EUROPEAN COMMISSION

Brussels, 14.11.2018
C(2018) 7662 final

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 Where possible the information omitted has been replaced by ranges of figures or a general description.

PUBLIC VERSION

To the notifying party

Subject: **Case M.8915 – DS Smith / Europac**
Commission decision pursuant to Article 6(1)(b) in conjunction with Article 6(2) 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 24 September 2018, the European Commission received notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which DS Smith plc ("DSS") will acquire sole control over Papeles y Cartones de Europa, S.A. (Europac Group) ("Europac") by way of purchase of shares (the "Transaction")[3]. DSS is designated hereinafter as the "Notifying Party" and together with Europac as the "Parties".

1. THE PARTIES

(2) DSS is active mainly in the manufacture and sale of corrugated packaging in the EEA, and plastic packaging worldwide. DSS also collects used paper and corrugated cardboard, to produce recycled paper for corrugated packaging. DSS' corrugated packaging activities are spread across the EEA.

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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 353, 2.10.2018, p. 4.

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(3) Europac is a paper and packaging company. It is primarily active in the manufacture and sale of paper, corrugated board and corrugated packaging. Its activities are based in France, Spain and Portugal, and for its production of paper and corrugated board, it also has forestry operations in those countries.

2. THE CONCENTRATION

(4) The Transaction consists of the acquisition by DSS of the entire issued share capital of Europac, with the exception of one plant in Bretagne ("the Caradec plant"). Post-Transaction, DSS will therefore exercise sole control over Europac.

(5) In 2012, the Commission conditionally cleared the acquisition by DSS of SCA (M.6512 - *DSS/SCA Packaging*). One of the conditions for clearance in that case was the divestiture of the Caradec plant. Following the conditional clearance, DSS sold the Caradec plant to Europac. DSS is, as a result of the commitments in that case, bound by a 10-year non-reacquisition clause preventing it from acquiring the Caradec plant. For this reason, [Details regarding the sale of the Caradec plant].

3. EU DIMENSION

(6) The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million (DSS: EUR 6 521.9 million; Europac: EUR 856.8 million).[4] Each of them has an EU-wide turnover in excess of EUR 250 million (DSS: EUR 5 300 million;[5] Europac: EUR […]), but they do not achieve more than two-thirds of their aggregate EU-wide turnover within one and the same Member State. The Transaction therefore has an EU dimension pursuant to Article 1(2) of the Merger Regulation.

4. MARKET DEFINITION

(7) DSS and Europac are both vertically integrated companies active in the collection and supply of recovered paper, manufacture and supply of corrugated case materials ("CCM"), manufacture and supply of corrugated sheets, and manufacture and supply of corrugated cases.

4.1. Collection of recovered paper

(8) Waste paper is collected from waste generators (*i.e.* supermarkets, industrial businesses, etc.) and is either used internally by the collector or sold to third parties. In respect of supply of recovered paper, only this latter activity on the merchant market is considered in this decision.

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4 Turnover calculated in accordance with Article 5 of the Merger Regulation.

5 The EU turnover only comprises the turnover achieved in the following Member States: Austria, Belgium, the Czech Republic, Denmark, France, Germany, Italy, the Netherlands, Slovenia, Spain, Sweden and the UK.

4.1.1. Product market definition

Commission's decision-making practice

(9) The Commission has previously defined separate product markets for the collection and the supply of recovered paper.[6]

(10) The Commission has previously considered that the market for the collection of recovered paper may be further segmented according to the quality of paper collected.[7]

The Notifying Party's view

(11) The Notifying Party defines a separate relevant market for the collection of recovered paper. It submits that the further sub-segmentation of this market based on the different paper grades is not appropriate because market players are active across all grades and waste generators of different types of paper do not require specialised services.[8]

The Commission's assessment

(12) The market investigation did not elicit anything that would contradict the Commission's earlier findings of defining a separate relevant product market for the collection of recovered paper. In any event, for the purpose of this decision, the exact scope of the product market definition and thus the question whether this market should be further sub-segmented based on the different market grades can be left open, as the Transaction does not give rise to serious doubts as to its compatibility with the internal market with regard to the collection of recovered paper even on the basis of this narrowest plausible product market definition.

4.1.2. Geographic market definition

Commission's decision-making practice

(13) The Commission has previously assessed the market for the collection of recovered paper on both an EEA-wide and a national basis.[9]

The Notifying Party's view

(14) The Notifying Party does not contest those market definitions and submits that the competitive assessment of the Transaction would not lead to competition concerns even when based on the narrower – national – market definition.[10]

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6 See cases COMP/M.6512 – *DS Smith/SCA Packaging*, paragraphs 15-17; COMP/M.6101 – *UPM/Myllykoski and Rhein Papier*¸ paragraphs 204-210; COMP/M.3935 – *Jefferson Smurfit/Kappa*, paragraph 12.

7 See cases COMP/M.6512 – *DS Smith/SCA Packaging*, paragraphs 19-21; COMP/M.6101 – *UPM/Myllykoski and Rhein Papier*¸ paragraphs 204-210; COMP/M.3935 – *Jefferson Smurfit/Kappa*, paragraph 12.

8 Paragraphs 6.28 and 6.32 of the Form CO.

9 See cases COMP/M.6512 – *DS Smith/SCA Packaging*, paragraphs 27-29; COMP/M.6101 – *UPM/Myllykoski and Rhein Papier*, paragraphs 211-214; COMP/M.3935 – *Jefferson Smurfit/Kappa*, paragraph 13.

The Commission's assessment

(15) The market investigation did not bring to light any indication that would contradict the Commission's earlier findings. The Commission considers that in any case, for the purpose of this decision, the exact scope of the geographic market definition can be left open, as the Transaction does not give rise to serious doubts with regard to the collection of recovered paper even when based on the narrowest plausible – national – geographic market definition.

4.2. Supply of recovered paper

(16) Following the collection, recovered paper is processed at a facility where it is sorted into recyclable and non-recyclable materials. The recyclable paper is sorted into grades and then inspected before either being used captively or sold to third party paper mills. Only this latter market-facing activity is considered in this decision.

4.2.1. Product market definition

Commission's decision-making practice

(17) The Commission has previously defined separate product markets for the collection and the supply of recovered paper.[11]

(18) The Commission has also previously considered that the market for the supply of recovered paper may be further segmented according to the quality of paper collected as qualities of paper do not have the same use and the same price.[12]

The Notifying Party's view

(19) The Notifying Party does not contest the Commission's decisional practice to the extent that it defined a separate relevant market for the supply of recovered paper. However, it submits that the further sub-segmentation of this market based on the different paper grades is not appropriate because the supply of recovered paper of any grade requires exactly the same equipment and know-how and therefore market players are active across all grades and all grades are used to some extent in the manufacturing of corrugated case materials.[13]

The Commission's assessment

(20) The market investigation did not elicit anything that would contradict the Commission's earlier findings of defining a separate relevant product market for the supply of recovered paper. In any event, for the purpose of this decision, the exact scope of the product market definition and thus the question whether this market should be further sub-segmented based on the different paper grades can be left open, as the Transaction does not give rise to serious doubts as to its

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10 Paragraphs 6.34-6.35 of the Form CO.

11 See cases COMP/M.6512 – *DS Smith/SCA Packaging*, paragraphs 15-17; COMP/M.6101 – *UPM/Myllykoski and Rhein Papier*¸ paragraphs 204-210; COMP/M.3935 – *Jefferson Smurfit/Kappa*, paragraph 12.

12 See cases COMP/M.6512 – *DS Smith/SCA Packaging*, paragraphs 22-26; COMP/M.3935 – *Jefferson Smurfit/Kappa*, paragraph 12.

13 Paragraphs 6.28 and 6.32 of the Form CO.

compatibility with the internal market with regard to the supply of recovered paper even on the basis of this narrowest plausible product market definition.

4.2.2. Geographic market definition

Commission's decision-making practice

(21) The Commission has previously assessed the markets for the supply of recovered paper on both an EEA-wide and a national basis, whilst leaving the market definition open.[14]

The Notifying Party's view

(22) The Notifying Party considers that the market for the supply of recovered paper cannot rationally be narrower than EEA-wide based on the current trading patterns.[15]

The Commission's assessment

(23) The Commission considers that for the purpose of this decision, the exact scope of the geographic market definition can be left open, as the Transaction does not give rise to serious doubts as to its compatibility with the internal market with regard to the supply of recovered paper even on the basis of the narrowest plausible – national – geographic market definition.

4.3. Manufacture and supply of corrugated case materials

(24) Corrugated case materials refer to a portfolio of products which are the main inputs for the manufacturing of corrugated packaging. CCM includes both liners, forming the flat outer layers of corrugated packaging, and fluting, which is the rippled middle layer of corrugated packaging providing rigidity, bulkiness and strength.

(25) Both liners and fluting can be made from virgin wood fibres or from recycled fibres, as well as from a mix of the two. Liners produced from virgin wood fibres are called "kraftliners"; while "testliners" are made from recycled fibres.

(26) Fluting from virgin wood fibres can be (i) Nordic semi-chemical fluting ("NSCF") containing (almost) exclusively Nordic birch tree fibres and (ii) semi-chemical fluting ("SCF") containing a large proportion (around 70-80%) of virgin wood fibres, as well as recycled fibres (around 20-30%).

(27) Recycled fluting can be (i) high performance ("HP") recycled fluting, made out of 100% recycled fibres but the performance of which is improved by the addition of starch and other chemicals; and (ii) standard recycled fluting made out of 100% recycled fibres, also known as "Wellenstoff".[16]

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14 See M.6512, *DS Smith/SCA Packaging*, paragraphs. 30-33; M.3935, *Jefferson Smurfit/Kappa*, paragraph 13.

15 Paragraph 6.36 of the Form CO.

16 See M.8831, *Mondi/Powerflute*, paragraphs 13-16.

4.3.1. Product market definition

Commission's decision-making practice

(28) In previous decisions, the Commission has considered a separate product market for CCM,[17] and within CCM it has identified separate relevant markets for fluting and liners.[18] Furthermore, the Commission considered but ultimately left open, whether the market for liners should be further sub-segmented between kraftliner and testliner,[19] and whether the market for fluting should be further sub-segmented by different types of fluting.[20]

The Notifying Party's view

(29) The Notifying Party submits that the relevant product market encompasses all CCM based on strong supply- and demand-side substitutability.

(30) First, the Notifying Party argues that in the EEA, [80-90]% of the recycled CCM mills produce both liners and fluting (representing [90-100]% of recycled CCM production). It does, however, admit that the production of virgin wood fibre CCM requires different machinery.[21]

(31) Second, the Notifying Party claims that while there is generally a performance difference between kraft- and testliners, (i) sheet feeders and box plants (*i.e.* plants that manufacture corrugated sheets and corrugated cases) can and do switch between the two; (ii) paper type is only one element that determines the performance of the end-product; and (iii) the performance level of recycled CCM is constantly improving due to technology improvements.

(32) Finally, it also submits that dual-use paper grades are available, which can be used as both fluting and liner.[22]

The Commission's assessment

(33) The Commission notes that it has analysed the market for the manufacture and supply of CCM in a very recent decision,[23] concluding that liners and fluting constitute separate relevant product markets. Furthermore, in that same decision the Commission considered the potential further sub-segmentation of the fluting market by the various types of fluting. Based on this, the Commission focused its market investigation in the present case on the market for liners which was not analysed in the *Mondi/Powerflute* decision.

(34) The market investigation results suggest that there is limited supply-side substitutability with regard to virgin wood fibre and recycled CCM. Indeed, the

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17 See M.8831, *Mondi/Powerflute*, paragraph 17; M.7885, *DS Smith/Duropack*, paragraphs. 8-9; M.6512, *DS Smith/SCA*, paragraphs. 54-55; M.6882, *Kinnevik/BillerudKorsnas*, paragraphs 56 and 71; M.3935, *Jefferson Smurfit/Kappa*, paragraphs 17-18.

18 See M.8831, *Mondi/Powerflute*, paragraphs 26-28.

19 See M.7885, *DS Smith/Duropack*, paragraph 9; M.6512, *DS Smith/SCA*, paragraphs 54-55; M.6882, *Kinnevik/BillerudKorsnas*, paragraphs 55-56; M.3935, *Jefferson Smurfit/Kappa*, paragraphs 17-18.

20 See M.8831, *Mondi/Powerflute*, paragraphs 29-43.

21 Paragraph 6.43 of the Form CO.

22 Paragraph 6.44 of the Form CO.

23 See M.8831, *Mondi/Powerflute.*

majority of competitors indicated that it is not possible to switch production on the same production lines between kraftliner and any recycled CCM product.[24] However, the majority of the competitors also submitted that such switching is possible between testliners and recycled fluting products.[25] This finding is in fact in line with the Notifying Party's first argument set out in paragraph 30 above.

(35) From a demand-side perspective, the majority of respondents indicated that it uses kraftliners and testliners interchangeably.[26] However, many market participants noted that there are certain applications for which kraftliner must be used due to legal requirements or technical requirements (*e.g.* humidity or temperature resistance).[27] This is in line with the findings made in the *Mondi/Powerflute* case for fluting.

(36) For the purpose of this decision, the Commission considers that flutings and liners constitute separate markets as per the *Mondi/Powerflute* decision. As regards each of flutings and liners, the exact scope of the product market definition and thus the question whether the various fluting and liner products constitute separate relevant product markets can be left open, as the Transaction does not give rise to serious doubts as to its compatibility with the internal market with regard to the manufacture and supply of CCM even on the basis of the narrowest plausible product market definition.

4.3.2. Geographic market definition

Commission's decision-making practice

(37) In previous cases the Commission has considered the market for the manufacture and supply of CCM, as well as its sub-segments to be at least EEA-wide in scope.[28]

The Notifying Party's view

(38) The Notifying Party does not contest the Commission's decisional practice and submits that the CCM market is at least EEA-wide in scope.[29]

The Commission's assessment

(39) The market investigation results support the previously retained geographic market definition. The majority of both competitors and customers indicated with regard to all CCM products that the market is at least EEA-wide in scope.[30]

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24 Replies to question 7 of Questionnaire Q3 – Competitors Corrugated Case Materials and replies to question 8 of Questionnaire Q1 – CCM, Corrugated Sheets, Corrugated Cases.

25 Replies to question 7 of Questionnaire Q3 – Competitors Corrugated Case Materials.

26 Replies to question 9 of Questionnaire Q1 – CCM, Corrugated Sheets, Corrugated Cases.

27 Replies to question 7.3 of Questionnaire Q3 – Competitors Corrugated Case Materials and replies to question 9.1 of Questionnaire Q1 – CCM, Corrugated Sheets, Corrugated Cases.

28 See M.8831, *Mondi/Powerflute*, paragraphs 44-48; M.7885, *DS Smith/Duropack*, paragraphs 9 and 33-34; M.6512, *DS Smith/SCA*, paragraphs 56-57; M.6882, *Kinnevik/BillerudKorsnas*, paragraphs 58 and 71; M.3935, *Jefferson Smurfit/Kappa*, paragraph 19.

29 Paragraph 6.47 of the Form CO.

30 Replies to question 9 of Questionnaire Q3 – Competitors Corrugated Case Materials and replies to question 10 of Questionnaire Q1 – CCM, Corrugated Sheets, Corrugated Cases.

(40) Furthermore, with regard to kraftliners, the market investigation in the present case suggests that the market might even be global in scope. Indeed, the majority of the competitors and customers who replied explained that they supply/source kraftliner globally[31] and the majority of competitors who replied indicated that roughly 10-20% of the total volumes sold in the EEA come from imports.[32]

(41) The Commission considers that for the purpose of this decision, the exact scope of the geographic market definition can be left open, as the Transaction does not give rise to serious doubts as to its compatibility with the internal market with regard to the manufacture and supply of CCM even if it is considered on a narrower basis, *i.e.* on a market that is at least EEA-wide in scope.

4.4. Manufacture and supply of corrugated sheets

(42) Corrugated sheets ("sheets") are made from CCM, and comprise an upper and lower layer of liner, and a middle layer of fluting. Sheets are produced at two different types of production facilities, (i) sheet feeders, which are plants dedicated exclusively to the conversion of CCM into sheets, that are then supplied to sheet plants for conversion into corrugated cases, or (ii) integrated plants, or so-called box plants, which convert CCM into sheets and then convert the sheets into corrugated cases at the same production site. Whilst integrated plants are designed to sell cases, they can also sell sheets to sheet plants, though usually sheet feeders are more efficient at producing sheets.

4.4.1. Product market definition

Commission's decision-making practice

(43) In previous decisions, the European Commission has considered a product market comprising all types of sheets. It has also further considered distinct markets for "conventional" sheets and "heavy duty" sheets, the latter comprising either (i) only triple wall sheets, or (ii) triple wall and double wall sheets insofar as the sheets contain at least one A flute (i.e. AA, BA and CA board) and weighs more than a given threshold (ranging between 300 and 1000 g/sqm).[33]

The Notifying Party's view[34]

(44) The Notifying Party submits that the relevant product market encompasses all types of sheets, and that it would not be appropriate to define separate markets for conventional and heavy duty sheets respectively as any cut-off would be arbitrary.

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31 Replies to question 9 of Questionnaire Q3 – Competitors Corrugated Case Materials and replies to question 10 of Questionnaire Q1 – CCM, Corrugated Sheets, Corrugated Cases, as well as minutes of a conference call with a competitor on 03 August 2018, paragraph 4 and minutes of a conference call with a competitor on 31 July 2018, paragraph 8.

32 Replies to question 11 of Questionnaire Q3 – Competitors Corrugated Case Materials, as well as minutes of a conference call with a competitor on 03 August 2018, paragraph 4, minutes of a conference call with a competitor on 31 July 2018, paragraph 8, minutes of a conference call with a competitor on 06 August, paragraph 12 and minutes of a conference call with a competitor on 02 August 2018, paragraph 6.

33 See M.7558, *DS Smith/Duropack*, paragraph 11; M.6512 – *DS Smith/SCA Packaging*, paragraphs 60-70; M.3935 – *Jefferson Smurfit/Kappa*, paragraph 22; M.8831 – *Mondi/Powerflute*, paragraphs 51-52.

34 Paragraphs 6.50 – 6.56 of the Form CO.

(45) To that end, the Notifying Party claims that on the demand side, there is an innumerable variety of sheets available that form a continuum of solutions, from single through triple wall and with various combinations of fluting. There is no specific cut-off for "heavy duty"; a product's characteristics and performance are delivered via a combination of paper content, flute type and/or flute combination and sheet construction. In addition, the balance between the costs and strength of a sheet also influences a customer's choice for either "conventional" or "heavy duty" products.

(46) On the supply side, all solutions – with some limited exceptions – can be produced using the same machines, and limited additional technology and investment is needed to be able to produce "heavy duty" sheets. More concretely, for the production of double or triple wall sheets, a corrugator with respectively two or three single-facers is required, and upgrading a double-wall corrugator to be able to produce triple wall sheets would cost EUR […].

The Commission's assessment

(47) The market investigation in the present case confirms the Notifying Party's claim that no specific cut-off for heavy duty sheets exists. Indeed, the majority of respondents is unaware of an industry standard used for distinguishing conventional and heavy-duty sheets, and only a minority indicates that its company itself distinguishes between conventional and heavy duty sheets. Between those that do indicate that a standard is applied in the industry, some refer to the number of walls being determinative, some to the weight and some to both, however no consistent replies were provided as to the exact design or weight rendering a sheet "heavy duty".[35]

(48) Furthermore, on the demand-side, respondents indicated that sheet customers generally tend to provide the exact technical specifications of the product that they wish to procure, although some customers also indicate their requirements in terms of performance, and leave the designing to the supplier.[36]

(49) As regards the supply-side, there appear to be a number of sheet producers that manufacture heavy duty sheets, although various sheet suppliers also indicated that they are not active as regards heavy duty sheets, and in particular with regard to triple wall sheets as special equipment is needed for this and adapting a conventional corrugator to accommodate triple wall sheets is difficult.[37]

(50) In view of the above, the results of the market investigation point to a continuum of different sheet solutions, though there also appear to be limits, especially on the supply-side, to the substitutability of conventional and heavy duty sheets.

(51) In any case, the exact scope of the product market definition can be left open as heavy duty sheets only represent around […]% of the Parties' production of sheets in 2017 and less than 15% of the total market for the manufacture and supply of sheets in France, Spain and Portugal, therefore the assessment does not hinge on whether heavy duty sheets are considered separately or not. For the purpose of

35 Replies to questions 13, 13.1, 14 and 14.1 of Questionnaire Q1 – CCM, Corrugated Sheets, Corrugated Cases.

36 Replies to question 17 of Questionnaire Q1 – CCM, Corrugated Sheets, Corrugated Cases.

37 Replies to questions 15 and 16 of Questionnaire Q1 – CCM, Corrugated Sheets, Corrugated Cases.

this decision, the Commission has analysed the Transaction on the basis of the narrowest plausible markets, comprising on the one hand conventional sheets and on the other heavy duty sheets.

4.4.2. Geographic market definition

Commission's decision-making practice

(52) The Commission has in previous decisions analysed the effects of transactions both at (i) national level, and (ii) with regard to a 300-400 km radius around the production sites concerned.[38] The Commission has also considered that heavy duty sheets can be transported further than conventional sheets.[39] The exact scope of the geographic market definition was consistently left open for sheets, both conventional and heavy duty sheets.[40]

The Notifying Party's view[41]

(53) The Notifying Party submits that the market for both conventional and heavy duty sheets is at least national and that a local level assessment is arbitrary. According to the Notifying Party, sheets are supplied at distances significantly over 400 km and across borders. Also, transport costs are very low[42] and, regardless of the fact that manufacturers will rationally try to maximise margins by supplying as close to their plant as possible, various DSS plants sell part of their sheets further than 400 km away.[43] In addition, the service expected by customers does not require a local presence.

The Commission's assessment

(54) The results of the market investigation did not confirm the view of the Notifying Party, but rather point to the existence of 400 km radii within which the vast majority of customers sources sheets.

(55) Almost all respondents indicated that the distance between a sheet supplier's production facility and customer's plant is (very) important, and a majority, both of suppliers and customers, indicated that sheets are sourced within a radius

38 See for example M.7558, *DS Smith/Duropack*, paragraph 12; M.2032, *SCA Packaging/Metsä Corrugated*, paragraphs 12-15; M.6512, *DS Smith/SCA Packaging*, paragraphs 60-70; M.3935, *Jefferson Smurfit/Kappa*, paragraph 22.

39 See M.1418, *SCA Packaging/Rexam*, paragraph 19.

40 See for example M.1418, *SCA Packaging/Rexam*, paragraph 20; M.3935, *Jefferson Smurfit/Kappa*, paragraph 23; M.6515, *DS Smith/SCA Packaging*, paragraph 76; M.7558, *DS Smith/Duropack*, paragraph 12.

41 Paragraphs 6.57-6.58 of the Form CO.

42 According to the Notifying Party, considering a transport distance of 400 km transportation costs represent around […]% of the costs of production for conventional sheets, and […]% for heavy duty sheets. Transport costs also represent only a low percentage of the available margin to be gained, so that this margin is still significant at distances over 400 km for corrugated sheets.

43 More specifically, over […]% (by volume) of DSS' corrugated sheet sales in France are made over 400 km, and some plants sell even more over 400 km – for example DSS Kunheim sells over […]% of its sheet production over 400 km, and DSS Velin nearly […]%. In Spain and Portugal, over […]% of DSS's are sold over 400 km. As for Europac, nearly […]% of its corrugated sheet sales are made over 400 km. See paragraph 6.58 of the Form CO.

around a production plant.[44] When it comes to the concrete distance that is considered acceptable, a majority indicated a distance of 400 km or less, mainly for reasons of transport costs, delivery time and flexibility.[45]

(56) It has to be noted that some respondents indicated that heavy duty sheets have a wider transport radius, as these are higher value products with slightly lower relative transport costs.[46]

(57) In view of the above and for the purpose of this decision, the Commission considers the geographic scope to be local, comprising a radius of 400 km, and will assess the Transaction on the basis of such a radius.[47] For heavy duty sheets specifically, it will take into account the fact that heavy duty sheets might have a wider transport radius.

4.5. Manufacture and supply of corrugated cases

(58) The conversion of sheets into corrugated cases ("cases") for sale to end-customers involves printing, slotting and/or die-cutting, folding and gluing and/or stitching. Cases are produced either by (i) converter plants, or sheet plants, which convert sheets supplied by sheet feeders or box plants into cases for sale to end-customers, or (ii) integrated plants (so-called box plants) that – as mentioned before - convert CCM into sheets and then convert the sheets into cases at the same production site.

4.5.1. Product market definition

Commission's decision-making practice

(59) In previous decisions, the Commission has considered a separate product market for cases, with potential sub-segmentations for conventional, heavy duty and litho-laminated cases.[48]

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44 Replies to questions 18, 19 and 20 of of Questionnaire Q1 – CCM, Corrugated Sheets, Corrugated Cases, as well as minutes of conference calls with competitors and sheet customers on 30 July 2018, 31 July 2018, 2 August 2018, 3 August 2018, 6 August 2018, 9 August 2018 and 30 August 2018.

45 Replies to questions 20.1, 21 and 23 of Questionnaire Q1 – CCM, Corrugated Sheets, Corrugated Cases.

46 Replies to questions 18.1, 19.1, 20.1, 20.2 and 21.2 of Questionnaire Q1 – CCM, Corrugated Sheets, Corrugated Cases.

47 Concretely, the local markets assessed in this decision comprise radii around the each of the Parties' plants rather than using each customer's plant as a centre for a local market analysis, as because of the high number of customers there is a lack of data necessary for such a demand-side analysis (*i.e.* an analysis on the basis of radii around each customer).

48 See for example M.7558, *DS Smith/Duropack*, paragraph 14; M. 6512, *DS Smith/SCA Packaging*, paragraph 94; M.1418, *SCA Packaging/Rexam*, paragraph 10; M.8831, *Mondi/Powerflute*, paragraphs 51-52. For completeness, while DDS is active in the manufacture and sale of litho-laminated cases, Europac is not. As such, the Transaction does not result in a horizontal overlap in this regard. The Notifying Party has also confirmed that if a market for the production and sale of litho-laminated cases were to be considered, this would not give rise to a vertically affected market. For these reasons, litho-laminated cases will not be discussed further in this decision.

The Notifying Party's view[49]

(60) The Notifying Party claims that it is not appropriate to segment conventional and heavy duty cases, and that there is a market comprising all types of cases.

(61) The Notifying Party submits in that context that, from a demand-side perspective, there is a continuum of capabilities of case characteristics, which can be assessed against a wide range of criteria, including reliability in stacking, structural quality, resistance to pressure and tearing, resistance to puncture by a sharp object, moisture resistance, susceptibility to vibration etc., and whereby the type of sheet used, which is in itself a combination of paper content, flute type and/or flute combination and sheet construction, is just one factor which influences the performance of a given case, with the design of the case also having a significant impact.

(62) From a supply-side point of view, the equipment and know-how also for the production of heavy duty cases is readily available. Although the conversion of triple wall may need some additional – but readily available and cheap – equipment, the conversion of double wall sheet into double wall case requires the same equipment and process of printing, slotting, die-cutting and gluing as is used for the conversion of conventional sheet into conventional case.

The Commission's assessment

(63) As for sheets, the market investigation in the present case suggests that no generally accepted standard exists for distinguishing conventional and heavy duty cases in the industry. The majority of customers for cases that responded are unaware of an industry standard used for distinguishing conventional and heavy duty cases, and only a minority of the case suppliers that responded indicated that a standard is used.[50] In addition, the majority of respondents, both case suppliers and customers, and also respondents that did indicate that a standard is used in the industry, indicated that they do not distinguish between conventional and heavy duty cases themselves.[51] Of those companies who do distinguish, none indicated the same standard of distinction.[52]

(64) As regards the demand-side, the market investigation indicated that customers generally provide their suppliers either with technical specifications such as design, weight and type of paper to be used, or with requirements in terms of performance such as resistance to humidity and printability, all depending on the customer concerned and on whether the product being sourced is new or has been sourced before.[53] As to the possibility for customers to switch between conventional and heavy duty cases, the market investigation indicated that from

49 Paragraphs 6.65-6.69 of the Form CO.

50 Replies to questions 25 and 25.1 of Questionnaire Q1 – CCM, Corrugated Sheets, Corrugated Cases; replies to question 6 of Questionnaire Q2 – Customers corrugated cases.

51 Replies to question 26 of Questionnaire Q1 – CCM, Corrugated Sheets, Corrugated Cases; replies to question 7 of Questionnaire Q2 – Customers corrugated cases.

52 Replies to question 26.1 of Questionnaire Q1 – CCM, Corrugated Sheets, Corrugated Cases.

53 Replies to question 10 of Questionnaire Q2 – Customers corrugated cases.

an economic point of view switching from conventional to heavy duty cases would not be appropriate unless needed.[54]

(65) As regards the supply-side, as for sheets, there appear to be several case suppliers that manufacture both conventional and heavy duty cases, although also here respondents indicated a need for special equipment.[55]

(66) Hence, as for sheets, the market investigation appears to support to a certain extent the existence of a continuum of different case solutions, nevertheless also revealing limits to the substitutability, especially on the supply-side.

(67) In any case, the exact scope of the product market definition can be left open as heavy duty cases only represent less than […]% of the Parties' production of cases and less than [5-10]% of the total market for the manufacture and supply of cases in 2017 in each of France, Spain and Portugal, so that the assessment would not significantly differ irrespective of whether heavy duty cases are considered part of the same market as conventional cases. For the purpose of this decision, the Commission has analysed the Transaction on the basis of the narrowest plausible markets, for conventional cases on the one hand, and heavy duty cases on the other.

4.5.2. Geographic market definition

Commission's decision-making practice

(68) For conventional cases, the Commission previously considered the geographic market to (i) be national, or (ii) comprise a 200-300 km radius around the production facilities concerned. As regards heavy duty cases, the Commission has in the past considered the geographic market to be national in scope.

The Notifying Party's view[56]

(69) The Notifying Party claims the geographic market for both conventional and heavy-duty cases to be at least national, and that any local level assessment is arbitrary. To that end, the Notifying Party submits that while production facilities aim to maximise their local sales to reduce the impact of transportation costs, they will also always look to make as many sales at as high a margin as possible and will thus also make marginal sales further afield.[57] Additionally, transport costs are low, around […]% of the costs of production for conventional cases, and […]% for heavy duty cases.

54 Replies to question 8 of Questionnaire Q2 – Customers corrugated cases.

55 Replies to questions 27 and 28 of Questionnaire Q1 – CCM, Corrugated Sheets, Corrugated Cases.

56 Paragraphs 6.70-6.72 of the Form CO.

57 As such, […]% of DSS's case sales (by volume) in France are made over 300 km away, and some plants sell even more of their case production over 300 km – DSS Kunheim supplies […]% of its cases (by volume) over 300 km, and DSS St Just supplies nearly […]%. In Spain and Portugal, around […]% of DSS's case sales (by value) are made over 300 km away. For Europac, overall […]% of its sales are made more than 300 km away. See paragraph 6.72 of the Form CO.

The Commission's assessment

(70) The results of the market investigation did not confirm the view of the Notifying Party, but indicated that the relevant geographic scope of the market for cases comprises a radius of 300km.

(71) A large majority of case suppliers that responded to the market investigation indicated that they supply to customers within a certain radius, and a large majority of both customers and suppliers consider the distance between a supplier's production facility and customer's plant to be (very) important.[58]

(72) Furthermore, the vast majority of suppliers indicated that they supply cases within a radius of 300 km or less, and a large majority of customers that responded indicated that 80% of their supplies for cases is sourced within a radius of 300 km, and even a considerable majority indicated that 90% of their supplies for cases is sourced within this radius.[59]

(73) Although some respondents indicated that heavy duty cases can be transported further, the market investigation results from suppliers are mixed with regard to the exact maximum distance that is acceptable.[60] The majority of the case customers that responded indicated that the maximum distance they consider acceptable for the supply of heavy duty cases is between 300-500 km.[61]

(74) In view of the above and for the purpose of this decision, the Commission considers the geographic scope to be local, comprising a radius of 300 km, and will assess the Transaction on the basis of such a radius.[62] For heavy duty cases specifically, it will take into account the fact that these might have a wider transport radius.

5. COMPETITIVE ASSESSMENT

5.1. Horizontal non-coordinated effects

5.1.1. Collection of recovered paper

Introduction

(75) Both DSS and Europac are active on the market for the collection of recovered paper, achieving a market share of [5-10]% and [0-5]% respectively on an EEA-

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58 Replies to questions 33 and 34 of Questionnaire Q1 – CCM, Corrugated Sheets, Corrugated Cases; replies to question 12 of questionnaire Q2 – Customers Corrugated Cases, as well as minutes of conference calls with competitors on 31 July 2018, paragraph 8, 02 August 2018, paragraph 12 and 06 August 2018, paragraph 13.

59 Replies to questions 35 of Questionnaire Q1 – CCM, Corrugated Sheets, Corrugated Cases; replies to question 14 of questionnaire Q2 - Customers Corrugated Cases.

60 Replies to questions 35 and 35.1 of Questionnaire Q1 – CCM, Corrugated Sheets, Corrugated Cases.

61 Replies to question 13 of Questionnaire Q2 – Customers – Corrugated cases.

62 As for corrugated sheets, the local markets assessed for corrugated cases in this decision comprise radii around the each of the Parties' plants rather than using each customer's plant as a centre for a local market analysis, as because of the high number of customers there is a lack of data necessary for such a demand-side analysis (i.e. an analysis on the basis of radii around each customer).

wide basis.[63] [64] Should the market be defined narrower, as national in scope, the Parties' activities overlap only to a very limited extent in Spain, where DSS does not collect recovered paper but has a trading office (with […] full-time employee).[65] The market shares of the Parties and therefore the increment brought about by the Transaction would not significantly differ, even if the market for the collection of recovered paper were to be further sub-segmented on the basis of the different paper grades.[66]

The Notifying Party's view

(76) The Notifying Party submits that in view of the low market shares and the very limited increment brought about by Europac, the Transaction is unlikely to raise competition concerns.[67]

The Commission's assessment

(77) The Transaction does not give rise to affected markets even on the basis of the narrowest plausible product and geographic market definition.

(78) Based on the limited combined market shares of the Parties, the limited increment brought about by Europac, as well as the lack of concerns expressed in the market investigation, the Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market with regard to the collection of recovered paper even on the basis of the narrowest plausible product and geographic market definition.

5.1.2. Supply of recovered paper

Introduction

(79) On an EEA-wide level, DSS achieves a market share of [5-10]% on the market for the supply of recovered paper, while Europac's activities are very limited, amounting to a market share of less than [0-5]% in 2017.[68] [69] Should the market be defined as national in scope, the Parties' activities overlap in Spain (combined

63 Paragraph 6.39 of the Form CO.

64 For the sake of completeness it should be mentioned that in the absence of reliable data on the total size of the EEA market, the Notifying Party has provided figures relating only to the countries covered by the data of the Confederation of European Paper Industries (CEPI). Given that while the Parties' market shares are based on sales data throughout the EEA but the total market size does not include all third party volumes traded in the EEA countries, the market shares of the Parties might be overestimated. (Footnote 45 of the Form CO.)

65 Paragraph 6.35 of the Form CO.

66 Paragraph 6.33 of the Form CO.

67 Paragraphs 6.39-6.41 of the Form CO.

68 Paragraph 6.39 of the Form CO.

69 For the sake of completeness it should be mentioned that in the absence of reliable data on the total size of the EEA market, the Notifying Party has used figures relating only to the countries covered by the data of the Confederation of European Paper Industries (CEPI). Given that while the Parties' market shares are based on sales data throughout the EEA but the total market size does not include all volumes traded in the EEA countries from third parties, the market shares of the Parties are overestimated. (Footnote 45 of the Form CO.)

market share of less than [0-5]%) and in Portugal (combined market share of [30-40]% with an increment of less than [0-5]% brought about by DSS).[70]

(80) The market shares of the Parties would not significantly differ, even if the market for the supply of recovered paper were to be further sub-segmented on the basis of the different paper grades.[71]

The Notifying Party's view

(81) The Notifying Party submits that in view of the limited combined market shares on an EEA-wide level, as well as the insignificant increment brought about by the Transaction, it is unlikely to lead to competition concerns. [72]

The Commission's assessment

(82) The Transaction leads to a horizontally affected market only if the market for the supply of recovered paper is considered as national in scope. However, while Europac has a market share of [30-40]% in Portugal, the increment brought about by DSS is *de minimis* (less than [0-5]%).[73]

(83) The market investigation suggests that the Transaction would not negatively affect the competitiveness of the market for the supply of recovered paper.

(84) As for the availability of recovered paper, a competitor of the Parties, itself sourcing recovered paper from the merchant market, explained that "[t]*here is no difficulty in sourcing recycled paper today. More and more paper is recycled in a proper way. The reduction in exports to China furthermore leaves more availability for European paper mills.*"[74] Indeed, the large majority of the respondents to the questionnaire indicated that the Transaction would not have an impact on the available volumes.[75]

(85) Furthermore, the majority of the Parties' customers which replied to the questionnaire indicated that they would have sufficient alternative suppliers should the Parties stop supplying them or supply them at significantly worse conditions post-transaction.[76]

(86) Although some unsubstantiated concerns were raised with regard to the impact of the Transaction on the respondent's sourcing of recovered paper in the market investigation,[77] the majority of respondents indicated that the intensity of competition will either increase or remain the same, and the price level will either decrease or remain the same.[78]

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70 Paragraph 6.37 of the Form CO.

71 Paragraph 6.33 of the Form CO.

72 Paragraphs 6.39-6.41 of the Form CO.

73 For the sake of completeness it should be mentioned that if the market for the supply of recovered paper were to be further sub-segmented on the basis of the different paper grades, these submarkets would be also affected in Portugal.

74 Minutes of a conference call with a competitor on 30 July 2018, paragraph 7.

75 Replies to question 42 of Questionnaire Q1 – CCM, Corrugated Sheets, Corrugated Cases.

76 Replies to question 40 of Questionnaire Q1 – CCM, Corrugated Sheets, Corrugated Cases.

77 Replies to question 41 of Questionnaire Q1 – CCM, Corrugated Sheets, Corrugated Cases.

78 Replies to question 42 of Questionnaire Q1 – CCM, Corrugated Sheets, Corrugated Cases.

(87) Based on the combined market shares of the Parties on an EEA-wide level and in Spain, the insignificant increment brought about by the Transaction, as well as the market investigation results, the Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market with regard to the supply of recovered paper even on the basis of the narrowest plausible product and geographic market.

5.1.3. Manufacture and supply of CCM

Introduction

(88) The Parties' activities overlap with regard to the manufacture and supply of CCM. This is in particular with regard to kraftliners, testliners and standard recycled fluting. The Parties' activities in this regard are summarised in the table below.

Table 1 – Parties' activities on the CCM markets in the EEA

	Liners		**Fluting**			
	Kraftliner	**Testliner**	**NSCF**	**SCF**	**HP recycled fluting**	**Standard recycled fluting**
DSS	✓	✓				✓
Europac	✓	✓			✓	✓

Source: Form CO

(89) On a market for liners and on a market for fluting, the Transaction does not lead to horizontally affected markets. Should these markets be further segmented, resulting in separate relevant product markets for each liner and fluting product, the Parties' combined market shares remain low.

(90) On a potential market for kraftliner, the Parties achieve a combined market share of [5-10]%. The increment brought about by DSS is very limited (less than [0-5]%) due to the fact the DSS does not produce kraftliner in the EEA, but only supplies small quantities to third parties which it imports from its paper mill in the USA.[79] As for testliner and standard recycled fluting, the Parties' combined market shares also remain below [10-20]%.[80] [81]

The Notifying Party's view

(91) The Notifying Party submits that the Transaction does not give rise to horizontally affected markets with regard to any of the CCM products.

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79 Footnote 32 and table 6.7 of the Form CO.

80 Paragraphs 6.49 and 6.103 of the Form CO.

81 The Notifying Party submits that on a hypothetical market encompassing testliners and recycled fluting products, the Parties' combined market share would be [5-10]% (with an increment of [0-5]%) on an EEA-wide basis.

The Commission's assessment

(92) The Commission notes that the Transaction does not lead to any horizontally affected markets, even on the basis of the narrowest plausible product and geographic market definitions set out in Section 4.3 above.

(93) In the market investigation, the majority of the competitors and customers replied that the Transaction will not have a negative impact on the intensity of competition, the price level or the volumes available.[82]

(94) Based on the limited combined market shares of the Parties and the market investigation results, the Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market with regard to horizontal non-coordinated effects regarding the manufacture and supply of case materials under any plausible product and geographic market definition set out above.

5.1.4. Manufacture and supply of corrugated sheets

Introduction

(95) The Parties' activities overlap in the manufacture and supply of sheets, and on a national level the Transaction gives rise to affected markets in relation to the potential sub-segments for conventional sheets in Spain and Portugal.[83]

(96) On a local level, taking the 400km radii around each of the Party's production plants, the Transaction results in affected markets in the potential sub-segments for conventional sheets in France, Spain and Portugal, and heavy duty sheets in Spain.

5.1.4.1. Manufacture and supply of corrugated sheets – France

Introduction

(97) In France, the Parties' activities overlap in relation to the manufacture and supply of sheets, but do not result in any affected markets on a national level. However, at local level the Transaction results in affected markets with regard to conventional sheets in Eastern France, in the local markets comprising the 400 km radii around (i) DSS Kunheim and (ii) DSS Velin, as well as in South Eastern France in the local markets comprising 400 km radii around (iii) DSS Dauphine and (iv) Europac La Rochette.

The Notifying Party's view[84]

(98) With regard to conventional sheets in France, the Notifying Party submits that the Transaction will not result in any competition concerns with regard to the market for conventional sheets, or any of its sub-segments, for the reasons below.

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82 Replies to questions 25-27 of Questionnaire Q3 – Competitors Corrugated Case Materials, replies to questions 57-59 of Questionnaire Q1 – CCM, Corrugated Sheets, Corrugated Cases.

83 For completeness, as regards heavy duty sheets, the Parties' activities do not overlap in Portugal. In France and Spain, both Parties are active with regard to heavy duty sheets. However, the Transaction would not result in affected markets on a national level.

84 Paragraphs 6.79 *et seq.* of the Form CO.

(99) *First*, the Parties' combined market shares, as well as the increment brought about by the Transaction, are limited even on a local basis, and there are several strong competitors remaining in the market. The radial size of 400 km is in any case arbitrary as transport costs are low and sheets travel further than this distance.

(100) *Second*, sheets are a relatively commoditised product, and customers can switch suppliers of sheets quickly and easily. Supply contracts are short, and sheet customers multi-source and are able to exert buyer power with regular tenders.

(101) *Third*, barriers to expansion are relatively low in terms of costs and time.

(102) *Fourth*, there is overall spare capacity in the market, and all competitors could quickly and easily increase output by adding overtime or increasing shifts.[85] In addition, operators of box plants that currently only produce sheets for internal use could easily start making merchant sales, either from existing capacity or as part of a new investment in sheet capacity.

The Commission's assessment

(103) On a national level, the Parties' combined market share does not result in any affected markets, neither with regard to conventional sheets nor in relation to heavy duty sheets.[86] At the local level, based on radii of 400 km around the Parties' production facilities concerned (see Section 4.4.2), the Parties' activities result in affected markets in Eastern France and South Eastern France.

(104) The Notifying Party provided market share estimates for all the local markets where the Parties' combined market shares exceed 20%. The Commission conducted a market reconstruction based on the Parties', as well as their main competitors' external sales volume data in 2017.[87] The results of the Commission's market reconstruction are also presented below.

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85 Concretely, the Notifying Party submits that adding one or two hours of overtime to an existing shift could increase the output of a plant by […]% to […]%, and adding one weekend shift could add […]% to […]%.

86 Concretely, at national level, the Parties' combined market share is [5-10]% with an increment of [0-5]% for conventional sheets, and [0-5]% with an increment of less than [0-5]% for heavy duty sheets. See paragraph 6.60 of the Form CO.

87 Confidential third party submissions on 10, 17 and 27 September 2018.

Table 2 – Corrugated sheets in France in 2017 (volume) – local markets[88]

Centroid plant	Parties' combined market share (increment)	
	Notifying Party's estimate	Market reconstruction
Conventional sheet		
Eastern France		
DSS Kunheim	[30-40]% ([0-5]%)	[40-50]% ([0-5]%)
DSS Velin	[30-40]% ([0-5]%)	[40-50]% ([0-5]%)
South Eastern France		
DSS Dauphine	[30-40]% ([0-5]%)	[30-40]% ([0-5]%)
Europac La Rochette	[40-50]% ([0-5]%)	[40-50]% ([0-5]%)

Source for Notifying Party's estimate: Form CO

(105) The Commission considers that, in view of the limited increment as well as the lack of concerns expressed in the course of the market investigation, the Transaction does not raise serious doubts as to its compatibility with the internal market with regard to conventional sheets in Eastern France and South Eastern France. These local markets are therefore not further discussed in the present decision.

5.1.4.2. Manufacture and supply of corrugated sheets – Spain

Introduction

(106) In Spain, the activities of the Parties overlap with regard to the manufacture and supply of sheets, and the Transaction leads to affected markets with regard to both conventional and heavy duty sheets.

(107) Concretely, the Transaction will result in an affected market at national level for conventional sheets, as well as at the local level, for conventional sheets in Northern Spain in the local markets comprising the radii of 400 km around (i) Europac Duenãs, in Eastern Spain around (ii) DSS Andorra, (iii) DSS Dicesa (Sant Pere de Riudebitlles), (iv) DSS Flak (Olerdola), (v) Europac Alcolea, and (vi) Europac Torrelavit, and in North Western Spain around (vii) DSS La Coruña and (viii) DSS Pontevedra, and for heavy duty sheet in Eastern Spain, in the local market comprising the radius of 400 km around (ix) DSS Dicesa (Sant Pere de Riudebitlles).

The Notifying Party's view[89]

(108) The Notifying Party claims that no competition concerns will arise from the Transaction with respect to the market for manufacture and supply of sheets in Spain, nor with regard to any of its sub-segments, for the following reasons.

(109) *First*, the Parties' combined market shares as well as the increment brought about by Europac in Spain are moderate, and at least 5 strong competitors remain, including Grupo Petit, Saica, International Paper, Smurfit Kappa and Hinojosa,

88 All local market shares set out in this decision are based on the Parties' actual production volumes destined for the merchant market produced at plants located within the given radii. As such, it includes volumes which may be "exported" to customers located outside the radius concerned and excludes volumes which may be "imported" into that radius.

89 Paragraph 6.87 of the Form CO.

next to a large number of smaller independent competitors. In any case, this does not represent the competitive landscape accurately as transport costs are low and sheets travel further than 400 km, so the radial size of 400 km is arbitrary.

(110) *Second*, as in France, sheets are a relatively commoditised product in Spain, and customers can switch suppliers of sheets quickly and easily.

(111) *Third*, also in Spain sheet customers multi-source and conclude short contracts, and are able to exert countervailing buyer power with regular tenders and requests for price reductions.

(112) *Fourth*, as is the case for France, barriers to expansion are relatively low in Spain in terms of costs and time.

(113) *Fifth*, as regards capacity, the Notifying Party submits that on the one hand, as for France, there is overall spare capacity in the market in Spain. On the other hand and in addition to that, all competitors could quickly and easily increase output. There have also been several capacity expansions, including by the Parties, in Spain.

(114) Finally, sales of sheets in Spain will also be constrained by imports from Portugal, France and beyond.

The Commission's assessment

(115) On a national level, the Parties' combined market share is [20-30]% for conventional sheets, with an increment of [10-20]%.[90]

Table 3 – Corrugated sheets in Spain in 2017[91]

	Conventional sheet	
Competitor	**Volume (msqm)**	**Share (%)**
DSS	[…]	[10-20]
Europac	[…]	[10-20]
Combined	[…]	[20-30]
Grupo Petit	[…]	[10-20]
Saica	[…]	[10-20]
IP	[…]	[5-10]
Smurfit Kappa	[…]	[0-5]
Cartonajes Erabil	[…]	[0-5]
Hinojosa	[…]	[0-5]
Others	[…]	[40-50]
Total	**[…]**	**100**

Source: Form CO

(116) On a local level, based on geographic markets comprising a radius of 400 km around the Parties relevant production facilities as set out in Section 4.4.2, the Parties activities for conventional sheets result in affected markets in Northern,

90 For completeness, the Parties' combined market share for heavy duty sheets in Spain is [10-20]%, with an increment of [5-10]%.

91 All national market shares set out in this decision are based on the Parties' estimates of the volume of sales conducted to customers located in the country concerned.

Eastern, North-Western and Southern Spain,[92] and for heavy duty sheets in Eastern Spain.

(117) Below are the Notifying Party's estimates of the combined market shares for those local markets where the combined market shares exceed 20%. The results of the Commission's market reconstruction are also included in the table below (where the market reconstruction provided meaningful and reliable results differing from the Notifying Party's estimate).

Table 4 – Corrugated sheets in Spain in 2017 (volume) – local markets

Centroid plant	Parties' combined market share (increment)	
	Notifying Party's estimate	Market reconstruction
Conventional sheet		
Northern Spain		
Europac Dueñas	[40-50]% ([10-20]%)	[30-40]% ([10-20]%)
Eastern Spain		
DSS Andorra	[20-30]% ([5-10]%)	[20-30]% ([5-10]%)
DSS Dicesa (Sant Pere de Riudebitlles)	[30-40]% ([10-20]%)	-
DSS Flak (Olerdola)	[30-40]% ([10-20]%)	[30-40]% ([10-20]%)
Europac Alcolea	[20-30]% ([10-20]%)	[20-30]% ([5-10]%)
Europac Torrelavit	[30-40]% ([10-20]%)	-
North Western Spain		
DSS La Coruña	[50-60]% ([10-20]%)	[50-60]% ([20-30]%)
DSS Pontevedra	[40-50]% ([10-20]%)	[50-60]% ([20-30]%)
Heavy duty sheet		
Eastern Spain		
DSS Dicesa (Sant Pere de Riudebitlles)	[20-30]% ([10-20]%)	-

Source for Notifying Party's estimate: Form CO

Northern Spain – Conventional corrugated sheets

(118) In Northern Spain, the Parties achieve a relatively high combined market share of [40-50]%, in the local market comprising a 400 km radius around Europac Dueñas, with an increment of [10-20]%. The market reconstruction shows a slightly lower market share of [30-40]%.

(119) The Commission however considers that the Transaction does not raise serious doubts as to its compatibility with the internal market with regard to conventional sheets in Northern Spain, for the following reasons.

(120) *First*, the Parties' combined local market share in Northern Spain, of [40-50]%[93], is likely to significantly overestimate the Parties' competitive position in Northern Spain. Concretely, the Parties' combined local market share results largely from the inclusion of the Parties' production of conventional sheets in Portugal. The

[92] As the Transaction does not result in an affected market in Southern Spain if a radius of 400 km around the respective plant is considered, this local area is not listed in the market share table.

[93] Or [30-40]%, if the combined market share resulting from the market reconstruction is considered.

majority of production in Portugal is sold to customers located in Portugal, not Northern Spain. Indeed, the total volume of exports from Portugal, *inter alia* (but not only) to (the whole of) Spain, equals only [a relatively limited proportion]% of the Parties' production of sheets in Portugal. Excluding the Parties' production from their plants located in Portugal reduces the Parties' combined market share to only [5-10]%, with an increment of [0-5]%.

(121) *Second*, a number of competitor plants are located just outside of the 400 km radius, including production facilities of Saica and Smurfit Kappa, that could and do conduct sales of sheets to customers located within the radius of 400 km around Europac Dueñas. Indeed, expanding the 400 km radius by 50 km introduces 20 additional plants, reducing the market share of the Parties to [20-30]%.

(122) *Third*, the responses to the market investigation indicated that although some smaller local customers select their suppliers on the basis of bilateral negotiations, many customers multi-source and organise tenders, organised on a local (*i.e.* plant-by-plant), national or pan-European level also depending on their size and geographic footprint.[94] In this context, none of the respondents indicated that they would lack sufficient alternative suppliers post-Transaction in Northern Spain.[95]

(123) *Fourth*, respondents to the market investigation considered that production can relatively easily and quickly be increased by 10% through overtime. This would reduce the Parties' market share, to [30-40]% within a 400 km radius (and [5-10]% within a 300 km radius).[96]

(124) Lastly, in the course of the market investigation no concerns were raised in relation to Northern Spain.

(125) Therefore, the Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market with regard to the local markets for conventional sheets in Northern Spain.

Eastern Spain – Conventional corrugated sheets

(126) As regards the radii around DSS Andorra and Europac Alcolea, the Commission considers that in view of the moderate combined market shares (*i.e.* less than 30%), in combination with the limited concerns that were raised by respondents during the market investigation and the presence of multiple competitors such as Grupo Petit, Saica, International Paper, Mora y Goma SA and Ondulados Carme SA, the Transaction is unlikely to raise serious doubts in relation to conventional sheets in the radii around DSS Andorra and Europac Alcolea.

(127) As regards the other affected radii in Eastern Spain, the Parties have moderate combined market shares of [30-40]-[30-40]% around the plants of DSS Dicesa, DSS Flak and Europac Torrelavit, with increments of [10-20]-[10-20]% brought

94 Minutes of conference calls with sheet customer on 30 July 2018, 31 July 2018, 2 August 2018, 3 August 2018, 6 August 2018, 9 August 2018 and 30 August 2018.

95 Replies to question 63 of Questionnaire Q1 – CCM, Corrugated Sheets, Corrugated Cases.

96 These market shares are based on the market reconstruction data, not the Notifying Party's estimates.

about by Europac.[97] The market reconstruction largely confirms these market share data.

(128) The Commission considers that the Transaction does not raise serious doubts with regard to conventional sheets in Eastern Spain for the reasons set out below.[98]

(129) *First*, there are a large number of competitors located just outside the 400 km radius. Indeed, expanding the radius to 500 km, adds more than 20 third party plants in total, including multiple plants of International Paper and Grupo Petit, bringing down the Parties' combined market share below 30%.[99] These plants are able to sell to many customers located within the radii around the Parties plants in Eastern Spain.

(130) *Second*, 4 of the 8 sheet feeders operating in Spain are located more closely to DSS Dicesa and DSS Flak than Europac's Alcolea,[100] which is a box plant.

(131) *Third*, the market investigation indicated that customers organise tenders to fulfil their demand and multi-source. The Commission notes that post-Transaction, multiple competitors will remain, such as Saica and Smurfit Kappa but also numerous smaller competitors. These competitors represent together a volume that is higher than the combined entity. As such, the customers' ability to organise tenders and multi-source will not be jeopardised.

(132) *Fourth*, the respondents to the market investigation considered that production can relatively easily and quickly be increased by 10% through overtime.[101] This would reduce the Parties' combined market share in each of the radii concerned with two percentage points.

(133) Therefore, the Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market with regard to the local markets for conventional sheets in Eastern Spain.

North Western Spain – Conventional corrugated sheets

(134) In North Western Spain, the Parties' combined market shares vary between [40-50]% around the plants of DSS La Coruña and DSS Pontevedra, with an increment of [10-20]% brought about by Europac. The Commission's market reconstruction shows a much higher combined market share of [50-60]% with an increment of [20-30]-[20-30]%.

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97 For completeness, the market share of Europac is entirely generated by Europac Alcolea; Europac Torrelavit does not manufacture or sell any sheets. See Annex 13 of the Form CO.

98 As the plants of DSS Dicesa, DSS Flak and Europac Torrelavit are all located very near to one another and the competitive landscape is thus to a very large extent similar, the Commission will focus its assessment on DSS Dicesa and will not provide separate assessments for each of these plants, as the assessment on DSS Dicesa applies equally to DSS Flak and Europac Torrelavit.

99 For example, […]% of DSS Dicesa's sales are to customers located further away than 400km.

100 For completeness, as mentioned before Europac Torrelavit, though located nearby DSS Dicesa and DSS Flak, does not produce sheets. See Annex 13 of the Form CO.

101 Minutes of conference calls with sheet customer on 30 July 2018, 31 July 2018, 2 August 2018, 3 August 2018, 6 August 2018, 9 August 2018 and 30 August 2018; Replies to question 69-71, 79 of Questionnaire Q1 – CCM, Corrugated Sheets, Corrugated Cases.

(135) Nevertheless, the Commission considers that the Transaction does not raise serious doubts with regard to conventional sheets in North Western Spain, for the reasons set out below.[102]

(136) Concretely, the local market shares most likely do not at all give a true representation of the competitive pressure exerted by Europac, and thus likely by the combined entity, in North Western Spain.

(137) *First*, Europac does not operate any plants in North Western Spain. The overlap for sheets results entirely from three of the four Europac plants located in Portugal (Europac Oporto, Europac Ovar and Europac Leiria) and Europac Dueñas located in Northern Spain.

(138) *Second*, Europac has in the past not exerted a significant competitive constraint in North Western Spain. It has only competed for very few tenders of sheet customers in North Western Spain, namely […] tenders during the last three years, […]. […]. As such, the Parties do not appear to be close competitors for customers located in North Western Spain.[103]

(139) *Third*, Europac's overall sales of conventional sheets to customers located in North Western Spain are very limited; they amounted to a total of […] msqm in 2017. According to the Parties' estimates, this represents only around [a limited proportion]% of demand in North Western Spain.

(140) In addition, the market investigation indicated that customers organise tenders to fulfil their demand and multi-source. The Commission notes that post-Transaction, multiple competitors will remain, such as Zarrinha and Smurfit Kappa but also numerous smaller competitors. In view of the likely significant overestimation of the Parties' market position, the sales of these competitors most probably represent together a volume that is higher than the combined entity in North Western Spain. As such, the customers' ability to organise tenders and multi-source will not be jeopardised.

(141) Finally, respondents to the market investigation considered that a sheet supplier can relatively easily and quickly be increase its production by 10%, through overtime.[104]

(142) Therefore, the Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market with regard to conventional sheets on the relevant local markets in North Western Spain.

(143) Irrespective of the above, the Commission notes that the remedies proposed by the Notifying Party, as described in Section 6 below, will in any case also significantly reduce the Parties' combined local market shares in North Western Spain, with more than 10 percentage points.

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102 As DSS La Coruña and DSS Pontevedra are geographically very near one another, and the competitive landscape is to a very large extent similar, the Commission's assessment of North Western Spain as a whole applies equally to each of DSS La Coruña and DSS Pontevedra.

103 Supplementary submission of the Parties of 17 October 2018, paragraph 2.3.

104 Minutes of conference calls with sheet customer on 30 July 2018, 31 July 2018, 2 August 2018, 3 August 2018, 6 August 2018, 9 August 2018 and 30 August 2018; Replies to question 69-71, 79 of Questionnaire Q1 – CCM, Corrugated Sheets, Corrugated Cases

Eastern Spain – Heavy duty corrugated sheets

(144) As regards heavy duty sheets in Eastern Spain, the Commission considers that in view of the moderate market shares (*i.e.* less than 30%), in combination with the limited concerns that were raised by respondents during the market investigation, and the presence of multiple competitors such as Smurfit Kappa, International Paper, Cartonajes Font, Grupo Rivas and Ondulados Carme SA, the Transaction does not raise serious doubts as to its compatibility with the internal market in relation to heavy duty sheet in Eastern Spain.[105]

Conclusion – Corrugated sheets in Spain

(145) In view of all the above, the Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market with regard to the manufacture and supply of conventional or heavy duty sheets in Spain or any local market within Spain.

5.1.4.3. Manufacture and supply of corrugated sheets – Portugal

Introduction

(146) In Portugal, the Parties' activities overlap with regard to the manufacture and supply of sheets, and the Transaction leads to affected markets as regards the conventional sheet market in Portugal.

(147) In particular, the Transaction will result in an affected market for conventional sheets at national level, as well as at local level, in Northern Portugal in the local markets comprising the radii of 400 km around (i) DSS Esmoriz, (ii) Europac Guilhabreu, (iii) Europac Ovar and (iv) Europac Leiria, and in Southern Portugal in the local market comprising the radius of 400 km around Europac Rio de Mouro.

The Notifying Party's view[106]

(148) The Notifying Party considers that the Transaction does not raise competition concerns with regard to the market for conventional sheets in Portugal, nor any potential sub-segments, for the following reasons.[107]

(149) *First,* according to the Notifying Party, the 2017 market shares are not entirely representative since the market for the manufacture and supply of sheets has changed substantially during 2018. In particular, Saica opened a new sheet feeder in March 2018 in Marinha Grande. This investment has already had an impact on the market, […].

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105 For completeness, it should be noted that during the market investigation concerns were raised regarding heavy duty sheets in Eastern Spain (in a 400 km radius around DSS Dicesa plant). However, the Commission considers that the Transaction does not raise serious doubts for the following reasons: (i) the market for the manufacture and supply of heavy duty sheet is a niche market with limited volumes (5% of the total sheet market in Spain); (ii) combined market shares are moderate in a 400 km radius from DSS Dicesa plant; (iii) there are a large number of competitors located just outside the 400 km radius; and (iv) the market investigation suggested that heavy duty sheet travels further than conventional sheet.

106 Paragraphs 6.79 – 6.85 of the Form CO, and Supplementary Submission of 17 October 2018.

107 Paragraph 6.80 of the Form CO.

(150) With Saica having made a large investment, the Notifying Party expects Saica to maximise its sales to third parties to recover its fixed costs. The Notifying Party estimates that this sheet feeder, that is currently still ramping up, will have a capacity of […] msqm of which […] msqm would be available for sale on the merchant market - which amounts to […] of the total merchant sheet market in Portugal. Already by the end of 2018, the Notifying Party expects this sheet feeder to be selling an additional […] msqm of conventional sheets on the market in Portugal. This alone would, based on the Notifying Party's estimates of all competitors' sales on the merchant market in Portugal, reduce the Parties' combined market share from [40-50]% to [30-40]%.

(151) *Second*, post-Transaction, a large number of competitors would remain in Portugal for these customers to source from, including Zarrinha, Saica, Smurfit Kappa, ECC and Sebastiao Martins. Further to this, the radial size of 400 km is in any case arbitrary as transport costs are low and sheets travel further than this distance.

(152) *Third*, sheets are a relatively commoditised product, and customers can switch suppliers of sheets quickly and easily.

(153) *Fourth*, customers multi-source and are able to exert countervailing buyer power with regular tenders and requests for price reductions.

(154) *Fifth*, barriers to expansion are relatively low in terms of costs and time.

(155) *Sixth*, as regards capacity the Notifying Party submits that on the one hand there is overall spare capacity in the market, and on the other hand that all competitors could quickly and easily increase output by adding overtime or increasing shifts.

(156) As such, the Parties estimate that the spare capacity of Saica's Marinha Grande sheet feeder together with that of another sheet feeder located in Portugal, of ECC's Feiria, is alone larger than the total current volumes of conventional sheets sold by the Parties. Concretely, the Notifying Party estimates this total spare capacity to be around […] msqm, whereas the Parties' sales of conventional sheets in 2017 amounted to […] msqm. This scenario does not even take into account the spare capacity that the Notifying Party believes exists in all Portuguese box plants.

(157) In respect of the capacity arguments made, on 17 October 2018, the Notifying Party provided an additional submission which sets out its market share estimates based on the assumption that each competitor increases its production of conventional sheets by 10%, explaining that in such a scenario the combined market share in Portugal decreases [5-10] percentage points if no sales are attributed to Saica's Marinha Grande sheet feeder, and [5-10] percentage points if Saica were to sell only [5-10]% of its total production capacity in Marinha Grande to third parties.

(158) Finally, the Notifying Party submits that there are significant imports into Portugal with potential imports in particular from Spain also exerting competitive

pressure. Across Portugal as a whole, imports accounted for [10-20]% of conventional sheet sales in 2017.[108]

The Commission's assessment

(159) For the reasons set out in this section, the Commission considers that the Transaction raises serious doubts as to its compatibility with the internal market in respect of sheets in Portugal.

(160) First, according to the Notifying Party's estimates, on a national level, the Parties achieve a combined market share of [40-50]% with regard to conventional sheets, with an increment of [10-20]% brought about by Europac.[109]

Table 5 – Corrugated sheets in Portugal in 2017

	Conventional sheet	
Competitor	**Volume (msqm)**	**Share (%)**
DSS	[…]	[20-30]
Europac	[…]	[10-20]
Combined	[…]	[40-50]
Zarrinha	[…]	[10-20]
Smurfit Kappa	[…]	[5-10]
Saica	[…]	[5-10]
ECC	[…]	[5-10]
Sebastiao Martins	[…]	[5-10]
IP	[…]	[0-5]
Others	[…]	[5-10]
Total	**[…]**	**100**

Source: Form CO

(161) The Commission conducted a market reconstruction, and collected the actual sales volumes of all main competitors in the Portuguese market in 2017. On the basis of the Parties' and main competitors' sales volume data in 2017,[110] the Parties' combined market share is [40-50]%, with an increment of [10-20]%. This is significantly higher than the Notifying Party's estimate of [40-50]%.

(162) Based on a narrower geographic market, encompassing a radius of 400 km around the Parties' relevant production plants (see Section 4.4.2), the Parties' activities result in affected markets with regard to conventional sheets in five radii in Northern and Southern Portugal. According to the Notifying Party's estimates, the Parties' combined market shares vary between [40-50]% and [40-50]% with an increment of [10-20]-[20-30]%. These share estimates are based on total production of each competitor located in the radius and the estimated volumes sold to third parties of that production. These estimates do not take into account the possibility that some of these sales could be made to customers outside the given radius or take account of imports into the radius.

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[108] Exports from Portugal are less significant, accounting for [5-10]% of conventional sheet sales in Portugal in 2017.

[109] For completeness, as regards heavy-duty sheets, Europac's market share is [20-30]% with DSS not being active in this segment.

[110] Confidential third party submissions on 7, 10, 12, 17, 27 September and 16 October 2018.

(163) Below are the Parties' combined market share estimates for those local markets where the combined market shares exceed 20%, as well as the market shares resulting from the market reconstruction that the Commission conducted. The market reconstruction exercise showed that the combined market shares of the Parties in the different radii are much higher, varying from [50-60]% to [50-60]%, with increments between [10-20]-[20-30]%.

Table 6 – Corrugated sheets in Portugal in 2017 (volume) – local markets

Centroid plant	Parties' combined market share (increment)	
	Notifying Party's estimate	Market reconstruction
Conventional sheet		
Northern Portugal		
DSS Esmoriz	[40-50]% ([10-20]%)	[50-60]% ([20-30]%)
Europac Guilhabreu	[40-50]% ([10-20]%)	[50-60]% ([20-30]%)
Europac Ovar	[40-50]% ([10-20]%)	[50-60]% ([20-30]%)
Europac Leiria	[40-50]% ([10-20]%)	[50-60]% ([10-20]%)
Southern Portugal		
Europac Rio de Mouro	[40-50]% ([10-20]%)	[50-60]% ([10-20]%)

Source for Notifying Party's estimate: Form CO

(164) All radii of 400km drawn around each of the Party's production plants in Portugal cover more or less the whole of Portugal (and North Western Spain). The difference in the resulting market shares stems from the fact that the market shares of the radii around DSS Esmoriz, Europac Guilhabreu and Europac Ovar also include the estimated merchant sales of all plants of the Parties located in North Western Spain (*i.e.* DSS La Coruña, DSS Pontevedra and Europac Dueñas).

(165) In addition, while exports from Portugal equal only [5-10]% of sheet sales in Portugal, imports account for [10-20]% of the Portuguese market for sheets.[111] Since the market shares for Portugal take into account imports into Portugal, and exports out of Portugal are relatively limited, the competitive landscape within each radius is similar, with the same competitors being present with comparable market shares,[112] the assessment of the present Transaction will not significantly differ whether a radius-based or national approach is applied. In view of the fact that none of the complaints received concerned a specific radius, assessing the effects of the Transaction at the national level of Portugal rather than on a radius-by-radius basis appears appropriate for the purposes of this decision.

(166) With regard to the Notifying Party's argument that none of the market shares are representative due to the substantial change in the market pursuant to Saica's opening of a new sheet feeder in 2018, the Commission notes that the market investigation did not support that claim. More specifically, it appears that Saica does not operate any sheet feeders at Marinha Grande. Instead, Saica has installed a new corrugator in its Marinha Grande production facility, primarily aimed at

111 See Annex 3 to Form CO and presentation of State of Play meeting of 15 October 2018.

112 Concretely, in the radius around each of (i) DSS Esmoriz, (ii) Europac Guilhabreu, (iii) Europac Ovar, (iv) Europac Leiria and (v) Europac Rio de Mouro, the major competitors are Zarrinha, Saica, Smurfit Kappa, ECC and Sebastiao Martins, with market shares of or ranging between [10-20]-[10-20]%, [5-10]-[10-20]%, [5-10]-[5-10]%, [5-10]% and [5-10]% respectively.

increased vertical integration (*i.e.* for sheets to be used for the production of Saica's own cases).[113] The resulting impact of that investment on the market is therefore significantly different from the understanding and estimations by the Notifying Party.

(167) In addition, the Parties allege that at least five strong competitors with significant spare capacities (*i.e*. Zarrinha, Smurfit Kappa, Saica, ECC and Sebastiao Martins) would remain in the relevant markets.

(168) The market investigation showed however that the possibility to increase production, also at these sites, may be limited. Indeed, the majority of the respondents, as well as of the major competitors in Portugal, considered that it is difficult to increase production by more than 10%. Whilst it is possible to increase production by 10% by working overtime, in order to increase production by more than 10% a weekend shift or extra shift during weekdays may be needed. For further production increases, new equipment may be required according to some respondents.[114] Presuming that all major competitors would increase their production by 10%, this would however only have a limited impact on the Parties' combined market share. Based on the Commission's market reconstruction, the Parties' combined market share would reduce from [40-50]% to [40-50]% were each competitor to increase its production by [10-20]%. The Commission also computed the Parties' combined market share based on the presumption that all competitors would increase their production by 10% and that Saica would sell 7% of its total Marinha Grande production capacity to the merchant market. In such case, the combined market share of the Parties would not decrease to [30-40]% as estimated by the Notifying Party, but only to [40-50]%.

(169) In addition, several concerns were raised during the course of the market investigation, by customers as well as competitors. In particular, a majority indicated that the intensity of competition would decrease in Portugal post-Transaction, with several respondents pointing to the Transaction creating a duopolistic market structure in Portugal. In this regard, the Commission notes that the combined entity together with its biggest competitor Zarrinha would represent according to the Notifying Party's estimates [60-70]%, and according to the Commission's market reconstruction up to [60-70]%[115], of the market for sales of sheets to customers in Portugal.

(170) The arguments of the Notifying Party that customers multi-source and can switch suppliers quickly, and that competitors can increase capacity easily, are not sufficient to counter the significant position of the merged entity. The results of the Commission's market reconstruction show that all smaller competitors together represent a volume that is much lower than DSS alone, even if they were to increase their production by 10%. Further, no structural capacity expansions are foreseen by sheets suppliers in Portugal.[116]

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113 Minutes of conference calls with Saica on 31 July and 18 October 2018, and submissions of 10 September and 10, 11 15 and 16 October.

114 Replies to questions 69-71 of Questionnaire Q1 – CCM, Corrugated Sheets, Corrugated Cases.

115 And up to [70-80]% within certain radii in Portugal.

116 Replies to question 78 of Questionnaire Q1 – CCM, Corrugated Sheets, Corrugated Cases.

(171) The market investigation also did not confirm the Notifying Party's argument that box plant operators that produce sheets for internal use could easily start making merchant sales, since cases are more complex products, with more added value.[117] As such, they are more profitable than sheets. This is apparent also from the margin data provided by the Parties for sheets in Portugal.

(172) In view of the above, the Commission considers that the Transaction raises serious doubts as to its compatibility with the internal market with regard to the local relevant markets for conventional sheets in Northern and Southern Portugal.

5.1.5. Manufacture and supply of corrugated cases

(173) As regards the manufacture and supply of cases, the Parties activities overlap, and on a national level the Transaction gives rise to affected markets in relation to the potential sub-segment for conventional cases in France and Portugal and the potential sub-segment for heavy duty cases in France.[118] There is no overlap between the Parties' activities with regard to litho-laminated cases, as Europac is not active in this segment.[119]

(174) On a local level, taking a 300 km radius around each of the Parties' production plants, the Transaction results in affected markets with regard to the potential sub-segments for both conventional and heavy duty cases in France, Spain and Portugal.

5.1.5.1. Manufacture and supply of corrugated cases - France

(175) The Parties' activities overlap with regard to the manufacture and supply of cases in France. On a national level the Transaction leads to affected markets as regards the potential sub-markets for each of conventional and heavy duty cases.

(176) At the local level, as regards conventional cases, the Transaction results in 5 affected markets in Northern France,[120] 1 affected market in Eastern France,[121] 3 affected markets in South Eastern France,[122] 6 affected markets in Western France,[123] 2 affected markets in South Western France[124] and 2 affected markets in Central France.[125] With regard to heavy duty cases, the Transaction leads to 3

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117 Annex 14 of the Form CO; Minutes of a conference call with a competitor. In addition, it should be noted that of those production facilities of the Parties producing both corrugated sheets and cases, the sales of sheets represent less than […]% of sales.

118 Although both Parties are active in the market for cases in Croatia, Denmark and Lithuania, Europac does not have any production facilities and only sells […] msqm of conventional cases in these countries. DSS has a share over [20-30]% in these countries and the increment from Europac is [0-5]%, [0-5]% and [0-5]% respectively.

119 Paragraph 6.74 of the Form CO.

120 Namely in the 300 km radii around (i) DSS Contoire, (ii) DSS St Just, (iii) DSS Vervins, (iv) Europac Gasny and (v) Europac Rouen.

121 Namely in the 300 km radius around (i) DSS Velin.

122 Namely in the 300 km radii around (i) DSS Cera (Meyzieu), (ii) DSS Rives and (iii) Europac La Rochette.

123 Namely in the 300 km radii around (i) DSS Atlantique, (ii) DSS Bretagne, (iii) DSS Normandie, (iv) DSS Normandie (Cabourg), (v) DSS Thouarce and (vi) Europac Durtal.

124 Namely in the 300 km radii around (i) DSS Rochechouart and (ii) DSS Sud-Ouest.

125 Namely in the 300 km radii around (i) DSS Larousse (Tigy) and (ii) DSS Mehun.

affected markets in Northern France,[126] 2 affected markets in Western France[127] and 2 affected markets in Central France.[128]

The Notifying Party's view

(177) The Notifying Party submits that the Transaction does not raise competition concerns with regard to cases or any of its sub-segments in France for the following reasons.

(178) *First*, the combined market shares, as well as the increment brought about by Europac are limited on a national level and there are strong competitors remaining present on the market such as Smurfit Kappa, Saica, International Paper, Rossmann and VPK.

(179) *Second*, barriers to expansion are low as evidenced by recent investments, by competitors of the Parties in their French plants.

(180) *Third*, the Notifying Party considers that there is currently spare capacity and competitors could easily and quickly increase output by, for example, increasing the number of production shifts or by adding overtime.

(181) *Finally*, it argues that case customers are able to exert countervailing buyer power, as a result of tendering and ad-hoc requests for price reductions. […].[129]

(182) The Notifying Party further submits that no competition concerns arise from the Transaction even if the market for corrugated cases, as well as its sub-segments, were to be defined as local in scope. In its local market analysis,[130] the Notifying Party bases itself on local market conditions, by considering the market structure, pricing, available third party capacity, closeness of the Parties and potential constraints from outside the local market.[131]

The Commission's assessment

(183) At national level, the Parties' combined market share is [20-30]% with regard to each of conventional and heavy duty corrugated cases. The increment brought about by Europac is limited, not exceeding [0-5]%.

[126] Namely in the 300 km radii around (i) DSS St Just, (ii) DSS Vervins and (iii) Europac Rouen.

[127] Namely in the 300 km radii around (i) DSS Normandie (Cabourg), and (ii) Europac Durtal.

[128] Namely in the 300 km radii around (i) DSS Larousse (Tigy) and (ii) DSS Mehun.

[129] Paragraph 6.91 of the Form CO.

[130] Annexes 3 and 4 of the Form CO.

[131] The Notifying Party's view will further be described when necessary for the assessment of a specific local market.

Table 7 – Corrugated cases in France in 2017

	Conventional case		Heavy duty case	
Competitor	**Volume (msqm)**	**Share (%)**	**Volume (msqm)**	**Share (%)**
DSS	[…]	[10-20]	[…]	[20-30]
Europac	[…]	[0-5]	[…]	[0-5]
Combined	[…]	[20-30]	[…]	[20-30]
Smurfit	[…]	[20-30]	[…]	[10-20]
Saica	[…]	[10-20]	[…]	[0-5]
IP	[…]	[5-10]	[…]	[0-5]
Rossmann	[…]	[5-10]	[…]	[10-20]
VPK	[…]	[5-10]	[…]	[0-5]
Caradec (currently Europac)	[…]	[0-5]	[…]	[0-5]
Others	[…]	[10-20]	[…]	[50-60]
Total	**[…]**	**100**	**[…]**	**100**

Source: Form CO

(184) However, based on a narrower geographic market as defined as a radius of 300 km around the Parties' production plants (see Section 4.5.2), the Parties' combined market shares significantly differ. The Parties' activities overlap with regard to conventional cases in Northern, Eastern, South Eastern, Western, South Western and Central France; and with regard to heavy duty cases in Northern, Western and Central France.[132]

(185) Below are the market share estimates provided by the Notifying Party for all the local markets where the Parties' combined market shares exceed 20% with regard to either conventional or heavy duty cases. Below are also the market share figures computed by the Commission based on the Parties', as well as their main competitors' external sales volume data in 2017[133], where the market reconstruction exercise gave meaningful and reliable results differing from the Notifying Party's estimates.

[132] For the sake of completeness, it should be mentioned that the Notifying Party uses a different categorization for the French regions than the one adopted in case M.6512 – *DS Smith/SCA Packaging* (paragraph 145), distinguishing only North, East and West. In any event however, given the local nature of the markets, this should have no effect on the analysis.

[133] Confidential third party submissions on 7, 10, 17, and 27 September 2018.

Table 8 – Corrugated cases in France in 2017 (volume) – local markets

Centroid plant	Parties' combined market share (increment)	
	Notifying Party's estimate	Market reconstruction
Conventional cases		
Northern France		
DSS Contoire	[20-30]% ([0-5]%)	-
DSS St Just	[20-30]% ([5-10]%)	-
DSS Vervins	[30-40]% ([0-5]%)	-
Europac Gasny	[20-30]% ([5-10]%)	-
Europac Rouen	[20-30]% ([5-10]%)	-
Eastern France		
DSS Velin	[20-30]% ([0-5]%)	-
South Eastern France		
DSS Cera (Meyzieu)	[20-30]% ([0-5]%)	-
DSS Rives	[20-30]% ([0-5]%)	-
Europac La Rochette	[20-30]% ([0-5]%)	-
Western France		
DSS Atlantique	[30-40]% ([5-10]%)	[30-40]% ([5-10]%)
DSS Bretagne	[40-50]% ([10-20]%)	[40-50]% ([10-20]%)
DSS Normandie	[30-40]% ([5-10]%)	[30-40]% ([5-10]%)
DSS Normandie (Cabourg)	[30-40]% ([5-10]%)	[30-40]% ([5-10]%)
DSS Thouarce	[30-40]% ([5-10]%)	[30-40]% ([5-10]%)
Europac Durtal	[30-40]% ([5-10]%)	[30-40]% ([5-10]%)
South Western France		
DSS Rochechouart	[20-30]% ([5-10]%)	-
DSS Sud-Ouest	[20-30]% ([5-10]%)	-
Central France		
DSS Larousse (Tigy)	[20-30]% ([5-10]%)	-
DSS Mehun	[20-30]% ([5-10]%)	-
Heavy duty cases		
Northern France		
DSS St Just	[70-80]% ([0-5]%)	-
DSS Vervins	[70-80]% ([0-5]%)	-
Europac Rouen	[40-50]% ([5-10]%)	-
Western France		
DSS Normandie (Cabourg)	[40-50]% ([5-10]%)	-
Europac Durtal	[40-50]% ([5-10]%)	-
Central France		
DSS Larousse (Tigy)	[30-40]% ([0-5]%)	-
DSS Mehun	[20-30]% ([0-5]%)	-

Source for Notifying Party's estimate: Form CO

(186) The Commission considers that in view of the moderate market shares (less than 30%) and/or limited increment (less than 5%), the limited concerns expressed by customers in the market investigation, as well as the presence of multiple

competitors,[134] the Transaction is unlikely to raise serious doubts as to its compatibility with the internal market with regard to conventional cases in Northern, Eastern, South Eastern, South Western and Central France and with regard to heavy duty cases in Central France. These regions and local markets are therefore not further discussed in the present decision.

Western France – Conventional corrugated cases

(187) The Parties achieve a relatively high market share – varying between [30-40]-[40-50]%[135] – in all six local markets in Western France, when defined as a 300 km radius around each of their six production plants in Western France. The increment brought about by the Transaction varies between [5-10]-[10-20]%.

The Notifying Party's view

(188) The Notifying Party submits that no significant impediment of effective competition arises in relation to the supply of conventional cases in any of the local markets.

(189) *First*, the Notifying Party argues that there are many strong competitors remaining in all local areas, providing a range of alternative suppliers, as well as a sufficient competitive constraint on the merged entity.

(190) *Second*, the Notifying Party argues that competitor plants can easily and cheaply increase production in response to a hypothetical rise in the price of cases.

(191) *Third*, the Notifying Party submits that the radial size of 300 km is arbitrary as conventional cases travel further than this distance and as it excludes competitors' plants just outside of the radius, which may exert important competitive constraint on the Parties.

(192) *Finally*, it argues that the Parties are not particularly close competitors in these local markets.[136]

(193) With regard to Brittany in particular, the Notifying Party submitted additional arguments in its Supplementary submission on 17 October 2018.

(194) *First*, it reinforces its argument that analysing the market on the basis of radii of 200km or 300km around DSS Bretagne – based on Commission's precedents – does not provide an accurate picture of the Brittany region.

(195) *Second*, the Notifying Party submits that there are a number of strong competitors in the radius around DSS Bretagne and considers that Europac is very rarely one of the geographically closest suppliers to the customers of DSS Bretagne. It further argues that in substantially all cases, the competitor plants closest to the

[134] These are *i.a.* Smurfit Kappa, Saica, VPK, International Paper, Rossmann in Northern, Eastern, South Eastern, South Western and in Central France with regard to conventional cases and Allard-Vallois, CPL Cartonnerie de Pays de Loire, Cartonnages de Maine and Rossmann in Central France with regard to heavy duty cases.

[135] Based on the market reconstruction on the basis of the Parties' and their competitors third party sales in 2017.

[136] Section 3 of Annex 3 of the Form CO.

customer produce sufficient conventional cases to cover the amounts the customer currently purchases from DSS Bretagne. It is therefore not plausible that customers in the region would not be able to secure at least three independent competitive bids post-Transaction.

(196) *Third*, the Notifying Party claims that the Parties rarely compete with another in this local market.

(197) *Finally*, the Notifying Party argues that customer orders in this local market tend to be relatively modestly-sized, therefore even small competitors can compete for the vast majority of conventional case opportunities in the local area, ensuring a sufficient number of alternative suppliers.

The Commission's assessment

(198) The Commission considers that the Transaction raises serious doubts as to its compatibility with the internal market with regard to the manufacture and supply of conventional cases in Western France, and in particular in Brittany,[137] for the following reasons.

(199) *First*, the Commission notes that the Parties' combined market shares are relatively high in all local markets, varying between [30-40]-[40-50]%. The Parties achieve the highest combined market share in Brittany, in the local market around DSS Bretagne.

(200) *Second*, in the market investigation, customers raised various concerns with regard to the conventional cases market in Western France, pointing out that further supply-side concentration resulting from the Transaction would reduce the number of alternative suppliers and lead to price increases.

(201) In particular in Brittany, 78% of the customers responding to the questionnaire indicated that they expect a price increase as a result of the Transaction, 67% replied that the Transaction would have a negative impact on their company and the market in general, and that the intensity of competition will decrease due to the Transaction. Furthermore, 44% of the respondents in the region expressed that they would not have sufficient alternative suppliers should the Parties stop supplying them or supply them at significantly worse conditions.[138]

(202) *Third*, although various other competing suppliers are active in Western France, DSS and its largest competitor, Smurfit Kappa, already before the Transaction – and without taking into account the Caradec plant[139] – appear to control more than half of the merchant market in all local areas with a combined market share between [50-60] and [70-80]%. Therefore, the Transaction would increase the combined market share of the two largest suppliers to [60-70]-[80-90]%.

(203) In this regard, the Commission notes that although the Notifying Party submitted, at least with regard to the customers of the DSS Bretagne plant,[140] that there are

[137] The region of Brittany is best captured by the local market analysis around the DSS Bretagne plant.

[138] Replies to questions 18 and 34-38 of Questionnaire Q2 – Customers Corrugated Cases.

[139] As explained in paragraph 5, the acquisition of the Caradec plant by Smurfit Kappa is conditional upon this Transaction.

[140] Annex 1 of the Supplementary submission of 17 October 2018.

indeed multiple third party plants present in the region and located closer than the Europac Durtal plant to the customers analysed, this analysis is not determinative. This is beacuse these smaller competitors – representing altogether a lower production volume than Europac Durtal alone – would not be able to replace the competitive constraint exerted by Europac pre-transaction. This remains the case even if customer orders tend to be small as claimed by the Notifying Party.[141]

(204) *Fourth*, the market investigation did not confirm the Notifying Party's claim that production can be easily increased in the region. Indeed, no structural capacity expansion is foreseen by the competitors in the region,[142] and a capacity expansion of more than 10% is seen as difficult.[143] The majority of market participants responding to the market questionnaires also do not expect any new suppliers entering the case market in France.[144]

(205) In any event, even a hypothetical 10% increase in third party merchant sales by all competitors of the Parties would only result in a limited decrease of the combined market shares of the Parties (varying between [30-40]-[40-50]% in the six local markets).

(206) *Fifth* and as to the Parties' criticism of the applicable radii-based market definition, the market investigation did not support the Notifying Party's view that customers can source cases from more than 300km (see Section 4.5.2). In any event, adding an additional 100km to the radii would still result in the Parties achieving significant combined market shares in the six local areas ([20-30]-[40-50]%).

(207) *Sixth*, due to the highly concentrated supply-side level of the market and the relatively small size of the majority of customers, it is unlikely that buyer power emanating from tenders and multi-sourcing can sufficiently counterbalance price increases induced by the merged entity.

(208) *Finally*, the Notifying Party asserts that the Europac Durtal plant has not in the past exerted a significant competitive constraint on the DSS plants in the Brittany region […]. However, this is not indicative with regard to its (potential) competitive strength in the future, […].[145]

(209) Whilst no customer has indicated that its demand is currently supplied by both DSS Bretagne and Europac Durtal,[146] the market investigation results indicate that Europac Durtal exerts a competitive constraint on DSS in Brittany. In this regard, the Commission has investigated whether customers located in Brittany[147] have seen Europac Durtal in past tenders or would consider it as a viable option to supply from it. The competitive interaction between DSS and the Europac Durtal

141 Supplementary submission of 17 October 2018, paragraph 4.6.

142 Replies to question 94 of Questionnaire Q1 – CCM, Corrugated Sheets, Corrugatd Cases.

143 Replies to question 85 of Questionnaire Q1 - CCM, Corrugated Sheets, Corrugatd Cases.

144 Replies to question 29 to Questionnaire Q2 – Cutomers Corrugated cases and replies to question 92 of Questionnaire Q1 – CCM, Corrugated Sheets, Corrugated Cases.

145 Indeed, several customers source currently from both the DSS Bretagne and the Europac Caradec for the same plant (replies to question 2 of Questionnaire Q4 – Case Customers in Western France).

146 Replies to question 2 of Questionnaire Q4 – Case Customers in Western France.

147 As defined as the administrative region of Brittany (Bretagne), comprised of four "départements", namely Côtes-d'Armor (22), Finistère (29), Ille-et-Vilaine (35) and Morbihan (56).

plant in Brittany is confirmed by the fact that the customers responding to the market investigation indicated for the majority (77%)[148] of their plants located in Brittany that Europac Durtal is a current supplier, past supplier, past tender participant or alternative supplier.[149]

(210) Therefore, the Commission considers that the Transaction raises serious doubts as to its compatibility with the internal market with regard to the manufacture and supply of conventional cases in Western France, and in particular in Brittany.

Western France – Heavy duty corrugated cases

(211) The Parties also produce heavy duty cases in Western France, leading to two affected local markets, when defined as radii of 300 km around DSS Normandie (Cabourg) and the Europac Durtal plant.

(212) The Commission however considers that the Transaction does not raise serious doubts with regard to heavy duty cases in Western France for the following reasons.

(213) *First*, the increment is limited ([5-10]-[5-10]%), brought about by the Europac Rouen plant in Western France, with a production of […] msqm (representing less than […]% of its total production).

(214) *Second*, the market investigation confirmed that heavy duty cases travel farther than conventional cases (see Section 4.5.2). Indeed, the majority of the customers replying to the questionnaire indicated that the maximum distance they consider acceptable for the supply of heavy duty cases is between 300-500km.[150] Such further expansion of the geographic scope of the market decreases the Parties' combined market shares and/or the increment in the affected local areas.

(215) With regard to the local market around DSS Normandie (Cabourg), the Parties' combined market share drops to [30-40]% (with an increment of [5-10]%) in a radius of 400km. With regard to the radius around Europac Durtal, the combined market share decreases to [20-30]% in a radius of 400 km, with an increment of [0-5]%, and to [20-30]% in a radius of 500km, with an increment of [0-5]%.

(216) *Third*, and as detailed in Section 4.5.1, the market investigation suggests that a sliding scale of substitution exists between the different case products and thus no sharp delineation can be made for heavy duty cases. In view of the significantly lower market shares of the Parties in the same geographic area with regard to conventional cases, which to some extent are substitutable with certain heavy duty products, it can be concluded that the market share of the Parties on the strictly defined heavy duty segment overestimates their market power.

(217) *Finally*, no concerns were raised in the market investigation with regard to heavy duty cases in Western France.

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148 This is true even on a "département" level, 64% in Côtes-d'Armor, 75% in Finistère, 76% in Ille-et-Vilaine and 88% in Morbihan.

149 Replies to question 3 of Questionnaire Q4 – Case Customers in Western France.

150 Replies to question 13 of Questionnaire Q2 – Customers – Corrugated cases.

(218) Therefore, the Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market with regard to heavy duty cases in Western France.

Northern France – Heavy duty corrugated cases

(219) While the Parties' combined market shares are moderate with regard to conventional cases in Northern France, they achieve high market shares with regard to heavy duty cases, varying between [40-50]-[70-80]% in the three affected markets.

(220) The Commission however considers that the Transaction does not raise serious doubts with regard to heavy duty cases in Northern France for the following reasons.

(221) *First*, the increment brought about by Europac is limited, [0-5]-[5-10]% in each local market. Indeed, the only Europac plant producing heavy duty cases in Northern France is Europac Rouen, with a production of […] msqm (representing less than […]% of its total production).

(222) *Second*, the market investigation confirmed that heavy duty cases travel farther than conventional cases (see Section 4.5.2). Indeed, the majority of the customers replying to the questionnaire indicated that the maximum distance they consider acceptable for the supply of heavy duty cases is between 300-500km.[151] Such further expansion of the geographic scope of the market decreases the Parties' combined market shares and/or the increment in all three affected local areas.

(223) With regard to the local market around DSS St Just, the Parties' combined market share drops to [50-60]% (with an increment of [0-5]%) in a radius of 400km, and to [20-30]% (with an increment of [0-5]%) in a radius of 500km. With regard to the radius around DSS Vervins, the combined market share decreases to [30-40]% in a radius of 400 km (with an increment of [0-5]%), and to [20-30]% in a radius of 500km (with an increment of only [0-5]%). Finally, as regards the local market around Europac Rouen, while the combined market share increases to [60-70]% with a 400km radius, the increment brought about by Europac is very limited, only [0-5]%. As for a radius of 500km, the Parties' combined market share decreases to [40-50]%, with an increment of only [0-5]%.

(224) *Third*, and as detailed in Section 4.5.1, the market investigation suggests that a sliding scale of substitution exists between the different case products and thus no sharp delineation can be made for heavy duty cases. In view of the significantly lower market shares of the Parties in the same geographic area with regard to conventional cases, which to some extent are substitutable with certain heavy duty products, it can be concluded that the market share of the Parties on the strictly defined heavy duty segment overestimates their competitive power.

(225) Finally, no concerns were raised in the market investigation with regard to heavy duty cases in Northern France.

[151] Replies to question 13 of Questionnaire Q2 – Customers – Corrugated cases.

(226) Therefore, the Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market with regard to heavy duty cases in Northern France.

Conclusion - France

(227) Given the strong position of the merged entity, the high concentration levels of the market, as well as customer concerns, the Commission considers that the Transaction raises serious doubts as to its compatibility with the internal market with regard to the manufacture and supply of conventional cases in Western France and in particular in the Brittany region. However, the Transaction does not raise serious doubts in other regions of France for either conventional or heavy duty cases.

5.1.5.2. Manufacture and supply of corrugated cases – Spain

(228) In Spain, the Parties' activities overlap with regard to the manufacture and supply of cases, although the Transaction does not result in any affected markets on a national level.[152] Nevertheless, at the local level the Transaction results in affected markets with regard to conventional cases in Western Spain, in the 300 km radii around (i) DSS La Coruña, (ii) DSS Pontevedra and (iii) Europac Cartonajes Asturiana, and with regard to heavy duty cases in North Western Spain and Eastern Spain, in the 300 km radii around (iv) DSS Tecnicarton Vigo and (v) DSS Tecnicarton Almussafes (Valencia) respectively.

The Notifying Party's view[153]

(229) The Notifying Party submits that the Transaction does not raise competition concerns with regard to cases, or any of its sub-segments, in Spain for the following reasons.

(230) *First*, the Parties' combined market shares, as well as the increment brought about by the Transaction, are limited and strong competitors will remain on the market in Spain, in additional to regional and local players, so that customers will continue to have a range of alternative suppliers. Also, in any direction there are always third party plants in between DSS Pontevedra and Europac's plants, so that the Parties are geographically not particularly close competitors in this radius.

(231) *Second*, the Notifying Party considers that there is overall spare capacity, and competitors could easily and quickly increase their production in response to a hypothetical rise in prices of cases, *inter alia* through overtime, increasing the number of shifts or adding a weekend shift.

(232) *Third*, customers multi-source, and are able to exert buyer power through regular tenders and requests for price reductions.

(233) *Fourth*, barriers to expansion are relatively low in terms of costs and time.

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152 For completeness, the Parties' combined market share in Spain for conventional corrugated cases is [5-10]%, with an increment of [0-5]%, and for heavy duty corrugated cases [5-10]%, with an increment of [0-5]%.

153 Paragraphs 3.180 to 3.201 of Annex 3 to Form CO.

The Commission's assessment

(234) On a national level the Transaction does not result in any affected markets. Based on a narrower geographic market of a 300 km radius around each of the Parties' production plants, the market shares significantly differ.

(235) Table 9 below sets out the market share estimates provided by the Notifying Party for all those local markets in Spain in which the Parties' combined market share exceeds 20%. The results of the Commission's market reconstruction are also included in the table where this exercise elicited meaningful and reliable results differing from the Notifying Party's estimates. The market reconstruction largely confirms the Parties' estimates.

Table 9 – Corrugated cases in Spain in 2017 (volume) – local markets

Centroid plant	**Parties' combined market share (increment)**	
	Notifying Party's estimate	**Market reconstruction**
Conventional cases		
Western Spain		
DSS La Coruña	[20-30]% ([10-20]%)	[30-40]% ([10-20]%)
DSS Pontevedra	[30-40]% ([10-20]%)	[30-40]% ([10-20]%)
Europac Cartonajes Asturiana	[20-30]% ([10-20]%)	-
Heavy duty cases		
North Western Spain		
DSS Tecnicarton Vigo	[30-40]% ([5-10]%)	-
Eastern Spain		
DSS Tecnicarton Almussafes (Valencia)	[20-30]% ([0-5]%)	-

Source for Notifying Party's estimate: Form CO

Western Spain – Conventional corrugated cases

(236) As regards the radii around DSS La Coruña and Europac Cartonajes Asturiana, the Commission notes that the market shares are moderate (less than 30%), and multiple large competitors such as Saica, Smurfit Kappa, Zarrinha, Sebastiao Martins and Cartonajes Vir remain present. Also, no concerns were expressed by customers in the market investigation with regard to conventional cases in Western Spain.

(237) Therefore, the Transaction is unlikely to raise serious doubts as to it compatibility with the internal market with regard to conventional cases in the 300 km radii around DSS La Coruña and Europac Cartonajes Asturiana.

(238) In the 300 km radius around DSS Pontevedra, the Parties' combined market share is [30-40]%, with an increment of [10-20]% brought about by the Transaction.

(239) The Commission considers nevertheless that the Transaction does not raise competition concerns with regard to conventional cases in the radius around DSS Pontevedra for the following reasons.

(240) *First*, the market share of [30-40]% is also due to the inclusion of the Parties' production facilities in Portugal, which all produce conventional case. As all exports from Portugal, *inter alia* to Spain, equal only roughly […]% of the Parties' total production of cases in Portugal, the Parties' combined market share does not give a true representation of the competitive pressure exercised by the Parties on each other in respect of customers located in Western Spain.

(241) *Second*, as regards the 300 km radius, it should be noted that (i) DSS Pontevedra made […]% of its sales to customers located outside of this radius, and that (ii) there is a number of third party plants located just outside the 300 km radius, including production facilities operated by Saica and Hinojosa, which could and potentially do supply cases within the radius.

(242) *Third*, the market investigation indicated that customers organise tenders to fulfil their demand and multi-source. The Commission notes that post-Transaction, multiple competitors will remain, such as Saica and Smurfit Kappa but also numerous smaller competitors. These competitors represent together a volume that is higher than the combined entity. As such, the customers' ability to organise tenders and multi-source will not be jeopardised.

(243) *Fourth*, the respondents to the market investigation considered that production can relatively quickly be increased by 10%, through overtime.[154] Such a hypothetical increase in production by all competitors would reduce the Parties' combined market share with two percentage points.

(244) In view of the above, the Commission considers that the Transaction does not raise serious doubts as regards its compatibility with the internal market with regard to conventional cases in Western Spain.

North Western Spain – Heavy duty corrugated cases

(245) In the 300 km radius around DSS Tecnicarton Vigo, the Parties' combined market share is [30-40]%, with an increment brought about by the Transaction of [5-10]%.

(246) The Commission considers nevertheless that the Transaction does not raise competition concerns with regard to heavy duty cases in the 300 km radius around DSS Tecnicarton Vigo, for the reasons set out below.

(247) *First*, DSS' market share is limited ([5-10]%), and equals a production of heavy duty cases of only […] msqm. Of this […] msqm, part is generated by DSS's production facility in Portugal, DSS Tecnicarton Agueda. In addition, Europac's market share is fully generated by its production facilities in Portugal; Europac does not have any production facilities of heavy duty cases in North Western Spain.

(248) *Second*, and as detailed in Section 4.5.1, the market investigation suggests that a sliding scale of substitution exists between the different case products and thus no sharp delineation can be made for heavy duty cases. Therefore, it can be

[154] Minutes of conference calls with sheet customers on 30 July 2018, 31 July 2018, 2 August 2018, 3 August 2018, 6 August 2018, 9 August 2018 and 30 August 2018; Replies to questions 69-71, 79 of Questionnaire Q1 – CCM, Corrugated Sheets, Corrugated Cases

concluded that the combined market share of the Parties on the strictly defined heavy duty segment would overestimate their market power.

(249) *Third*, the market investigation confirmed that heavy duty cases travel further than conventional cases (see Section 4.5.2). Indeed, the majority of the customers replying to the questionnaire indicated that the maximum distance they consider acceptable for the supply of heavy duty cases is between 300-500 km.[155] Such further expansion of the geographic scope of the market decreases the Parties' combined market shares and/or the increment in the affected local areas – to [10-20]% with a [5-10]% increment at 500 km, as there is a number of additional competitor plants (including Zarrinha, Embalpacos, Jose Neves and Cartocerm Lda.) located outside of the 300 km radius but within 500 km of Tecnicarton Vigo.

(250) *Fourth*, DSS Tecnicarton Vigo and Europac are not each other's closest competitors because unlike Europac, Tecnicarton Vigo is not focused on corrugated packaging but rather on designing and producing tailor-made multi-material solutions for its customers, using materials such as plastic, metal, foam and paper with corrugated packaging only being produced incidentally, as evidenced by the fact that the two facilities together produce only […] msqm.

(251) Finally, no concerns were raised in the market investigation with regard to heavy duty cases in North Western Spain.

(252) In view of the above, the Commission considers that the Transaction does not raise serious doubts as regards its compatibility with the internal market with regard to heavy duty cases in North Western Spain.

Eastern Spain – Heavy duty corrugated cases

(253) The Commission considers that in view of the moderate market share (less than 30%) and the limited increment (less than 5%), and the fact that no customers expressed concerns during the market investigation as regards heavy duty cases in Eastern Spain, the Transaction does not raise serious doubts as to it compatibility with the internal market with regard to heavy duty cases in Eastern Spain.

5.1.5.3. Manufacture and supply of corrugated cases – Portugal

(254) In Portugal, the Parties' activities overlap with regard to the manufacture and supply of cases, and the Transaction leads to affected markets as regards each of conventional and heavy duty cases.

(255) Concretely, the Transaction results in an affected market at national level, for conventional cases, as well as affected markets at local level, for conventional cases in Northern Portugal in the 300 km radii around (i) DSS Esmoriz, (ii) DSS Tecnicarton Agueda, (iii) Europac Guilhabreu, (iv) Europac Leiria, and (v) Europac Ovar and in Southern Portugal in the 300 km radius around Europac Rio de Mouro, and for heavy duty cases in Northern Portugal, in the 300 km radii around (i) Europac Guilhabreu, (ii) Europac Ovar and (iii) DSS Tecnicarton Agueda.

[155] Replies to question 13 of Questionnaire Q2 – Customers – Corrugated cases.

The Notifying Party's view[156]

(256) The Notifying Party considers that the Transaction does not raise competition concerns with regard to cases in Portugal, or any of its sub-segments, for the following reasons.

(257) *First*, the Parties' combined market shares, as well as the increment brought about by the Transaction, are limited in Portugal as well as in any sub-segment, and strong competitors will remain on the market in addition to regional and local players, so that customers will continue to have a range of alternative suppliers.

(258) *Second*, the Notifying Party considers that there is currently overall spare capacity and that competitors could easily and quickly increase their output, for example through overtime, increasing the number of shifts or adding a weekend shift.

(259) *Third,* case customers multi-source and are able to exert buyer power through regular tenders and requests for price reductions.

The Commission's assessment

(260) On a national level, the Parties' combined market share is [20-30]% with regard to conventional cases in Portugal. The exact market shares are set out below.

Table 10 – Corrugated cases in Portugal in 2017

	Conventional case	
Competitor	**Volume (msqm)**	**Share (%)**
DSS	[…]	[5-10]
Europac	[…]	[20-30]
Combined	[…]	[20-30]
Saica	[…]	[30-40]
Zarrinha	[…]	[10-20]
Smurfit Kappa	[…]	[5-10]
Sebastiao Martins	[…]	[0-5]
Jose Nieves	[…]	[0-5]
IP	[…]	[0-5]
Embalpacos	[…]	[0-5]
Others	[…]	[10-20]
Total	**[…]**	**100**

Source: Form CO

(261) On a narrower geographic market however, based on a radius of 300 km around each of the Parties' production plants concerned (see Section 4.5.2), the Parties' combined market shares are higher.

(262) Concretely, the Parties' activities result in affected markets with regard to conventional cases in five radii in Northern Portugal and one in Southern Portugal, and as regards heavy duty cases in three radii in Northern Portugal. According to the Notifying Party's estimates, the Parties' combined market shares vary between [20-30]% and [30-40]% for conventional cases, and amount to [30-

156 Paragraphs 6.79 – 6.85 of the Form CO, Annex 3 an Annex 4 to the Form CO.

40]% for heavy duty cases. The results of the market reconstruction exercise conducted by the Commission largely confirm these estimates. These results are also set out below, where meaningful and reliable results differing from the Notifying Party's estimates were attained.

Table 11 – Corrugated cases in Portugal in 2017 (volume) – local markets

Centroid plant	Parties' combined market share (increment)	
	Notifying Party's estimate	Market reconstruction
Conventional cases		
Northern Portugal		
DSS Esmoriz	[30-40]% ([10-20]%)	[30-40]% ([10-20]%)
DSS Tecnicarton Agueda	[20-30]% ([10-20]%)	[30-40]% ([10-20]%)
Europac Guilhabreu	[30-40]% ([10-20]%)	[30-40]% ([10-20]%)
Europac Leiria	[20-30]% ([10-20]%)	[20-30]% ([5-10]%)
Europac Ovar	[30-40]% ([10-20]%)	[30-40]% ([10-20]%)
Southern Portugal		
Europac Rio de Mouro	[20-30]% ([5-10]%)	-
Heavy duty cases		
Northern Portugal		
DSS Tecnicarton Agueda	[30-40]% ([5-10]%)	-
Europac Guilhabreu	[30-40]% ([5-10]%)	-
Europac Ovar	[30-40]% ([5-10]%)	-

Source for Notifying Party's estimate: Form CO

(263) The Commission considers that in view of the moderate market shares (*i.e.* less than 30%) and/or the limited increment (*i.e.* less than 5%), the Transaction is unlikely to raise serious doubts as to it compatibility with the internal market with regard to conventional cases in in the radii around Europac Leiria and Europac Rio de Mouro

Northern Portugal – Conventional corrugated cases

(264) In Northern Portugal, within the 300 km radii around (i) DSS Esmoriz, (ii) Europac Guilhabreu and (iii) Europac Ovar, the Parties' combined market share for conventional cases is [30-40]%, with an increment of [10-20]% brought about by Europac. Within the 300 km radius around DSS Tecnicarton Agueda the Parties' combined market share is [20-30]% according to the Notifying Party's estimate, though the market reconstruction pointed to a market share of [30-40]%. The increment brought about by Europac in the 300 km radius around DSS Tecnicarton Agueda is [10-20]%.

(265) The Commission considers nevertheless that the Transaction does not raise competition concerns with regard to conventional cases in these radii for the following reasons.

(266) *First,* the Parties' combined market share is moderate, and is also due to the inclusion of the DSS's plants located in Western Spain, namely DSS La Coruña and DSS Pontevedra. In fact, these plants account for the largest part of DSS' share, as the production of conventional cases in DSS Esmoriz is only […] msqm, respresenting a share of [0-5]%. In addition, DSS La Coruña and DSS Pontevedra mostly serve customers located in Spain, and export only respectively […]% and

[…]% of their production to Portugal.[157] For that reason, the Parties' combined market share may not give a true representation of their position in Northern Portugal.

(267) *Second*, although some complaints were raised in the course of the market investigation, pointing to the fact that a large portion of the market would be in the hands of the combined entity together with Saica,[158] the Commission notes that post-Transaction multiple competitors will remain, such as Zarrinha ([10-20]%) and Smurfit Kappa ([5-10]%), and also Sebastiao Martins, in addition to numerous smaller competitors. These competitors together represent a volume that is substantially higher than the combined entity. As such, the customers' ability to organise tenders and multi-source will not be jeopardised.

(268) *Third*, the market investigation showed that production can relatively quickly be increased by 10%, through overtime.[159] Such a hypothetical increase in production of 10% by all competitors would reduce the Parties' combined market share by two percentage points.

(269) In view of the above, the Commission considers that the Transaction will not raise serious doubts as to it compatibility with the internal market with regard to conventional cases in Northern Portugal.

(270) Irrespective of the above, the Commission notes that the remedies proposed by the Notifying Party, as described in Section 6 below, will in any case reduce the Parties' moderate combined market share also with regard to conventional cases. Since Europac Ovar is active with regard to the production and supply of conventional cases as well, the remedy would decrease the Parties' combined market share to below 30%.

Northern Portugal – Heavy duty corrugated cases

(271) In Northern Portugal, in the radii around DSS Tecnicarton Agueda, Europac Guilhabreu and Europac Ovar, the Parties' combined market share for heavy duty cases is [30-40]%, with an increment of [5-10]% brought about by DSS.

(272) The Commission considers nevertheless that the Transaction does not raise competition concerns with regard to heavy duty cases in these radii for the following reasons.

(273) *First*, DSS' market share is limited ([5-10]%), and equals a production of heavy duty cases of only […] msqm. Of this […] msqm, part of which is generated by one of DSS's production facilities in North Western Spain, DSS Tecnicarton Vigo.

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157 Replies to question 6 of RFI 8 submitted on 29 October 2018.

158 Replies to questions 80-84 and 96-99 of Questionnaire Q1 – CCM, Corrugated Sheets, Corrugated Cases.

159 Minutes of conference calls with sheet customers on 30 July 2018, 31 July 2018, 2 August 2018, 3 August 2018, 6 August 2018, 9 August 2018 and 30 August 2018; Replies to questions 69-71, 79 of Questionnaire Q1 – CCM, Corrugated Sheets, Corrugated Cases.

(274) *Second*, post-Transaction multiple competitors will remain, such as Zarrinha ([10-20]%), Embalpacos ([10-20]%), Jose Neves ([10-20]%) and Cartocer, Lda ([5-10]%), in addition to numerous smaller competitors.

(275) *Third*, and as detailed in Section 4.5.1, the market investigation suggests that a sliding scale of substitution exists between the different case products and thus no sharp delineation can be made for heavy duty cases. Therefore, the combined market share of the Parties on the strictly defined heavy duty segment could slightly overestimate their competitive power.

(276) *Fourth*, the market investigation confirmed that heavy duty cases travel further than conventional cases (see Section 4.5.2). Indeed, the majority of the customers that responded indicated that the maximum distance they consider acceptable for the supply of heavy duty cases is between 300-500 km.[160] Such further expansion of the geographic scope of the market decreases the Parties' combined market shares and/or the increment in the affected local areas – to [20-30]% with a [0-5]% increment at 400 km,[161] as there is a number of additional competitor plants within this larger radius (including Embalajes Camo, Gecoinsa and Trelaco's Loeches) located outside of the 300 km radius.

(277) *Fifth*, DSS and Europac are not each other's closest competitors because unlike Europac, Tecnicarton Agueda is not focused on corrugated packaging but rather on designing and producing tailor-made multi-material solutions for its customers, using materials such as plastic, metal, foam and paper with corrugated packaging only being produced incidentally, as evidenced by the fact that DSS Tecnicarton Agueda together with DSS Tecnicarton Vigo produce only […] msqm.

(278) *Finally*, no concerns were raised in the market investigation with regard to heavy duty cases in Portugal.

(279) In view of the above, the Commission considers that the Transaction does not raise serious doubts as regards its compatibility with the internal market with regard to heavy duty cases in Northern Portugal.

5.2. Horizontal coordinated effects

(280) The Commission considers that based on the limited combined market shares of the Parties, the Transaction is unlikely to lead to coordinated effects on the narrowest plausible markets for collection and supply of recovered paper, as well as for the manufacture and supply of corrugated case materials as set out in Sections 4.1-4.3. Therefore, these markets will not be further discussed in this section of the present decision.

(281) As for the markets for sheets and cases in France, Spain and Portugal, the Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market with regard to coordinated effects

[160] Replies to question 13 of Questionnaire Q2 – Customers – Corrugated cases.

[161] If a 500 km radius would be considered, the Parties' combined market share would [20-30]% with an [10-20]% increment brought about by Europac.

irrespective of the exact product and geographic market definition retained, for the following reasons.

(282) *First*, the sourcing of these products is organised via tenders, and therefore the suppliers are not aware of the pricing strategy of their competitors. The lack of transparency is further reinforced by the fact that prices are negotiated bilaterally between suppliers and customers. Indeed, the Notifying Party is often not able to correctly assess its competitors' third party sales or capacity.

(283) The Commission therefore takes the view that the market is not sufficiently transparent to allow the coordinating firms to monitor to a sufficient degree whether other firms are deviating and thus know when to retaliate.

(284) *Second*, coordination is also unlikely as different players are active in the different geographic markets, making it difficult to reach a common understanding on term of coordination.

(285) *Third*, suppliers differ significantly in terms of markets shares, capacity and level of vertical integration.

(286) *Finally*, short-term contracts and fluctuating demand, and - as for cases - the variety of different box designs add to the complexity of these markets.

5.3. Vertical non-coordinated effects

(287) Due to the vertically integrated nature of both Parties, the Transaction leads to various vertical overlaps between their activities throughout the whole value chain.

5.3.1. Collection (upstream) and supply of recovered paper (downstream)

The Notifying Party's view

(288) The Notifying Party considers that in view of the limited combined market shares of the Parties, as well as the small increment, the Transaction is unlikely to lead to competition concerns on the upstream and downstream markets.[162]

The Commission's assessment

(289) The Commission notes that the Transaction leads to vertically affected markets only if the markets are defined as national in scope as the Parties' combined market share on the downstream market for the supply of recovered paper in Portugal is [30-40]% (see section 5.1.2).[163]

(290) In any event however, the Commission considers that also on markets defined as national in scope, the Transaction does not raise competition concerns for the following reasons.

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[162] Paragraphs 6.39-6.41 of the Form CO.

[163] For the sake of completeness it should be mentioned that if the markets for the collection and supply of recovered paper were to be further sub-segmented on the basis of the different paper grades, these submarkets would be also affected in Portugal.

(291) The Transaction is unlikely to lead to input foreclosure given the moderate combined market share of the Parties on the upstream market. Downstream competitors can easily source recovered paper from other alternative suppliers. Indeed, on an EEA-wide level the Parties' combined market share is [5-10]%. On a national level the only overlap is in Spain where the combined market share would be [0-5]%. Europac has a [30-40]% market share in Portugal where DSS is not active in the collection of recovered paper.[164]

(292) Similarly, the merged entity is unlikely to have the ability or the incentive to engage in customer foreclosure, given its moderate market share on the downstream market for the supply of recovered paper ([5-10]% in the EEA, less than [0-5]% in Spain and [30-40]% in Portugal) and the very limited increment brought about by the Transaction (not exceeding [0-5]%).

(293) Therefore, the Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market with regard to the vertical link between the Parties' activities on the markets of collection and supply of recovered paper, irrespective of the exact product and geographic market definition upheld.

5.3.2. Supply of recovered paper (upstream) and manufacture and supply of CCM (downstream)

The Notifying Party's view

(294) The Notifying Party considers that in view of the limited combined market shares of the Parties, as well as the small increment, the Transaction is unlikely to lead to competition concerns on the upstream and downstream markets.[165]

The Commission's assessment

(295) The Commission notes that given that recovered paper is only an input product for recycled CCM, whereas kraftliner and virgin wood fibre fluting should not be taken into account when analysing the Transaction's potential impact due to the vertical link between the Parties' activities on the upstream and downstream markets. Furthermore, given the at least EEA-wide scope of the downstream market confirmed by the market investigation (see Section 4.3.2), the appropriate geographic scope of the vertical analysis should be at least EEA-wide. Therefore, the Transaction does not lead to vertically affected markets in this regard.

(296) The Commission considers that irrespective of the exact market definition, the Transaction does not raise competition concerns for the following reasons.

(297) The Transaction is unlikely to lead to input foreclosure as the combined market share of the Parties is moderate on the upstream market, therefore downstream competitors can easily source recovered paper from other alternative suppliers. Indeed, on an EEA-wide level the Parties' combined market share is [5-10]%.

(298) Similarly, the merged entity is unlikely to have the ability or the incentive to engage in customer foreclosure, given its moderate market share on the

164 Notifying Party's reply to question 4 of RFI5 on 11 October 2018.

165 Paragraphs 6.39-6.41 and 6.49 of the Form CO.

downstream market for the manufacture and supply of recycled CCM ([5-10]%) and the limited increment brought about by the Transaction ([0-5]%).

(299) Therefore, the Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market with regard to the vertical link between the Parties' activities on the markets of the supply of recovered paper and the manufacture and supply of recycled CCM.

5.3.3. Manufacture and supply of CCM (upstream) and corrugated sheets (downstream)

The Notifying Party's view

(300) The Notifying Party submits that the Transaction does not lead to input or customer foreclosure concerns based on the merged entity's limited upstream market presence, as well as its moderate demand for CCM products.[166]

The Commission's assessment

(301) The Commission notes that the Transaction leads to vertically affected markets only if national or local sheet markets are considered. However, the upstream market for the manufacture and supply of CCM is EEA-wide.

(302) The Commission considers that the merged entity will not have the ability or incentive to engage in input foreclosure for the following reasons.

(303) *First*, the fact that the Parties' upstream market shares do not exceed 10% with regard to any of the CCM products suggest that the merged entity will not have a significant degree of market power in relation to any CCM product. Without a significant degree of market power in relation to any CCM product, the merged entity is unlikely to have a significant influence on the conditions of competition in relation to CCM products in a manner that could lead to input foreclosure concerns.

(304) *Second*, although some customers raised concerns in the market investigation with regard to the Transaction's potential negative impact on the sourcing of CCM, and in particular kraftliners,[167] this view was not widely shared by market participants.

(305) The majority of the Parties' CCM customers responding to the questionnaire indicated that they would be able to find alternative suppliers should the Parties stop supplying them or supply them at significantly worse conditions post-transaction.[168] Furthermore, the majority indicated that the Transaction will have no impact on their company in sourcing these products.[169]

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166 Paragraphs 6.105-6.113 of the Form CO.

167 Minutes of a conference call with a competitor on 30 July 2018, paragraphs 29-30; replies to questions 47 and 56-59 of Questionnaire Q1 – CCM, Corrugated Sheets, Corrugated Cases and replies to question 24 of Questionnaire Q3 – Competitors Corrugated Case Materials.

168 Replies to question 47 of Questionnaire Q1 – CCM, Corrugated Sheets, Corrugated Cases and replies to question 14.2 of Questionnaire Q3 – Competitors Corrugated Case Materials.

169 Replies to question 56 of Questionnaire Q1 – CCM, Corrugated Sheets, Corrugated Cases and replies to question 24 of Questionnaire Q3 – Competitors Corrugated Case Materials.

(306) The majority of the competitors and customers replied that the Transaction will not have a negative impact on the intensity of competition, the price level or the volumes available.[170]

(307) *Third*, the market investigation confirmed that third party capacity expected in the market in the next 5 years (in form of capacity expansions) would be able to counterbalance the effect of a potential internalisation strategy of the merged entity.[171]

(308) Indeed, competitors indicated with regard to all CCM products produced by the Parties (kraftliner, testliner, HP recycled fluting and standard recycled fluting) that they either expect the demand and the supply to be balanced in the future or predict oversupply.[172] Similarly, the majority of customers describe the present situation as and expects for the future a balance between the demand and supply with regard to these products,[173] and predicts no sourcing difficulties in the future.[174]

(309) *Fourth*, although the Parties are already vertically integrated, they use only a proportion of their CCM production internally, and they supply their downstream competitors with CCM products.[175]

(310) *Finally*, the Commission notes that – similarly to the Parties – some downstream competitors are vertically integrated, manufacturing themselves CCM, therefore any input foreclosure strategy would have limited effect on them.

(311) The Commission considers that the Transaction does not lead to customer foreclosure concerns either.

(312) *First*, the merged entity will not have a significant degree of market power on the downstream market; the Parties' combined demand on the merchant market represents [10-20]% of the total EEA demand for CCM.[176] This figure does not significantly differ should one look at the demand for individual CCM products.[177] Therefore, upstream competitors of the Parties have sufficient economic alternatives to sell their output across the EEA.

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170 Replies to questions 25-27 of Questionnaire Q3 – Competitors Corrugated Case Materials, replies to questions 57-59 of Questionnaire Q1 – CCM, Corrugated Sheets, Corrugated Cases.

171 Replies to question 19 of Questionnaire Q3 – Competitors Corrugated Case Materials and replies to question 51 of Questionnaire Q1 – CCM, Corrugated Sheets, Corrugated Cases.

172 Replies to question 21 of Questionnaire Q3 – Competitors Corrugated Case Materials.

173 Replies to questions 52-53 of Questionnaire Q1 – CCM, Corrugated Sheets, Corrugated Cases.

174 Replies to question 55 of Questionnaire Q1 – CCM, Corrugated Sheets, Corrugated Cases and replies to question 23 of Questionnaire Q3 – Competitors Corrugated Case Materials.

175 In 2017, DSS used […]% of its kraftliner, […]% of its testliner and […]% of its standard recycled fluting production internally. Europac used […]% of its kraftliner, […]% of its testliner, […]% of its HP recycled fluting and […]% of its standard recycled fluting production.

176 Paragraph 6.105 of the Form CO.

177 The Parties' combined demand represents [20-30]% of the total kraftliner demand, [5-10]% of the total testliner demand, [10-20]% of the total semi-chemical fluting demand (and similarly of the total NSCF and SCF demand) and [10-20]% of total recycled fluting demand (and similarly of the total HP recycled and standard recycled fluting demand). (Reply to question 1 of RFI8 submitted on 29 October 2018).

(313) *Second*, although both Parties are already vertically integrated, they do source CCM products from third parties, either because they do not produce the specific product themselves (*e.g.* neither of the Parties produce virgin wood fibre flutings) or because of cost efficiency. This strategy is unlikely to change post-transaction.

(314) *Finally* and consistent with the above, no concerns were raised in the market investigation with regard to customer foreclosure.

(315) Therefore, the Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market with regard to the vertical link between the Parties' activities on the markets of the manufacture and supply of CCM and the manufacture and supply of sheets irrespective of the exact product and geographic market definition upheld.

5.3.4. Manufacture and supply of corrugated sheets (upstream) and corrugated cases (downstream)

(316) The Commission notes that the local scope of the upstream and downstream markets differs based on the market investigation results; while the local scope of the upstream sheet markets is 400 km, that of the downstream case markets is 300km.[178] Therefore, it is not possible to clearly identify the vertically affected local markets, given that more than one downstream market can fall under a specific upstream market. In order to be able to assess the potential impact of the Transaction due to the vertical link between the Parties' activities in the manufacture and supply of sheets and cases, the Commission uses the local market shares in the local markets around the production plants of the Parties as presented in Sections 5.1.4 and 5.1.5 as proxies because the Commission considers that they are representative for the competitive landscape in the affected markets.

5.3.4.1. France

(317) On a national level, the Transaction does not lead to vertically affected markets, however, with regard to local level, it leads to affected markets in the local markets around (i) DSS Kunheim, (ii) DSS Velin, (iii) DSS Dauphine, (iv) Europac La Rochette, (v) DSS Atlantique, (vi) DSS Bretagne, (vii) DSS Normandie, (viii) DSS Vervins, (ix) DSS Normandie (Cabourg), (x) DSS Thouarce and (xi) Europac Durtal for conventional sheets and cases; as well as in the local markets around (xii) DSS St Just, (xiii) DSS Vervins, (xiv) Europac Rouen, (xv) DSS Normandie (Cabourg), (xvi) Europac Durtal and (xvii) DSS Larousse (Tigy) for heavy duty sheets and cases.

The Commission's assessment

(318) The Commission takes the view that the Transaction does not lead to input foreclosure concerns for the following reasons.

(319) *First*, based on the Parties' market shares[179] and in particular, the very limited increment on the upstream markets (not exceeding [0-5]% on the affected

[178] This is larger for heavy duty sheets and cases as explained in Sections 4.4.2 and 4.5.2.

[179] Varying between [30-40]-[40-50]%, depending on the affected local market concerned.

markets), it is unlikely that the merged entity will have, as a result of the Transaction, a significant degree of market power on the upstream market and therefore the ability to significantly influence the conditions of competition in the upstream market and thus possibly the prices and supply conditions in the downstream market (see Section 5.1.4.1).

(320) *Second*, the Commission notes with regard to the incentive of the merged entity to engage in input foreclosure that although the Parties are already vertically integrated, they do not use all of their sheet production internally, and they supply – although to a limited extent - their downstream competitors with sheets.[180] This indicates that it is economically profitable for vertically integrated undertakings to supply their downstream competitors. There is no indication that this would change due to the Transaction.

(321) *Finally*, the Commission notes that – similarly to the Parties – some downstream competitors such as Smurfit Kappa, Saica, VPK or International Paper are vertically integrated, manufacturing themselves sheets, therefore any input foreclosure strategy would have a limited effect on them.

(322) The Commission considers that the Transaction does not lead to customer foreclosure concerns either, because the Parties – already pre-transaction – internalise to a great extent their sheet demand, and therefore account for only [5-10]% of the total merchant demand for sheets in France.[181]

(323) Therefore, the Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market with regard to the vertical link between the Parties' activities on the markets of the manufacture and supply of sheets (upstream) and cases (downstream) in France irrespective of the exact product and geographic market definition.

5.3.4.2. Spain

(324) On a national level the Transaction does not lead to vertically affected markets, however, with regard to local level, it leads to affected markets in the local markets around (i) Europac Dueñas, (ii) DSS Dicesa (Sant Pere de Riudebitlles), (iii) DSS Flak (Olerdola), (iv) Europac Torrelavit, (v) DSS La Coruña and (vi) DSS Pontevedra with regard to conventional sheets and cases, as well in the local market around (vii) DSS Tecnicarton Vigo with regard to heavy duty sheets and cases.

The Commission's assessment

(325) The Commission takes the view that the Transaction does not lead to input foreclosure concerns for the following reasons.

(326) *First*, as explained in detail in Section 5.1.4.2, the Commission takes the view that it is unlikely that the merged entity will have, as a result of the Transaction, a

[180] DSS uses around […]%, Europac […]% of its sheets production in France internally (reply to question 4 of RFI8 submitted on 29 October 2018).

[181] Reply to question 3 of RFI8 submitted on 29 October 2018.

significant degree of market power on the upstream market[182] and therefore the ability to significantly influence the conditions of competition in the upstream market and thus possibly the prices and supply conditions in the downstream market (see Section 5.1.5.2).

(327) *Second*, the Commission notes with regard to the incentive of the merged entity to engage in input foreclosure that although the Parties are already vertically integrated, they do not use all of their sheet production internally, and they supply – although to a limited extent - their downstream competitors with sheets.[183] This indicates that it is economically profitable for vertically integrated undertakings to supply their downstream competitors. There is no indication that this would change due to the Transaction.

(328) *Finally*, the Commission notes that – similarly to the Parties – some downstream competitors are vertically integrated, manufacturing themselves sheets, therefore any input foreclosure strategy would have limited effect on them.

(329) The Commission considers that the Transaction does not lead to customer foreclosure concerns either, because the Parties – already pre-transaction – internalise to a great extent their sheet demand, and therefore account for only [0-5]% of the total merchant demand for sheets in Spain.[184]

(330) Therefore, the Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market with regard to the vertical link between the Parties' activities on the markets of the manufacture and supply of sheets (upstream) and cases (downstream) in Spain irrespective of the exact product and geographic market definition.

5.3.4.3. Portugal

(331) The Transaction leads to vertically affected markets on a national level with regard to conventional sheets and cases. Furthermore, it leads to affected markets in the local markets around (i) DSS Esmoriz, (ii) Europac Guilhabreu, (iii) Europac Ovar, (iv) Europac Leiria, (v) Europac Rio de Mouro and (vi) DSS Tecnicarton Agueda with regard to conventional sheets and cases, as well in the local markets around (vii) Europac Guilhabreu, (viii) Europac Ovar and (ix) DSS Tecnicarton Agueda with regard to heavy duty sheets and cases.

The Notifying Party's view

(332) The Notifying Party argues that post-transaction DSS will not have the ability to foreclose rival case suppliers for the following reasons.

(333) *First*, in a hypothetical event of the merged entity no longer supplying its downstream competitors, they could still access over 50% of the conventional sheet market. The Notifying Party points out that with regard to heavy duty

[182] The combined market shares of the Parties is [20-30]% on a national conventional sheet market (with an increment of [10-20]%) and vary between [20-30]-[50-60]% on the affected local markets (both conventional and heavy duty sheet), with and increment of [5-10]-[20-30]%.

[183] DSS uses around […]%, Europac […]% of its sheets production in Spain internally (reply to question 4 of RFI8 submitted on 29 October 2018).

[184] Reply to question 3 of RFI8 submitted on 29 October 2018.

sheets, the Transaction does not alter the merged entity's ability to foreclose as the Transaction does not result in any increment.

(334) *Second*, Saica's recently opened sheet feeder facility has already had significant success in winning new business and it could alone defeat any attempted foreclosure strategy by the merged entity.

(335) *Third*, the majority of the Parties' key competitors in Portugal are already vertically integrated.

(336) *Fourth*, the Notifying Party argues that imports are present on the Portuguese market and can be easily increased.[185]

(337) Furthermore, the Notifying Party submits that the Transaction will not provide DSS with the ability to foreclose rival sheet suppliers as (i) the Transaction results in a downstream increment of only [5-10]% for conventional and [0-5]% for heavy duty cases on a national level and (ii) because the Parties' activities in the downstream affected markets account for only a small fraction of demand for sheets as the Parties currently self-supply to a great extent.[186]

The Commission's assessment

(338) The Commission takes the view that the Transaction is likely to lead to input foreclosure with regard to conventional sheets for the following reasons.

(339) *First*, as discussed in detail in Section 5.1.4.3, the upstream market is rather concentrated. The Parties combined market shares are high, [40-50]% on a national level (with an increment of [10-20]%) and varying between [50-60]% and [50-60]% on a local level (with an increment of [10-20]-[20-30]%).

(340) *Second*, Saica's future position on the market appears to be overestimated by the Notifying Party and as such is not sufficient to counterbalance the merged entity's potential foreclosure strategy.

(341) *Third*, the Commission notes that imports (and exports) are taken into account in the national market shares which already shows high concentration and thus it is unlikely that upstream competitors – located in or outside Portugal - could successfully offset the negative impact of a potential input foreclosure strategy.

(342) Therefore, the Commission considers that such concentration confers a significant degree of market power to the merged entity on the upstream market, and consequently an ability to engage in input foreclosure.

(343) Furthermore, as for the incentive of the merged entity to engage in input foreclosure, the Commission takes the view that given that cases are more complex and thus more profitable products (as also apparent from the margin data provided by the Parties), the merged entity would have an incentive to limit its sheets sales to its competitors, in order to gain profits from expanding its downstream sales.

185 Paragraph 6.117 of the Form CO.

186 Paragraph 6.115 of the Form CO.

(344) The Commission takes however note that the effects of a potential input foreclosure remedy would be lessened by the fact that some of the Parties' downstream competitors are themselves vertically integrated. However, smaller non-integrated downstream competitors still represent around 20% of the downstream market.

(345) The Commission on the other hand considers that the Transaction does not lead to customer foreclosure concerns, because the Parties – already pre-transaction – internalise the overwhelming majority, and for Europac all - of their sheet demand, and therefore account for only [0-5]% of the total merchant demand for sheets in Portugal.[187]

(346) Therefore, the Commission considers that the Transaction raises serious doubts as to its compatibility with the internal market with regard to the vertical link between the Parties' activities on the markets of the manufacture and supply of conventional sheets and cases in the relevant local markets in Portugal.

5.4. Conclusion on competitive assessment

(347) The Commission considers that the Transaction raises serious doubts as to its compatibility with the internal market with regard to

(a) horizontal non-coordinated effects in the market of manufacture and supply of conventional sheets in Portugal and its local markets;

(b) horizontal non-coordinated effects in the market of manufacture and supply of conventional cases in Western France, and in particular in Brittany; and

(c) vertical non-coordinated effects regarding the Parties' activities in the markets of manufacture and supply of conventional sheets and cases in Portugal.

6. PROPOSED REMEDIES

(348) In order to render the concentration compatible with the internal market, the undertakings concerned have modified the notified concentration by entering into the following commitments (the "Commitments"), which are annexed to this decision and form an integral part thereof.[188]

(349) As per the Commitments, the Notifying Party has proposed to divest:

(i) the "DSS Normandie plants", comprising a box plant ("DSS Normandie") and a sheet plant (“DSS Normandie (Cabourg)”) for the manufacture and supply of conventional cases in Western France and in particular in Brittany, and

187 Reply to question 3 of RFI8 submitted on 29 October 2018.

188 The Notifying Party submitted commitments first on 22 October 2018, then modified it on 25 October 2018 and 5 November 2018. Given that these modifications were not of major significance, the Commission only analyses the Commitments in their final form.

(ii) Europac's Ovar box plant for the manufacture and supply of conventional sheets in Portugal.

(350) Specifically, the Notifying Party commits to divest:

6.1. For DSS Normandie plants[189]

(a) all tangible assets owned by DSS and necessary for the production, servicing and sale of all products and product lines manufactured in the DSS Normandie plants;

(b) a non-exclusive, non-transferrable, royalty-free, perpetual licence for the benefit of the business currently carried on by the DSS Normandie plants, for any intangible asset that is necessary for the development, production, servicing and sale of the products currently manufactured at the DSS Normandie plants;

(c) all licences, permits and authorisations necessary to produce the products manufactured at the DSS Normandie plants to the extent transferrable under applicable law;

(d) all external customer contracts relating to the products manufactured at the DSS Normandie plants – with the exception of five contracts as listed in Annex 2 of the Commitments –, and all other external contracts, agreements, leases and commitments necessary for the business of the DSS Normandie plants;

(e) all customer accounts, orders and credit records or portions thereof relating to the products manufactured at the DSS Normandie plants, other than those relating to the customers listed in Annex 2 of the Commitments;

(f) the Personnel listed in Annex 3 of the Commitments, to the extent still employed on the Effective Date;

(g) all Key Personnel listed in Annex 3 of the Commitments, to the extent still employed on the Effective Date;

– […].

6.2. For Europac Ovar

(a) all tangible assets owned by Europac and necessary for the production, servicing and sale of all products and product lines manufactured in Europac Ovar;

(b) a non-exclusive, non-transferrable, royalty-free, perpetual licence for any intangible asset that is necessary for the development, production, servicing and sale of the products currently manufactured at Europac Ovar;

189 Paragraphs 1-7 of the Schedule of the Commitments.

(c) all licences, permits and authorisations necessary to produce the products manufactured at the Europac Ovar to the extent transferrable under applicable law;

(d) all external customer contracts relating to the products manufactured at Europac Ovar and all other external contracts, agreements, leases and commitments necessary for the business of Europac Ovar;

(e) all customer accounts, orders and credit records or portions thereof relating to the products manufactured at Europac Ovar;

(f) the Personnel listed in Annex 5 of the Commitments, to the extent still employed on the Effective Date;

(g) all Key Personnel listed in Annex 5 of the Commitments, to the extent still employed on the Effective Date;

– […].

(351) In addition, the undertakings concerned have entered into related commitments, *inter alia* regarding the separation of the divested businesses from their retained businesses, the preservation of the viability, marketability and competitiveness of the divested businesses, including the appointment of a monitoring trustee and, if necessary, a divestiture trustee.

(352) The Parties consider that these remedies would eliminate any serious doubts which may be identified by the Commission in relation to (i) the supply of conventional sheets in Portugal and (ii) the supply of conventional cases in the 300km radius around DSS Bretagne (Brittany). In particular, the Parties are of the view that:

(a) the proposed remedies would effectively remove the overlap between the Parties in the areas of concern identified by the Commission;

(b) the plants are high-quality and competitive plants with substantial revenues and strong EBITDA, and ideally suited and well-positioned to compete effectively with the Parties' plants in the areas of concern; and

(c) the proposed remedies offer a purchaser significant potential to expand production with substantial spare capacity and scope for additional capacity. It includes the necessary assets and personnel to ensure the plants' viability and competitiveness on a lasting basis.[190]

[190] Paragraph 2.2 of the Form RM.

7. ASSESSMENT OF THE PROPOSED REMEDIES

7.1. DSS Normandie plants – manufacture and supply of corrugated cases in Brittany (Western France)

7.1.1. Suitability of the Commitments to remove serious doubts

(353) The overlap between the Parties' activities in Western France stems from the Europac Durtal plant, which in 2017 sold […] msqm conventional cases to third parties.[191] The DSS Normandie plants in turn had third party sales of […] msqm.[192] Therefore, the Commission considers the Commitments would effectively remove close to the full overlap between the Parties with regard to conventional cases in Western France.[193]

(354) Furthermore, DSS Normandie is 50km closer to DSS Bretagne than Europac Durtal, suggesting that it is particularly well placed to serve customers across Western France, including Brittany.

(355) The market test has also confirmed the suitability of the Commitments, as the majority of the market test participants indicated that they consider that the Commitments would remove the competition concerns in respect of the manufacture and supply of cases in the local relevant markets in Western France.[194]

7.1.2. Viability of the Divestment Business

(356) The DSS Normandie plants are profitable, in the last financial year of 2017/2018, they have achieved a turnover of EUR […] with an EBITDA of EUR […].[195]

(357) The majority of the respondents in the market test also indicated that the Purchaser of the DSS Normandie plants can effectively compete in Western France on a lasting basis with regard to cases.[196]

(358) Therefore, the Commission considers that the DSS Normandie plants constitute a viable business should they be acquired by a suitable Purchaser.

7.1.3. Purchaser criteria and buyers

(359) In response to the comments made in the market test that the Purchaser of the DSS Normandie plants should have proven expertise in the paper industry,[197] the

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191 Annex 13.2 of the Form CO.

192 DSS Normandie sold […] msqm, while DSS Normandie (Cabourg) […] msqm conventional cases to third parties (Annex 13.2 of the Form CO). It should be further noted that DSS Normandie had intragroup sales of […] msqm in 2017 (Annex 13.2 of the Form CO).

193 Although the Commission does not consider that the Transaction raises serious doubts as to its compatibility with the internal market with regard to corrugated sheets in Western France, for the sake of completeness, the Commission notes that Europac Durtal, as well as the DSS Normandie plants also produce and sell conventional sheets ([…] msqm and […] msqm, respectively).

194 Replies to question 5 of Questionnaire Q4 – Case Customers in Western France and to question 4 of Questionnaire Q5 – Case Competitors in Western France.

195 Paragraph 2.33 of the Form RM.

196 Replies to question 7 of Questionnaire Q4 – Case Customers in Western France and to question 7 of Questionnaire Q5 – Case Competitors in Western France.

Commitments[198] require the suitable Purchaser to have existing activities in the paper industry, including (but not limited to) activities in the production of corrugated case materials and/or sheets and/or cases. The Commission considers that if acquired by a Purchaser fulfilling this requirement, the DSS Normandie plants will be able to remain a viable and active competitive force in competition with the merged entity and other competitors.

(360) Based on the market test results,[199] the Commission considers that the DSS Normandie plants are perceived as an attractive business, which is further confirmed by the fact that a competitor of the Parties has expressed preliminary interest in acquiring the DSS Normandie plants.[200]

7.1.4. Conclusion

(361) For the reasons outlined above, the Commitments entered into by the Notifying Party are sufficient to eliminate the serious doubts as to the compatibility of the Transaction with the internal market with regard to the manufacture and supply of cases in Western France and in particular in Brittany as a result of horizontal non-coordinated effects.

7.2. Europac Ovar

7.2.1. Suitability of the Commitments to remove serious doubts

(362) Europac had external sales in 2017 of […] msqm of sheets. It is by far Europac's production facility with the most sheet sales in Portugal. All other Europac plants with sales in Portugal (*i.e.* Europac Leiria, Europac Lisboa and Europac Guilhabreu) account for only […] msqm of sheet sales in total. As such, the increment arising from the Transaction would be largely eliminated, to roughly [0-5]% of sales.

(363) In addition, Europac Ovar is well located to compete for customers across Portugal,[201] and only 9 km away from DSS Esmoriz.[202] Also, Europac continuously implemented improvements on the existing equipment, also in 2018.

(364) The results of the market test indicated that the divestment of Europac Ovar to a suitable purchaser is sufficient to remove the competition concerns raised by the Transaction. Indeed, whilst some market test participants refrained from taking a position on this point, of those that did, a majority indicated that they consider that the Commitments would remove the competition concerns in respect of the manufacture and supply of sheets in the relevant local markets in Portugal.

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197 Replies to questions 13-16 of Questionnaire Q4 – Case Customers in Western France and to questions 12-15 of Questionnaire Q5 – Case Competitors in Western France.

198 As modified on 5 November 2018.

199 Replies to question 11 of Questionnaire Q4 – Case Customers in Western France and to question 10 of Questionnaire Q5 – Case Competitors in Western France.

200 Replies to question 18 of Questionnaire Q5 – Case Competitors Western France.

201 […].

202 Paragraphs 2.7 – 2.18 of the Form RM.

7.2.2. Viability of the Divestment Business

(365) Europac Ovar are profitable, with a turnover of EUR […] with an EBITDA of EUR […].[203]

(366) A majority of respondents considered that Europac Ovar would be viable so that a suitable purchaser could effectively compete on a lasting basis as regards the manufacture and supply of sheets in Portugal provided that Europac Ovar's customers would be transferred along with it according to several respondents. The terms of the Commitments address this point raised by several respondents. Indeed, the Parties commit to use their best efforts to transfer or assign the applicable aspects of all customer contracts along with Europac Ovar.[204]

7.2.3. Purchaser criteria and buyers

(367) Furthermore, a majority of respondents indicated that Europac Ovar would be an attractive business opportunity, for a purchaser that is an established industrial player.[205] Indeed, the market test indicated that a purchaser complying with the relevant criteria of financial stability and expertise would be in a position to be an effective force able to compete against the combined entity post-Transaction, provided that it has previous experience in the industry. As such, the Commitments[206] require the Purchaser to be approved to have existing activities in the paper industry, including (but not limited to) activities in the production of corrugated case materials and/or sheets and/or cases. The Commission considers that if acquired by a Purchaser fulfilling this requirement, Europac Ovar will be able to remain a viable and active competitive force in competition with the merged entity and other competitors.

7.2.4. Conclusion

(368) For the reasons outlined above, the commitments entered into by the undertakings concerned are sufficient to eliminate the serious doubts as to the compatibility of the transaction with the internal market in relation to the manufacture and supply of sheets in Portugal, as well as with regard to the vertical link between the Parties' activities on the markets of the manufacture and supply of conventional sheets and cases in Portugal.

(369) The commitments in section B of the Annex constitute conditions attached to this decision, as only through full compliance therewith can the structural changes in the relevant markets be achieved. The other commitments set out in the Annex constitute obligations, as they concern the implementing steps which are necessary to achieve the modifications sought in a manner compatible with the internal market.

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[203] Paragraph 2.18 of the Form RM.

[204] Paragraph 5.18(vii) of the Form RM.

[205] Replies to questions 1, 3, 6-8 of Questionnaire Q6 – Market Test Portugal.

[206] As modified on 5 November 2018.

8. CONCLUSION

(370) For the above reasons, the Commission has decided not to oppose the notified operation as modified by the commitments and to declare it compatible with the internal market and with the functioning of the EEA Agreement, subject to full compliance with the conditions in section B of the commitments annexed to the present decision and with the obligations contained in the other sections of the said commitments. This decision is adopted in application of Article 6(1)(b) in conjunction with Article 6(2) of the Merger Regulation and Article 57 of the EEA Agreement.

For the Commission

(Signed)
Margrethe VESTAGER
Member of the Commission

5 November 2018

Case M. 8915 – DS Smith / Europac

COMMITMENTS TO THE EUROPEAN COMMISSION

Pursuant to Article 6(2) of Council Regulation (EC) No 139/2004 (the "**Merger Regulation**"), DS Smith Plc ("**DSS**" or the "**Notifying Party**") hereby enters into the following Commitments (the "**Commitments**") vis-à-vis the European Commission (the "**Commission**") with a view to rendering the acquisition of the entire issued shareholding of Papeles y Cartones de Europa, S.A. ("**Europac**", and together with DSS, the "**Parties**") by DS Smith Plc (the "**Concentration**") compatible with the internal market and the functioning of the EEA Agreement.

This text shall be interpreted in light of the Commission's decision pursuant to Article 6(1)(b) of the Merger Regulation to declare the Concentration compatible with the internal market and the functioning of the EEA Agreement (the "**Decision**"), in the general framework of European Union law, in particular in light of the Merger Regulation, and by reference to the Commission Notice on remedies acceptable under Council Regulation (EC) No 139/2004 and under Commission Regulation (EC) No 802/2004 (the "**Remedies Notice**").

SECTION A. DEFINITIONS

1. For the purpose of the Commitments, the following terms shall have the following meaning:

Affiliated Undertakings: undertakings controlled by the Parties and/or by the ultimate parents of the Parties, whereby the notion of control shall be interpreted pursuant to Article 3 of the Merger Regulation and in light of the Commission Consolidated Jurisdictional Notice under Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings (the "**Consolidated Jurisdictional Notice**").

Assets: the assets that contribute to the current operation or are necessary to ensure the viability and competitiveness of the Divestment Businesses as indicated in Section B, paragraph 6(i), 6(ii) and 6(iii) and described in more detail in the Schedule.

Closing: the transfer of the legal title to the Divestment Businesses to the Purchaser(s).

Closing Period: the period of […]from the approval of the Purchaser(s) and the terms of sale by the Commission.

Confidential Information: any business secrets, know-how, commercial information, or any other information of a proprietary nature that is not in the public domain.

Conflict of Interest: any conflict of interest that impairs the Trustee's objectivity and independence in discharging its duties under the Commitments.

Divestment Businesses: the businesses as defined in Section B and in the Schedule which the Notifying Party commits to divest.

Divestiture Trustee: one or more natural or legal person(s) who is/are approved by the Commission and appointed by DSS and who has/have received from DSS the exclusive Trustee Mandate to sell the Divestment Businesses to one or more Purchaser(s) at no minimum price.

DSS: DS Smith Plc, incorporated under the laws of England and Wales, with its registered office at 350 Euston Road, London NW1 3AX and registered with the Commercial/Company Register at Companies House under number 1377658.

DSS Normandie: DSS's box plant located at Avenue de la Gare, 50160 Torigni-sur-Vire, France.

DSS Normandie (Cabourg): DSS's sheet plant located at ZAC de Cabourg Village 47, 14390 Cabourg, France.

DSS Normandie plants: DSS Normandie and DSS Normandie (Cabourg).

Effective Date: the date of adoption of the Decision.

Europac Ovar: Europac's box plant located at Zona Industrial de Ovar, Apartado 92, 3881-902, Ovar, Portugal.

First Divestiture Period: the period of […]from the Effective Date.

Hold Separate Manager: the person or persons appointed by DSS for the Divestment Businesses to manage the day-to-day business under the supervision of the Monitoring Trustee.

Key Personnel: all personnel necessary to maintain the viability and competitiveness of the Divestment Businesses, as listed in the Schedule, including the Hold Separate Manager.

Monitoring Trustee: one or more natural or legal person(s) who is/are approved by the Commission and appointed by DSS, and who has/have the duty to monitor DSS's compliance with the conditions and obligations attached to the Decision.

[…]

Parties: DSS (the Notifying Party) and Europac (the undertaking that is the target of the Concentration).

Personnel: all staff currently employed by the Divestment Businesses, including staff seconded to the Divestment Businesses, shared personnel as well as the additional personnel listed in the Schedule.

Purchaser(s): the entity or entities approved by the Commission as acquirer(s) of the Divestment Business(es) in accordance with the criteria set out in Section D.

Purchaser(s) Criteria: the criteria laid down in paragraph 16 of these Commitments that the Purchaser(s) must fulfil in order to be approved by the Commission.

Schedule: the schedule to these Commitments describing in more detail the Divestment Businesses.

Trustee(s): the Monitoring Trustee and/or the Divestiture Trustee as the case may be.

Trustee Divestiture Period: the period of […] from the end of the First Divestiture Period.

SECTION B. THE COMMITMENT TO DIVEST AND THE DIVESTMENT BUSINESSES

Commitment to divest

2. In order to maintain effective competition, DSS commits to divest, or procure the divestiture of the Divestment Businesses by the end of the Trustee Divestiture Period as a going concern to a purchaser or purchasers and on terms of sale approved by the Commission in accordance with the procedure described in paragraph 17 of these Commitments. To carry out the divestiture, DSS commits to find a purchaser or purchasers and to enter into a final binding sale and purchase agreement(s) for the sale of the Divestment Businesses within the First Divestiture Period. If DSS has not entered into such an agreement(s) at the end of the First Divestiture Period, DSS shall

grant the Divestiture Trustee an exclusive mandate to sell the Divestment Businesses in accordance with the procedure described in paragraph 29 in the Trustee Divestiture Period.

3. DSS shall be deemed to have complied with this commitment if:

(i) by the end of the Trustee Divestiture Period, DSS or the Divestiture Trustee has entered into one or more final binding sale and purchase agreement(s) and the Commission approves the proposed purchaser(s) and the terms of sale as being consistent with the Commitments in accordance with the procedure described in paragraph 17; and

(ii) the Closing of the sale of the Divestment Businesses to the Purchaser(s) takes place within the Closing Period.

4. In order to maintain the structural effect of the Commitments, the Notifying Party shall, for a period of 10 years after Closing, not acquire, whether directly or indirectly, the possibility of exercising influence (as defined in paragraph 42 of the Remedies Notice, footnote 3) over the whole or part of the Divestment Businesses, unless, following the submission of a reasoned request from the Notifying Party showing good cause and accompanied by a report from the Monitoring Trustee (as provided in paragraph 43 of these Commitments), the Commission finds that the structure of the market has changed to such an extent that the absence of influence over the Divestment Businesses is no longer necessary to render the proposed concentration compatible with the internal market.

Structure and definition of the Divestment Businesses

5. The Divestment Businesses consist of:

(i) Europac Ovar, as described in further detail in the Schedule; and

(ii) the DSS Normandie plants, as described in further detail in the Schedule.

6. The legal and functional structure of the Divestment Businesses as operated to date is described in the Schedule. The Divestment Businesses, as described in more detail in the Schedule, include all assets and staff that contribute to the current operation or are necessary to ensure the viability and competitiveness of the Divestment Businesses, in particular:

(i) all tangible and intangible assets (including intellectual property rights);

(ii) all licences, permits and authorisations issued by any governmental organisation for the benefit of the Divestment Businesses;

(iii) all contracts, leases, commitments and customer orders of the Divestment Businesses; all customer, credit and other records of the Divestment Businesses; and

(iv) the Personnel.

7. In addition, the Divestment Businesses include the benefit, at the option of the Purchaser(s), for a transitional period of 6 months (extendable by an additional 6 months at the option of the relevant Purchaser) after Closing and on terms and conditions equivalent to those at present afforded to the Divestment Businesses, of all current arrangements under which DSS or Europac (whichever is the current parent company of the relevant Divestment Business), or its Affiliated Undertakings supply products or services to the Divestment Businesses, as detailed in the Schedule. Strict firewall procedures will be adopted so as to ensure that any competitively sensitive information related to, or arising from such supply arrangements (for example, product roadmaps) will not be shared with, or passed on to, anyone outside the relevant business unit providing the product/service operations.

SECTION C. RELATED COMMITMENTS

Preservation of viability, marketability and competitiveness

8. From the Effective Date until Closing, the Notifying Party shall preserve or procure the preservation of the economic viability, marketability and competitiveness of the Divestment Businesses, in accordance with good business practice, and shall minimise as far as possible any risk of loss of competitive potential of the Divestment Businesses. In particular DSS undertakes:

(i) not to carry out any action that might have a significant adverse impact on the value, management or competitiveness of the Divestment Businesses or that might alter the nature and scope of activity, or the industrial or commercial strategy or the investment policy of the Divestment Businesses;

(ii) to make available, or procure to make available, sufficient resources for the development of the Divestment Businesses, on the basis and continuation of the existing business plans;

(iii) to take all reasonable steps, or procure that all reasonable steps are being taken, including appropriate incentive schemes (based on industry practice), to encourage all Key Personnel to remain with the Divestment Businesses, and not to solicit or move any Personnel to DSS's remaining businesses. Where, nevertheless, individual members of the Key Personnel exceptionally leave the Divestment Businesses, DSS shall provide a reasoned proposal to replace the person or persons concerned to the Commission and the Monitoring Trustee. DSS must be able to demonstrate to the Commission that the replacement is well suited to carry out the functions exercised by those individual members of the Key Personnel. The replacement shall take place under the supervision of the Monitoring Trustee, who shall report to the Commission.

Hold-separate obligations

9. The Notifying Party commits to keep the Divestment Businesses separate from the businesses it is retaining and to ensure that unless explicitly permitted under these Commitments: (i) management and staff of the businesses retained by DSS have no involvement in the Divestment Businesses; (ii) the Key Personnel and Personnel of the

Divestment Businesses have no involvement in any business retained by DSS and do not report to any individual outside the Divestment Businesses.

10. Until Closing, DSS shall assist the Monitoring Trustee in ensuring that the Divestment Businesses are managed as distinct and saleable entities separate from the businesses which DSS is retaining. Immediately after the Effective Date, DSS shall appoint one or more Hold Separate Manager(s), who shall be part of the Key Personnel. The Hold Separate Manager(s) shall manage the Divestment Businesses independently and in the best interest of the business with a view to ensuring their continued economic viability, marketability and competitiveness and their independence from the businesses retained by DSS. The Hold Separate Manager shall closely cooperate with and report to the Monitoring Trustee and, if applicable, the Divestiture Trustee. Any replacement of the Hold Separate Manager shall be subject to the procedure laid down in paragraph 8(iii) of these Commitments. The Commission may, after having heard DSS, require DSS to replace the Hold Separate Manager.

Ring-fencing

11. DSS shall implement, or procure to implement, to the extent possible, all necessary measures to ensure that it does not, after the Effective Date, obtain any Confidential Information relating to the Divestment Businesses and that any such Confidential Information obtained by DSS before the Effective Date will be eliminated and not be used by DSS. This includes measures vis-à-vis DSS appointees on the supervisory board and/or board of directors of the Divestment Businesses. In particular, the participation of the Divestment Businesses in any central information technology network shall be severed to the extent possible, without compromising the viability of the Divestment Businesses. DSS may obtain or keep information relating to the Divestment Businesses which is reasonably necessary for the divestiture of the Divestment Businesses or the disclosure of which to DSS is required by law.

Non-solicitation clause

12. The Parties undertake, subject to customary limitations, not to solicit, and to procure that Affiliated Undertakings do not solicit, the Key Personnel transferred with the Divestment Businesses for a period of […] after Closing.

Due diligence

13. In order to enable potential purchasers to carry out a reasonable due diligence of the Divestment Businesses, DSS shall, subject to customary confidentiality assurances and dependent on the stage of the divestiture process:

    (i) provide to potential purchasers sufficient information as regards the Divestment Businesses; and

    (ii) provide to potential purchasers sufficient information relating to the Personnel and allow them reasonable access to the Personnel.

Reporting

14. DSS shall submit written reports in English on potential purchasers of the Divestment Businesses and developments in the negotiations with such potential purchasers to the Commission and the Monitoring Trustee no later than 10 days after the end of every month following the Effective Date (or otherwise at the Commission's request). DSS shall submit a list of all potential purchasers who have expressed interest in acquiring one or both of the Divestment Businesses to the Commission at each and every stage of the divestiture process, as well as a copy of all the offers made by potential purchasers within five days of their receipt.

15. DSS shall inform the Commission and the Monitoring Trustee on the preparation of the data room documentation and the due diligence procedure and shall submit a copy of any information memorandum to the Commission and the Monitoring Trustee before sending the memorandum out to potential purchasers.

SECTION D. THE PURCHASER(S)

16. In order to be approved by the Commission, the Purchaser(s) must fulfil the following criteria:

(i) The Purchaser(s) shall be independent of and unconnected to the Notifying Party and its Affiliated Undertakings (this being assessed having regard to the situation following the divestiture).

(ii) The Purchaser(s) shall have the financial resources, proven expertise and incentive to maintain and develop the Divestment Business(es) as a viable and active competitive force in competition with the Parties and other competitors;

(iii) The Purchaser(s) shall have existing activities in the paper industry, including (but not limited to) activities in the production of corrugated case materials and/or corrugated sheet and/or corrugated case; and

(iv) The acquisition of the Divestment Business(es) by the Purchaser(s) must neither be likely to create, in light of the information available to the Commission, *prima facie* competition concerns nor give rise to a risk that the implementation of the Commitments will be delayed. In particular, the Purchaser(s) must reasonably be expected to obtain all necessary approvals from the relevant regulatory authorities for the acquisition of the Divestment Business(es).

17. The final binding sale and purchase agreement(s) (as well as ancillary agreements) relating to the divestment of the Divestment Businesses shall be conditional on the Commission's approval. When DSS has reached an agreement with a purchaser, it shall submit a fully documented and reasoned proposal, including a copy of the final agreement(s), within one week to the Commission and the Monitoring Trustee. DSS must be able to demonstrate to the Commission that the purchaser(s) fulfil(s) the Purchaser(s) Criteria and that the Divestment Businesses are being sold in a manner consistent with the Commission's Decision and the Commitments. For the approval, the Commission shall verify that the purchaser(s) fulfil(s) the Purchaser(s) Criteria and that

the Divestment Businesses are being sold in a manner consistent with the Commitments including their objective to bring about a lasting structural change in the market. The Commission may approve the sale of the Divestment Businesses without one or more Assets or parts of the Personnel, or by substituting one or more Assets or parts of the Personnel with one or more different assets or different personnel, if this does not affect the viability and competitiveness of the Divestment Businesses after the sale, taking account of the proposed purchaser(s).

SECTION E. TRUSTEE

I. Appointment procedure

18. DSS shall appoint a Monitoring Trustee to carry out the functions specified in these Commitments for a Monitoring Trustee. DSS commits not to close the Concentration before the appointment of a Monitoring Trustee.

19. If DSS has not entered into a binding sale and purchase agreement(s) regarding the Divestment Businesses […] before the end of the First Divestiture Period or if the Commission has rejected a purchaser(s) proposed by DSS at that time or thereafter, DSS shall appoint a Divestiture Trustee. The appointment of the Divestiture Trustee shall take effect upon the commencement of the Trustee Divestiture Period.

20. The Trustee shall:

(i) at the time of appointment, be independent of the Notifying Party and its Affiliated Undertakings;

(ii) possess the necessary qualifications to carry out its mandate, for example have sufficient relevant experience as an investment banker or consultant or auditor; and

(iii) neither have nor become exposed to a Conflict of Interest.

21. The Trustee shall be remunerated by the Notifying Party in a way that does not impede the independent and effective fulfilment of its mandate. In particular, where the remuneration package of a Divestiture Trustee includes a success premium linked to the final sale value of the Divestment Businesses, such success premium may only be earned if the divestiture takes place within the Trustee Divestiture Period.

Proposal by DSS

22. No later than two weeks after the Effective Date, DSS shall submit the name or names of at least three natural or legal persons whom DSS would propose to appoint as the Monitoring Trustee to the Commission for approval. No later than […] before the end of the First Divestiture Period or on request by the Commission, DSS shall submit a list of one or more persons whom DSS proposes to appoint as Divestiture Trustee to the Commission for approval. The proposal shall contain sufficient information for the Commission to verify that the person or persons proposed as Trustee fulfil the requirements set out in paragraph 20 and shall include:

(i) the full terms of the proposed mandate, which shall include all provisions necessary to enable the Trustee to fulfil its duties under these Commitments;

(ii) the outline of a work plan which describes how the Trustee intends to carry out its assigned tasks; and

(iii) an indication of whether the proposed Trustee is to act as both Monitoring Trustee and Divestiture Trustee or whether different trustees are proposed for the two functions.

Approval or rejection by the Commission

23. The Commission shall have the discretion to approve or reject the proposed Trustee(s) and to approve the proposed mandate subject to any modifications it deems necessary for the Trustee to fulfil its obligations. If only one name is approved, DSS shall appoint or cause to be appointed the person or persons concerned as Trustee, in accordance with the mandate approved by the Commission. If more than one name is approved, DSS shall be free to choose the Trustee to be appointed from among the names approved. The Trustee shall be appointed within one week of the Commission's approval, in accordance with the mandate approved by the Commission.

New proposal by DSS

24. If all the proposed Trustees are rejected, DSS shall submit the names of at least two more natural or legal persons within one week of being informed of the rejection, in accordance with paragraphs 18 and 23 of these Commitments.

Trustee nominated by the Commission

25. If all further proposed Trustees are rejected by the Commission, the Commission shall nominate a Trustee, whom DSS shall appoint, or cause to be appointed, in accordance with a trustee mandate approved by the Commission.

II. <u>Functions of the Trustee</u>

26. The Trustee shall assume its specified duties and obligations in order to ensure compliance with the Commitments. The Commission may, on its own initiative or at the request of the Trustee or DSS, give any orders or instructions to the Trustee in order to ensure compliance with the conditions and obligations attached to the Decision.

Duties and obligations of the Monitoring Trustee

27. The Monitoring Trustee shall:

(i) propose in its first report to the Commission a detailed work plan describing how it intends to monitor compliance with the obligations and conditions attached to the Decision.

(ii) oversee, in close co-operation with the Hold Separate Manager, the on-going management of the Divestment Businesses with a view to ensuring their

continued economic viability, marketability and competitiveness and monitor compliance by DSS with the conditions and obligations attached to the Decision. To that end the Monitoring Trustee shall:

(a) monitor the preservation of the economic viability, marketability and competitiveness of the Divestment Businesses, and the keeping separate of the Divestment Businesses from the business retained by DSS the Parties, in accordance with paragraphs 8 and 9 of these Commitments;

(b) supervise the management of the Divestment Businesses as distinct and saleable entities, in accordance with paragraph 10 of these Commitments;

(c) with respect to Confidential Information:

- determine all necessary measures to ensure that DSS does not after the Effective Date obtain any Confidential Information relating to the Divestment Businesses,

- in particular strive for the severing of the Divestment Businesses' participation in a central information technology network to the extent possible, without compromising the viability of the Divestment Businesses,

- make sure that any Confidential Information relating to the Divestment Businesses obtained by DSS before the Effective Date is eliminated in accordance with normal document destruction protocols and will not be used by DSS; and

- decide whether such information may be disclosed to or kept by DSS as the disclosure is reasonably necessary to allow DSS to carry out the divestiture or as the disclosure is required by law;

(d) monitor the splitting of assets and the allocation of Personnel between the Divestment Businesses and DSS or Affiliated Undertakings;

(iii) propose to DSS such measures as the Monitoring Trustee considers necessary to ensure DSS's compliance with the conditions and obligations attached to the Decision, in particular the maintenance of the full economic viability, marketability or competitiveness of the Divestment Businesses, the holding separate of the Divestment Businesses and the non-disclosure of competitively sensitive information;

(iv) review and assess potential purchasers as well as the progress of the divestiture process and verify that, dependent on the stage of the divestiture process:

(a) potential purchasers receive sufficient and correct information relating to the Divestment Businesses and the Personnel in particular by

reviewing, if available, the data room documentation, the information memorandum and the due diligence process, and

(b) potential purchasers are granted reasonable access to the Personnel;

(v) act as a contact point for any requests by third parties, in particular potential purchasers, in relation to the Commitments;

(vi) provide to the Commission, sending DSS a non-confidential copy at the same time, a written report within 15 days after the end of every month that shall cover the operation and management of the Divestment Businesses as well as the splitting of assets and the allocation of Personnel so that the Commission can assess whether the business is held in a manner consistent with the Commitments and the progress of the divestiture process as well as potential purchasers;

(vii) promptly report in writing to the Commission, sending DSS a non-confidential copy at the same time, if it concludes on reasonable grounds that DSS is failing to comply with these Commitments;

(viii) within one week after receipt of the documented proposal referred to in paragraph 17 of these Commitments, submit to the Commission, sending DSS a non-confidential copy at the same time, a reasoned opinion as to the suitability and independence of the proposed purchaser(s) and the viability of the Divestment Businesses after the Sale and as to whether the Divestment Businesses are sold in a manner consistent with the conditions and obligations attached to the Decision, in particular, if relevant, whether the Sale of the Divestment Businesses without one or more Assets or not all of the Personnel affects the viability of the Divestment Businesses after the sale, taking account of the proposed purchaser(s); and

(ix) assume the other functions assigned to the Monitoring Trustee under the conditions and obligations attached to the Decision.

28. If the Monitoring and Divestiture Trustee are not the same legal or natural persons, the Monitoring Trustee and the Divestiture Trustee shall cooperate closely with each other during and for the purpose of the preparation of the Trustee Divestiture Period in order to facilitate each other's tasks.

Duties and obligations of the Divestiture Trustee

29. Within the Trustee Divestiture Period, the Divestiture Trustee shall sell at no minimum price the Divestment Businesses to a purchaser or purchasers, provided that the Commission has approved both the purchaser or purchasers and the final binding sale and purchase agreement(s) (and ancillary agreements) as in line with the Commission's Decision and the Commitments in accordance with paragraphs 16 and 17 of these Commitments. The Divestiture Trustee shall include in the sale and purchase agreement(s) (as well as in any ancillary agreements) such terms and conditions as it considers appropriate for an expedient sale in the Trustee Divestiture Period. In particular, the Divestiture Trustee may include in the sale and purchase agreement(s)

such customary representations and warranties and indemnities as are reasonably required to effect the sale. The Divestiture Trustee shall protect the legitimate financial interests of DSS, subject to DSS's unconditional obligation to divest at no minimum price in the Trustee Divestiture Period.

30. In the Trustee Divestiture Period (or otherwise at the Commission's request), the Divestiture Trustee shall provide the Commission with a comprehensive monthly report written in English on the progress of the divestiture process. Such reports shall be submitted within 15 days after the end of every month with a simultaneous copy to the Monitoring Trustee and a non-confidential copy to DSS.

III. Duties and obligations of the Parties

31. DSS shall provide and shall cause its advisors to provide the Trustee with all such co-operation, assistance and information as the Trustee may reasonably require to perform its tasks. The Trustee shall have full and complete access to any of DSS's or the Divestment Businesses' books, records, documents, management or other personnel, facilities, sites and technical information necessary for fulfilling its duties under the Commitments and DSS and the Divestment Businesses shall provide the Trustee upon request with copies of any document. DSS and the Divestment Businesses shall make available to the Trustee one or more offices on their premises and shall be available for meetings in order to provide the Trustee with all information necessary for the performance of its tasks.

32. DSS shall provide the Monitoring Trustee with all managerial and administrative support that it may reasonably request on behalf of the management of the Divestment Businesses. This shall include all administrative support functions relating to the Divestment Businesses which are currently carried out at headquarters level. DSS shall provide and shall cause its advisors to provide the Monitoring Trustee, on request, with the information submitted to potential purchasers, in particular give the Monitoring Trustee access to the data room documentation and all other information granted to potential purchasers in the due diligence procedure. DSS shall inform the Monitoring Trustee on possible purchasers, submit lists of potential purchasers at each stage of the selection process, including the offers made by potential purchasers at those stages, and keep the Monitoring Trustee informed of all developments in the divestiture process.

33. DSS shall grant or procure Affiliated Undertakings to grant comprehensive powers of attorney, duly executed, to the Divestiture Trustee to effect the sale (including ancillary agreements), the Closing and all actions and declarations which the Divestiture Trustee considers necessary or appropriate to achieve the sale and the Closing, including the appointment of advisors to assist with the sale process. Upon request of the Divestiture Trustee, DSS shall cause the documents required for effecting the sale and the Closing to be duly executed.

34. DSS shall indemnify the Trustee and its employees and agents (each an "**Indemnified Party**") and hold each Indemnified Party harmless against, and hereby agrees that an Indemnified Party shall have no liability to DSS for, any liabilities arising out of the performance of the Trustee's duties under the Commitments, except to the extent that

such liabilities result from the wilful default, recklessness, gross negligence or bad faith of the Trustee, its employees, agents or advisors.

35. At the expense of DSS, the Trustee may appoint advisors (in particular for corporate finance or legal advice), subject to DSS's approval (this approval not to be unreasonably withheld or delayed) if the Trustee considers the appointment of such advisors necessary or appropriate for the performance of its duties and obligations under the Mandate, provided that any fees and other expenses incurred by the Trustee are reasonable. Should DSS refuse to approve the advisors proposed by the Trustee the Commission may approve the appointment of such advisors instead, after having heard DSS. Only the Trustee shall be entitled to issue instructions to the advisors. Paragraph 34 of these Commitments shall apply *mutatis mutandis*. In the Trustee Divestiture Period, the Divestiture Trustee may use advisors who served DSS during the Divestiture Period if the Divestiture Trustee considers this to be in the best interest of an expedient sale.

36. DSS agrees that the Commission may share Confidential Information proprietary to DSS with the Trustee. The Trustee shall not disclose such information and the principles contained in Article 17 (1) and (2) of the Merger Regulation apply *mutatis mutandis*.

37. The Notifying Party agrees that the contact details of the Monitoring Trustee are published on the website of the Commission's Directorate-General for Competition and they shall inform interested third parties, in particular any potential purchasers, of the identity and the tasks of the Monitoring Trustee.

38. For a period of 10 years from the Effective Date the Commission may request all information from the Parties that is reasonably necessary to monitor the effective implementation of these Commitments.

IV. Replacement, discharge and reappointment of the Trustee

39. If the Trustee ceases to perform its functions under the Commitments or for any other good cause, including the exposure of the Trustee to a Conflict of Interest:

(i) the Commission may, after hearing the Trustee and DSS, require DSS to replace the Trustee; or

(ii) DSS may, with the prior approval of the Commission, replace the Trustee.

40. If the Trustee is removed according to paragraph 39 of these Commitments, the Trustee may be required to continue in its function until a new Trustee is in place to whom the Trustee has effected a full hand over of all relevant information. The new Trustee shall be appointed in accordance with the procedure referred to in paragraphs 18 to 25 of these Commitments.

41. Unless removed according to paragraph 39 of these Commitments, the Trustee shall cease to act as Trustee only after the Commission has discharged it from its duties after all the Commitments with which the Trustee has been entrusted have been implemented. However, the Commission may at any time require the reappointment of

the Monitoring Trustee if it subsequently appears that the relevant remedies might not have been fully and properly implemented.

SECTION F. THE REVIEW CLAUSE

42. The Commission may extend the time periods foreseen in the Commitments in response to a request from DSS or, in appropriate cases, on its own initiative. Where DSS requests an extension of a time period, it shall submit a reasoned request to the Commission no later than one month before the expiry of that period, showing good cause. This request shall be accompanied by a report from the Monitoring Trustee, who shall, at the same time send a non-confidential copy of the report to the Notifying Party. Only in exceptional circumstances shall the Notifying Party be entitled to request an extension within the last month of any period.

43. The Commission may further, in response to a reasoned request from the Notifying Party showing good cause waive, modify or substitute, in exceptional circumstances, one or more of the undertakings in these Commitments. This request shall be accompanied by a report from the Monitoring Trustee, who shall, at the same time send a non-confidential copy of the report to the Notifying Party. The request shall not have the effect of suspending the application of the undertaking and, in particular, of suspending the expiry of any time period in which the undertaking has to be complied with.

SECTION G. ENTRY INTO FORCE

44. The Commitments shall take effect upon the date of adoption of the Decision.

……..
duly authorised for and on behalf of
DS Smith Plc

5 November 2018

SCHEDULE

1. The Divestment Businesses comprise DSS Normandie, DSS Normandie (Cabourg) (together the "DSS Normandie plants") and Europac Ovar,

DSS Normandie

2. In accordance with paragraph 5 of these Commitments, DSS Normandie includes, but is not limited to:

(i) **the following main tangible assets:** save as stated below, all tangible assets owned by DSS and necessary for the production, servicing and sale of all products and product lines manufactured at DSS Normandie, specifically including:

(a) the plant located at the above address, including […];

(b) all manufacturing and sales assets including […]:

(ii) **the following main intangible assets**: save as stated below, a non-exclusive, non-transferrable, royalty-free, perpetual licence (without the right to sub-licence) for the benefit of the business currently carried on by DSS Normandie, for any intangible asset that is necessary for the development, production, servicing and sale of the products currently manufactured at DSS Normandie. Nothing in this licence shall restrict the ability of the Purchaser to transfer or sub-licence the benefit of this licence as a result of: (a) an intra-group transfer; or (b) a subsequent sale of DSS Normandie;

(iii) **the following main licences, permits and authorisations**: all licences, permits and authorisations necessary to produce the products manufactured at DSS Normandie to the extent transferrable under applicable law. DSS shall use its best efforts to assign the applicable aspects of such relevant licences, permits and authorisations to the Purchaser;

(iv) **the following main contracts, agreements, leases, commitments and understandings**: all external customer contracts relating to the products manufactured at DSS Normandie, other than contracts, agreements or understandings relating to the customers listed in Annex 2, and all other external contracts, agreements, leases and commitments necessary for the business of DSS Normandie. […];

(v) **the following customer, credit and other records**: all customer accounts, orders and credit records or portions thereof relating to the products manufactured at DSS Normandie, other than those relating to the customers listed in Annex 2;

(vi) **the following Personnel**: the Personnel listed in Annex 3, to the extent still employed on the Effective Date;

(vii) **the following Key Personnel**: all Key Personnel listed in Annex 3, to the extent still employed on the Effective Date; and

(viii) […]

3. DSS Normandie shall not include:

(i) […]

The names of these personnel are therefore not included in the Personnel or Key Personnel of DSS Normandie listed in Annex 3 and all hardware and equipment used primarily by those personnel (including office and IT equipment) shall not be transferred;

(ii) […];

(iii) all DSS proprietary […] software and associated assets, including, […];

(iv) the ownership of, or right to use, any IP rights currently used by DSS Normandie that are not necessary for either the operation of or the viability of DSS Normandie's business;

(v) any brands or logos currently held, as owner or licensee, by DSS;

(vi) any rights to websites or domain names;

(vii) books and records required to be retained pursuant to any law provided that the Purchaser shall on request receive a copy of the same;

(viii) […]; or

(ix) contracts or understandings in relation to customers listed in Annex 2.

4. If there is any asset or personnel which is not covered by paragraph 2 of this Schedule but which is both used (exclusively or not) in DSS Normandie and necessary for the continued viability and competitiveness of DSS Normandie, that asset or adequate substitute will be offered to potential purchasers.

DSS Normandie (Cabourg)

5. In accordance with paragraph 5 of these Commitments, DSS Normandie (Cabourg) includes, but is not limited to:

(i) **the following main tangible assets:** save as stated below, all tangible assets owned by DSS and necessary for the production, servicing and sale of all products and product lines manufactured at DSS Normandie (Cabourg), specifically including:

(a) the plant located at the above address, including […];

(b) all manufacturing and sales assets including […]:

(ii) **the following main intangible assets**: save as stated below, a non-exclusive, non-transferrable, royalty-free, perpetual licence (without the right to sub-licence) for the benefit of the business currently carried on by DSS Normandie (Cabourg) for any intangible asset that is necessary for the development, production, servicing and sale of the products currently manufactured at DSS Normandie (Cabourg). Nothing in this licence shall restrict the ability of the Purchaser to transfer or sub-licence the benefit of this licence as a result of: (a) an intra-group transfer; or (b) a subsequent sale of DSS Normandie (Cabourg);

(iii) **the following main licences, permits and authorisations**: all licences, permits and authorisations necessary to produce the products manufactured at DSS Normandie (Cabourg) to the extent transferrable under applicable law. DSS shall use its best efforts to assign the applicable aspects of such relevant licences, permits and authorisations to the Purchaser;

(iv) **the following main contracts, agreements, leases, commitments and understandings**: all external customer contracts relating to the products manufactured at DSS Normandie (Cabourg) and all other external contracts, agreements, leases and commitments necessary for the business of DSS Normandie (Cabourg). […];

(v) **the following customer, credit and other records**: all customer accounts, orders and credit records or portions thereof relating to the products manufactured at DSS Normandie (Cabourg);

(vi) **the following Personnel**: the Personnel listed in Annex 3, to the extent still employed on the Effective Date;

(vii) **the following Key Personnel**: all Key Personnel listed in Annex 3, to the extent still employed on the Effective Date; and

(viii) […]

6. DSS Normandie (Cabourg) shall not include:

(i) the ownership of, or right to use, any IP rights currently used by DSS Normandie (Cabourg) that are not necessary for either the operation of or the viability of DSS Normandie (Cabourg)'s business;

(ii) any brands or logos currently held, as owner or licensee, by DSS;

(iii) any rights to websites or domain names; or

(iv) books and records required to be retained pursuant to any law provided that the Purchaser shall on request receive a copy of the same.

7. If there is any asset or personnel which is not covered by paragraph 5 of this Schedule but which is both used (exclusively or not) in DSS Normandie (Cabourg) and necessary for the continued viability and competitiveness of DSS Normandie (Cabourg), that asset or adequate substitute will be offered to potential purchasers.

Europac Ovar

8. In accordance with paragraph 5 of these Commitments, Europac Ovar includes, but is not limited to:

(i) **the following main tangible assets:** save as stated below, all tangible assets owned by Europac and necessary for the production, servicing and sale of all products and product lines manufactured at Europac Ovar, specifically including:

(a) the plant located at the above address, including […];

(b) the lease of the warehouse located at Rua de Cabo Verde, Zona Industrial de Ovar, Ovar;

(c) all manufacturing and sales assets including […]:

(ii) **the following main intangible assets**: save as stated below, a non-exclusive, non-transferrable, royalty-free, perpetual licence (without the right to sub-licence) for the benefit of the business currently carried on by Europac Ovar, for any intangible asset that is necessary for the development, production, servicing and sale of the products currently manufactured at Europac Ovar. Nothing in this licence shall restrict the ability of the Purchaser to transfer or sub-licence the benefit of this licence as a result of: (a) an intra-group transfer; or (b) a subsequent sale of Europac Ovar;

(iii) **the following main licences, permits and authorisations**: all licences, permits and authorisations necessary to produce the products manufactured at Europac Ovar to the extent transferrable under applicable law. DSS shall use its best efforts to assign the applicable aspects of such relevant licences, permits and authorisations to the Purchaser;

(iv) **the following main contracts, agreements, leases, commitments and understandings**: all external customer contracts relating to the products manufactured at Europac Ovar and all other external contracts, agreements, leases and commitments necessary for the business of Europac Ovar. […];

(v) **the following customer, credit and other records**: all customer accounts, orders and credit records or portions thereof relating to the products manufactured at Europac Ovar;

(vi) **the following Personnel**: the Personnel listed in Annex 5, to the extent still employed on the Effective Date;

(vii) **the following Key Personnel**: all Key Personnel listed in Annex 5, to the extent still employed on the Effective Date; and

(viii) […].

9. Europac Ovar shall not include:

(i) The following personnel which do not form part of the business of Europac Ovar but which are currently located at the Europac Ovar site: […]

The names of these personnel are therefore not included in the Personnel or Key Personnel of Europac Ovar listed in Annex 5 and all hardware and equipment used primarily by those personnel (including office and IT equipment) shall not be transferred;

(ii) the ownership of, or right to use, any IP rights currently used by Europac Ovar that are not necessary for either the operation of or the viability of Europac Ovar's business;

(iii) any brands or logos currently held, as owner or licensee, by Europac;

(iv) any rights to websites or domain names; or

(v) books and records required to be retained pursuant to any law provided that the Purchaser shall on request receive a copy of the same.

10. If there is any asset or personnel which is not covered by paragraph 8 of this Schedule but which is both used (exclusively or not) in Europac Ovar and necessary for the continued viability and competitiveness of Europac Ovar, that asset or adequate substitute will be offered to potential purchasers.

LIST OF ANNEXES

Annex 1	DSS Normandie plants
Annex 2	Excluded customers
Annex 3	DSS Normandie plants personnel
Annex 4	Europac Ovar
Annex 5	Europac Ovar personnel

ANNEX 1

DSS Normandie Plants

1. DSS Normandie

[…]

2. DSS Normandie (Cabourg)

[…]

ANNEX 2

DSS Normandie – Excluded centrally managed customers

Customer
[…]
[…]
[…]
[…]
[…]

ANNEX 3

DSS Normandie Plants – Personnel

Details of Personnel employed at DSS Normandie

Job description	Number
[…]	[…]
[…]	[…]
[…]	[…]
[…]	[…]
[…]	[…]
[…]	[…]
[…]	[…]
[…]	[…]
[…]	[…]
[…]	[…]
[…]	[…]
[…]	[…]
[…]	[…]
[…]	[…]
[…]	[…]
[…]	[…]
[…]	[…]
[…]	[…]
[…]	[…]
[…]	[…]
[…]	[…]
Total Headcount	[…]

Details of Key Personnel employed at DSS Normandie

Function	Name
[…]	[…]
[…]	[…]
[…]	[…]
[…]	[…]
[…]	[…]
[…]	[…]
[…]	[…]

Details of Personnel employed at DSS Normandie (Cabourg)

Job description	Number
[…]	[…]
[…]	[…]
[…]	[…]
[…]	[…]
[…]	[…]
[…]	[…]
[…]	[…]
[…]	[…]
[…]	[…]
[…]	[…]
[…]	[…]
[…]	[…]
[…]	[…]
[…]	[…]
[…]	[…]
[…]	[…]
[…]	[…]
[…]	[…]
[…]	[…]
Total Headcount	[…]

Details of Key Personnel employed at DSS Normandie (Cabourg)

Function	Name
[…]	[…]
[…]	[…]
[…]	[…]
[…]	[…]

ANNEX 4
Europac Ovar

[…]

ANNEX 5

Europac Ovar – Personnel

Details of Personnel employed at Europac Ovar

Job description	Number
[…]	[…]
[…]	[…]
[…]	[…]
[…]	[…]
[…]	[…]
[…]	[…]
[…]	[…]
[…]	[…]
[…]	[…]
[…]	[…]
[…]	[…]
[…]	[…]
Total Headcount	[…]

Details of Key Personnel employed at Europac Ovar

Function	Name
[…]	[…]
[…]	[…]
[…]	[…]
[…]	[…]
[…]	[…]

[…]	[…]
[…]	[…]