

Opinion of the Advisory Committee on Mergers given at its 154th meeting of 5 September 2007 regarding a draft decision relating to Case COMP/M.4525 — Kronospan/Constantia

Rapporteur: Spain

(2009/C 134/02)

1. The Advisory Committee agrees with the Commission that the notified operation constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.
2. The Advisory Committee agrees with the Commission that although the notified operation does not have a community dimension within the meaning of Article 1, it is capable of being reviewed under the national competition law in Austria, Germany, Hungary, Latvia, Poland and Slovakia. Therefore, it can be examined by the Commission pursuant to Article 4(5) of the Merger Regulation.
- 3.1. The Advisory Committee agrees with the Commission's definition of the relevant product markets of:
(a) raw particle board and (b) coated particle board.
- 3.2. The Advisory Committee agrees with the Commission that the exact scope of the product market of (c) decorative laminates and (d) post-forming elements, can be left open in these two cases.
- 4.1. The Advisory Committee agrees with the Commission's definition of the relevant geographic market for raw particle board, which includes an area with a radius of about 500 km around the original target's production facilities.
- 4.2. The Advisory Committee agrees with the Commission that the definition of the relevant geographic market for coated particle board includes at least Central Europe, and may be EEA-wide.
- 4.3. The Advisory Committee agrees with the Commission that the relevant geographic market for decorative laminates and for post-forming elements is at least EEA-wide.
5. The Advisory Committee agrees with the Commission that the originally intended transaction would have significantly impeded effective competition in the common market through non-coordinated effects in the market for raw particle board production in certain areas within a circle of around 500 km surrounding the original Target's production sites.
6. The Advisory Committee agrees with the Commission that the originally intended transaction would not have significantly impeded effective competition in the market for coated particle board.
7. The Advisory Committee agrees with the Commission that any concerns about the appearance of coordinated effects as a result of the originally intended transaction have been removed by the modification of the transaction and the commitment entered by the Notifying Party.
8. The Advisory Committee agrees with the Commission that although the new entity may seem to have the ability to foreclose its competitors by merging vertically integrated companies, it seems very unlikely that it would have the incentive to do so.
9. The Advisory Committee agrees with the Commission that, subject to full compliance with the undertakings offered by the parties, the proposed concentration does not significantly impede effective competition in the common market or in a substantial part of it, in particular as a result of the creation or strengthening of a dominant position, within the meaning of Article 2(2) of the Merger Regulation and that the proposed concentration is therefore to be declared compatible with Articles 2(2) and 8(2) of the Merger Regulation and Article 57 of the EEA Agreement.
10. The Advisory Committee will ask the Commission to take into account all the other points raised during the discussion.