austria, Germany, Lithuania and Poland.

7 Form CO, paragraph 93.

sulphate board ("SBB" or "SBS"); solid unbleached sulphate board ("SUS"); and FBB, which are all made from virgin fibre.[8]

(8) In addition to these categories of cartonboard, the cartonboard industry has more recently developed "cup board", another type of board made of virgin fibre used (primarily) for the production of cups ("cupstock"), i.e., open cups such as for coffee, ice-cream etc. Cup board is made by applying a rather complex, coated barrier to the cartonboard. Only a limited number of suppliers produce cup board, among them Kotkamills which has developed a plastic-free, water based dispersion coated barrier.[9]

(9) 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.

(10) As regards cartonboard, MM only manufactures and sells FBB and WLC and Kotkamills only manufactures and sells FBB and cup board. The only horizontal overlap between the Parties' activities is therefore in FBB.

4.1.1. Product market

4.1.1.1. The Commission's decisional practice

(11) 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.

(12) 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,[10] but has ultimately left this open. The Commission previously 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-use (e.g. food applications, pharmaceutical applications etc.).

4.1.1.2. The Notifying Party's view

(13) The Parties submit that the main different types of cartonboard are FBB, WLC, SBS and SUS. According to the Parties, the relevant market comprises all types of cartonboard, for the following reasons.

(14) From a demand-side perspective, customers can to a significant degree switch between the various types of cartonboard, and often do so.

(15) 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

8 Form CO, paragraph 96.

9 Form CO, paragraph 99.

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

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.

(16) The Parties further argue 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.[11]

4.1.1.3. The Commission's assessment

(17) In the market investigation, 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),[12] the remainder of the production process was similar. Adjustments can be made to the board machine, according to the category of cartonboard being manufactured.[13]

(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.[14] Examples of different end applications could include, packaging for food, pharmaceuticals, cosmetics or cigarettes.[15] 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."*[16] 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."*[17]

(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*."[18]

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11 Form CO, paragraph 151.

12 Non-confidential reply to question 8 of Questionnaire to competitors.

13 Non-confidential replies to question 8 of Questionnaire to competitors.

14 Replies to question 6 of Questionnaire to customers and replies to question 7 of Questionnaire to competitors.

15 Form CO, paragraph 156.

16 Non-confidential reply to question 6 of Questionnaire to customers.

17 Non-confidential reply to question 6 of Questionnaire to competitors.

18 Non-confidential reply to question 9 of Questionnaire to competitors.

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

(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.[19] GC1 is a fully coated board with a coated reverse and GC2 is a fully coated board with an uncoated reverse.[20] 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.[21] The different sub-grade of FBB used may therefore vary according to the different end application.[22] Different end applications could include: food, tobacco and pharmaceutical applications.[23]

(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[24], or according to the type of end application.[25] While a majority of customers said that there were specific end use applications that required a specific sub-grade of FBB, the reasons given for this differed.[26] Some converters[27] referred to the fact that their own customers specified the sub-grade to be used, others referred to the particular function of the packaging i.e. 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.*"[28] 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.*"[29] The responses in the market investigation therefore tend to indicate that it is the customer preferences that drives the type of FBB and this 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

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19 Form CO, paragraph 97.

20 Form CO, paragraphs 158 – 159.

21 Replies to questions 8, 9 of Questionnaire to customers and replies to question 11 of Questionnaire to competitors.

22 Replies to question 8 of Questionnaire to customers and replies to question 11 of Questionnaire to competitors.

23 Form CO, paragraph 218.

24 Replies to question 8 of Questionnaire to customers and replies to question 11 of Questionnaire to competitors.

25 Reply to question 9 of Questionnaire to customers.

26 Replies to question 9 of Questionnaire to customers.

27 A converter is a company which uses cartonboard as an input for producing packaging products for end-customers.

28 Reply to question 9 of Questionnaire to customers.

29 Reply to question 9 of Questionnaire to customers.

investments of time or cost[30] and that the production process was similar.[31] 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*"; and "*If the machine does not have a coating unit on reverse side the investment could be 5-10 M€.*"[32]

(24) In any case, for the purpose of this decision the exact product market definition can be left open between an overall market for cartonboard[33] or FBB, and between an overall FBB market or sub-segments for FBB according to end use or sub-grade of FBB, as the proposed 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 proposed Transaction 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",[34] or by sub-grade of FBB i.e. GC1 and GC2. No affected markets arise if considering an overall cartonboard market or an overall FBB market and so these 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.[35]

4.1.2.2. The Notifying Party's view

(27) The Parties consider the market for cartonboard to be at least EEA-wide and potentially worldwide, for the following reasons:[36]

(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 EEA-wide maximum production capacity of FBB. At the same time, Finland and Sweden correspond to only 2% of EEA demand for FBB in 2019.[37]

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30 Replies to question 14 of Questionnaire to competitors.

31 Replies to question 12 of Questionnaire to competitors.

32 Reply to question 14 of Questionnaire to competitors.

33 The transaction does not give rise to affected markets in an overall cartonboard market and this will therefore not be addressed further in this decision.

34 The non-specified category "other non-food" accounts for a small portion of the FBB segment. It is very fragmented, including several unrelated end-uses, such as car accessories, clothing, shoes, fashion accessories, electrical devices, IT, shipping packaging, etc. Form CO, footnote 52.

35 Case COMP/M.8951 – Suzano Papel e Celulose/Fibria Celulose, paragraph 82 and Case COMP/M.8421 – Westrock/MPS, paragraph 28.

36 Form CO, paragraph 168.

37 Form CO, paragraph 173.

(29) Second, European cartonboard producers also face significant competitive pressure from outside the EEA. Producers outside Europe fulfil approximately 10-12% of European demand for FBB.[38]

(30) Third, the customers that procure by way of tenders mostly launch these tenders at a global level or at least cover multiple countries within the EEA. Out of the […] tenders in which Kotkamills participated in the past three years, […] had a global scope, […] had an EEA-wide scope and the remaining […] covered one country (however, these tenders covered countries where Kotkamills does not have any production, therefore also indicating an EEA-wide market).[39] Out of the […] tenders in which MM participated in the past three years, […] included non-EEA countries, […] had an EEA-wide scope and […] covered one EEA-country.[40]

(31) However, the Parties submit 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.[41]

4.1.2.3. The Commission's assessment

(32) The vast majority of customers confirmed that their suppliers were located in the EEA or worldwide,[42] with a majority of competitors also confirming that their customers were located at either EEA or worldwide level.[43] 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.[44] The majority of respondents also confirmed that price differences were not significant within the EEA, price differences generally tended to be explained by the differences in product (e.g. the different grade etc.).[45] While a majority of respondents confirmed that transport costs were however significant by the EEA,[46] 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) In any case, for the purpose of this decision the exact geographic market definition can be left open between EEA-wide and worldwide as the proposed 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.

38 Form CO, paragraph 174.
39 Form CO, paragraph 176.
40 Form CO, paragraph 177.
41 Form CO, paragraph 180.
42 Replies to question 15 of Questionnaire to customers.
43 Replies to question 15 of Questionnaire to competitors.
44 Replies to question 15 of Questionnaire to customers and replies to question 15 of Questionnaire to competitors.
45 Replies to question 18 of Questionnaire to customers and replies to question 18 of Questionnaire to competitors.
46 Replies to question 17 of Questionnaire to customers and replies to question 17 of Questionnaire to competitors.

(34) In conclusion, the Commission will analyse the effects of the proposed Transaction on the basis that the market for FBB is EEA-wide. No affected markets arise under at worldwide level so this will not be analysed further in this decision.[47]

4.2. Folding boxes

4.2.1. Product market

4.2.1.1. The Commission's decisional practice

(35) 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.[48] For example, the Commission has considered separate markets for (i) folding boxes used for tobacco packaging,[49] as well as (ii) folding boxes for pharmaceutical packaging and (iii) folding boxes for beverages.[50] The Commission ultimately left open whether the market for folding boxes should be further segmented by end-use.

4.2.1.2. The Notifying Party's view

(36) The Parties submit 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.[51]

4.2.1.3. The Commission's assessment

(37) In the market investigation, a majority of respondents replied that production processes of folding boxes differ depending on the end-application.[52] According to a customer of the Parties: "*The production processes required to manufacture folding boxes are dependent on the characteristics, format, order run length, decoration and design of the boxes. Certain of these characteristics will be more or less used in the various end use segments*."[53] 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.[54] 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). One respondent also noted that switching production might not be viable "*economically if a*

47 Form CO, paragraph 193.
48 M.8421 – Westrock/MPS, para 6 and cases cited therein.
49 M.5599 – Amcor/Alcan, paras. 44-45.
50 M.8421 – Westrock/MPS, paras 8 et seq.
51 Form CO, paragraph 189.
52 Replies to question 13 of Questionnaire to customers.
53 Non-confidential reply to question 13.1 of Questionnaire to customers.
54 Replies to question 14 of Questionnaire to customers.

commercial agreement/volume rebate is in place."[55] 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.

(38) 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 […]% of MM's folding carton sales.[56] Also the respondents in the market investigation mentioned these sub-segments when asked for which end-applications they produce folding boxes.[57]

(39) 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 proposed 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.

(40) In conclusion, the Commission will analyse the effects of the proposed Transaction on the basis that the markets for folding boxes are segmented . 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.[58] No affected markets arise if considering an overall market for folding boxes and this will therefore not be analysed further in this decision.

4.2.2. Geographic market

4.2.2.1. The Commission's decisional practice

(41) 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.[59]

4.2.2.2. The Notifying Party's view

(42) The Parties submit 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 Proposed

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55 Replies to question 14.1 of Questionnaire to customers. See for instance non-confidential reply to question 14.1 of Questionnaire to customers: "*various segments require differing business processing standards and certification, such as food hygiene standards for the Food Industry (such as BRC/IAM) and material control processes for the Pharmaceutical industry (PS9000)*."

56 Form CO, footnote 53.

57 Replies to question 12 of Questionnaire to customers.

58 As MM's market shares in the potential markets for folding boxes for food, beverages, cosmetics and personal hygiene, and household remain below 30% under any plausible geographic market definition, these will not be further discussed in this Decision.

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

Concentration should be analysed on the basis of an (at least) EEA-wide market for folding cartons.[60]

4.2.2.3. The Commission's assessment

(43) 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. Half of the respondents supply folding boxes at EEA or worldwide level, whereas some respondents supply at regional level, i.e. beyond their own country but not in all EEA-countries.[61] Notably, none of the respondents who replied participate in tenders in their own country only. 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.[62] Although a majority of respondents consider that transport costs for folding boxes are significant,[63] this does not appear to limit sales to other national markets.

(44) In any case, for the purpose of this decision the exact geographic market definition can be left open as the proposed 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.

(45) In conclusion, since no affected markets arise under a broader market definition (i.e. regional, EEA or worldwide), the Commission will analyse the effects of the proposed Transaction on the market for folding boxes at national level.

5. COMPETITIVE ASSESSMENT

(46) The proposed Transaction gives rise to affected markets in the plausible markets for the supply of FBB for food applications ([20-30%]) and the supply of GC2 ([20-30%]) in the EEA. The Commission does not consider it necessary to analyse separately these two plausible markets as the conditions of competition and the position of the Parties in both markets are similar.

(47) Moreover, MM is active in the production and supply of folding boxes, which are made out of cartonboard. This vertical link gives rise to two vertically affected markets, as MM's market shares in the market for folding boxes for the pharma industry in France and folding boxes for the tobacco industry in Germany exceed 30% (with <40% and <50% respectively).

5.1. Assessment of horizontally affected markets

(48) 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")[64], mergers between actual or potential competitors

60 Form CO, paragraph 191.
61 Replies to question 20 of Questionnaire to customers.
62 Replies to question 21 of Questionnaire to customers.
63 Replies to question 22 of Questionnaire to customers.
64 OJ C 31, 05.02.2004.

can result in horizontal non-coordinated effects which are harmful to competition.[65] 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.[66]

5.1.1. The Notifying Party's view

(49) The Notifying Party submits that the Transaction does not raise competition concerns with regard to the supply of FBB for food applications and the supply of GC2 in the EEA for the following reasons.

(50) First, the Parties' combined market shares remain moderate post-merger.[67] The current market leaders (Stora Enso and Metsä Board) have significantly higher market shares both in an EEA-wide FBB market in the EEA.[68]

(51) Second, the Parties are not close competitors since (i) they offer different product portfolios;[69] (ii) they have relatively few customers in common;[70] (iii) their customers multi-source from at least two suppliers to ensure supply security and handle unexpected contingencies;[71] (iv) they win and lose customers from and to Metsä Board and Stora Enso (rather than from and to each other);[72] (v) they do not compete closely in tenders organised by customers;[73] and they consider Metsä Board and Stora Enso as their real rivals and close substitutes.[74]

(52) Third, 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.[75]

(53) Fourth, suppliers in the EEA have spare capacity and there are various other sources for significant additional (potential) capacity in the market. Any attempt of

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65 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*".

66 Horizontal Merger Guidelines, paragraph 26 et seq.

67 Form CO, paragraph 224.

68 Form CO, paragraph 225 et seq.

69 Form Co, paragraph 238.

70 The customer overlap for one Party is calculated as the percentage of volumes that are sold to customers that bought similar products also from the other Party in the same year. (Form CO, paragraph 239)

71 Form CO paragraph 239.

72 Form CO, paragraph 241.

73 Form CO, paragraph 242.

74 Form CO, paragraph 244.

75 Form CO, paragraph 246.

increasing prices by reducing supply post-merger would, therefore, immediately be met by an increase in supply by competitors.[76]

(54) Finally, neither MM nor Kotkamills 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.[77]

5.1.2. The Commission's assessment

(55) 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.

(56) First, the Parties have a moderate combined market share. As Table 1 and Table 2 show, post-Transaction the Parties' combined market share will be [20-30%] (MM and Kotkamills achieve [10-20%] and [5-10%] respectively) in the market for the production and supply of FBB for food applications in the EEA and [20-30%] (MM and Kotkamills achieve [10-20%] and [5-10%] respectively) in the market for the production and supply of GC2 in the EEA.

Table 1: 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	[…]	[10-20]%	[…]	[10-20]%	[…]	[10-20]%
Kotkamills	[…]	[5-10]%	[…]	[5-10]%	[…]	[5-10]%
Combined	[…]	**[20-30]%**	[…]	**[20-30]%**	[…]	**[10-20]%**
Metsä Board	[…]	[20-30]%	[…]	[30-40]%	[…]	[30-40]%
Stora Enso	[…]	[20-30]%	[…]	[20-30]%	[…]	[20-30]%
IP Kwidzyn	[…]	[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%

76 Form CO, paragraph 248 et seq.

77 Form CO, paragraph 275.

Table 2: Market shares in the production and supply of GC2 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]%
Kotkamills	[…]	[5-10]%	[…]	[5-10]%	[…]	[5-10]%
Combined	[…]	**[20-30]%**	[…]	**[20-30]%**	[…]	**[20-30]%**
Metsä Board	[…]	[20-30]%	[…]	[20-30]%	[…]	[20-30]%
Stora Enso	[…]	[20-30]%	[…]	[20-30]%	[…]	[20-30]%
IP Kwidzyn	[…]	[5-10]%	[…]	[5-10]%	[…]	[5-10]%
Iggesund	[…]	[5-10]%	[…]	[5-10]%	[…]	[5-10]%
Others	[…]	[10-20]%	[…]	[10-20]%	[…]	[10-20]%
Estimated total	[…]	100%	[…]	100%	[…]	100%

(57) Second, the Parties are not particularly close competitors. The Commission notes that the Parties have relatively few customers in common[78] and that the majority of customers do not invite both Parties to bid for the same tender.[79] Moreover, the majority of customers replying to the market investigation indicated that the Parties' closest competitor is Metsä Board.[80] Regarding the Parties' competitors, only one considers that the Parties are close competitors, the others concurring that the two leading players in the market, Metsä Board and Stora Enso, are the Parties' closest competitors.[81] According to both customers and competitors, Kotkamills is more modern and innovative in FBB while MM focuses more on WLC.[82]

(58) Third, as indicated in Table 1 and Table 2, there are a number of credible alternatives to the Parties that will remain active post-merger in the market for the supply of FBB for food applications, including several sizeable players: Metsä Board (with a market share of [20-30]%), Stora Enso ([20-30]%), IP Widzyn ([5-10]) and Pankaboard ([0-5]).[83] As regards the plausible market for the supply of GC2 in the EEA, competitors would have similar market shares (Metsä Board [20-30]%, Stora Enso [20-30]%, IP Kwidzyn [5-10]% and Iggesund [5-10]%). In this regard, most of the customers who

78 The customer overlap in lightweight products in 2020 was [...]% for Kotkamills and only [...]% for MM . The customer overlap for one Party is calculated as the percentage of volumes that are sold to customers that bought similar products also from the other Party in the same year. (Form CO, paragraph 239).

79 Replies to question 33 of Questionnaire to customers.

80 Replies to questions 29 and 30 of Questionnaire to customers.

81 Replies to question 20 of Questionnaire to competitors.

82 Replies to question 31 of Questionnaire to customers and replies to question 22 of Questionnaire to competitors.

83 Two companies have recently left the market, i.e. Buchmann Karton (Germany) and Reno di Medici (Italy).

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, IP Kwidzyn, Iggesund and Pankaboard.[84] Moreover, although Reno di Medici (Italy) recently left the FBB market, two thirds of the customers indicated that there would be sufficient suppliers should the merged entity stop supplying FBB.[85]

(59) Fourth, although there is a qualification process required to switch FBB suppliers,[86] 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.[87] 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.

(60) Fifth, half of the competitors who replied to the market investigation confirmed that there are not significant barriers to enter the FBB market.[88] Among the barriers to entry mentioned by some competitors, there are environmental permits, building a new mill and building customer relationships (including the qualification process).[89] Yet, the majority of competitors identified new market entrants in the previous years such as Kotkamills and Sappi.[90] Moreover, KAMA (Russia) confirmed that it is entering the market (both GC1 and GC2, including FBB for food applications) in 2021.[91]

(61) Sixth, the market for the supply of FBB in the EEA seems to be balanced. Although the market investigation revealed that most of the FBB suppliers have high capacity utilisation rates,[92] competitors indicated that, in addition to KAMA in Russia, Dobrush (Belarus) will start operating a new machine later in 2021.[93] Moreover, several competitors replied that the market is balanced or there is over capacity.[94] The majority of respondents submitted that the market for the supply of FBB is expected to grow steadily in the coming years.[95] In this regard, there are some plans to expand capacity in the short term, including Metsä Board by 2023.[96]

(62) Seventh, as regards the impact of the Transaction, the results of the market investigation are mixed. Although some respondents acknowledge the fact that the Transaction may bring more volumes to the market, some customers expressed concerns that prices might rise post-Transaction, including common customers of the

84 Replies to question 36 of Questionnaire to customers.
85 Replies to question 44 of Questionnaire to customers.
86 Replies to question 41 of Questionnaire to customers.
87 Replies to question 27 of Questionnaire to customers.
88 Replies to question 29 of Questionnaire to competitors.
89 Replies to question 29.1 of Questionnaire to competitors.
90 Replies to question 30 of Questionnaire to competitors.
91 Replies to question 31.1 of Questionnaire to competitors.
92 Replies to question 32 of Questionnaire to competitors. See also non-confidential minutes of a conference call with a competitor, 16 April 2021.
93 See non-confidential minutes of conference calls with competitors, 16 April 2021 and 30 April 2021.
94 Replies to question 32 of Questionnaire to competitors.
95 Replies to question 35 of Questionnaire to competitors.
96 Replies to question 33 of Questionnaire to competitors.

Parties that indicated that both Parties are among their three main suppliers.[97] However, these concerns 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

(63) In view of the above, the Commission concludes that the proposed 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 supply of FBB for food applications in the EEA and the supply of GC2 in the EEA.

5.2. Assessment of vertically affected market

(64) 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.[98]

(65) 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.[99]

(66) 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.

(67) 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 two vertically affected markets, as MM's market shares in the market for folding boxes for the pharma industry in France and folding boxes for the tobacco industry in Germany exceed 30% (with <40% and <50% respectively).

(68) As Kotkamills 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.

(69) In the upstream market for FBB, if analysed by end-use (as for the downstream markets), the Parties' combined market shares remains moderate, with the highest

97 Replies to questions 25.1 and 47 of Questionnaire to customers.

98 Non-horizontal Merger Guidelines, paragraph 18.

99 Non-horizontal Merger Guidelines, paragraph 59.

market share in a potential market for FBB for the food sector and GC2 [20-30]% (see paragraph (46)). The Parties' market share in an overall FBB market is [10-20]%.[100] However, as some customers of the Parties raised input foreclosure concerns, the Commission has investigated both input and customer foreclosure for the purpose of this Decision.

5.2.1. The Notifying Party's view

(70) The Notifying Party submits that these links do not give rise to vertically "affected markets", as, according to them, the market for folding boxes is at least EEA-wide (see paragraph (42)) and MM's market share at EEA-level remains below 30% even if based on a narrow product market definition of types of cartonboard (i.e. FBB, WLC, SBS, SUS), or an addition subsegmentation by end-use (i.e. food, pharmaceuticals, tobacco, cosmetics, graphical and "other non-food"). In any case, competition in the cartonboard and the converting markets is intense and the Parties, in their view, have a limited presence in both markets. Therefore, MM has no ability to foreclose cartonboard input to converters or access to customers (converters) to cartonboard suppliers. Cartonboard suppliers have numerous alternative customers and converters have multiple alternatives of cartonboard supplies.[101]

5.2.2. The Commission's assessment

5.2.2.1. No customer foreclosure

(71) The Commission considers that customer foreclosure concerns appear unlikely to arise even under the narrowest plausible product and geographic market definition, for the following reasons.

(72) First, the Parties do not have the *ability* to foreclose access to customers in the downstream market, as this would require a significant degree of market power in the downstream market.[102] Although MM's market share exceeds 30% in the French market for folding boxes for pharma products, MM faces competition from numerous strong competitors active in the folding box market in other countries and sub-segments. Given that most folding box producers are active in all sub-segments and participate in tenders throughout the EEA (see paragraph (43)), significant competitive constraints exist. Competitors who could no longer sell FBB to MM in the markets for FBB for pharma in France could react to losing MM as a customer for FBB in different ways. In the short term, they could retaliate by suppling FBB to MM at worse conditions in other countries/end-use markets where MM does not have market power. In the long term, even if looking at national markets, there are considerable cross-border tenders and sales, competitors could sell FBB to folding box producers in other countries who could sell their products at lower prices in France and Germany respectively, and thereby counter a price rise by MM.

(73) Second, the Parties do not have the *incentive* to foreclose access to customers in the downstream French market for folding boxes for pharma products. MM's high market shares in the downstream market predate the Transaction, and MM has been

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100 Form CO, Table 15.

101 Form CO, paragraph 284.

102 Non-horizontal Merger Guidelines, paragraph 61.

sourcing FBB from different upstream competitors rather than from its in-house production. As the Transaction only results in an increment of [5-10]% in the upstream market for FBB overall ([0-5]% in FBB for pharma), the incentives to foreclose are unlikely to change as a result of the Transaction.

(74) Third, even in case MM stopped sourcing FBB for its production of folding boxes for pharma products in France 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 France (not only in pharma but other sectors) and also in other EEA countries. Finally, in the market investigation, none of the competitors raised customer foreclosure concerns.[103]

5.2.2.2. No input foreclosure

(75) The Commission considers that input foreclosure concerns appear unlikely to arise even under the narrowest plausible product and geographic market definition, for the following reasons.

(76) First, the Parties do not have the *ability* to foreclose access to FBB, as this would require a significant degree of market power in the upstream market.[104] However, the Parties' market shares in the upstream markets for all types of cartonboard are low and only exceed 20% in the sub-segment GC2 and for FBB for food (see paragraph (46)), the latter of which is not an input in folding boxes for pharmaceutical products. On an EEA market for all types of FBB, the Parties' combined market share is low with [10-20]%. As for the other types of cartonboard, only MM is active (so any vertical relationships do not change as a result of the Transaction) with the exception of cup board where Kotkamill's market share at EEA level is below 5%.[105]

(77) Second, the parties do not have the *incentive* to foreclose access to FBB in the downstream market, as MM would lose more than […]% of its customers for FBB in case it stopped supplying competing firms downstream. Customers could also retaliate and stop buying other types of cartonboard from MM in case it stopped supplying FBB to suppliers of pharmaceutical boxes in France.

(78) Third, even if MM stopped supplying FBB 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 FBB market (see Section 5.1.2).

(79) Finally, a majority of customers replied that in case MM stopped supplying FBB to them, they would still have sufficient alternative suppliers to source any type of FBB.[106]

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103 Replies to question 37 of Questionnaire to competitors.

104 Non-horizontal Merger Guidelines, paragraph 35.

105 Form CO, table 10.

106 Replies to question 44 of Questionnaire to competitors.

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

(80) In view of the above, the Commission concludes that the proposed 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 link between the EEA-wide market for FBB (overall or by end-use) upstream and national markets for folding boxes by end-use downstream (in particular the French market for folding boxes for pharma).

6. CONCLUSION

(81) 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