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*Case No IV/M.166 -
TORRAS / SARRIO*

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**REGULATION (EEC) No 4064/89
MERGER PROCEDURE**

Article 6(1)(b) NON-OPPOSITION
Date: 24.02.1992

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MERGER PROCEDURE
ARTICLE 6(1)b DECISION

PUBLIC VERSION

TO THE NOTIFYING PARTY

Subject: Case No. IV/M.166 - TORRAS/SARRIO

1. The notified concentration consists of the acquisition by Grupo Torras SA ("TORRAS"), through its 100% owned subsidiary Sarriopapel y Celulosa SA, previously known as Ofitronic SA, of the entire non-board paper activities of SARRIO SA. The concentration comprises all of the Spanish pulp and non-board paper production and related distribution assets of SARRIO SA. These assets will be referred to as SARRIO hereafter.

After examination of the notification, the Commission has concluded that the notified operation falls within the scope of application of Council Regulation No 4064/89 (the Merger Regulation) and that it is compatible with the common market.

I. LATE NOTIFICATION

2. The main purchase agreement was signed on 7 February 1991 and put into effect thereafter in breach of article 7(1) of the Merger Regulation (suspension of the concentration).
3. However, in view of the problems related to the calculation of the turnover of holding companies such as the KIO and in particular how the Regulation would apply to an organization such as the KIO, the Commission considers that the fines provided for in article 14(2)(b) of the Merger Regulation should exceptionally not be imposed.

II. COMMUNITY DIMENSION

4. TORRAS' parent company is the Kuwait Investment Office (KIO), which holds well over 50% of TORRAS share capital. Its turnover must therefore be taken into account pursuant to article 5(4)(b) first indent of the Merger Regulation.

5. KIO is part of the Kuwait Investment Authority. Its economic activity consists of the management of investments on behalf of the State of Kuwait. The investment activity of KIO divides into two distinct parts:
 - portfolio (equities, fixed interest securities and real estate) in which KIO acts as an institutional investor.
 - "direct" investment, where KIO considers it appropriate to take an active part in the company's management.
6. The rules provided for in article 5(3) of the Merger Regulation require loans and advances to customers to be taken into account in order to calculate the Community-wide turnover and turnover in one Member State. The Commission considers that the holding of fixed interest securities is essentially another way of giving credit to third parties. Therefore, the Community wide turnover and turnover within one Member State is to be calculated on the basis that fixed interest securities held from Community residents issuers and issuers from that Member State, respectively, constitute loans and advances in the sense of Article 5(3) of the Merger Regulation.
7. The operation has a Community dimension. The aggregate worldwide turnover of the undertakings concerned exceeds 5.000 million ecus in the financial year preceding the operation. The aggregate Community-wide turnover of each of TORRAS and SARRIO exceeds 250 million ecus. The parties do not achieve more than two thirds of their Community turnover in one and the same Member State.

III. COMPATIBILITY WITH THE COMMON MARKET

Relevant product market

8. The transformation of wood into paper and the selling to consumers through merchants leads to the identification of several distinct product markets. First, wood and waste paper is turned into pulp. Secondly, pulp is turned into paper of different qualities, grades and weights. Finally, part of the paper production is sold to the consumer through merchants.
 - a. **The pulp market**
9. Pulp reveals different properties depending on the wood used, the treatment used to turn the wood into pulp and on whether the pulp has been bleached or not.
10. Most of the pulp is fed into the paper-making machines without passing through the pulp market. The pulp traded is therefore mainly confined to pulp sold for use in non-integrated paper mills. Moreover, the parties' production of pulp is basically for their own use, and their (marginal) sales represent only []⁽¹⁾ of the Spanish free market.
 - b. **Paper manufacture**
11. In order to establish the segregation that is made between the different categories of paper, it is important to understand

⁽¹⁾ Less than 5%.

the paper-making process. It is basically a two stage process. The first stage consists of making the paper by depositing cellulose fibres from an aqueous slurry and drying to form sheets. The second stage may consist of coating the paper with a mixture of china clay and starch, latex or other binders. Alternatively, uncoated paper may be calendered by passing it between heavy rollers in order to smooth it.

12. Papers may be coated or not. Some machines integrate both processes, whereas others do not. Coated papers are well suited for colour printing and even if the paper has been made from mechanical treated pulp, the paper will not discolour.
13. The parties have defined three different product markets; the self-adhesive paper market, the self-copying paper market and the "fine paper" which comprises the total printing and writing paper market, from which the parties exclude newsprint, LWC and SC.
14. The self-adhesive and self-copying paper markets are separated equally from the consumer's and from the producers' points of view.
15. Within the fine papers market, enquiries made by the Commission and further information supplied by the parties, shows that further subdivisions are appropriate to assess the merger.

Fine papers include both coated and uncoated papers made of pulp mechanically treated (also referred to as "woodcontaining") or chemically treated (also referred to as "woodfree").

Fine paper subdivisions	Discolour	Weight	Colour printing	Price	Remark
Uncoated wood-containing	Yes	55-80g	Not best suited	[] ⁽²⁾ []*	
Uncoated woodfree	No	60-80g	Not best suited		Typical photocopier paper
Coated wood-containing	No or little	60-80g	Suited	[] ⁽³⁾ []**	
Coated woodfree	No	80-140g	Suited		There are a lot of different grades in this category, i.e. art paper

* Minimum, maximum and average price for uncoated paper sold by DISPA piece per 1000 kg in Ptas for 80g sheets of 65x50 cm

** Same as above but for uncoated paper.

16. The parties do not manufacture paper from mechanical pulp. They do market certain mechanical based papers, but they do not attain significant market shares (in excess of 5%) in any Member State of the Community. Therefore, the analysis focuses on wood-free papers; the question of whether wood-containing papers compete with wood-free in certain end uses can be left open, as even on the narrowest market definition there will

(2) For purposes of publication these figures are deleted.

(3) For purposes of publication these figures are deleted.

be no doubts as to the compatibility of the operation with the common market.

Uncoated and coated papers

Demand side substitutability

17. There is limited substitutability between uncoated and coated papers because of their different characteristics (such as discolouring and printing quality). In addition uncoated paper is much cheaper than coated paper. The above table shows that the price of the cheapest coated paper is even higher than the price of the most expensive uncoated paper and that coated paper is on average 15% more expensive than uncoated paper.

Supply-side substitutability

18. From the supply side, there is a rather high substitutability. Indeed, since the difference between coated and uncoated paper results from extra processing, the coating processing can be included whenever required. Since the different grades of paper result mainly from the blend used, the coating materials used and some other extra processing, it is relatively easy for a producer to switch from production of one paper type to another. This is particularly true with regard to the older non-integrated machines, which can be used for various kinds of paper production. The high speed, high capacity and highly integrated new mills are also able to switch from production of one paper type to another, although to a lesser extent than older non-integrated machines.
19. The parties are mainly active in the production of coated (wood-free) papers. Therefore, the analysis will focus primarily on the impact of the transaction in this segment. As there are no competition concerns arising from the operation in this narrow market, a more precise definition of the product market is not necessary.
20. Within coated papers, still a further segmentation between top-range (special coated, art) and medium range (fully coated) papers is theoretically possible. However, due to the high degree of demand-side substitutability between at least some of these segments and that many of the existing machines allow producers to switch from one segment to a better quality one (basically by adding coating) or vice-versa, coated wood-free paper should be considered as a whole.

c. The distribution market

21. When buying paper, the consumer has the choice between buying the paper directly from the producer or through merchants. The choice of addressing oneself to one or the other is determined by various factors such as the quantity of the orders, the proximity, the after sales service or technical assistance, the price and the range of products offered.
22. Merchants attract customers who need fast delivery of small quantities and those who want to have the choice between a wide range of products.
23. Producers attract customers who need bulk delivery at lower prices.

24. The typical clients of producers are printing offices and publishers and any kind of large quantity paper consumer, whilst the typical clients of merchants are all the small paper consumers. Being the customer of one does not involve not being the customer of the other. Indeed, many printing offices also sometimes order from merchants when fast delivery of small quantity of paper is required.
25. For the reasons mentioned above, the distribution through merchants constitutes a distinct market, although it cannot be considered in total isolation, from direct deliveries.

Relevant Geographic Market

Pulp

26. The EEC is a net-importer of pulp. Of a total consumption of 17 million tonnes, some 11 million tonnes are imported into the European Community, mainly from Sweden (2 million), Finland (1 million), Canada (2 million) and USA (1,8 million). Imported pulp into the European Community represents nearly 50% of the total consumption of fibrous raw materials (including waste paper pulp) by the EC papermaking industry. Intra-EC trade of pulp amounts to 2 million tonnes.
27. In view of these trade flows, the market for pulp is at least Community-wide. The question whether the market is broader, can be left open since even on an EEC-wide basis, the operation does not raise serious doubts as to its compatibility with the Common market.

Paper manufacture

28. Trade flows and the fact that each Member State produces, imports, and exports each of the various categories of papers indicates that competition in the paper sector takes place at least at Community level. Furthermore, the presence of the major paper manufacturers throughout the Community and the fact that conditions of transport or transport costs are not of a nature to hinder trade, reinforce this conclusion.
29. The parties, however, carry out most of their activity in Spain. In none of the product markets defined above do they reach market shares exceeding []⁽⁴⁾ in any Member State, excepting Spain and Portugal.
30. The high market shares attained by TORRAS/SARRIO in their domestic market derive from the fact that they were the most important producers when the Spanish market was closed to foreign competition. Tariff rates and other taxes applied before the Accession of Spain to the European Community implied a price increase for most imported papers of around 30%.
31. The suppression of the above-mentioned barriers has resulted in a rapid and constant increase of imports, as well as a gradual decrease in prices of the products sold by the parties.
32. This phenomenon has been true for all kinds of paper. In the case of coated wood-free paper, the volume of imports into Spain amounted to 33.8% of total consumption in 1990 and to

⁽⁴⁾ Around 10%.

41.7% in 1991. Most of the major European producers (including Swedish and Finnish) such as Arjomari, Leykam, MoDo, Stora, Burgo and KNP have thereby gained access to the Spanish territory.

33. Four further factors have favoured imports into the Spanish territory:

- the market in Spain is in a stage of expansion, as demand is growing at a quicker pace than in other Member States
- transport costs are low, and they can be negligible (2%-3%) when large volumes of paper are transported
- 80% of the coated wood-free paper sold in Spain is purchased directly from manufacturers, as the clients are printers and editors that order large quantities. Therefore, access is not limited by the lack of a local distribution network
- access to distribution networks is possible for producers, although creating their own network requires time. Other options available are the use of independent merchants or of manufacturer - owned merchants when the product is different from the types they offer.

34. Conclusion. For the above reasons, in spite of the high market shares attained by the parties in their domestic market, the relevant geographic market is wider than Spain and Portugal. For operators based in these two countries, the geographic market is therefore at least Community-wide.

Distribution (paper merchanting)

35. One of the principal elements of a paper merchant business is the provision of a prompt delivery service. According to information provided by the parties, one of the reasons for which a client would purchase from a distributor is to ensure delivery within 24 hours and avoid stock maintenance; the technical service being another reason. Competition in the merchanting sector would therefore be at most national in scope.

IV. ASSESSMENT

The market position of the parties

Wood pulp

36. TORRAS and SARRIO have traditionally produced woodpulp mostly for their own consumption. However, after TORRAS' acquisition of La Cellulose des Ardennes, TORRAS has been selling pulp in France, the Netherlands, Germany, Spain, Belgium and Italy. Its total sales of pulp amount to []⁽⁵⁾ of all EC consumption. In Spain their production represents []⁽⁶⁾ of the total consumption and their sales only []⁽⁷⁾ of non-captive production. Therefore the concentration would not result in the creation or strengthening of a dominant position as a result

(5) Less than 5%.

(6) Less than 20%.

(7) Less than 5%.

of which effective competition would be significantly impeded in the common market.

Uncoated wood free paper

37. In this product market, the activities of the parties are mainly based in Spain and Portugal, where their market share was around 25% in 1991, followed closely by the Arjo-Wiggins group and national producers. The parties do not attain a 5% share of the Community market. Therefore the concentration would not result in the creation or strengthening of a dominant position as a result of which effective competition would be significantly impeded in the common market.

Coated wood free paper

38. This is the core business of TORRAS and SARRIO, although they have not been present in the same segments that could be distinguished within this product market. SARRIO has been operating in the top-range segments (special coated, art) whereas TORRAS has been mostly active in the medium range (fully coated).
39. The combined market share of TORRAS and SARRIO in 1990 was []⁽⁸⁾ and []⁽⁹⁾ in 1991 in Spain and []⁽¹⁰⁾ in Portugal. Their competitors are small-sized national producers and international groups, such as Arjo-Wiggins, although none of them account for a market share higher than 15%. At the Community level, and taking together the production of all wood-free paper (coated and uncoated), the parties held a []⁽¹¹⁾ market share in 1990. They do not have a significant presence in any other Member State.
40. European producers have confirmed that access to the Spanish territory is no longer difficult for them. At the same time, all Spanish manufacturers have stated that their possibilities of expansion are hindered by imports, which have also brought about a significant decrease in prices. As a result of this, their market shares have been eroded: TORRAS and SARRIO had a combined market share of []⁽¹²⁾ in production of coated wood-free papers in 1989, which has decreased to []⁽¹³⁾ in 1991. Therefore, notwithstanding the present level of the parties' market shares, the growing penetration of the major European competitors in the Spanish territory (which is likely to continue for the above reasons) leads to the conclusion that the operation does not create or strengthen a dominant position as a result of which effective competition would be significantly impeded in the Common market.

Self-copying paper

41. TORRAS does not manufacture self-copying paper. SARRIO is the only manufacturer in Spain with a market share of []⁽¹⁴⁾ in

(8) Around 60%.

(9) Around 50%.

(10) Less than 40%.

(11) Around 5%.

(12) Around 60%.

(13) Around 50%.

(14) Less than 50%.

Spain and []⁽¹⁵⁾ in Portugal. The parties market shares are below 10% in all other Member States and their share of the total Community market is []⁽¹⁶⁾. Imports account for the remainder of consumption in Spain. August Koehler, Arjo-Wiggins, Zanders and Stora/Feldmühle which are the main competitors in these markets, are all much larger groups than the parties.

In view of the parties' market shares, the large and increasing quantities of imports into Spain, the depressive effects they are having on both nominal and real prices, and the significance and size of competitors, the concentration would not result in the creation or strengthening of a dominant position as a result of which effective competition would be significantly impeded in the Common market.

Self adhesive paper

42. SARRIO does not manufacture self-adhesive paper, but it sells third party products in Spain. The combined market share of the parties amounts to []⁽¹⁷⁾ in Spain and less than 2% in any other Member State and the Community as a whole. Imports into Spain account for 37% of consumption in 1990, and show an increasing trend. Therefore the concentration would not result in the creation or strengthening of a dominant position as a result of which effective competition would be significantly impeded in the Common market.

The distribution market

43. The total amount of sales made through paper merchants varies according to the product. TORRAS and SARRIO sell through merchants []⁽¹⁸⁾ of their self-copying paper whereas only []⁽¹⁹⁾ of their self-adhesive paper and []⁽²⁰⁾ of their coated and uncoated woodfree paper. Their combined market share of wholesale distribution in Spain was []⁽²¹⁾ in 1990, their next competitors being Arjo-Wiggins []⁽²²⁾, Leykam []⁽²³⁾ and a large number of regional independent merchants.
44. The parties have therefore a substantially larger market share than any of their competitors. However, as indicated by a number of the main European paper manufacturers, entry into the Spanish merchanting market is not hindered by significant barriers. A distribution network can be created starting with some sales agents and some warehouses and also by purchasing existing independent merchants.

At the same time the clients of paper merchants contacted by the Commission have stated that there is a wide variety of Spanish and foreign suppliers in Spain and they could switch their orders if the conditions on quality, price or service made it advisable to do so.

⁽¹⁵⁾ Less than 20%.

⁽¹⁶⁾ Less than 10%.

⁽¹⁷⁾ Less than 25%.

⁽¹⁸⁾ Around 90%.

⁽¹⁹⁾ Less than 40%.

⁽²⁰⁾ Less than 25%.

⁽²¹⁾ Less than 50%.

⁽²²⁾ Less than 20%.

⁽²³⁾ Less than 5%.

45. Therefore, the widespread distribution network of TORRAS and SARRIO will not be such as to create or reinforce a dominant position as a result of which effective competition would be significantly impeded in the Common market.

V. CONCLUSION

46. In the light of the above the operation does not create or strengthen a dominant position as a result of which effective competition would be significantly impeded in the Common market or in a substantial part of it.

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For the above reasons, the Commission has decided not to oppose the notified concentration and to declare it compatible with the common market. This decision is adopted in application of Article 6(1)B of Council Regulation No 4064/89.

For the Commission,