

II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 25 November 1998

declaring a concentration to be compatible with the common market and the functioning of the EEA Agreement

(Case No IV/M.1225 — Enso/Stora)

(notified under document number C(1998) 3653)

(Only the English text is authentic)

(Text with EEA relevance)

(1999/641/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to the Agreement on the European Economic Area, and in particular Article 57 thereof,

Having regard to Council Regulation (EEC) No 4064/89 of 21 December 1989 on the control of concentrations between undertakings ⁽¹⁾, as amended by Regulation (EC) No 1310/97 ⁽²⁾, and in particular Article 8(2) thereof,

Having regard to the Commission decision of 31 July 1998 to initiate proceedings in this case,

Having given the undertakings concerned the opportunity to make known their views on the objections raised by the Commission,

Having regard to the opinion of the Advisory Committee on Concentrations ⁽³⁾,

Whereas:

(1) On 18 June 1998, the Commission received a notification of a proposed concentration pursuant to Article 4 of Regulation (EEC) No 4064/89 (hereinafter referred to as 'the Merger Regulation' by which Enso Oyj (Enso) enters into a full merger with Stora Kopparbergs Bergslags AB (Stora). The newly merged company will be named Stora Enso Oyj (Stora Enso).

(2) After examining the notification, the Commission has concluded that the notified operation falls within the scope of the Merger Regulation. The Commission decided to initiate proceedings pursuant to Article 6(1)(c) of the Merger Regulation on 31 July 1998.

I. THE PARTIES

(3) Enso is an industrial group active in the forest industry, in particular in wood-based fibre products. Its activities consist of wood procurement, paper and board manufacturing, pulp and sawmilling. Enso is also active in merchanting. Enso is incorporated in Finland where it has its main activities. Enso has production plants in other European countries as well — in particular, in Germany and in the Baltic States — and in Asia.

(4) Stora is an industrial group with operations in the forest industry. Stora produces pulp, paper and board and is active in sawmilling. Stora is incorporated in Sweden where it carries out its main business. Stora has production plants also in other European countries too — Germany, in particular — and in Canada.

II. THE OPERATION

(5) The operation is a 'merger between equals' and will be carried out by way of a public bid for all Stora's shares, announced on 2 June 1998, under which Stora's shareholders will receive newly issued shares in Enso.

⁽¹⁾ OJ L 395, 30.12.1989, p. 1; corrected version OJ L 257, 21.9.1990, p. 13.

⁽²⁾ OJ L 180, 9.7.1997, p. 1.

⁽³⁾ OJ C 275, 27.9.1999.

- (6) Following the public bid, Stora will become a wholly owned subsidiary of Enso. The two major shareholders in Stora Enso will be the Finnish State, with approximately 17,6 % of the shares and 21 % of the voting rights, and Investor AB, currently the largest shareholder in Stora, with approximately 10,6 % of the shares and 11,3 % of the voting rights.

III. COMMUNITY DIMENSION

- (7) Enso and Stora have a combined aggregate world-wide turnover in excess of ECU 5 000 million (Enso: ECU 4 976,3 million; Stora: ECU 5 139,7 million). Each of them has a Community-wide turnover in excess of ECU 250 million (Enso: ECU [...] (*) million; Stora: ECU [...] * million), but they do not achieve more than two-thirds of their aggregate Community-wide turnover within one and the same Member State. The notified operation therefore has a Community dimension, but does not constitute a cooperation case under the EEA Agreement.

IV. COMPATIBILITY WITH THE COMMON MARKET

Relevant product markets

General

- (8) The parties have identified the following horizontally affected markets: newsprint, magazine papers, fine papers, corrugating raw materials, consumer packaging and pulp.
- (9) The parties have only limited overlapping activities in corrugating raw materials. There are two types of corrugating raw materials: fluting, which is the rippled middle layer of a corrugated board, and liners, which are the flat surface layers of the board glued to each side of the fluting. Corrugating raw materials are used for manufacturing corrugated board and, ultimately, corrugated boxes and containers, which are mainly used for transport packaging. The only overlap between the activities of the parties in corrugating raw materials occurs in the production and sale of fluting to independent converters. Stora has a market share of 2,1 % at the EEA level, far behind such international groups as SCA (11,9 %) and Jefferson Smurfit Group (10,6 %). Enso's market share in corrugating raw materials is not significant. Consequently, this market will not be discussed further.
- (10) Both Enso and Stora are engaged in the manufacture of pulp. The merged entity would have approximately 20,6 of the pulp production market at the EEA level with the largest competitor yielding 15,2 %. A large part of pulp produced by the parties is used internally in the parties' own paper and board production but the statistics do not exclude such sales. It may therefore be concluded that the parties' pulp production, excluding 'captive' production, will not result in significant market shares

either at EEA or at global level. Therefore, this market will not be discussed further.

- (11) The Commission has in previous decisions identified four sub-markets for fine paper. These were uncoated wood-containing, uncoated wood-free, coated wood-containing and coated wood-free paper. The Commission has, to date, left open the exact definition of the product market ⁽⁴⁾. The precise definition can also be left open in this case because, in all alternative market definitions considered, effective competition would not be significantly impeded in the EEA or any substantial part of that area. Therefore, this market will not be discussed any further.

(a) Newsprint

- (12) Newsprint is primarily used for publication of newspapers. The manufacturing of newsprint requires mechanical pulp or recycled pulp of at least 65 % by weight. There are different grades of newsprint, depending for example on whether the paper is finished or calendered, white or coloured. The brightness differs between different grades.
- (13) According to the parties, the differences in quality, characteristics and price between different grades of newsprint do not suffice to separate the different grades into distinct product markets. Therefore, the parties consider newsprint a single product market. According to the parties, there is a high degree of both demand-side and supply-side substitutability between different grades, and most printers are able to handle different grades without costly adjustments to their printing machines.
- (14) The Commission has considered newsprint in a previous decision ⁽⁵⁾ where it found, *inter alia*, that there was a high degree of demand — and supply-side substitutability and that the price differences were not significant. Therefore, the Commission considered newsprint a single product market. Furthermore, in this case, even if the market were to be further subdivided — for instance into improved newsprint and standard newsprint — the assessment of the notified transaction would not be materially affected. Consequently, for the purpose of this case, newsprint can be considered one relevant product market.

(*) Parts of this text have been edited to ensure that confidential information is not disclosed; those parts are enclosed in square brackets and marked with an asterisk.

⁽⁴⁾ Decision of 24 February 1992 (IV/M.166 — Torras/Sarrió); OJ C 58, 5.3.1992, p. 20; Decision of 19 September 1994 (IV/M.499 — Jefferson Smurfit/Saint-Gobain); OJ C 284, 12.10.1994, p. 3; Decision of 20 February 1995 (IV/M.549 — Svenska Cellulosa/PWA Papierwerke); OJ C 57, 7.3.1995, p. 6; Decision of 11 June 1998 (IV/M.1006 UPM-Kymmene — April); OJ C 219, 15.7.1998, p. 9.
⁽⁵⁾ Decision of 30 October 1995 (IV/M.646 — Repola/Kymmene); OJ C 318, 29.11.1995, p. 3.

(b) *Magazine paper*

- (15) Magazine paper requires mechanical pulp, chemical and recycled pulp, chemicals, fillers and pigments. The parties have identified two main grades of magazine paper, namely uncoated super-calendered mechanical printing paper (SC) and coated mechanical paper in reels. The parties have further divided the coated paper into lightweight coated (LWC), medium-weight coated (MWC) and heavyweight coated paper (HWC). The parties have submitted wood-free coated paper in reels (WFC) as competing with coated mechanical paper.
- (16) According to the parties, there is a high degree of demand-side substitutability between the different grades of magazine paper. The general reaction to the investigation carried out by the Commission, however, points to more limited demand-side substitutability. The decision as to what type of paper to use for a publication depends on a number of criteria, such as the type of publication, the target group and their willingness to pay a given price, the balance between the quality and price of paper, and so on. Furthermore, publishers do not often change the type of paper used for their publications.
- (17) However, it is not necessary to define exactly the relevant product market further, because the assessment of the operation would not be affected even if narrower product markets were considered. For the purpose of this case the relevant product market is, therefore, considered to be magazine paper.

(c) *Consumer packaging board*

- (18) Within consumer packaging boards a large variety of different types and grades of boards exist. Boards are made from either purely virgin fibres or from a mixture of recycled and virgin fibres. A distinction is normally made between four main categories of boards: solid bleached sulphate (SBS), folding box board (FBB), solid unbleached sulphate (SUS) and white lined chipboard (WLC). SBS, FBB and SUS are made from virgin fibres, whereas WLC is made from recycled fibres. The board materials are converted into cartons or folding boxes and cups, which are sold to producers of food and non-food consumer products, including nonliquid and liquid foods, cigarettes, cosmetics and pharmaceuticals. The boards are used, to a limited extent, for graphical applications as well.
- (19) The parties have identified two relevant product markets for consumer packaging board. The first category includes both virgin and recycled fibre-based boards, namely all consumer packaging board grades SBS, SUS, FBB and WLC. The parties refer to this market as the 'virgin and recycled market'. Second, the parties have identified the virgin fibre-based board market, which only includes the virgin fibre grades SBS, SUS and FBB. The parties refer to this market as the 'virgin market'.

- (20) According to the parties, virgin fibre-based board can be used for packaging of both liquid and non-liquid goods, whereas board based on recycled fibres can only be used for the packaging of non-liquid goods. WLC has limited uses in the packaging of non-food liquid products, such as liquid detergents. The parties submit, however, that these volumes are insufficient to justify the inclusion of WLC in the 'virgin' market.

Demand-side substitutability

No substitutability between liquid and non-liquid virgin fibre-based boards

- (21) The parties claim that there is a high degree of demand-side substitutability between the different virgin fibre-based grades owing, *inter alia*, to the same basic raw materials and similar manufacturing technology. The parties acknowledge that, within each grade, board is produced to meet the specifications set by each converting customer and that these specifications are set, at least partly, as a function of the end use of the packaging. This, according to the parties, results in variations in the physical characteristics of the board grades due to the differences in the pulp mixtures, the number of layers and the chemical additives used. The parties argue, nevertheless, that converters are capable of switching between different grades of virgin fibre-based boards and do so frequently.
- (22) Liquid packaging applications refer to such end-products as milk and juice packages. The cartons are filled on special filling machines. There are two main types of liquid packaging systems: so-called aseptic packaging systems and fresh packaging systems. Aseptic packages have distinctively long shelf lives of up to two years, whereas fresh packages have to be kept chilled and only have a shelf life of up to two weeks.
- (23) According to the parties, the principal technical difference between board used for the packaging of liquid goods and all other goods is the application of a plastic coating or aluminium laminate on the board. If the packaging is used for fresh liquids, the board must be plastic coated (polyethylene-coated or PE-coated). Board for aseptic packaging of liquids must be laminated. Lamination refers to bonding a combination of aluminium and plastic to the board. According to the parties, the physical characteristics of the 'base' board used in the packaging of liquid foods and other products are virtually the same. Consequently, the parties maintain that the suitability of the board for the packaging of liquids is mainly achieved through the application of the plastic coating or the combination of plastic coating and aluminium lamination. It is the opinion of the parties that the role of the board producer is, therefore, restricted to the production of the base board, which can be used for packaging of both liquid and non-liquid goods.

- (24) The response to the Commission enquiry, however, showed that the finishing of the board is not sufficient of itself to produce liquid packaging board and that the requirements imposed on the base board itself differ substantially from other types of virgin fibre-based board. Both the customers and the producers of liquid packaging board contacted by the Commission indicated that liquid packaging is a very demanding end-use and that there are tougher requirements for several of the characteristics of the board for liquid packaging uses compared to the other types of virgin fibre-based board. In general terms, liquid packaging board has numerous performance requirements related to, *inter alia*, its ability to run in a filling machine and to ensure the best possible packing result. The board has to resist light, cracking and leakages. It has to resist moisture resulting from the filling process and has to meet special demands as to the transportability of the filled product, such as the cool-chain distribution for fresh products. The results of the Commission investigation will be examined in more detail below.
- (25) The Commission investigation found, first of all, that an important difference between liquid packaging board and board for other end uses is that liquid packaging board must have a particularly high absorption resistance. In order to avoid liquid penetration, sizing⁽⁶⁾ is required. The Commission enquiry found that sizing has to be particularly thorough in boards used to package liquids.
- (26) Liquid packaging board has to meet higher bacteriological, food-law and environmental requirements. The industry generally follows the American FDA rules⁽⁷⁾ and German BgVV rules⁽⁸⁾. According to customers certain Community Directives⁽⁹⁾ are applicable, too. According to customers and certain producers, the regulations concerning liquid applications are more restrictive than those for non-liquid applications. It is the general perception of customers and certain producers that these rules are more difficult to meet for liquid than for non-liquid food packaging.
- (27) In the case of aseptic food packaging the board material has to be sterilised. The sterilisation is carried out usually by treating the board with peroxides⁽¹⁰⁾. Peroxide is an aggressive substance and imposes extra high demands on sizing, which has to be adequate to make the fibres repellent to the peroxide solution. In this respect sizing is not, according to customers and some producers, as critical for nonliquid food packaging.
- (28) The investigation showed further that crack resistance is more critical for liquid packaging board than for other types of board. The ability of the board to be folded is important, as liquids will escape easily through the smallest cracks, which is not the case with solids. Cracks will reduce gas tightness of the package and expose unsterilised material, for instance fibres, which may cause unsterile matter to dissolve in liquids. Furthermore, in the case of aseptic packaging a long shelf life (up to two years) imposes special requirements on the board material as the package has to be able to avoid cracking throughout the entire shelf life of the product.
- (29) Third parties indicated also that organoleptic qualities, such as taints and odours, are more difficult to meet for liquid food packaging board than for other types of board. Liquid food products, especially milk, are very sensitive in this respect and will easily absorb taints and odours, while solid foods withstand unsterile influences better than liquid foods.
- (30) The parties admit that the packaging of liquid foods is one of the most demanding end-use applications and acknowledge the importance of the characteristics described at paragraphs 25 to 29 for liquid packaging board. The parties argue, nevertheless, that a number of the abovementioned requirements apply to board used in the packaging of other types of goods as well. The Commission acknowledges that while it may be correct that for instance the organoleptic requirements for board used for packaging of cigarettes and chocolate may be similar to those that apply to liquid packaging board, it should also be noted that some other requirements imposed on liquid packaging board, such as resistance to the absorption of liquid, are not. No other end-use for consumer packaging board requires the fulfilment of all these requirements together, and within such narrow tolerances.
- (31) On the bases of the above, it is concluded that liquid packaging board forms a distinct relevant product market from non-liquid packaging board from the point of view of demand-side substitutability.

⁽⁶⁾ Sizing refers to a process of impregnating the board with a form of glue which binds the fibres of the board. Sizing is added to the pulp before the pulp is fed to the head box of the board machine.

⁽⁷⁾ US Food and Drug Administration: Federal Food, Drug and Cosmetic Act.

⁽⁸⁾ BGA (*Bundesgesundheitsamt*), *Bundesinstitut für gesundheitlichen Verbraucherschutz in Veterinärmedizin*.

⁽⁹⁾ For example Council Directive 92/46/EEC of 16 June 1992 laying down the health rules for the production and placing on the market of raw milk, heat-treated milk and milk-based products (OJ L 268, 14.9.1992, p. 1).

⁽¹⁰⁾ Peroxide is applied by submerging the packaging material through a hot bath of peroxide or by spraying peroxide into the formed carton.

No substitutability between liquid packaging board and other packaging materials

Supply-side substitutability

- (32) According to the parties, there is a high degree of demand-side substitutability between board used for the packaging of liquid goods and other packaging materials, such as glass and plastic. This inter-material substitution claim put forward by the parties has, however, been clearly dismissed by customers of packaging board.
- (33) The customers of the liquid packaging board producers are converters such as Tetra Pak, SIG Combibloc and Elopak and not the final customers, such as dairies. Converters are not able to switch to other packaging materials within the existing packaging systems. More precisely, replacement of board by other materials would not be a viable solution, owing *inter alia* to production technology and the existing machinery. Changing the packaging product would require heavy investments in the existing filling and packing machinery. Customers of liquid packaging board do not therefore switch back and forth between different packaging materials (board, plastic and glass) in response to short-term price movements.
- (34) The parties argue that a change in demand by customers further down in the distribution chain, such as dairies or retailers, would force converters to switch their production to plastic. The Commission is of the opinion, however, that a decision on the part of a food manufacturer to switch from liquid packaging board to plastic would be a one-step change. In other words, the decision to switch would be normally made for the whole application and would mean a lasting change in the demand pattern. Accordingly, the Commission notes that the demand for liquid packaging board may be affected by plastic only in the long run and on a lasting basis. Consequently, plastic is not considered to be a direct substitute for liquid packaging board for the purpose of defining the relevant product market.
- (35) The findings in this case are in line with previous decisions⁽¹¹⁾ concerning food and beverage packaging, where the Commission did not find that the relevant product market included all packaging materials.
- (36) For the reasons stated above, the Commission does not consider other packaging materials to belong to the same relevant product market as liquid packaging board.

No substitutability between liquid and non-liquid virgin fibre-based grades

- (37) The parties claim that there is a high degree of supply-side substitutability between the different virgin fibre-based grades, owing *inter alia* to the same basic raw materials and similar manufacturing technology. According to the parties, the fact that the same machine can be used for the production of more than one grade is evidence of supply-side substitutability. Furthermore, the parties argue that there are no serious technical barriers to the production of liquid packaging board and that other producers of virgin fibre-based board would be able to produce liquid packaging board.
- (38) The investigation showed that it is, indeed, theoretically possible to produce different grades of virgin fibre-based board with the same machine from a technical point of view. However, the enquiry showed that there is a high degree of specialisation — for instance, in particular grades of liquid packaging board among the suppliers. The leading board manufacturers tend to specialise in certain categories of end uses either for strategic reasons or for established patterns of producing for certain converters. Both the parties and the customers have confirmed that the underlying reason for streamlining the board machines is to avoid switching costs and thereby to achieve economies of scale. [...] *.
- (39) The investigation showed further that switching the production to new grades of liquid packaging board is not simple and takes time even for experienced producers of liquid packaging board. For example, according to customers of liquid packaging board, to find a new producer for the production of a new board would require elaborate planning, development, testing, trial production and field test procedures before commercial production could be launched. This, according to customers, could take up to 36 months. There is no reason to believe that the time period for initiating commercial production of liquid packaging board would be shorter for an existing producer of non-liquid packaging board, since such a producer would have to go through the same steps. The parties argue that a producer who has not previously produced liquid packaging board would be able to start commercial production in a period of 12 to 18 months. The Commission enquiry showed further that the existing producers of non-liquid packaging board would only be able to switch production at a significant cost.
- (40) On the basis of the above, it must be concluded that a quick supply response would not be possible. Consequently, the Commission does not consider supply-side substitutability in the market definition but rather considers these elements under potential competition (see below).

⁽¹¹⁾ Decision of 6 June 1991 (IV/M.081 — VIAG/Continental Can), OJ C 156, 14.6.1991, p. 10; Decision 96/222/EC (IV/M.603 — Crown Cork & Seal/Carnaud MetalBox), OJ L 75, 23.3.1996, p. 38; Decision of 21 April 1998 (IV/M.1109 — Owens Illinois/BTR Packaging), OJ C 165, 30.5.1998, p. 7.

Conclusion

- (41) Owing to the limited demand-side substitutability between liquid and non-liquid packaging board as well as other packaging materials and the limited supply-side substitutability between liquid and non-liquid packaging board, the relevant product market for the purpose of this case is considered to be the market for liquid packaging board.
- (42) As regards the non-liquid packaging board it cannot be ruled out that this should include recycled fibre-based board. Moreover it is not inconceivable that a further sub-division into board for different applications such as cigarette cartons, cupstock, cosmetics, graphic purposes, etc. might be warranted. However, these questions do not have to be resolved finally in this case, since the operation would not lead to the creation or strengthening of a dominant position even on the narrowest possible market definition in the non-liquid packaging board area.

Relevant geographic markets

(a) Newsprint

- (43) According to the parties, the relevant geographic market for newsprint is world-wide. The parties argue that newsprint is an internationally traded product and that there are substantial imports and exports to and from the EEA. In the view of the parties, the majority of customers source from both national and international suppliers, irrespective of the actual location of the supplier. Finally, the parties claim that the prices do not differ to a significant degree between continents and that there are no particular barriers to trade.
- (44) In previous cases⁽¹²⁾ the Commission held that competition in newsprint takes place at least at the EEA level. In a recent case involving the Canadian producer Abitibi Consolidated the Commission found strong indications of an EEA market⁽¹³⁾. The investigation carried out by the Commission in this case confirms the thesis of an EEA-wide market rather than a global market. In particular, imports of newsprint into the EEA have been small and relatively stable in the past ten years. In 1997 they represented 744 000 tonnes or only 7,6 % of consumption, and came mainly from Canada and only to a smaller extent from Russia and the USA⁽¹⁴⁾.
- (45) Comments obtained from newsprint customers show that the location of the mills in relation to the location of the printing site is important and that, generally, no significant imports were made from outside Europe. Duties and transport costs were regarded as increasing the price of newsprint and a barrier to sourcing from outside Europe. Furthermore, the qualities used in the

EEA are not exactly identical to the qualities produced in North America. For instance, there are some imports from Canada, but the quality is perceived as inferior to the European quality and 'cheap'. As to imports from Russia, customers said that the quality delivered was not adequate for their purposes. Finally, customers also stated that price movements do not indicate that North America and the EEA are part of the same relevant geographic market, since prices according to customers can vary quite considerably between these two continents.

- (46) The parties have argued that, in the event of a temporary over-capacity and, therefore, over-supply in other parts of the world, these over-supplies will be offered for sale on the EEA market. The parties have argued that this is evidence of a global market. The Commission does not agree that such sales are necessarily an indication of a global market. Furthermore, at this stage of the investigation there is no evidence that this has ever happened and the argument, therefore, seems purely hypothetical.
- (47) Therefore, on the basis of the above and for the purpose of this Decision the relevant geographic market for newsprint is not considered to be wider than the EEA.

(b) Magazine paper

- (48) According to the parties, there are substantial exports from the EEA. The parties therefore consider the market for magazine paper to be worldwide.
- (49) Exports from the EEA constitute, according to the parties, some 13 % of the total production. The imports, however, are currently limited and the share of imports into the EEA is negligible. In an earlier decision⁽¹⁵⁾, the Commission defined the relevant geographic market as at least EEA-wide. Information obtained from third parties confirms that this is so in this case as well.
- (50) Therefore, on the basis of the above and for the purposes of this case the relevant geographic market for magazine paper is considered to be at least EEA-wide.

(c) Non-liquid packaging board

- (51) The indications are that the market for non-liquid packaging board is at least EEA-wide. However, it is not necessary for the purpose of this case to define the geographic market for non-liquid packaging board, since the operation would not lead to the creation or strengthening of a dominant position, even on the narrowest possible market definition.

(d) Liquid packaging board

- (52) According to the parties, there are substantial global trade flows in liquid packaging board and, therefore, the parties submit the relevant geographic market is global.

⁽¹²⁾ Decision of 12 May 1992 (IV/M.210 — Mondi/Frantschach), OJ C 124, 16.5.1992, p. 19; also IV/M.646 — Repola/Kymmene — see footnote 5.

⁽¹³⁾ Decision of 14 September 1998 (IV/M.1296 — Norske Skog/Abitibi/Hansol Paper), OJ C 306, 6.10.1998, p. 11.

⁽¹⁴⁾ Imports are subject to a duty of 3,5 %, which will be phased out by the year 2002. There is a duty-free quota for imports from Canada of 630 000 tonnes.

⁽¹⁵⁾ IV/M.646 — Repola/Kymmene — see footnote 5.

- (53) The parties argue that a high level of exports from the EEA is an indication of a global market. As an example of this, the parties' exports of liquid packaging board amounted to some [between 20 % and 30 %] * of their total production in 1997. However, high exports of board by the parties cannot alone be taken as proof of a global market. On the basis of information provided by the parties, total exports from the EEA in 1997 were only about 10 % of the total market. It should also be noted that in the case of liquid packaging board, exports mainly go to Asia, where there is virtually no production of liquid packaging board at all.
- (54) The parties argue that liquid packaging customers import significant amounts of board from North America. Based on the information provided by the parties, the overall imports of liquid packaging board as a whole from North America into Western Europe in 1997 were around 8 % of the total market. The imports are unevenly divided between the buyers, in that some firms import substantial amounts and others virtually nothing. While this may be seen as an indication that importing is not prohibitively expensive or difficult, the Commission also found that board from North America was imported rather for strategic reasons.
- (55) The parties argue further that in Decision 92/163/EEC ⁽¹⁶⁾ (Tetra Pak II), the Commission has recognised the fact that competition in the sale of board for liquid packaging applications occurs at worldwide level. However, the market for liquid packaging board was not the subject of the investigation in this particular decision, which concerned the downstream market for liquid packaging board. Furthermore, the relevant geographic market was not stated explicitly in the decision nor factors such as imports/exports, duties or non-tariff barriers to trade were examined. Therefore, the Commission cannot take into account the parties' submission that the Commission has already accepted the relevant geographic market as worldwide.
- (56) The general view expressed by customers is that sourcing from outside Europe is not attractive, on account of duties, transport costs and environmental regulations in some Member States. Fibre costs are lower in North America than in the EEA. However, currently there are duties of between 4,0 % and 6,6 % on imports of liquid packaging board. The duties will be phased out by the end of 2003. Furthermore, on the basis of information provided by the parties transportation costs from the United States of America are more than [between 5 and 15 %] * higher resulting in a further price increase of approximately [between 1 % and 5 %] * per tonne.
- (57) The Commission found further that board grades in the EEA are developed to meet certain environmental requirements, which is not necessarily the case outside Europe. As far as liquid packaging board is concerned the Commission found in its investigation that there are considerable differences in the boards sold in the United States of America and in the EEA. The United States suppliers produce a grade which is used in Europe only

to a limited extent, owing *inter alia* to its higher weight as compared to European grades. This aspect comes into play in those Member States where the reduction of waste is an important environmental issue, such as Germany, Austria, the Netherlands and Scandinavia. In particular, the environmental regulations in Germany and the Netherlands are both based on the weight of the board. In Germany, the 'DSD Duales System Deutschland' collects a recycling fee per kilogram of board. In the Netherlands the 'Integratiecovenant Verpakkingen' requires a source reduction of all packages, including board, of 10 % by the year 2001. Source reduction aims at reducing the weight of the board while maintaining the same performance requirements. In both cases the use of the American board will be an economic disadvantage. According to data submitted by the parties, North American board sold in the EEA is more expensive per square metre.

- (58) The demand structure, together with the duties and environmental requirements in the EEA renders it therefore difficult for the United States suppliers to export into the EEA, even if there are some indications that fibre costs are lower for United States producers than for the EEA producers. These difficulties are underlined by the fact that imports from the United States of America have been stable over the past seven years at below 10 % of total consumption in the EEA. Lastly, the Commission enquiry found that sourcing from Eastern Europe is, in general, not considered viable due to the inferior quality of the board. There are currently no imports of liquid packaging board from Eastern Europe.
- (59) Given the relatively low level of imports, duties, transport costs, non-tariff barriers in the field of environmental legislation and the evidence of a different supply structure in North America, Eastern Europe and in the EEA, the relevant geographic market for the liquid packaging board is not considered to be wider than the EEA. Some of the factors discussed above, such as the phasing-out of customs duties, may point to a gradual shift towards a wider market. However, these factors are not sufficient to prove conclusively at the present stage that the market is wider than the EEA. The role played by imports from outside the EEA will, however, be discussed in the part of the assessment devoted to potential competition.

V. ASSESSMENT

(a) *Newsprint*

Current competition

- (60) The parties estimate the total consumption of newsprint in the EEA to amount to 9,7 million tonnes. Their combined market share in the EEA is estimated to be [between 20 and 30 %] * (Enso [between 10 and 15 %] *, Stora [between 10 and 15 %] *). The parties have been unable to provide market shares for their competitors on the basis of sales, either in terms of volume or in terms of value. They have been able to provide shares of installed capacity in the EEA. The

⁽¹⁶⁾ Case IV/31.043, (O) L 72, 18.3.1992, p. 1).

Commission has verified with confidential figures supplied by the main competitors that the shares of capacity broadly reflect the shares in terms of sales. Furthermore, public statistics from the Confederation of the European Paper Industries (CEPI) confirm that overall capacity and consumption in the EEA are basically in balance. On the basis of this, the following table, therefore, represents the relative position of the leading suppliers in the EEA.

Table

Market position of the main suppliers, 1997

Enso	[between 10 and 15 %] *
Stora	[between 10 and 15 %] *
Combined	[between 20 and 30 %] *
UPM-Kymmene	[between 15 and 20 %] *
Norske Skog	[between 10 and 15 %] *
Haindl	[between 10 and 15 %] *
MoDo	[between 10 and 15 %] *

It may be noted that there are a number of smaller suppliers in the EEA, such as SCA, Myllykoski, Palm, etc. Furthermore, imports of newsprint in the EEA, primarily from Canada and Russia, represented about 7,6 % of consumption in 1997.

- (61) As may be seen from the above, the supply of newsprint appears to be fairly concentrated. The six leading producers account for about 75 %. The largest of the smaller producers account for less than 5 % of the capacity and is less than half of the size of the smallest of the six big producers.
- (62) Competitors have expressed no concerns about the current operation. A number of customers have expressed some general concerns about the trend towards concentration in the newsprint industry, but no specific concerns over the present merger. Furthermore, some customers have even indicated that they believe the market is currently rigged.
- (63) In this case, the Commission found that the competition between the six largest suppliers is crucial for the overall market outcome. The demand-side consists of some very large buyers such as the Murdoch Group and the Axel Springer Verlag as well as a great number of medium-

sized and small buyers. The parties estimate that the largest buyers account for some [between 25 and 35 %] * of the market. Some of the largest buyers of newsprint buy volumes that could fill the complete capacity of some of the large producers.

- (64) For the suppliers the biggest buyers are a source of stability, and therefore security, since losing or partly losing a large customer could cause substantial problems for a supplier to fill its mill capacity. Suppliers are, therefore, very sensitive to losing large customers. On the other hand, for the largest buyers the six large suppliers in reality represent the only source of supply. This was evident from the Commission's investigation, which showed that the largest buyers mainly buy from the largest producers, and basically only consider these companies as actual or potential suppliers.
- (65) The conditions achieved in the contract negotiations between the biggest customers and the six big suppliers have an significant effect on the rest of the market, not least because the six suppliers account for 75 % of the market, but also due to the sheer size and volume of these buyers. As a result, the contract negotiations between the suppliers and the large buyers play a pivotal role in the functioning of the market for newsprint. The six largest suppliers (UPM-Kymmene, Enso, Stora, Norske Skog, MoDo and Haindl) effectively constitute an oligopoly, and the competition between the oligopoly members for the large contracts is crucial for the market outcome. Consequently, there are reasons to believe that if the oligopoly succeeded in increasing the prices *vis-à-vis* the largest buyers, this would result in an increase in the overall price level of the market. The Commission therefore examined whether the operation was likely to lead to the creation or strengthening of an oligopolistically dominant position.

Oligopolistic dominance

- (66) In Decision 97/26/EC (Gencor/Lonrho) ⁽¹⁷⁾, the Commission noted the following: 'Similar negative effects which arise from a dominant position held by one firm arise from a dominant position held by an oligopoly. Such a situation can occur where a mere adaptation by members of the oligopoly to market conditions causes anti-competitive parallel behaviour whereby the oligopoly becomes dominant. Active collusion would therefore not be required for the members of the oligopoly to become dominant and to behave to an appreciable extent independently of their remaining competitors, their customers and, ultimately, the consumers'.
- (67) In this case, the Commission found that the characteristics of the newsprint market indicate a market with few incentives for the members of the oligopoly to compete. Rather, the market has several of the characteristics of an anti-competitive oligopolistic market: there is only moderate growth on the demand-side, the supply-side is highly concentrated, the product is homogeneous, the production technology is mature, there are high entry barriers and similar cost structures. The Commission also noted that the operation would lead to an increase in the Herfindahl-Hirschman Index of 313 points, which is a significant change.

⁽¹⁷⁾ Case IV/M.619, (OJ L 11, 14.1.1997, p. 30, paragraph 140).

(68) After a detailed examination of the market, however, the Commission has concluded that the operation would not lead to the creation or strengthening of an oligopolistically dominant position. In particular, according to the parties the market for newsprint is not transparent on such key parameters as supplies and prices and that, particularly concerning prices, secret discounts indicate that the market lacks transparency. Furthermore, the Commission noted that apparently there is some potential competition, notably from Canada. Some countervailing purchasing power of the largest buyers appears to exist, too. Therefore, on balance, the Commission has found that the change from six to five members of the oligopoly is not significant in order to lead to the creation or strengthening of an oligopolistically dominant position under the circumstances of the present case.

(b) *Magazine paper*

(69) The parties estimate the total consumption of magazine paper in the EEA at 7,94 million tonnes. The parties' combined market share is estimated at [between 20 and 25 %] * (Enso [between 5 and 10 %] *, Stora [between 10 and 15 %] *). The parties have been unable to provide market shares for their competitors on the basis of sales, either in terms of volume or value. They have been able to provide shares of installed capacity in the EEA. On the basis of this, the following table represents the relative position of the leading producers in the EEA by reference to capacity.

Table

Market position of the main suppliers, 1997

Enso	[between 5 and 10 %] *
Stora	[between 10 and 15 %] *
Combined	[between 15 and 25 %] *
UPM-Kymmene	[between 20 and 25 %] *
Metsä-Serla	[between 15 and 20 %] *
Burgo	[between 5 and 10 %] *
Haindl	[between 5 and 10 %] *
Norske Skog	[between 5 and 10 %] *
SCA	[between 5 and 10 %] *
MoDo	[between 1 and 5 %] *

(70) After the merger, the two leading suppliers of magazine paper would account for 45 % of capacity in the EEA and the three leading suppliers would account for around 60 % of capacity.

(71) For the same reasons as regards newsprint, the Commission examined the question of oligopolistic dominance in relation to the magazine paper market. The Commission has concluded for essentially the same reasons as in newsprint that the present operation does not lead to the creation or strengthening of an oligopolistically dominant position in the market of magazine paper.

(c) *Non-liquid packaging board*

(72) In this market, the parties would only achieve a market share of about [between 25 and 35 %] * in the EEA. If the market were to be split further according to applications such as cigarettes, cupstock, etc. there would either be no or only limited market overlaps between the parties depending on the particular application, since Stora and Enso do not produce non-liquid consumer packaging board for exactly the same applications. Consequently, the merger would not lead to the creation or strengthening of a dominant position in the non-liquid packaging board market.

(d) *Liquid packaging board*

Market shares

(73) The parties have been unable to provide an estimate of the total market for liquid packaging board. The Commission roughly estimates the value of the overall EEA virgin fibre market to be in the range of ECU 2 to 2,5 billion, of which liquid packaging board forms a substantial part.

(74) The total volume of the liquid packaging board market in 1997, as estimated by the parties, was 1 062 700 tonnes in terms of deliveries. The Commission has verified the parties' estimate with confidential figures provided by third parties and concluded that this figure broadly reflects the estimates of third parties. In terms of deliveries by consumption, the parties have estimated their joint deliveries in 1997 at [between 500 000 and 1 000 000 tonnes] *. On this basis, the parties' market share in liquid packaging board applications would be [between 50 and 70 %] *, a position far ahead of the other players in the market. According to the parties' estimates, the corresponding market share of Korsnäs would be [between 10 and 20 %] * and that of Assi-Domän [between 10 and 20 %] *. The Commission has verified the parties' estimates of the market shares with confidential sales figures provided by the customers of liquid packaging board.

Potential competition

(i) *Barriers to entry*

(75) The entry barriers to the virgin fibre-based board market are high. In particular, there are substantial costs associated with building a board machine. The parties estimate these costs to be about [between ECU 300 and 400 million] *. Entry is risky also due to the significance of economies of scale: minimum viable sales are estimated to be in the region of 50 000 to 200 000 tonnes per year, depending on the mill. Furthermore, the modest growth of demand (in the region of 1 to 2 % per year) makes entry even less attractive.

- (76) With regard to the liquid packaging board market, there are additional barriers to entry. Most importantly, producing liquid packaging board requires in practice an integrated long-fibre pulp mill. In addition, the parties have identified the following technical equipment/processes needed to produce liquid packaging board: enhanced pulp-washing capacity, an increase in the pulp-beating capacity, modifications to the white-water circulation system and the installation of a pH control system.
- (77) Owing to high investment costs and the fact that producing liquid packaging board requires a certain level of production capacity and sales, the potential entrant would need secured contracts with customers even before investing in the machinery. Given the problems connected to switching and the fact that the relationships between the existing producers and the customers of liquid packaging board tend to be well established and traditionally long-term, this would appear to be difficult. There have been no new entries into the liquid packaging board market in the EEA over the last 10 years.

(ii) *Potential competitors*

- (78) Given that the construction of a new board mill takes several years and that the investment costs are substantial, no green-field entrants are likely to emerge in the overall virgin fibre-based board market or in the liquid packaging board market in the foreseeable future.
- (79) The parties have identified International Paper's mill in Svetogorsk, Russia, as a viable potential competitor in the liquid packaging board market. The Commission investigation showed, however, that the board produced at the mill is of inferior quality and not suitable for the Western European market. The mill is currently supplying board mainly for the Russian market. The Commission enquiry confirmed that it would require significant investments and would take several years to produce board at the Svetogorsk mill for the Western European market.
- (80) The parties have argued that a mill in Kwidzyn, Poland, also belonging to International Paper, is delivering liquid packaging board to a converting facility in France. However, the Commission knows that this mill is not producing liquid packaging board and will not be able to export liquid packaging board to the EEA within the foreseeable future.
- (81) The parties argue that the current increases in the capacity of the rival liquid packaging producers, Korsnäs and AssiDomän, will further intensify competition in the EEA. According to the parties, the current capacity exceeds demand. Comments obtained from third parties suggest, however, that the recent capacity increases merely respond to the increasing demand for liquid packaging board. In particular, the investigation also

showed that a considerable amount of this new capacity already has buyers.

- (82) The Commission has consulted other paper and board manufacturing companies such as MoDo and Metsä-Serla whether these would consider entering the liquid packaging board market. These companies are currently producing non-liquid packaging board. MoDo and Metsä-Serla could theoretically start production of liquid packaging board in the medium term on their existing machines. Having consulted MoDo and Metsä-Serla, the Commission has, however, concluded that none of these producers are likely to enter the market within the foreseeable future.
- (83) The Commission notes that the potential for further US imports brings a limited, but not insignificant, competitive pressure to bear on the market. This pressure is likely to increase in the future due to the phasing-out of the duties on imports over the next years. The undertaking by the parties not to oppose any application for a duty-free quota for liquid packaging board would help to make it possible for this effect to come about more rapidly, if such a quota is adopted (see below).

Countervailing buyer power

- (84) The liquid packaging board market is characterised by few large producers and few large buyers. In addition to Stora and Enso, the producers of liquid packaging board in Europe include only Korsnäs and AssiDomän. Buyers of liquid packaging board are few and the market is dominated by Tetra Pak, which represents an estimated market share of close to [between 60 and 80 %] *. The other main buyers of liquid packaging board are Elopak and SIG Combibloc with about [between 10 and 20 %] * of the EEA market each. After the merger the structure of the supply-side will mirror the structure of the demand-side of the market for liquid packaging board, with one large supplier and two smaller suppliers facing one large buyer and two smaller buyers.
- (85) According to the parties, the three large customers, and Tetra Pak in particular, exercise considerable buyer power that prevents the producers of liquid packaging board from increasing prices.
- (86) The investigation showed that the relationship between the suppliers and the customers is one of mutual dependency. In the liquid packaging board market the relationships between suppliers and buyer are of a long-term nature and switching supplier of liquid packaging board is rare. The customers have indicated that switching the supplier would lead to delays, is costly and technically demanding due to the fact that the evaluation process for liquid packaging board is complex and time-consuming. In particular, the investigation showed that to become a supplier for a specific type of liquid packaging board requires considerable investment from both the producer and the customer in terms of machinery, technical support production and product trials as well as human resources.

- (87) As evidence regarding the long-term relationship between the producers and the buyers, it is noted that in the case of Enso the longest customer relationship goes back 40 years. Further evidence of the long-term and mutually dependent supplier-buyer relationships in the industry is the fact that Enso has divided its research and development activities into units, which specialise in developing boards for Tetra Pak, Elopak and SIG Combibloc respectively.
- (88) An examination of each of the main buyers confirms that the demand-side has countervailing buyer power.
- (89) Tetra Pak buys about [more than 500 000 tonnes] * of liquid packaging board per year for use in the EEA. This volume is bought from Enso, Stora, AssiDomän and Korsnäs. Outside the EEA, Tetra Pak also uses other local suppliers. Tetra Pak has in the past been instrumental in developing several of its current suppliers into producers of liquid packaging board.
- (90) Tetra Pak buys about [more than 50 %] * of its requirements in the EEA from Stora Enso. The purchases of Tetra Pak represent the whole output of several board machines and about [more than 50 %] * of the parties' total output for the EEA. Furthermore, it has to be considered that the production of liquid packaging board is a high fixed-cost industry, where high rates of capacity utilisation are necessary in order to achieve satisfactory levels of profitability. To lose the large volumes purchased by Tetra Pak would therefore mean that the parties would have to find other customers in order to fill the capacity. This would not be an easy task in the short term.
- (91) Tetra Pak, on the other hand, buys such volumes of liquid packaging board that it would have the option of developing new capacity with other existing or new suppliers, should the parties attempt to exercise market power. In addition, Tetra Pak, through close cooperation with the producers of liquid packaging board, has an intimate knowledge of the cost structure of the parties. Furthermore, the liquid packaging board represents about [more than 50 %] * of the cost of the blank supplied by Tetra Pak to its customers. The Commission has also noted that plastic may to a certain extent be a substitute for liquid packaging board in the long term in the downstream market for the packaging of liquids. Tetra Pak, therefore, has every incentive to seek to exercise its countervailing buyer power.
- (92) Consequently, for all the reasons stated above, it is concluded that Tetra Pak has countervailing buyer power to such an extent that it will neutralise the potential increase in market power of the merger between Stora and Enso.
- (93) Elopak and SIG Combibloc are buying much smaller volumes of liquid packaging board than Tetra Pak. Furthermore, in particular where Elopak is concerned, it is noted that Elopak and Enso's subsidiary Pakenso at present run joint converting activities in Lahti in Finland [...] *. These joint converting activities represent a significant proportion of the total amount of cartons converted by Elopak. This link to the parties could weaken the buyer power of Elopak following the merger.
- (94) However, it also has to be considered that both companies place orders large enough to fill the capacity of a board machine. This would in itself make it difficult for Elopak and SIG Combibloc to switch a significant proportion of volumes sourced to alternative suppliers at short notice. However, it also means that a large shift of volumes to alternative suppliers such as AssiDomän and Korsnäs, who could in principle switch WTL capacity to the production of liquid packaging board, could hurt Stora Enso significantly, should the parties attempt to exercise market power. Elopak and SIG Combibloc both also source strategic volumes from the United States, which strengthens their countervailing buyer power. Both of them also have significant operations outside the EEA. Finally, as for Tetra Pak, both Elopak and SIG Combibloc have detailed knowledge of the cost structure of the parties. They also have the same incentives as Tetra Pak to exercise their buyer power.
- (95) Compared to Tetra Pak, both companies are, nevertheless, in a weaker position in the short to medium term *vis-à-vis* Stora Enso, since they will have only one EEA supplier after the merger, whereas Tetra Pak will have three. Furthermore, Elopak and SIG Combibloc source much smaller volumes than Tetra Pak. Therefore, while it is true that Elopak and SIG Combibloc are not without any means to counter a price increase, it seems that the proposed merger will shift the balance of power towards Stora Enso in its relationship with Elopak and SIG Combibloc.
- (96) Furthermore, in the case of Elopak and SIG Combibloc, it also has to be considered that the parties will have an incentive to have both companies as major players in the market in order to not to become completely dependent on Tetra Pak. Therefore, while the concern that Elopak and SIG Combibloc could be disadvantaged by the merger in comparison with Tetra Pak is not completely removed, it also has to be recognised that the countervailing buyer power of Tetra Pak will for this reason, to a certain extent, spill over to Elopak and SIG Combibloc as well. In addition, the undertakings given by the parties are an attempt by the parties to address these concerns (see paragraph 101). It is in particular noted that Enso's divestiture of its share in the joint converting activities with Elopak in Lahti in Finland will remove any concerns that this link could have given the parties an increased leverage over Elopak.

- (97) In conclusion, the merger will result in a market structure with one large and two smaller suppliers facing one large and two smaller buyers. This is a rather exceptional market structure. On balance, the Commission considers that the buyers in these rather special market circumstances have sufficient countervailing buyer power to remove the possibility of the parties' exercising market power.

Reactions from third parties

- (98) The customers, in particular, have ranged from neutral to positive in their reaction. According to customers a major long-term strategic issue for the liquid packaging board industry is the possibility that plastic will over time replace paper for more and more applications. The liquid packaging board industry as such, therefore, needs to become more competitive. The merger between Stora and Enso should allow a more efficient production of liquid packaging board and will, therefore, contribute to improving the long-term competitiveness of liquid packaging board *vis-à-vis* plastic packaging materials.
- (99) A Finnish organisation, The Central Union of Agricultural Producers and Forest Owners ('MTK'), has raised concerns over the effects of the merger on wood procurement in Finland. MTK considers the merger to strengthen the position of the parties in that the parties would have greater opportunities for sourcing wood from outside the EEA — in particular from the Baltic States — but also from Sweden. According to MTK, this would put considerable pressure on the Finnish supply market and allow the parties to control price levels. The Commission does not agree with this view. In particular, the Commission found that the merger would have virtually no effects on the Finnish wood procurement market.

Conclusion

- (100) Based on the above, it may be concluded that the parties will have a large market position in the market for liquid packaging board. There will be only limited potential competition. However, the demand-side is as concentrated as the supply-side, and the countervailing buyer power of the main buyers, in particular Tetra Pak, means that the operation will not lead to the creation or strengthening of a dominant position in the market for liquid packaging board.

Undertakings given by the parties

- (101) The Commission notes that, in reaction to the statement of objections, the parties have submitted the following undertakings:
- (a) The parties have undertaken to provide a price-protection mechanism for the smaller customers for a period of five years from the date of the completion of the merger. In particular, the parties have undertaken that any increase in their prices to the

largest customer will not be smaller, in percentage terms, than any increase in the prices to the smaller customers. Similarly, any percentage price decrease to the largest customer will not be greater than any percentage price decrease to the smaller customers. Deviations from this rule are possible within a certain limited tolerance margin and also where special factors such as objective cost differences warrant a difference in the percentage increase or decrease in price paid by the largest and the smaller customers. The parties will notify the Commission of any differences in the percentage price increase or decrease which are not within the tolerance margin or justified by objective cost differences. The price protection mechanism will be audited annually by an independent auditor working under a strict obligation of confidentiality.

- (b) In the event of a request by one or more Community processors or manufacturers for the opening of a duty-free quota on imports of liquid packaging board, the parties have undertaken to use their best efforts to facilitate the opening of such a quota and not to oppose such a quota. In addition, the parties have provided letters from the Finnish and Swedish Governments showing that the Finnish and Swedish Governments would not oppose the opening of such a quota.
- (c) Enso has certain joint converting activities with Elopak in Lahti in Finland. Enso has undertaken to sell its entire interest in these activities to Elopak. Such a sale would remove any concerns that this link would reduce the countervailing buyer power of Elopak. Should Elopak and Enso fail to reach an agreement on the sale, Enso has undertaken not to extend the current agreement when it expires. In this event, these activities will be sold to Elopak according to the terms of the contract between Elopak and Enso.

VI. CONCLUSION

- (102) In conclusion, the notified operation will not create or strengthen a dominant position in any market as a result of which effective competition would be significantly impeded in the common market or in a substantial part of it. The operation is, therefore, compatible with the common market and the functioning of the EEA Agreement,

HAS ADOPTED THIS DECISION:

Article 1

The concentration notified by the parties on 18 June 1998 relating to the full merger of Stora Kopparbergs Bergslags AB and Enso Oyj is hereby declared compatible with the common market and the functioning of the EEA Agreement.

Article 2

This Decision is addressed to:

Enso Oyj
Kanavaranta 1
FIN-00160 Helsinki
Stora Kopparbergs Bergslags AB Group Head Office
S-79180 Falun

Done at Brussels, 25 November 1998.

For the Commission
Karel VAN MIERT
Member of the Commission
