

II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 31 January 2001

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

(Case COMP/M.2097 — SCA/Metsä Tissue)*(notified under document number C(2001) 177)***(Only the English text is authentic)****(Text with EEA relevance)**

(2002/156/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 last amended by Regulation (EC) No 1310/97 ⁽²⁾, and in particular Article 8(3) thereof,

Having regard to the Commission's Decision of 26 September 2000 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 11 August 2000, the Commission received a notification pursuant to Article 4 of Regulation (EEC)

No 4064/89 (the Merger Regulation) of a proposed concentration whereby SCA Mölnlycke Holding BV (SCA) will acquire sole control of the whole of Metsä Tissue Corporation (MT).

(2) After examination of the notification, the Commission concluded that the notified operation falls within the scope of the Merger Regulation and raises serious doubts as to its compatibility with the common market, because it could 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 and in the territory covered by the EEA Agreement. On 26 September 2000, the Commission therefore decided to initiate proceedings pursuant to Article 6(1)(c) of the Merger Regulation and Article 57 of the EEA Agreement.

I. THE PARTIES

(3) SCA is a wholly owned subsidiary of Svenska Cellulosa AB, a forest industry company that specialises in the manufacture of hygiene products, transport packaging and graphic papers. SCA manufactures and distributes a variety of tissue-based hygiene products throughout the EEA.

(4) MT is active in the production of tissue products, baking and cooking papers. It is majority-owned (66 %) by the Metsä-Serla Corp., a Finnish forest industry

⁽¹⁾ OJ L 395, 30.12.1989, p. 1; Corrigendum: OJ L 257, 21.9.1990, p. 13.

⁽²⁾ OJ L 180, 9.7.1997, p. 1.

⁽³⁾ OJ C 52, 27.2.2002.

company. MT has production sites in Sweden, Germany, Finland, Poland and the Canary Isles.

(b) Production of parent reels (base paper) from the treated pulp or waste paper,

(c) Conversion of parent reel into the various end products and packaging.

II. THE OPERATION AND THE CONCENTRATION

(5) SCA proposes to acquire sole control of MT. The operation forms part of an extensive exchange of assets between Svenska Cellulosa and Metsä-Serla, involving three notifiable transactions: Case COMP/M.2020 Metsä-Serla/Modo ⁽⁴⁾, Case COMP/M.2032 SCA Packaging/Metsä Corrugated ⁽⁵⁾ and the present operation.

(10) Large manufacturers are generally vertically integrated across these three production stages, whilst smaller operators may only be active in the conversion stage.

(6) The proposed transaction, whereby SCA would acquire sole control of MT, therefore constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

(11) Parent reel is the raw material for tissue products. Its production is a scale-intensive activity, which generally requires production equipment to run continuously near capacity.

(12) At the converting stage, the parent reel is unwound, cut and decorated, embossed, folded or perforated as appropriate and packaged. This final production stage is less scale-intensive than base paper production, but specialised equipment is required for a number of products.

III. COMMUNITY DIMENSION

(7) The combined aggregate worldwide turnover of the undertakings concerned exceeds EUR 5 000 million (SCA EUR 7 366 million, MT EUR 586 million). The aggregate Community-wide turnover of each of the undertakings concerned exceeds EUR 250 million (SCA EUR [...] * (*) million, MT EUR [...] * million). Neither of the undertakings concerned achieves more than two-thirds of its aggregate Community-wide turnover within one and the same Member State. The notified operation therefore has a Community dimension within the meaning of Article 1(2) of the Merger Regulation.

A. RELEVANT PRODUCT MARKETS

(13) The parties' activities overlap in the supply of parent reels and converted products.

A.1. TISSUE PARENT REELS

(8) The notified transaction constitutes a cooperation case pursuant to Article 57 of the EEA Agreement and Article 2(1)(c) of Protocol 24 to that Agreement. The case therefore falls to be assessed by the Commission in cooperation with the EFTA Surveillance Authority in accordance with Article 58 of the EEA Agreement.

(14) In line with the definition in the Kimberly-Clark/Scott case ⁽⁶⁾, SCA submits that the tissue parent reels should be seen as a single relevant product market. Tissue parent reels can be made from pulp or from waste paper or a combination of both.

(15) The parties produce parent reels, mainly for internal consumption, but sell excess production to third party converters. In times of inadequate internal production the parties may also purchase parent reels from other tissue producers.

IV. COMPATIBILITY WITH THE COMMON MARKET

(9) The parties are both manufacturers of a range of tissue paper products, such as toilet tissue, kitchen towels, handkerchiefs and napkins. The production process essentially involves a three-stage process.

(16) The relevant product market is considered to be the supply of parent reels to third parties.

A.2. CONVERTED PRODUCTS

(a) Stock preparation where wood paper (pulp) or waste paper is treated so as to make it suitable to be run on the paper machine,

(17) The final converted products are supplied to retailers (consumer products) and away-from-home (AFH) distributors. The latter group includes supplies to hotels, restaurants and catering firms and other corporate customers. Although toilet tissue and napkins are both

⁽⁴⁾ Commission Decision of 4 August 2000.

⁽⁵⁾ Commission Decision of 25 August 2000.

^(*) 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.

⁽⁶⁾ Commission Decision 96/435/EC in Case M.623 Kimberly-Clark/Scott, OJ L 183, 23.7.1996, p. 1.

sold as consumer products and AFH products, consumer products and AFH products constitute separate product markets as they are sold via different distribution channels and to different customers and are therefore not substitutable. This is consistent with the Commission's conclusions in the Kimberly-Clark/Scott decision and has been confirmed by the Commission's inquiries.

Consumer products

- (18) In the notification SCA submitted data based on four separate product markets for consumer products:
- toilet tissue;
 - kitchen towels;
 - handkerchiefs and facial tissues;
 - napkins.
- (19) These are considered separate product markets in that they differ by price, physical characteristics and end use. The market investigation confirmed that these four products should be considered as distinct relevant product markets.

Branded v. private label

- (20) Within each consumer product market there are both branded and private label products. The parties both have strong Nordic ⁽⁷⁾ brands and are also active in the supply of private label products. Outside Sweden, Norway and Finland, the parties' sales are predominantly made under private label. SCA considers branded and private label products to be in the same product market.
- (21) In Kimberly-Clark/Scott the issue to what extent final consumers considered branded and private label tissue products to be in the same market was discussed extensively. The Commission found that in retail stores in the United Kingdom private label products were priced relative to leading branded products and that at least some consumers were willing to switch between branded and private label products in response to promotional campaigns. The parties and third parties presented various econometric studies based on Nielsen supermarket scanner data to directly assess whether prices of branded products were constrained by prices of private label products. The Commission acknowledged that, based on the studies submitted, it

could not be excluded that private label competed with branded products at the retail level. Most respondents in the Commission's investigation in the present case have also been of the opinion that branded products and private label products are in the same market at the retail level.

- (22) However, in Kimberly-Clark/Scott the Commission also considered that the true competitive significance of that operation was its impact on the branded tissue products market where the new entity would have the two most important brands in the relevant geographic market (the United Kingdom and Ireland). The Commission described how the continued presence of brands was important, even for the major retailers where private label sales had become increasingly important. Branded products were seen as necessary to attract shoppers, to provide an adequate range of choice and to offer the consumer a reference point against which the merits of store brands could be evaluated. The large retailers questioned by the Commission considered the two major brands of the new entity as essential brands. The Commission concluded that retailers would become dependent on the new entity for essential brands. For the supply of private label products, however, the Commission focused on whether there was an adequate supply/capacity to meet the requirements of retailers.

- (23) The market investigation in the present case has confirmed that for the merging parties' customers there is a substantial difference in the way branded products and private label products are procured. Although supermarkets are the main buyers of both types of product, there is a clear distinction in how they are purchased.

- (24) For branded products, the supermarket chooses to stock a brand depending on a combination of factors, which influence the brand's downstream market position, such as consumer loyalty, price and promotional activity. The supermarket can only realistically choose between the brands that are presently marketed by the manufacturer in the country where the retailer is located. In certain countries, where the parties are active, the number of potential suppliers is very limited.

⁽⁷⁾ For the purpose of this decision defined as Norway, Sweden, Denmark and Finland.

- (25) For private label products, however, the supermarket determines the quality and quantity of the product, and the supplier produces to order. The marketing is left to the retailer who decides on issues such as packaging, promotional effort, etc. Compared to branded products, this process allows supermarkets more readily to switch private label volume between tissue manufacturers with spare capacity. A customer typically asks for bids from a number of producers according to the customer's specification of the quality of the products and other terms of the contract. In this respect, a private label contract could be viewed as a toll-manufacturing arrangement where the contract is awarded through a bidding process. As the termination period is very short, this bidding process may be repeated quite often, even every few months. The number of potential suppliers is determined by such elements as quality, transport costs, spare capacity and reliability of delivery. Many respondents underline the importance of just-in-time delivery for their choice of supplier. There is, however, no need for a producer already to be present with sales or a distribution channel in a certain area in order to be considered a realistic potential supplier.
- (26) This difference in the functioning of the markets for branded and private is reflected in that the producers' margins are typically higher for branded products than for private label products. While it is often technically possible to switch production between branded and private-label products, a manufacturer that produces both branded and private label products would therefore normally prefer to use its capacity for production of branded products. As a result, the owners of strongly positioned tissue brands, such as Kimberly-Clark, Procter & Gamble and, to a lesser extent, Fort James have a clear focus on branded production and only produce private label to the extent necessary to utilise spare production capacity and gain economies of scale. A large number of Italian manufacturers, on the other hand, have a clear focus on production of private-label products. For these manufacturers, the costs of building brand awareness create important barriers to enter the branded market. SCA is one of the few players with a relatively balanced presence in the branded and private-label markets, although the respective shares of brands and private label vary significantly between the different countries where SCA is active. Hence, the supply of branded and private-label tissue products is characterised by two different sets of competitors which have only limited economic incentives and financial capabilities to seriously challenge each other's product markets.
- (27) In its reply to the Commission's Statement of Objections pursuant to Article 18 of the Merger Regulation (hereinafter 'the Reply'), SCA claims that the Commission's decision to regard private label and branded products as separate markets at the wholesale level ignores the fact that these products are in competition with each other at the retail level. The Commission does not accept that it has ignored competition between the two products at the retail level. However, the Commission considers that relative price changes at the wholesale level are not necessarily transmitted fully to the retail level. Retailers may, for instance, choose to reduce their margins instead of raising their retail prices fully in line with an increase in the wholesale price. This possibility was mentioned by some retailers as a likely response to a 5 % to 10 % increase in their supply price for private label products. The Commission therefore considers that branded and private label consumer tissue products can compete with each other at the retail level, while being in separate markets at the wholesale level.
- (28) On the basis of the above, the Commission considers that, for the purpose of the present case, branded and private label consumer products are separate relevant product markets. In any event, the Commission, even though it considers that the market investigation does not support SCA's product market definition, has also examined the competitive impact that the notified operation would have if branded and private label products constituted one single relevant product market. The competitive assessment of the notified operation leads to the same result no matter which product market definition is adopted.
- AFH products**
- (29) SCA has provided data for the following product markets within the AFH sector:
- toilet tissue,
 - hand wiping and drying (hand wiping),
 - general wiping,
 - health care (e.g. examination couch covers, patient washcloths),
 - napkins.
- (30) SCA considers that AFH toilet tissue is a distinct relevant product market. However, for the other four AFH product groups, SCA argues that tissue products compete with products made from other materials. For hand wiping competing products are said to include textile products and hot air dryers. For general wiping SCA would also include textile wipes in the relevant product market. AFH health care products are

essentially tissue couch covers and wash cloths. In this sector as well as for AFH napkins, SCA argues that textile products compete with tissue products and therefore should be included in the relevant product market. The market investigation carried out by the Commission, however, has shown that the majority of the respondents consider that tissue products cannot be substituted easily by products made from other materials.

(31) In its Reply SCA reiterates its argument that textile products compete directly with tissue in the hand wiping and general wiping markets. SCA also states that many respondents to the Commission's market investigation considered textile products to be in competition with tissue products.

(32) Some respondents to the Commission's market investigation did indeed confirm that alternative products exist for specific applications. However, customer choice between tissue, textile products and, where applicable, blow dryers takes place predominantly based on the specific application and on criteria other than relative prices. For example, non-tissue products are generally excluded for reasons of hygiene in health care and in many restaurants. By contrast, blow dryers may be preferred where avoidance of paper waste is a priority. Direct price comparison between the different products, however, is difficult, even where substitution may be possible. Switching between the different materials is complicated by the fact that most AFH tissue wholesalers do not carry any of the alternative products. The Commission recognises that the existence of textile products may provide a certain competitive restraint on tissue products. However, the Commission's market investigation has not shown that the prices of tissue products are restrained sufficiently by substitute products made from other materials that these should be included in the same product markets. Nor has SCA provided any such evidence.

(33) In the notification SCA argues that branded and private label AFH products are in the same product market. The majority of AFH sales are branded, SCA's main brand is Tork, and MT's brands include Katrin and Saga. These brands are used throughout the Nordic region as well as in other parts of Europe. The market investigation confirmed SCA's view that, although branded products exist, the distinction between private label and branded AFH products is less significant than for consumer

products. This is because the AFH customer is more likely to choose the products based on quality and price than to be influenced by a supplier's brand image. Branded and private label AFH products are therefore considered to be in the same product markets.

(34) The five AFH products identified above are therefore considered to constitute separate and distinct relevant product markets.

B. RELEVANT GEOGRAPHIC MARKETS

B.1. TISSUE PARENT REELS

(35) SCA argues that the relevant geographic market for parent reels is at least EEA-wide. The Commission's investigation has confirmed this view. Transport costs are significantly lower than for converted products, owing to the more compact nature of the product, and parent reels can be supplied on at least a European basis.

B.2. CONVERTED PRODUCTS

(36) SCA submits that the importance of economies of scale has increased relative to transport costs since the investigation in the Kimberly-Clark/Scott case in 1995. SCA argues that its business today is organised on the basis that economies of scale derived from specialising mills in one or two products outweigh the transport costs incurred in distributing products from these mills to any location in Europe. SCA also argues that consumer markets are increasingly characterised by cross-border and pan-European mergers and alliances between retailers and that AFH contracts are similarly the subject of cross-border and pan-European competition, facilitated by e-commerce. SCA, therefore, sustains that the emergence of an EEA-wide market is one of a number of factors which mean that certain high apparent market shares calculated on a national basis are less reliable indicators of the possible existence of market power than in other industries.

(37) In the notification SCA also presented an economic analysis by Prof. Jerry Hausman of Lexecon/Cambridge Economics. Based on an analysis of SCA profit margins the study makes the 'strong conclusion' that Finland and Denmark are not in the same geographic market as Sweden and Norway and that Germany, Belgium/Luxembourg and the Netherlands are not in the same geographical market as Sweden and Norway. According to the study it is 'less clear' whether Finland and Denmark are in the same market as each other, or in the same market as Germany, Belgium/Luxembourg and the Netherlands; these countries are 'more similar' to each other than to Norway and Sweden, but

differences between their respective gross margins still exist.

- (38) In the Reply, SCA argues that the study related only to branded consumer products and does therefore not allow conclusions on the relevant geographical markets for private label consumer tissue products and AFH tissue products. The Commission notes that this interpretation, which was not presented in the notification, of the study is inconsistent with SCA's view that branded and private label tissue products are in the same relevant product market.
- (39) The Commission's investigation has shown that three to four first-tier manufacturers are active on a European level, while a number of smaller competitors achieve significant market shares only in a more limited geographic area. The first-tier group includes SCA, Kimberly-Clark, Fort James and, in some product markets, Procter and Gamble. MT and a number of Italian manufacturers (such as Annunziata, Cartiera Lucchese, CartoInvest (Carrara), Delicarta, Linder and Tronchetti) are among the largest second-tier firms and have established some more limited market positions outside their respective home markets, in particular in the sale of private label products. Furthermore, there are some local manufacturers, which have only marginal sales outside their respective home markets. In Sweden and Norway, Munksjö and Skjaerdal are such local players. However, even the market positions of the first-tier manufacturers are by no means uniform across Europe, and individual country markets are significantly more concentrated than the EEA shares would suggest. Manufacturers have so far typically only achieved high market shares in those countries where they operate local production plants and in neighbouring countries. The identity and relative strength of the main competitors differ significantly between Member States, at the level of both the first- and second-tier manufacturers.
- (40) In the Kimberly-Clark/Scott case, the Commission found the relevant geographic market to include both Britain and Ireland, due to the countries' geographic location relative to the Continent, common language (that is, similar media exposure) and similar consumer preferences (emphasis on high quality tissue products). For the remaining parts of Europe, the geographic market definition was left open because the operation primarily concerned the United Kingdom and Ireland.
- (41) In the present case, the most significant additions of market share occur in the Nordic region (Norway, Sweden, Finland and Denmark) and in a number of central European countries (Germany, Austria, Belgium/Luxembourg, the Netherlands and France).

However, as competition concerns only arise in the Nordic region, this section on the definition of the relevant geographic market will mainly focus on defining the markets which are relevant to the assessment of the impact of the transaction in this region.

Logistics

- (42) Transport costs constitute a significant obstacle to supplying converted products over large distances due to the fact that tissue products are characterised by a high volume-to-value ratio. Transport costs per kilometre are primarily determined by the quantity of product that can be loaded on a truck, that is, on the product's density relative to sales price. Since the profitability per pallet is higher for folded products (handkerchiefs, napkins) than for rolled products (toilet tissue, kitchen towels), economic delivery distances tend to be larger for folded products. Similarly, premium products can be supplied over longer distances than lower quality varieties, as the value per unit is higher.
- (43) Citing its own restructuring programme, SCA argues that economies of scale have gained in importance relative to transport costs since the Kimberly-Clark/Scott investigation in 1995 ⁽⁸⁾. Accordingly, SCA claims that its activities are currently being reorganised on a European basis [...]*,
- (44) Most competitors and customers consider that the Kimberly-Clark/Scott distances still apply, although the majority of the replies tended toward the upper end of the Kimberly-Clark/Scott range, with maximum distances of approximately 800 to 1 000 km for full truckloads. Amongst the competitors who considered themselves within the viable distance for delivering to the Nordic region, the average maximum distance given was 750 km. The importance to customers of reliable just-in-time deliveries was stressed repeatedly. In this respect it should be noted that long transport distances increases the lead-time with which an order must be given. The Finnish consulting firm Jaakko Poyry has described the importance of just-in-time delivery as: 'The market where a producer can deliver is not only determined by the transportation costs per tonne of its tissue products. In customers' eyes a key buying factor

⁽⁸⁾ Respondents to the Kimberly-Clark/Scott market investigation estimated that the various tissue products could be economically transported over maximum distances of 540 to 865 km (depending on the product category).

is quick and reliable on time delivery. Replenishing at retailers' distribution centres needs to be in 24 to 48 hours. With growing distance of the producer the reliability of on time or even just in time delivery to retailers' distribution centres is more difficult to guarantee unless additional warehousing etc. is used-which again raise servicing costs for the producer'.⁽⁹⁾.

- (45) Supply to customers in the Nordic region is complicated by the large distances and low population densities within these countries. A number of competitors consider that these geographic factors, in addition to the strong incumbent manufacturers, increase the barriers-to-entry to Nordic countries and lead to lower distances over which customers can be economically supplied.
- (46) Italian manufacturers seem to constitute an exception to the rule of maximum distances of approximately 800 to 1 000 km. The last decade has seen a considerable expansion of the capacity of Italian tissue production. A number of these manufacturers, mainly based close to Lucca in Tuscany, supply significant amounts of private label tissue products to German and French retail customers. One of these companies states viable transport distances of up to 2 000 km for toilet tissue and handkerchiefs, 1 700 km for napkins and 1 500 km for kitchen towels. However, the most successful Italian producers have recently established, or are in the process of establishing, production facilities in France to serve Northern European customers. Hence, proximity to markets seems also to be a competitive factor that these successful Italian manufacturers take into account once they have established a foothold in an export market.

The scope for geographic price discrimination

- (47) A relevant geographic market comprises the area in which the undertakings concerned are involved in the supply and demand of products and services, in which the conditions of competition are sufficiently homogeneous and which can be distinguished from neighbouring areas because the conditions of competition are appreciably different in those areas. If customers can buy at the same prices as customers located in other areas, such areas should be included in the geographic market definition. If, however, customers buying from suppliers located in other areas cannot necessarily buy at the same prices as the customers located in those areas, such areas should not necessarily be included in the geographic market definition. In other words, there can be situations where the fact that customers are being supplied from a plant in a certain area does not mean that these customers are getting the

prevailing 'market' prices in that area. This could, for instance, be the case when the suppliers deliver the products to the premises of the customers. If arbitrage between customers is not possible, suppliers can then charge different prices to customers in different areas. In a prospective analysis, as is carried out in investigations of concentrations, the possibility of future price discrimination by undertakings which through a concentration can achieve a very strong position among the suppliers that can supply to a certain area, may be a crucial factor in delineating the relevant geographic market to take into consideration.

- (48) The extent of the geographic market may thus be affected by the existence of customers in a certain area, which could be subject to price discrimination by a firm controlling most of the supply into such area. This will usually be the case when two conditions are met: (a) it is possible to identify clearly which area an individual customer belongs to at the moment of selling the relevant products to him, and (b) trade among customers or arbitrage by third parties should not be feasible. Such arbitrage is particularly difficult where the product is sold on a delivered basis and where the transportation costs are a significant percentage of the final cost. The assessment of the competitive impact of a proposed concentration in such an area should take into consideration all suppliers who can in an economically viable way supply into this area, no matter where the location of the suppliers production facilities.
- (49) Buyers in the Nordic countries generally organise their purchases on a national basis. This is particularly true for national supermarket chains but also for smaller retailers, which often have organised their purchasing through national purchasing groups. The only example of a group with a significant share of the retail markets in more than one Nordic country is ICA in Sweden and Hakon in Norway, which are under the same ownership. According to SCA, ICA has 39 % of the Swedish and Hakon 28 % of the Norwegian retail market. In the Reply SCA also refers to other examples of buyers, which, according to SCA, have adopted a regional or pan-European purchasing strategy. The only example relevant to the Nordic region is Aldi, which according to SCA has 4 % of the Danish retail market and is not present in the other Nordic countries.
- (50) The market investigation has shown that buying tissue products through cross-border purchasing groups such as AMS, NAF and EMD is not very developed. Although SCA, both in the notification and in its Reply, stresses the importance of such international retailer alliances, the Commission's investigation has shown that these

⁽⁹⁾ 'Market Structure and Competition in the Paper Tissue Industry', draft report of 30 October 2000, p. 10.

alliances do not directly purchase tissue products for their members. Their activities are in coordination and negotiations on a framework basis covering such items as bonuses and general conditions of trade, mostly for private label products. While the activities of the alliances in the area of tissue products may change, the Commission's market investigation has not provided any indications of any such changes in the foreseeable future that should lead the Commission to modify its definition of the relevant geographic markets ⁽¹⁰⁾.

- (51) Since tissue products are delivered to customers' warehouses it is possible to identify clearly to which country an individual customer belongs at the moment of selling the tissue products to him. This means that a producer controlling all supplies to one or more of the Nordic countries could target a price increase to customers in one country without affecting prices in other countries. Arbitrage is not possible as these tissue products have high transport costs relative to total costs and customers need just-in-time delivery, often several times per week, which is not likely to be possible to achieve through arbitrage buying. Therefore, customers in one country would not be able to counter such a price increase through arbitrage with customers in another country, where a price increase had not been applied.
- (52) The Commission also notes that, even if cross-border purchasing, whether by retailer chains or alliances, were to account for a significant proportion of sales in the Nordic region, this would not necessarily imply that prices would become uniform across this region. The ability of alliances to negotiate successfully uniform prices will depend on the availability of alternative suppliers.
- (53) In its Reply SCA claims that most retailers responding to the Commission's market investigation also seemed to share the view that markets are Europe-wide. However, this is not the case for the Scandinavian respondents. The majority of these retailers takes a narrower view and considers the markets to be either national or Scandinavian. Those who say that they view the markets as wider than Scandinavian do so because they source from non-Scandinavian countries. However, as outlined above, in the specific circumstances of the present case the geographic location of suppliers does in

itself not determine the scope of the relevant geographical market.

Branded consumer products

- (54) For branded products the choice of the supermarkets is restricted to the products that are presently marketed by producers in the given country. While many brand names are used in several countries, there is probably only one example of a brand name known in all of Europe, which is Kimberly-Clark's Kleenex brand. The typical picture in a country is therefore a mixture of national and regional brands. Even when brands are used in more than one country, brand recognition generally has to be built on a national basis due to the fact that media coverage is predominantly national. Because of language differences, the advertising campaigns, brands and packaging have to be adapted to national markets. As a result, consumer awareness of regional brands differs markedly even between neighbouring countries.
- (55) According to survey data submitted by SCA, (spontaneous) awareness of SCA's Lilla Edet brand in March 2000 varied between [approximately 50%]* in Sweden, [30%]* % in Norway and [20%]* % in Denmark, despite the close geographic proximity and cultural and linguistic similarities between the three Scandinavian countries. As a result of increased marketing activity, for example, spontaneous awareness of the Edet brand among Norwegian consumers increased significantly between December 1999 and March 2000 (from [about 20 % to 30 %]*), while it was stable in Sweden and declined slightly in Denmark. Similar awareness variations over time occurred for MT's Lambi brand and other consumer tissue brands. Overall, brand building activities in one Nordic country appear to have no effect on recognition in any neighbouring country, supporting the hypothesis that markets for branded consumer products are national even when the same brand is used in different countries.
- (56) A further indication of the Nordic countries being separate geographic markets is given by the considerable differences in the market shares that the competitors have in the different countries. The details of the distribution of market shares in the various markets are given in the assessment section below. In the two largest consumer product markets, toilet tissue and kitchen towel, a major player like Kimberly-Clark has a significant presence only in Denmark. Another major competitor to the parties, Fort James, is strong in Finland, has a solid presence in Denmark, but much smaller positions in Norway and Sweden. A small regional producer, Munksjö, has a significant position in Norway and Sweden, but almost no position in Denmark and Finland. Also the parties themselves have very varying positions in the Nordic countries. SCA has only small market shares in Finland while it has strong

⁽¹⁰⁾ In its Decision of 6 April 2000 in Case IV/M.1832 Ahold/ICA Förbundet/Canica, the Commission found that: 'The markets for wholesale and procurement of daily consumer goods, although undergoing changes following the introduction of the Euro, can still be considered as national due to a number of factors such as consumer preferences for national products and different distribution channels. Furthermore, many European manufacturers and wholesalers negotiate with their customers on a national level, basically via their subsidiaries and branches'. (Recital 15).

positions in the other three countries. MT has very high shares in Sweden, Finland and Norway and more moderate shares in Denmark.

- (57) The cost of building a new consumer tissue brand from scratch is considered by most market participants as prohibitive for all but the largest manufacturers. Few, if any, of those firms that currently specialise in private-label production can therefore be expected to enter new geographical markets with branded products outside their respective traditional strongholds in the foreseeable future.
- (58) Even first-tier competitors have stated that the cost of entering a market that is dominated by strong incumbents can be prohibitive, because the incumbents' local manufacturing base and established supplier contacts enable them to retaliate against any small scale entry (which could, for instance, take place through imports). In addition, the barriers to large-scale entry via new local production capacity are high, and such entry is not likely to happen in mature markets such as those in the Nordic region. In fact, both customers and competitors have stated that the strong position that a merged SCA/MT would have in the Nordic region would create a powerful disincentive for potential new entrants.
- (59) Hence, the Commission concludes that the relevant geographical markets for branded consumer products in the Nordic countries are national. The Commission has, however, also examined the competitive impact that the notified operation would have if Sweden and Norway constituted one single relevant geographic market. The competitive assessment of the notified operation leads to the same result even if this wider geographic market definition is adopted. Outside the Nordic countries it can be left open whether the relevant geographic markets are national or wider than national, as the proposed transaction does not raise competition problems outside the Nordic countries even if each country is considered under the narrowest geographic market definition.

Private label consumer products

- (60) As for branded products, the buyers of private label products typically organise their purchases on a national basis. A major difference to branded products is, however, that for private label products, any marketing and promotional activities are carried out by the customers (the retailers). The customers therefore often have a wider choice of suppliers for private label products. The main parameters that determine the set of potential suppliers for a customer are transport costs,

the location of production capacity available for private label production, the quality that the manufacturers are able to deliver, whether a manufacturer has sufficient spare capacity and the reliability of delivery that a given manufacturer offers.

- (61) Italian manufacturers are important in private label production and routinely supply German retailers, although it appears that due to transport costs they usually do not deliver beyond Northern Germany. The substantial private label capacity in the Lucca region thus exerts significant competitive pressure on the German market as well as in a number of other European countries (Austria, Belgium/Luxembourg, the Netherlands, and France). Similarly, private label trade flows emanate (mainly) from a number of other production clusters, which outside Italy include especially Germany, and to a smaller extent the Benelux and France.
- (62) Supplies to the Nordic region to a large extent come from Swedish and Finnish plants. The exception is Denmark, where substantial amounts of tissue paper products are imported from non-Nordic countries. Denmark has no local plants, while there are two small local plants in Norway. Sweden and Norway are mostly supplied from plants in either Sweden or Norway with the possibility of some further supplies arriving from Finland. Finland is primarily supplied from MT's Mänttä plant and from a Fort James plant in Nokia.
- (63) In contrast to the other Nordic countries, significant imports arrive to Denmark from non-Nordic production facilities. The main competitor to the parties in the private label markets in Denmark is a German company, Wepa, which does not deliver to other Nordic countries; Denmark is at the limit of what Wepa itself considers the maximum transport distance for tissue products. MT also delivers substantial quantities of private label tissue products from its German mills, basically continuing the supply relationships carried over from its recent acquisitions of two German tissue producers. This results in a market structure and conditions of competition in Denmark that are substantially different from neighbouring Sweden and Norway, where only supplies originating from Nordic countries are available. The ability of other potential suppliers to influence the competitive conditions in Denmark is considered in the assessment of this market.
- (64) The competitive conditions in Denmark can also be clearly distinguished from Germany by the fact that the Italian manufacturers cannot effectively compete due to transport costs. Trade flows underline the Italians' diminishing competitiveness in areas north of Germany (even after allowing for the different market sizes). While Germany imported EUR 110 million of toilet

tissue from Italy in 1998, the corresponding figure for Denmark was only EUR 362 000, a much smaller percentage of the total domestic market. The Italian manufacturers are considered by market participants to have a major impact on competitive conditions for supply of private label products in Germany, because they have substantial production capacity to supply private label products. They are seen as main alternative suppliers to SCA and MT in Germany. Danish customers, by contrast, depend almost entirely on northern European suppliers.

- (65) The competitive conditions in Finland differ from those in the other Nordic countries because of the strong presence of the American producer, Fort James, and — compared to the other Nordic countries — the very small presence of SCA. SCA has [practically no]* private label sales in Finland. The small Swedish producer Munksjö has a minor presence in private label sales. The competition in Finland therefore mainly takes place between MT and Fort James, which together have [more than 90]* % of private label sales.
- (66) The competitive conditions in Norway and Sweden differ in that SCA is not present in private label sales in Norway while it is the second largest player in the main (toilet tissue and kitchen towels) in Sweden.
- (67) Hence, the Commission concludes that the customers in each of the Nordic countries constitute a distinct relevant geographical market for private label consumer products. The Commission has, however, also examined the competitive impact that the notified operation would have if customers in Sweden and Norway constituted one single distinct relevant geographic market. The competitive assessment of the notified operation leads to the same result even if this wider geographic market definition is adopted. Outside the Nordic countries it can be left open whether the relevant geographic markets are national or wider than national, as the proposed transaction does not raise competition problems outside this region, even if each country is considered under a national geographic market definition.

AFH products

- (68) SCA argued in the notification that AFH contracts are the subject of cross-border and pan-European competition. The Commission's market investigation has, however, shown that AFH customers do not normally negotiate contracts on a wider-than-national basis. The main customer group for AFH products consists of wholesalers operating on a national or sub-national level. The tissue suppliers usually provide a package solution that includes, for instance, paper towels and a dispenser system. The largest AFH

customers of SCA and MT in the Nordic region identified in the notification are predominantly wholesalers, which are on average significantly smaller than retail chains, with annual turnover not exceeding double-digit million euro figures. The wholesalers mostly supply to smaller servicing companies like cleaning service companies that again deliver the tissue product as part of a service package to the customer. While some of these dealers are specialised on specific customer groups like hospitals, their market is mostly defined in geographic terms ⁽¹¹⁾.

- (69) In its Reply SCA disputes the Commission's preliminary finding in the Statement of Objections that the geographical markets for AFH products in the Nordic region are no wider than national. SCA notes the presence of cross-border buying by multinational enterprises, such as transport and catering groups. It claims that both SCA and MT have evidence of customers seeking suppliers for more than one country.
- (70) The Commission does not consider that the examples of cross-border buying by multinational companies provided in the Reply indicate that the geographic markets for AFH products are wider than national in the Nordic region. SCA has in its Reply only given examples of companies seeking future contracts covering more than one country, but no evidence of existing contracts. The only example given of a company seeking a future Nordic cross-border contract is a catering company, which is not mentioned in the notification as a large customer of either SCA or MT in the Nordic region. However, the vast majority of customers in the Nordic region covered by the market investigation have confirmed that the market for AFH tissue products is no wider than national. Very few of these companies are active in more than one Nordic country.
- (71) The same transport cost constraints as for private label products also limit the potential scope of the geographic market in the AFH segment. However, maximum viable transport distances tend to be shorter than for consumer products, due to the product characteristics and lower average order size. A certain minimum density of customers in a given geographical area is thus necessary and the cost of expanding into new geographical markets is higher than in the private label consumer segment. Due to the low population density and large

⁽¹¹⁾ 'Market Structure and Competition in the Paper Tissue Industry' (see footnote 9), p. 12.

geographical extent, combined with the region's considerable distance from the main continental tissue production clusters, the Nordic countries constitute particularly difficult markets in this respect.

(72) As for branded products, the market positions of the main players vary considerably in the Nordic countries. When considering the three large AFH markets, toilet tissue, hand wiping and general wiping, SCA and MT both have strong positions in Sweden, Norway and Denmark. SCA has only a small presence in Finland, where MT and Fort James are strong. In Denmark Fort James and Kimberly-Clark have some presence while they are both weak in Norway and Sweden. Of the smaller players, Munksjö has a limited position in Norway and Sweden and a very minor position in Finland. In Norway, a local company, Skjaerdal, is present in general wiping and napkins.

(73) Hence, the Commission concludes that the relevant geographical markets for AFH products in the Nordic region are national. The Commission has, however, also examined the competitive impact that the notified operation would have if Sweden and Norway constituted one single relevant geographic market. The competitive assessment of the notified operation leads to the same result even if this wider geographic market definition is adopted. Outside the Nordic region it can be left open whether the relevant geographic markets are national or wider than national, as the proposed transaction does not raise competition problems outside this region even if each country is considered under a national geographic market definition.

C. ASSESSMENT

C.1. TISSUE PARENT REELS

(74) The integrated tissue manufacturers, including SCA and MT, produce parent reels primarily for internal consumption. Sales to, or purchases from, third parties take place mainly in cases where base paper and converting capacities cannot be matched exactly, due to the different manufacturing economics prevailing at the two production levels.

(75) According to SCA the combined EEA market share of the parties for parent reel sales to third parties was [10-20]*% by volume (SCA [0-10]*%, MT [10-20]*%) and [10-20]*% by value (SCA [0-10]*%, MT [10-20]*%) in 1999. In 1997 and 1998, the parties' combined market share was below [10-20]*% by both

volume and value. The sale of parent reels to third parties does not constitute a core activity of SCA and MT. The market investigation has confirmed that the proposed transaction would not create or strengthen a dominant position in the market for tissue parent reels.

C.2. CONVERTED PRODUCTS

(76) SCA has production capacity in Austria, Belgium, France, Germany, the Netherlands, Sweden, Portugal, Poland, Russia, Spain and the United Kingdom. MT has plants in Germany, Finland, Sweden, Poland and the Canary Isles.

Consumer products

(77) For consumer products, competition concerns arise in toilet tissue and kitchen towels in the Nordic region. In the markets for handkerchiefs/facial tissues and for napkins in the Nordic countries, the Commission's market investigation has shown that there are other competitors present with significant market shares. SCA has limited sales in these two product categories and the proposed transaction would at most lead to a small addition of market share. Furthermore, in napkins Duni, a specialised Swedish producer, which is the market leader in Northern Europe, has a strong position in all four Nordic countries as well as in handkerchiefs/facial tissues in Sweden. In handkerchiefs/facial tissue, Kimberly-Clark has, with Kleenex, the strongest brand in the EEA. Kimberly-Clark's sales of handkerchiefs/facial tissues are larger than the combined sales of the parties in Norway and Denmark and larger than SCA's sales in Sweden. Both SCA and Kimberly-Clark have negligible positions in Finland. Consequently, the detailed assessment below of the impact of the proposed transaction on the tissue markets in the Nordic countries concern only toilet tissue and kitchen towels.

Sweden

(78) According to SCA, total sales of consumer tissue products in Sweden in 1999 were EUR [110-130]* million, of which approximately [80]*% were branded products and [20]*% private label products.

Branded consumer products

(79) Among branded consumer products, toilet tissue was the biggest market with approximately EUR [50-60]* million, the kitchen towels market was worth EUR [20-30]* million while that of handkerchiefs/facial

tissues was EUR [0-10]* million and napkins EUR [0-10]* million.

- (80) SCA's estimates of the parties' market shares (measured by volume) for the markets for branded toilet tissue and kitchen towels in Sweden in 1999 are set out in Table 1.

Table 1: SCA's estimates — branded products Sweden

Market shares	SCA	MT	SCA/MT
Toilet tissue	[20-30]* %	[60-70]* %	[80-90]* %
Kitchen towels	[30-40]* %	[50-60]* %	[80-90]* %

- (81) The market shares estimated by SCA for 1998 are similar to the 1999 figures. Value based market shares, given by SCA, also indicate the same market structure. The Commission has compared the sales figures of the parties with those of their competitors and its market investigation confirms that the merged entity would be by far the market leader. The main competitors in toilet tissue and kitchen towels are Munksjö with at most [around 20]*% (volume based) in toilet tissue and [around 15]*% in kitchen towels and Fort James with [less than 5]*% in toilet tissue and kitchen towels.

- (82) SCA's only brand for toilet tissue and kitchen towels is Edet, which is mainly produced in SCA's plant in Lilla Edet in Sweden. MT has three main brands, the premium brands Lambi and Leni and the basic brand Serla. Lambi has [somewhat higher sales]* than Serla for both toilet tissue and kitchen towels, while the sales of Serla are [about three times higher]* than those of Leni. All three brands are mainly produced in MT's three Swedish plants, Katrinefors, Pauliström and Nyboholm. Fort James sells toilet tissue and kitchen towels under its Lotus brand. Munksjö sells under its Munksjö brand products that are mainly produced in its plant in Jönköping in Sweden.

- (83) The parties' brands are generally considered to be the strongest brands in Sweden. SCA distinguishes between 'A brands' and 'B brands'. 'A brands' are actively promoted and advertised manufacturer brands. Among 'A brands' in Sweden SCA counts Leni, Lambi, Serla and Edet. 'B brands' are other manufacturers' brands which are not actively promoted, for example Billigt&Bra, Vivette, Dax, some Munksjö brands and Lotus in Sweden. SCA has also provided information about the 'brand awareness' and 'advertising awareness' that certain brands have had in Sweden in the period March/June 1998 to March 2000. SCA measured brand awareness by asking the respondents questions like 'Which brands of toilet paper do you know?' or 'Do you know a brand called Edet?' Brand awareness research is made in order to get an indication of how well known a particular brand is. Advertising awareness is measured by asking the same type of questions regarding the actual advertising for each relevant brand. Advertising

awareness research is made in order to get an indication of how well known the actual advertising for a particular brand is. The information is only given for Edet, Lambi, Leni, Serla and Lotus; the Munksjö brands are not included. This information clearly shows that Lotus is not nearly as well known as the parties' brands. Less than [5]*% of the respondents were apparently aware of the brand name Lotus. Around [50]*% of the respondents were aware of the Edet brand, over [40]*% knew Lambi, over [20]*% Serla, and over [10]*% Leni. The brands of the parties are clearly all better known than Lotus, and Fort James would have to invest in a major promotional effort in order to increase the market share of Lotus in Sweden.

- (84) Swedish customers have confirmed the importance of the brands of the parties. Some have even suggested that Munksjö's products are low price products that should not be considered branded products in the same way as the products of the parties and Fort James⁽¹²⁾. The majority of customers express worries about the effects of the proposed transaction.

Countervailing buyer power

- (85) SCA states in the notification that the existing demand structure contains enough buyers with sufficient strength to be able to resist any attempt to raise prices above the competitive level after the merger. The Commission does not accept this argument, for the following reasons.
- (86) According to SCA, among its largest customers in Sweden, ICA Handlarnas AB account for about [40]*% of the retail market. Dagab AB accounts for [around 30]*%, KF Kategoriteam Papper [15]*% and Bergendahl Grossist AB [<5]*%.
- (87) Buyer power can only be exercised effectively if the buyer has an adequate choice of alternative suppliers. In the Commission's view, the choice is limited as the parties would have around [80-90]*% of current sales in the markets for toilet tissue and kitchen towels and the brands with the strongest brand recognition in Sweden.

⁽¹²⁾ Munksjö confirms that it sells basic brands at low prices; it does not engage in serious advertising for its products.

- (88) Furthermore, it is easy to price discriminate between different customers as tissue products are delivered to the customers. Customers would not be able to counter price discrimination through arbitrage, since tissue products have high transport costs relative to total costs and customers need just-in-time delivery, often several times per week. Hence, even if the largest customers would be able to exercise some countervailing buyer power this would not protect smaller customers, and the new entity would still be able to raise prices above the pre-merger level.
- (89) In its Reply, SCA argues that a buyer would need to switch away only a small share of its purchases to 'punish' a large supplier and that such smaller volumes could be handled by an alternative supplier. Further, SCA claims that the current over-capacity in the market means that suppliers need as much volume as possible passing through their mills to be profitable. The Commission notes that for branded products switching volumes between suppliers can only be a credible threat if other comparable brands are available. This is not the case in Sweden. Furthermore, even if other, comparable brands were available, competitors would need to have sufficient spare capacity for a threat of switching volumes to be credible. In Sweden the relative size of the merging parties and their competitors is such that only very limited switching could occur.
- (90) SCA furthermore argues that international retailers, or members of international retailing associations, may choose to retaliate against SCA by taking action in other geographical markets. The Commission does not accept this argument because there are very few international retailers present in the Nordic region. The international retailing associations do not at present engage in detailed cross-border price negotiations for tissue products. SCA also claims that retailers could threaten to take action against other SCA products such as baby diapers or feminine protection products. Such a threat would, however, not seem credible as SCA also has very strong positions and well-known brands in these areas. For example, SCA states in the notification that it had in 1999 in Sweden a market share of [60-70]* % in adult incontinence care, [40-50]* % in feminine protection products and [50-60]* % in baby diapers.
- (91) In the Commission's view, such 'buyer power' as may exist would not prevent the creation of a lasting dominant position as a result of the merger.

Market entry

- (92) Entry with new capacity in Sweden (in fact in the entire Nordic region) is unlikely. The Nordic tissue paper markets are considered mature and saturated markets with high per capita consumption. They have, therefore, lower growth rates than countries in other regions of Europe where consumption of tissue products traditionally has been lower. Furthermore, there are significant costs and lead-time involved in establishing new production capacity. SCA estimates that it will take 18 to 24 months to set up a parent reel facility. A 50 000 tonnes ⁽¹³⁾ plant installation will cost between EUR [50]* million and EUR [80]* million depending on the technology, 'Through Air Dried' being the most expensive. A de-inking plant costs EUR [around 10]* million. Installing converting facilities for a similar sized plant will cost between EUR [30]* million and EUR [45]* million depending on the quality. This takes 12 to 18 months to install. If installing conversion facilities also requires purchase of a site, Fort James estimates that the total project/installation costs would increase by 50 to 100 %, depending on the total scope of the operation. For these reasons, the Commission concludes that entry with new capacity in Sweden is unlikely and that in any event it would take several years before a new competitor entering with new capacity could exert an effective competitive restraint on the parties.
- (93) Any new entry into Sweden would thus have to come from manufacturers that could deliver from their existing plants. This is, however, also unlikely because of the combination of high transportation costs and the high costs of entering with branded products in a stagnating market with strong established brands. Market participants do therefore not consider it likely that the two other large-scale producers with strong brands, Kimberly-Clark and Procter & Gamble would enter the Swedish markets for toilet tissue and kitchen towels. In fact, some market participants consider that the proposed transaction could raise the barriers of entry for the Nordic markets. The difficulties of entering in Sweden is further illustrated by the fact that Fort James, which has production facilities in neighbouring Finland, has only achieved a very moderate market share in Sweden.

Conclusion

- (94) The proposed operation would, therefore, combine four leading brands in one single company, resulting in a very strong market position. Customers would have little choice of other brands with the same attributes and ability to attract customers. The proposed operation

⁽¹³⁾ SCA and MT presently have production capacity of more than 100 000 tonnes each in Sweden alone.

would eliminate the main source of competition in the Swedish markets for toilet tissue and kitchen towels and would leave the new entity in a position that could not be challenged by competitors or customers.

- (95) The Commission, therefore, concludes that the proposed operation would result in the creation of a dominant position in the markets for branded toilet tissue and kitchen towels in Sweden.

Private label consumer products

- (96) According to SCA toilet tissue was, in 1999, the largest private label market in Sweden with approximately EUR [10-20]* million. The kitchen towels market was worth EUR [0-10]* million while that of handkerchiefs/facial tissues was EUR [0-10]* million and that of napkins EUR [0-10]* million.
- (97) SCA's estimates of the parties' market shares (measured by volume) in the private label toilet tissue and kitchen towels markets in Sweden in 1999 are set out in Table 2.

Table 2: SCA's estimates — private label products Sweden

	SCA	MT	SCA/MT
Toilet tissue	[30-40]* %	[30-40]* %	[60-70]* %
Kitchen towels	[30-40]* %	[50-60]* %	[80-90]* %

- (98) For kitchen towels, the market shares of the parties in 1998, as given by SCA, are very similar to the 1999 figures. For toilet tissue, the market shares for SCA are quite similar in 1998 and 1999, while MT in 1998 had [50-60]* % against [30-40]* % in 1999. The Commission has compared the sales figures of the parties with those of their competitors. The Commission's investigation has confirmed that the parties have a very large combined share in these markets. The main competitors in toilet tissue and kitchen towels are Fort James with [around 10]* % in both toilet tissue and kitchen towels and Munksjö with [less than 10]* % in both markets. The new entity would be [about than six times]* as large as Fort James and [more than ten times]* as large as Munksjö in these markets.
- (99) For both toilet tissue and kitchen towels SCA mainly supplies the Swedish market with products manufactured in SCA's plant in Lilla Edet in Sweden and MT with products mainly manufactured in MT's three Swedish plants, Katrinefors, Paulström and Nyboholm. Munksjö sells products that are mainly produced in its plant in Jönköping in Sweden.

Countervailing buyer power

- (100) SCA states in the notification that the existing demand structure contains enough buyers with sufficient strength to be able to resist any attempt to raise prices above the competitive level after the merger. The Commission does not accept this argument, for the following reasons.
- (101) According to SCA, among its largest customers in Sweden, ICA Handlarnas AB account for about [40]* % of the retail market. Dagab AB accounts for [30]* %, KF Kategoriteam Papper [15]* % and Bergendahl Grossist AB [< 5]* %.
- (102) Buyer power can only be exercised effectively if the buyer has an adequate choice of alternative suppliers. In the Commission's view, the choice is limited as the parties would have around [80-90]* % of current sales in the markets for private label toilet tissue and kitchen towels in Sweden.
- (103) Furthermore, it is easy to price discriminate between different customers as tissue products are delivered to the customers. Customers would not be able to counter price discrimination through arbitrage, since tissue products have high transport costs relative to total costs and customers need just-in-time delivery, often several times per week. Hence, even if the largest customers would be able to exercise some countervailing buyer power this would not protect smaller customers, and the new entity would still be able to raise prices above the pre-merger level.
- (104) In its Reply, SCA argues that a buyer would need to switch away only a small share of its purchases to 'punish' a large supplier and that such smaller volumes could be handled by an alternative supplier. Further, SCA claims that the current over-capacity in the market means that suppliers need as much volume as possible passing through their mills to be profitable. The Commission notes that switching volumes between suppliers can only be a credible threat if competitors have sufficient spare capacity. In Sweden the relative size of the merging parties and their competitors is such that only very limited switching could occur.
- (105) SCA furthermore argues that international retailers, or members of international retailing associations, may choose to retaliate against SCA by taking action in other geographical markets. The Commission does not accept this argument because there are very few international

retailers present in the Nordic region. The international retailing associations do not at present engage in detailed cross-border price negotiations for tissue products. SCA also claims that retailers could threaten to take action against other SCA products such as baby diapers or feminine protection products. Such a threat would, however, not seem credible as SCA also is a major supplier of these products and has well-known brands. For example, SCA states in the notification that it had in 1999 in Sweden a share of [60-70]* % of sales of adult incontinence care products, [40-50]* % of feminine protection products and [50-60]* % of baby diapers.

- (106) In the Commission's view, such 'buyer power' as may exist would not prevent the creation of a lasting dominant position as a result of the merger.

Market entry

- (107) In the section on branded consumer products it is explained why entry with new capacity in Sweden is unlikely. The same arguments apply in respect of private label products. Any new entry would therefore have to come from manufacturers that could deliver from their existing plants. No manufacturer other than the four 'local' producers (including Fort James in Finland) has entered the Swedish markets for private label sales of toilet tissue and kitchen towels. The Commission's market investigation has shown that none of the other producers of private label products, such as Italian or smaller German producers, would be able to enter the Swedish market with anything other than small and sporadic deliveries because of the significant transportation costs.

Conclusion

- (108) The long term prospects in Sweden would be the same as for branded products with the entity much larger than the only other national producer, the small local manufacturer Munksjö, and with Fort James disadvantaged by being situated further from the market than the new entity. The proposed operation would eliminate the main source of competition in the Swedish private label markets for toilet tissue and kitchen towels and would leave the new entity in a position that could not be challenged by competitors or customers.
- (109) The Commission therefore concludes that the proposed operation would result in the creation of a dominant position in the markets for private label toilet tissue and kitchen towels in Sweden.

An alternative product market comprising both branded and private label

- (110) For the purposes of the present case, the Commission considers that branded and private label consumer products are separate relevant product markets. However, the Commission has also considered the parties' position if the relevant product markets were to comprise both branded and private label consumer products.
- (111) SCA's estimates of the parties' market shares (measured by volume) in combined branded/private label toilet tissue and kitchen towels markets in Sweden in 1999 are set out in Table 3.

Table 3: SCA's estimates — branded/private label products Sweden

	SCA	MT	SCA/MT
Toilet tissue	[20-30]* %	[50-60]* %	[80-90]* %
Kitchen towels	[20-30]* %	[50-60]* %	[70-80]* %

- (112) The Commission has compared the sales figures of the parties with those of their competitors. The Commission's investigation confirms that the merged entity would be by far the market leader. The main competitors in toilet tissue and kitchen towels are Munksjö with [around 15]* % (volume based) and Fort James with [less than 5]* % in both toilet tissue and in kitchen towels. Such a market position would in itself be indicative of dominance.
- (113) The strength of the parties' brands, the lack of countervailing buyer power and the fact that new entry is unlikely, have been explained above. These considerations reinforce the conclusion that the merger would lead to the creation of a dominant position in these markets.

Conclusion

- (114) The proposed operation would eliminate the main source of competition in the Swedish markets for toilet tissue and kitchen towels and would leave the new entity in a position that could not be challenged by competitors or customers.
- (115) Even on the basis of a wider market definition the proposed operation would result in the creation of a dominant position in combined markets for branded and private label toilet tissue and kitchen towels in Sweden.

Norway

- (116) According to SCA, total sales of consumer tissue products in Norway were, in 1999, EUR [60-80]* million, of which approximately [90]* % were branded products and [10]* % private label products.

Branded consumer products

- (117) Among the branded consumer products, toilet tissue was the largest market in 1999 with approximately EUR [40-50]* million. The market for kitchen towels was worth EUR [10-20]* million while that of handkerchiefs/facial tissues was EUR [<5]* million and napkins EUR [<5]* million.
- (118) SCA's estimates of the parties' market shares (measured by volume) in the markets for branded toilet tissue and kitchen towels in Norway in 1999 are set out in Table 4.

Table 4: SCA's estimates — branded products Norway

Market shares	SCA	MT	SCA/MT
Toilet tissue	[10-20]* %	[40-50]* %	[60-70]* %
Kitchen towels	[20-30]* %	[50-60]* %	[70-80]* %

- (119) The market shares provided by SCA for 1998 are quite similar to the 1999 figures. Value based market shares given by SCA indicate the same market structure. The Commission has compared the sales figures of the parties with those of their competitors. The Commission's investigation has confirmed that the parties would be the clear market leader in both markets. The merged entity would become [more than twice]* as large as its main competitor, Munksjö, and [several times]* larger than Fort James in both markets. In the market for toilet tissue Munksjö has [around 20]* % (volume based) and Fort James [less than 5]* %. In kitchen towels Munksjö has [around 25]* % while Fort James has [less than 10]* %. Kimberly-Clark is not present in Norway in these two markets.
- (120) SCA's only brand for both toilet tissue and kitchen towels is Edet, mainly produced in SCA's plant in Lilla Edet in Sweden. MT has three main brands, the premium brands Lambi and Leni and the basic brand Serla. In toilet tissue Serla achieves the highest sales in Norway with [about 30]* % higher sales than Lambi, while Leni has very small sales. In kitchen towels Lambi sells [about three times]* as much as Serla and Leni, which have [about the same sales]*. All three brands are mainly produced in MT's three Swedish plants, Katrinefors, Paulström and Nyboholm. Fort James sells toilet tissue and kitchen towels under its Lotus brand.

Munksjö sells branded products mainly produced by its subsidiary A/S Sunland-Eker Papirfabrikker in Drammen in Norway. It uses the brand name 'Classic', which, however, is not considered a strongly promoted brand name.

- (121) Together, SCA and MT will have the strongest brands in Norway. SCA has provided the same information about brand awareness and advertising awareness as for Sweden. In Norway, the information is given for Edet, Lambi, Leni, and Lotus; Serla and the Munksjö brands are not included. [Less than 5]* % of the respondents to the survey were aware of the brand name Lotus. Lambi is the best known brand with [around 40]* % of the respondents aware of it; Edet was the second best known with [about 30]* % and Leni third with [over 10]* %. These three brands of SCA and MT are thus all better known than Lotus.
- (122) The large market shares of the merging parties indicate that the merger would result in the creation of a dominant position. This conclusion is reinforced by the fact that the merged entity's brands are by far the best known.

Countervailing buyer power

- (123) According to SCA, among its largest customers in Norway, Norges Gruppen accounts for about [30]* % of the retail market. Hakan Gruppen accounts for [30]* %, NKL [25]* % and Reitan [15]* %.
- (124) In the section on the Swedish markets for branded consumer products, the Commission explains why it does not accept the arguments given by SCA in the Reply for the existence of significant buyer power. The arguments presented by the Commission are equally valid for the Norwegian market. In particular, SCA has well-known brands in Norway and is a major supplier of those other products where it claims that retailers would retaliate against it. In Norway in 1999 SCA had a share of [60-70]* % of sales of adult incontinence care products, [70-80]* % of feminine protection products and [70-80]* % of baby diapers.
- (125) In the Commission's view, such 'buyer power' as may exist would, for the same reasons as explained for the Swedish markets, not prevent the creation of a lasting dominant position on the Norwegian markets for branded toilet tissue and kitchen rolls as a result of the merger.

Market entry

- (126) For reasons similar to those outlined in the assessment of the Swedish market, entry with new capacity in Norway is unlikely. Any new entry into Norway therefore would have to come from manufacturers that

could deliver from their existing plants. This is, however, also unlikely because of the combination of high transportation costs and the high costs of entering with branded products in a stagnating market with strong established brands. Market participants do therefore not consider it likely that the two other large-scale producers with strong brands, Kimberly-Clark and Procter & Gamble would enter the Norwegian markets for toilet tissue and kitchen towels. In fact, some market participants consider that the proposed transaction could raise the barriers of entry for the Nordic markets.

Conclusion

(127) The proposed operation would combine four well-known brands, resulting in a very strong market position. Customers would have little choice of brands with the same attributes and ability to attract consumers. The proposed operation would eliminate the main source of competition in the Norwegian markets for branded toilet tissue and kitchen towels and would leave the new entity with a strong position that could not be challenged by competitors or customers.

(128) The Commission, therefore, reaches the conclusion that the proposed operation would result in the creation of a dominant position in the markets for branded toilet tissue and kitchen towels in Norway.

An alternative product market comprising both branded and private label

(129) SCA's estimates of the parties' market shares (measured by volume) in combined branded/private label toilet tissue and kitchen towels markets in Norway in 1999 are set out in Table 5.

Table 5: SCA's estimates — branded/private label products Norway

Market shares	SCA	MT	SCA/MT
Toilet tissue	[10-20]* %	[40-50]* %	[60-70]* %
Kitchen towels	[10-20]* %	[50-60]* %	[70-80]* %

(130) The Commission has compared the sales figures provided by SCA and MT with those of their competitors. The Commission's investigation confirms that the merged entity would be by far the market leader. The main competitors in toilet tissue and kitchen towels are Munksjö with [around 25]* % (volume based) in toilet tissue and [around 30]* % in kitchen towels and Fort James with [around 5]* % in toilet tissue and [10]* % in kitchen towels.

(131) The strength of the parties' brands, the lack of countervailing buyer power and the fact that new entry is unlikely, have been explained above.

Conclusion

(132) The proposed operation would eliminate the main source of competition in the Norwegian markets for toilet tissue and kitchen towels and would leave the new entity in a position that could not be challenged by competitors or customers.

(133) Even on the basis of a wider market definition the proposed operation would result in the creation of a dominant position in combined markets for branded and private label toilet tissue and kitchen towels in Norway.

An alternative, wider Swedish-Norwegian geographic market

(134) SCA presented in the notification an econometric study, according to which Denmark and Finland are not in the same geographic market as Sweden and Norway. As described in the section on geographic market definition, the Commission considers that there are several arguments that point to the conclusion that geographic markets are national. However, even if Sweden and Norway were considered one geographic market, the proposed operation would lead to the creation of a dominant position in the markets for consumer toilet tissue and kitchen towels in such a geographic market.

(135) Many market characteristics such as the strength of the parties' brands compared to those of their competitors, the fact that entry is unlikely, the large capacity of the parties relative to that of their competitors and the transport cost advantage relative to the only large-scale competitor, Fort James, have already been described in the assessment of the Swedish and the Norwegian markets. These market characteristics are equally valid for a combined Swedish-Norwegian geographic market.

Branded consumer products

(136) The Commission's market investigation has shown that the position of the parties in branded consumer products in such a combined Swedish-Norwegian market would be very strong. The parties would have a combined market share of around [70-80]* % in the markets for both toilet tissue and kitchen towels. The main competitor would Munksjö with [around 20]* % in both markets, while Fort James would have [around

5]* % in both markets. The parties would therefore be [more than three times]* as large as the largest competitor. Furthermore, Munksjö is a small local player, and Fort James is disadvantaged by having production facilities further away from Sweden and Norway than the parties.

- (137) These market shares indicate that even on the basis of a wider market definition the proposed operation would result in the creation of a dominant position in the markets for branded toilet tissue and kitchen towels.

Private label consumer products

- (138) The position of the parties in a combined Swedish-Norwegian market for private label consumer products would be very strong. The parties would have a combined market share of [around 70]* % in the markets for both toilet tissue and kitchen towels. The only competitors would be Fort James and Munksjö, both with [around 15]* % in both product markets. The parties would be [more than four times]* as large as the largest competitor.

- (139) Even on the basis of a wider market definition the proposed operation would result in the creation of a dominant position in the markets for private label toilet tissue and kitchen towels.

An alternative product market comprising both branded and private label

- (140) The position of the parties in a combined Swedish-Norwegian market for branded and private label consumer products would be very strong. The parties would have a combined market share of [around 75]* % in the markets for both toilet tissue and kitchen towels. The only competitors would be Munksjö with [around 20]* % and Fort James with [around 5]* % in both product markets. The parties would be [about four times]* as large as the largest competitor.

- (141) Even on the basis of a wider market definition the proposed operation would result in the creation of a dominant position in the Swedish-Norwegian markets for branded and private label toilet tissue and kitchen towels.

Finland

- (142) According to SCA, total sales of consumer tissue products in Finland in 1999 were EUR [70-80]* million, of which approximately [80]* % were branded products and [20]* % private label products.

Branded consumer products

- (143) Among the branded consumer products, toilet tissue was the biggest market with approximately EUR [30-40]* million, the kitchen towels market was worth EUR [10-20]* million while that of handkerchiefs/facial tissues was EUR [< 5]* million and napkins EUR [< 5]* million.

- (144) SCA's estimates of the parties' market shares (measured by volume) in the markets for branded toilet tissue and kitchen towels in Finland in 1999 are set out in Table 6.

Table 6: SCA's estimates — branded products Finland

Market shares	SCA	MT	SCA/MT	FJ ⁽¹⁴⁾
Toilet tissue	[< 5]* %	[50-60]* %	[50-60]* %	[40-50]* %
Kitchen towels	[< 5]* %	[50-60]* %	[50-60]* %	[40-50]* %

- (145) In these two markets Finland is characterised by the very strong position of the two domestic producers MT and Fort James. SCA is, by its own admission, the only other producer achieving some sales in these markets. The Commission has compared the sales figures of the parties with those of their competitors. The Commission's investigation has confirmed this picture of two large and more or less evenly sized competitors, although the market shares of MT and FJ seem to be more equally balanced than suggested by the parties. The overall picture of two similar sized competitors also emerges if value-based market shares or data from previous years are considered.

- (146) SCA is clearly the company best placed to challenge the strong positions of the two domestic producers and to prevent them from having a duopolistic dominant position. In fact, the Commission considers that the proposed transaction would lead to the loss of the only realistic competitor to MT and Fort James, and to the creation of a duopolistic dominant position by MT and Fort James in these product markets.

- (147) In its Reply SCA contests that it has a special position as a competitive restraint in Finland by virtue of its small market share in Finland. SCA claims that the Commission argues that entry barriers are so high that entry either by new capacity or by supply from existing plants is unlikely. SCA therefore considers that it is questionable whether it represents a constraining influence on current Finnish supplies. The Commission, however, considers that SCA is in a unique position to

⁽¹⁴⁾ Fort James' share is calculated by the Commission as the rest of the market.

act as a competitive restraint on MT and Fort James in Finland compared to other producers with small positions elsewhere. Not only does SCA have a strong presence in tissue products in neighbouring Sweden, it also has strong positions in several other consumer product markets in Finland and therefore an established distribution network with knowledge of the Finnish retailing market and indeed relationships with the major retailers. SCA had, for example, in 1999 a market share of [70-80]* % in adult incontinence care, [30-40]* % in feminine protection products and [50-60]* % in baby diapers with well-known brands in these markets.

(148) The markets for tissue products possess many of the characteristics that are considered to make markets conducive to collective dominance. The market demand for these products is generally considered to be rather inelastic⁽¹⁵⁾. Furthermore, like the other Nordic tissue markets the Finnish market is a mature market with low growth prospects. Tissue production is, moreover, a market where technical innovation is relatively moderate and takes time to have a strong influence on markets, partly due to the long life of tissue machines.

(149) The Finnish market would be transparent after the merger in that only two producers would be present. Any lost contract would therefore have to go to the other producer. The markets for tissue products are characterised by frequent contacts between producers and buyers. Formal long-term contracts are rare. Instead relationships are more 'fluid' with continuous orders from the buyers, while price negotiations are taken up by one of the parties when 'circumstances' encourage it. Many buyers have stated that they would normally expect an explanation of why a price rise is asked. Increasing pulp prices were mentioned as one such explanation often given for recent price rises. In such a market with constant feedback from the customers, no large long-term contracts, only one competitor on the market and more or less accepted standards for how to pass cost increases on to customers, MT and Fort James would not find it difficult to form precise ideas about the conditions offered by the other to its customers. The main factor, which could prevent them from easily inferring whether the other had gained market share, would be the existence of one or more smaller competitors. The only competitor able to exert such a restraining influence is SCA.

(150) SCA is likely to have played such a restraining role in the past. SCA has been trying actively to gain position in the Finnish market. Thus its advertising expenditure as a proportion of sales is [more than seven times]*

larger in Finland than in Sweden. Furthermore, SCA has provided data to the Commission showing a [...] EBITDA⁽¹⁶⁾ margin of [...] % for consumer tissue products in Finland, while the EBITDA margin in Sweden was [...] %. SCA has explained that the [...] EBITDA margin in Finland is due to the small volume of SCA sales combined with advertising and promotion activities that lead to a [...] margin. SCA's advertising and promotion expenditure is thus [around one third]* of total sales. SCA only entered the Finnish market for consumer products quite recently. In fact, SCA had either no or negligible sales in the years 1995 to 1997. However, from 1997 to 1998 the sales of SCA in branded toilet tissue increased from EUR [25 000]* to EUR [1 500 000]* and in kitchen towels from EUR [20 000]* to EUR [1 000 000]*. SCA's [...] EBITDA margin should therefore be seen in the context of SCA's brand building efforts through advertising and promotion.

(151) Both MT and Fort James are able to offer the same range of tissue products in Finland. There are no important technological differences between the products they are able to offer their customers.

(152) Therefore, the merger would lead to the creation of a collective dominant position held by the merged entity and Fort James.

Countervailing buyer power

(153) SCA states in the notification that the existing demand structure contains enough buyers with sufficient strength to be able to resist any attempt to raise prices above the competitive level after the merger. The Commission does not accept this argument, for the following reasons.

(154) According to SCA, among their largest customers in Finland, Kesko Oyj accounts for about [40]* % of the retail market. INEX partners account for [30]* %, Tuko for [20]* %, Tarjoustalo Oy and Jukka Saastamoinen Oyj [< 5]* % each.

(155) Buyer power can only be exercised effectively if the buyer has an adequate choice of alternative suppliers. In the Commission's view, the choice is limited as the parties and Fort James together would hold 100 % of

⁽¹⁵⁾ This was also found in the econometric studies made for the Kimberly-Clark/Scott case.

⁽¹⁶⁾ 'EBITDA' margin, is an acronym for Earnings Before Interest, Taxes and Depreciation/Amortisation, and as such represents a pure estimate of how much profit the company obtains compared to its sales; in other words, it is an indicator of a company's core profitability.

current sales in the markets for toilet tissue and kitchen towels in Finland.

(156) Furthermore, it would be easy for firms in a dominant position to price discriminate between different customers as tissue products are delivered to the customers. Customers would not be able to counter price discrimination through arbitrage, since tissue products have high transport costs relative to total costs and customers need just-in-time delivery, often several times per week. Hence, even if the largest customers were able to exercise some countervailing buyer power this would not protect smaller customers and the parties would still be able to raise prices above the pre-merger level.

(157) In the section on the Swedish markets for branded consumer products, the Commission explains why it does not accept the arguments given by SCA in the Reply for the existence of significant buyer power. The arguments presented by the Commission are also valid for the Finnish market. In particular, SCA has well-known brands in Finland and is a major supplier of those products where it claims that retailers would retaliate against it.

(158) In the Commission's view, such 'buyer power' as may exist would, therefore, not prevent the creation of a lasting dominant position as a result of the merger.

Market entry

(159) For similar reasons as in Sweden, entry with new capacity in Finland is unlikely. Any new entry into Finland would have to come from manufacturers that could deliver from their existing plants. This is, however, also unlikely because of the combination of high transportation costs and the high costs of entering with branded products in a stagnating market with strong established brands. Market participants do therefore not consider it likely that the two other large-scale producers with strong brands, Kimberly-Clark and Procter & Gamble would enter the Finnish markets for toilet tissue and kitchen towels. In fact, some market participants consider that the proposed transaction could raise the barriers of entry for the Nordic markets.

Conclusion

(160) The Commission, therefore, reaches the conclusion that the proposed transaction would lead to the creation of a duopolistic dominant position of SCA/MT and Fort

James in Finland in the markets for branded toilet tissue and branded kitchen towels.

An alternative product market comprising both branded and private label

(161) SCA's estimates of the parties' market shares (measured by volume) in combined branded/private label toilet tissue and kitchen towels markets in Finland in 1999 are set out in Table 7.

Table 7: SCA's estimates — branded/private label products Finland

Market shares	SCA	MT	SCA/MT	FJ ⁽¹⁷⁾
Toilet tissue	[< 5]* %	[50-60]* %	[50-60]* %	[40-50]* %
Kitchen towels	[< 5]* %	[40-50]* %	[50-60]* %	[50-60]* %

(162) In these two markets Finland is characterised by the very strong position of the two domestic producers MT and Fort James. SCA is, by its own admission, the only other producer achieving some sales in these markets. The Commission has compared the sales figures of the parties with those of their competitors. The Commission's investigation has confirmed this picture of two large and more or less evenly sized competitors.

(163) The lack of countervailing buyer power and the fact that new entry is not likely have been explained above. Likewise, the reasons why the markets for tissue products possess many of the characteristics that are considered to make markets conducive to collective dominance have been explained.

Conclusion

(164) Even on the basis of a wider product market definition comprising both branded and private label products, the proposed operation would result in a duopolistic dominant position of SCA/MT and Fort James in Finland in the markets for toilet tissue and kitchen towels.

Denmark

(165) According to SCA, total sales of consumer tissue products in Denmark in 1999 were EUR [70-80]* million, of which approximately [30]* % were branded products and [70]* % private label products. This is a considerably different picture from that of the other three Nordic countries where the sales of branded

⁽¹⁷⁾ Fort James' share is calculated by the Commission as the rest of the market.

products account for [more than 80 %]* of total sales of consumer tissue products. In Denmark only in napkins are branded products sales larger than those of private label products.

Branded consumer products

(166) Among the branded consumer products, toilet tissue was the biggest market with approximately EUR [10-20]* million, the kitchen towels market was worth EUR [5-15]*million while that of handkerchiefs/facial tissues was EUR [< 5]* million and napkins EUR [< 5]* million.

(167) SCA's estimates of the parties' market shares, measured by volume, in the markets for branded toilet tissue and kitchen towels in Denmark in 1999 are set out in Table 8.

Table 8: SCA's estimates — branded products Denmark

Market shares	SCA	MT	SCA/MT
Toilet tissue	[20-30]* %	[20-30]* %	[40-50]* %
Kitchen towels	[20-30]* %	[30-40]* %	[50-60]* %

(168) The market shares given by SCA for the parties for 1998 are quite similar to the 1999 figures. Measured by value, SCA estimates that, in 1999, the parties had [50-60]* % in toilet tissue and [50-60]* % in kitchen towels. The Commission has compared the sales figures of the parties with those of their competitors. The Commission investigation has shown that the parties would be the market leader in both markets. The main competitors are Kimberly-Clark with around [10]* % (volume based) in both toilet tissue and kitchen towels and Fort James with around [30]* % in toilet tissue and [35]* % in kitchen towels. The combined market share of the parties would be [about twice]* as large as Fort James' in toilet tissue and more than [25]* % larger in kitchen towels; it would be [about three times]* as large as Kimberly-Clark in both markets. The parties have also submitted that the Italian producer Delicarta has a certain presence in branded consumer tissue products in Denmark. This has not been confirmed by the Commission's market investigation.

(169) SCA's only brand for both toilet tissue and kitchen towels is Edet. Edet is mainly produced in SCA's plant in Lilla Edet in Sweden. MT has three main brands, the premium brands Lambi and Leni and the basic brand Serla. All three brands are produced in MT's three Swedish plants, Katrinefors, Paulström and Nyboholm.

(170) In Denmark the parties have the best known brands. SCA has provided the same information about brand awareness and advertising awareness as for Sweden and Norway. In Denmark, the information is given for Edet, Lambi, Leni, Lotus and Kleenex. Lambi is the best known brand with the awareness fluctuating between [30]* % and [50]* % of the respondents; Edet was the second best known with about [30]* %. Lotus and Kleenex both are in the range of [5 to 10]* %, while Leni is hardly known in Denmark.

(171) Several of the parties' Danish customers have expressed concerns about the consequences of the proposed operation. They state that they will have problems in finding alternative suppliers and that they consequently expect less competition and higher prices.

(172) The large market shares of the merging parties, the significant difference in weight compared to their competitors, combined with the fact that the merged entity would own the best known brands by far in the Danish market, indicate that the merger would result in the creation of a dominant position in branded toilet tissue and kitchen towels.

Countervailing buyer power

(173) According to SCA, among their largest customers in Denmark, FDB accounts for about [40]* % of the retail market. Supergros accounts for [25]* %, Aldi for [<5]* %, Edeka for [< 5]* % and Købmændenes for [< 5]* %.

(174) In the section on the Swedish markets for branded consumer products, the Commission explains why it does not accept the arguments given by SCA in the Reply for the existence of significant buyer power. The arguments presented by the Commission are also valid for the Danish market. In particular, SCA has well-known brands in Denmark and is a major supplier of the products where it claims that retailers would retaliate against it. In Denmark in 1999 SCA had a share of [50-60]* % of sales of adult incontinence care products, [30-40]* % of feminine protection products and [40-50]* % of baby diapers.

(175) In the Commission's view, such 'buyer power' as may exist would, for the same reasons as explained for the Swedish markets, not prevent the creation of a lasting dominant position on the Danish markets for branded toilet tissue and kitchen rolls as a result of the merger.

Market entry

(176) For similar reasons as in Sweden, entry with new capacity in Denmark is unlikely. Any new entry into Denmark would have to come from manufacturers that could deliver from their existing plants. The only

large-scale producer with strong brands not present in Denmark is Procter & Gamble. Market participants take the view that it is not likely that Procter & Gamble will enter the Danish market. Procter & Gamble confirms that it has no plans for entering into supplier relationships in countries where it has so far not been active. In fact, some market participants consider that the proposed transaction could raise the barriers of entry for the Nordic market.

Conclusion

- (177) The proposed operation would, therefore, combine three well-known brands, resulting in a very strong market position. Customers would have little choice of brands with the same attributes and ability to attract consumers. The new entity would also benefit from a closer geographic position to the market than its two main competitors. The new entity would therefore be in a strong position that could not easily be challenged by competitors or customers.
- (178) The Commission, therefore, concludes that the proposed operation would result in the creation of a dominant position in the markets for branded toilet tissue and kitchen towels in Denmark.

Private label consumer products

- (179) According to SCA, toilet tissue was, in 1999, the biggest private label market in Denmark with approximately EUR [30-40]* million, the kitchen towels market was worth EUR [10-20]* million while that of handkerchiefs/facial tissues was EUR [< 5]* million and napkins EUR [< 5]* million.
- (180) SCA's estimates of the parties' market shares (measured by volume) in the markets for private label toilet tissue and kitchen towels in Denmark in 1999 are set out in Table 9.

Table 9: SCA's estimates — private label products Denmark

Market shares	SCA	MT	SCA/MT
Toilet tissue	[20-30]* %	[30-40]* %	[60-70]* %
Kitchen towels	[20-30]* %	[20-30]* %	[40-50]* %

- (181) SCA estimates that the parties' combined share based on value would be [50-60]*% in toilet tissue and [30-40]*% for kitchen towels. SCA has also provided its estimates of the market shares (value based) of the competitors in toilet tissue as Delicarta and Wepa with [10-20]*% each, Munksjö with [0-10]*% and Fort James with [0-10]*%. These figures have not been confirmed by the Commission's market investigation.

When the Commission compared sales figures of the parties with those of their competitors it found that the parties in 1999 had [approximately two thirds]* (volume based) of the markets for both toilet tissue and kitchen towels. Fort James had no sales and Delicarta and Munksjö both had insignificant market presence.

- (182) Tissue supply to Denmark mainly originates from Sweden, Germany, Belgium or the Netherlands. The parties account for almost all the Danish private label imports that originate from Sweden and Norway. The joint production capacity of SCA and MT in Sweden is 247 000 tonnes, whilst the next largest producer, Munksjö, with plants in both Sweden and Norway, has a capacity of less than 60 000 tonnes. The combined capacity of the parties in Germany and the Netherlands is over 600 000 tonnes, whilst none of their competitors has capacity in this area in excess of 160 000 tonnes. The spare capacity of the parties in this area is larger than the combined spare capacities of their five major competitors. In line with the principles set out in recitals 47 and 48 the Commission has considered the competitive impact of mills located within a distance from where the Danish market can be economically supplied.

- (183) The only larger existing competitor in Denmark is Wepa, which has two plants in Germany in Arnsberg and Giershagen, both situated about 650 km from the German/Danish border. Delivering to any of the four major cities in Denmark entails travelling at least another 150 km. The Commission's market investigation has shown that Wepa would not have the capacity, in terms of both scale and product range, to expand significantly beyond its current presence in the Danish market. Wepa's strength lies in private label tissue products made from recycled paper. However, the Finnish consulting firm Jaakko Poyry in a study⁽¹⁸⁾ notes with regards to this segment that 'The highest share of transportation costs in total product value is for non-branded toilet paper based on recovered paper, which is normally not worth shipping more than 500 km. Even here, Wepa supplying some amounts to northern European markets represents a remarkable exception.' Wepa is among the companies, which have indicated 800 km as the distance that tissue products economically can be supplied. Since Wepa is located around 800 to 900 km from the major cities in Denmark, Denmark is at the limit of what Wepa itself considers the maximal transport distance for tissue products. Growth in German tissue product demand has

⁽¹⁸⁾ 'Market Structure and Competition in the Paper Tissue Industry' (see footnote 9), p. 9.

over a period been larger than the average in Western Europe, partly due to the impact of the reunification, after which the demand structure in the new *Länder* has been adapting to western consumption patterns. Germany will also in the foreseeable future account for a large part of the growth of European tissue demand. Wepa may therefore find opportunities to use its capacity in its home market within a close distance from its plants, rather than shipping tissue products to Denmark.

- (184) Danish customers have expressed concerns that this strong concentration would lead to higher prices and the market investigation has confirmed that it is unlikely that competitors would be able to constrain the new entity's behaviour in these markets. The proposed operation would eliminate a main source of competition in the Danish private label markets for toilet tissue and kitchen towels and would leave the new entity in a position that cannot be challenged by competitors or customers.

Countervailing buyer power

- (185) The structure of the buyer side in the Danish retail market is described in the section on branded consumer products. For reasons similar to those given in that section the Commission concludes that such 'buyer power' as may exist would not prevent the creation of a lasting dominant position as a result of the merger.

Market entry

- (186) For similar reasons as in Sweden, entry with new capacity in Denmark is unlikely. Any new entry into Denmark would have to come from manufacturers that could deliver from their existing plants.
- (187) In its Reply SCA argues that the Commission does not take into account that the Danish market is contestable in the supply of private label toilet tissue and kitchen rolls. In particular, SCA argues that hit-and-run entry is possible and sufficient to constrain the merged entity from raising prices. The Commission considers that this might have been a valid proposition if there had been manufacturers with spare capacity for private label production of the required quality close to the Danish market and logistics arrangements that would permit them to profitably supply this market. The Commission has, however, carefully examined the potential for such hit-and-run entry by existing manufacturers located in

Northern Germany, the Netherlands and Belgium and concluded that none of these manufacturers are likely to represent a constraining influence on SCA.

- (188) The closest plant owned by one of the competitors is located around 500 km from the German/Danish border, a Procter & Gamble plant in Witzgenhausen in Germany. Procter & Gamble also has a plant in Neuss in Germany, about 600 km from the border. Procter & Gamble has, however, no sales of tissue products in Denmark and has no plans for entering the Danish market in the near future.
- (189) Fort James' has a plant close to Nijmegen in the Netherlands, around 630 km from the German/Danish border. It has no other plants in this area. Fort James considers that Denmark is substantially further away than the distance that it can viably transport private label toilet tissue and kitchen towels.
- (190) Kimberly-Clark has three plants in Germany (Düsseldorf, Koblenz and Mainz) and one plant in Belgium (Duffel). These plants are 700 to 750 km from the German/Danish border. Kimberly-Clark states that the distance from its existing mills in Europe to the Scandinavian region limits both the type and volume of products it can profitably export into the region. Kimberly-Clark is not active in sales of private label in Denmark. However, it does sell premium branded toilet tissue manufactured at the Duffel mill, approximately 750 km from the German/Danish border. Kimberly-Clark has submitted that, because of transport distances, a manufacturer without a source mill and warehouse coverage in the Nordic area can only effectively compete in facial tissues and not in any of the other categories with the possible exception of the highest value toilet tissue. Kimberly-Clark furthermore considers that the Nordic Swan qualification, which means satisfying certain local environmental requirements, is an entry barrier in Sweden and is becoming one in Denmark and Norway. According to Kimberly-Clark only Scandinavian manufacturers produce in such a way that they can get the Swan stamp.
- (191) In its Reply SCA also asked the Commission to consider the possibilities of Italian producers supplying the Danish market from production facilities in France, although these plants are further away from the Danish market than the maximum transport distances indicated by most market participants. The Commission does not consider that the hit-and-run entry referred to by SCA in the Reply is feasible for the Italian producers in France. The Italian company, which mentioned longer transport distances than other respondents to the Commission's market investigation, achieves these distances through a logistic network using transportation by train to external warehouses in Germany, France and Spain. The necessity of setting up such a network would make hit-and-run entry into Denmark unlikely. Another Italian producer mentioned

that it did not consider Denmark a natural market because Danish customers tend to look for tissue products based on recycled paper. The Commission therefore does not consider that hit-and-run entry by Italian producers will be an effective competitive restraint on the new entity in the Danish market for private label toilet tissue and kitchen towels.

Conclusion

- (192) The Commission, therefore, concludes that the proposed operation would result in the creation of a dominant position in the markets for private label toilet tissue and kitchen towels in Denmark.

An alternative product market comprising both branded and private label

- (193) SCA's estimates of the parties' market shares (measured by volume) in combined branded/private label toilet tissue and kitchen towels markets in Denmark in 1999 are set out in Table 10.

Table 10: SCA's estimates — branded/private label products
Denmark

Market shares	SCA	MT	SCA/MT
Toilet tissue	[20-30]* %	[30-40]* %	[50-60]* %
Kitchen towels	[20-30]* %	[20-30]* %	[40-50]* %

- (194) The Commission has compared the sales figures of the parties with those of their competitors. The Commission's investigation has shown that the parties would be the market leader in both markets. The main competitors are Wepa with around [20-30]* % (volume based) in toilet tissue and [20-30]* % in kitchen towel, Fort James with around [10]* % in toilet tissue and [15]* % in kitchen towels, and Kimberly-Clark with around [5]* % in both toilet tissue and kitchen towels. The parties' combined market share would be [more than twice]* that of Wepa, [more than four times]* that of Fort James and [more than ten times]* that of Kimberly-Clark in both markets.
- (195) The strength of the parties' brands, the lack of countervailing buyer power and the fact that new entry is not likely, as described in more detail in the separate sections on branded and private label also applies to the combined product market.

Conclusion

- (196) The proposed operation would eliminate a main source of competition in the Danish markets for toilet tissue and kitchen towels and would leave the new entity in a position that could not be challenged by competitors or customers.
- (197) Even on the basis of a wider market definition the proposed operation would result in the creation of a dominant position in combined markets for branded and private label toilet tissue and kitchen towels in Denmark.

Conclusion on consumer products

- (198) The Commission reaches the conclusion that the proposed operation would result in the creation of a dominant position in the markets for branded consumer toilet tissue and kitchen towels in Sweden, Norway and Denmark, the creation of a duopolistic dominant position in the markets for branded consumer toilet tissue and kitchen towels in Finland, and the creation of a dominant position in the markets for private label consumer toilet tissue and kitchen towels in Sweden and Denmark.

AFH products

General

- (199) SCA and MT are both active in the AFH markets, which account for [50-60]* % and [30-40]* % of their Nordic sales respectively by value. For AFH the customers are mainly wholesalers who in turn supply smaller servicing companies like cleaning companies that again deliver the tissue product as part of a service package to the final (institutional) customer. Access to wholesalers is vital to be successful in the AFH markets and wholesalers will only carry and market a supplier's products through their catalogues and networks if the suppliers support their products sufficiently. Such support includes product innovation, category support and direct contact between the supplier's sales force and end-users. In addition the supplier must be able to supply in a reliable manner and 'just-in-time'.
- (200) MT's warehouse in Mariestad, next to its Katrinefors plant in Sweden, acts as the distribution centre for AFH sales to Sweden, Norway and Denmark. Distribution goes mainly through wholesalers, where the actual products are delivered from Mariestad to the warehouses of wholesalers. MT's warehouse at the Mänttä mill acts as the distribution centre for sales in Finland. SCA produces AFH products at several of its plants including those in Sweden, Germany and the Netherlands. Both parties are able to offer whole

package solutions, offering dispenser systems along side their product range. Dispensers are sold, rented or provided free on loan to the final customer, depending on the country in question.

- (201) The transport costs involved in moving AFH products are considered an important restraining factor for suppliers' ability to compete effectively in the AFH market. The distances quoted for AFH products by suppliers, during the Commission's market investigation, are on average shorter than those for branded consumer products. One company quoted the distances it can economically transport AFH products in the 500 to 600 km range, whilst another estimates up to 800 km. SCA's and MT's distribution facilities are located in

Sweden such that they are within relatively close reach of Denmark and Norway.

Sweden

- (202) According to SCA, in 1999 the largest AFH market in Sweden was for hand wiping products which was worth EUR [30-40]* million, and the markets for toilet tissue and general wiping products accounted for EUR [20-30]* million and EUR [10-20]* million respectively. The health care tissue market was EUR [<5]* million and the napkin market was EUR [10-20]* million.
- (203) SCA's estimates of the parties' market shares (measured by volume) for AFH products in Sweden in 1999 are set out in Table 11.

Table 11: SCA's estimates — AFH Sweden

Market shares	SCA	MT	SCA/MT	FJ	KC	Munksjö	Other
Toilet tissue	[40-50]* %	[40-50]* %	[90-100]* %	< 5]* %	< 5]* %	[0-10]* %	0< 5]* %
Hand wipe	[50-60]* %	[20-30]* %	[70-80]* %	< 5]* %	< 5]* %	[10-20]* %	[10-20]* %
General wipe	[40-50]* %	[30-40]* %	[80-90]* %	< 5]* %	< 5]* %	[10-20]* %	2< 5]* %
Health care	[40-50]* %	[0-10]* %	[50-60]* %	< 5]* %	< 5]* %	[0-10]* %	[30-40]* %

- (204) The structure shown in Table 11 remains largely unchanged irrespective of whether value based data or data from 1997 or 1998 are studied. The Commission's market investigation has also confirmed this market structure. The parties would have a very strong combined position in toilet tissue ([90-100]* %), hand wiping ([70-80]* %) and general wiping ([80-90]* %). In health care, based on SCA's market data, they would equally have a strong position ([50-60]* %).

therefore, concludes that the, already high, AFH health care market share provided in the notification significantly understates SCA/MT's true market position. In the absence of any credible competitors, the notified operation would, therefore, lead to the creation of a dominant position in the market for AFH health care products in Sweden.

- (205) The next largest competitor in the tissue markets for toilet tissue, hand wiping and general wiping is Munksjö. Neither Fort James nor Kimberly-Clark has gained foothold in the AFH market in Sweden.

- (206) In health care, the parties' market share of [50-60]* %, as estimated by SCA, would already lead to a presumption of dominance. According to SCA, Munksjö is the next largest competitor. A large proportion of the market has been attributed to 'other' competitors, but the parties have only been able to identify one small company in this segment. The Commission's market investigation did not confirm that any sizeable competitor exists in the AFH health care market that would be able to restrain the combined market power of SCA and MT. Munksjö's market share amounts to only [one eighth]* of that of SCA/MT ([0-10]* % versus [50-60]* %, according to SCA data). The Commission,

- (207) SCA produces the majority of its AFH products at its Swedish plant, Lilla Edet, and MT produces most of its AFH products at the Katrineförs mill in Sweden. With the exception of Munksjö other competitors must transport products from production sites outside Sweden and are thus placed at a competitive disadvantage. For AFH customers a key factor is the supplier's ability to supply just-in-time in a reliable manner. A potential entrant must therefore have a local presence in the form of a warehouse or a production plant. Given the high transport costs associated with tissue products the only large competitor with the potential of competing effectively in Sweden is Fort James, yet it has not been able to gain a significant part of the market. AFH customers and competitors have expressed serious concerns about the proposed concentration. The customers' main concerns were the

creation of a monopoly situation with higher prices, less choice to offer their own customers and making it increasingly difficult for foreign competitors to enter the Swedish market.

- (208) In Sweden, as elsewhere, AFH products are mainly sold through wholesalers and access to such wholesalers is of vital importance for any potential entrant. The proposed concentration would give the merged entity a stranglehold on the wholesale channels, as it would be the wholesalers' main, if not only, supplier. The additional cost that must be incurred to win wholesalers' confidence to switch to new suppliers would create a barrier to entry thereby making market entry or growth more difficult for new competitors.
- (209) The proposed concentration would result in the creation of a single firm with market shares in excess of [75]* % in three AFH markets (toilet tissue, hand wiping and general wiping) and in excess of [50]* % in the health care tissue market, with little prospect of real or potential competition. The present consumers express serious concerns about the proposed concentration, which they predict will result in higher prices and less choice for the final consumer.

Countervailing buyer power

- (210) According to SCA, the demand side in the AFH markets is not as concentrated as that in the consumer product markets. This is due to the number and variety of the different distribution channels in the AFH markets. As outlined above in the section on geographic markets, the majority of AFH customers are wholesalers, which are on average much smaller than the major retail chains in the consumer segment, leading to a significantly more dispersed customer base. Multinational corporate buyers only account for a minority of purchases in the AFH segment and cannot significantly alter the overall distribution of bargaining power between tissue manufacturers and AFH customers. Furthermore, the operation would create strong or dominant market positions of SCA across a wide range of products in Sweden. Therefore, as explained in the section on the Swedish markets for branded consumer products, the Commission finds that such 'buyer power' as may exist would not prevent the creation of a lasting dominant position as a result of the merger.

Market entry

- (211) New entry into the Swedish market is not likely for the reasons outlined in the sections on consumer tissue products. Any new entry into Sweden would have to come from manufacturers that could deliver from their existing plants. This is, however, also unlikely because of the combination of high transportation costs and the difficulty of developing a distribution network through wholesaler who are already supplying the parties' products. The obstacles to entering the Swedish AFH market are further compounded by the country's low population density, long transport distances and the smaller order sizes typical for AFH customers. Market participants do therefore not consider it likely that other large-scale producers with a wide range of AFH products would enter the Swedish AFH markets. In fact, some market participants consider that the proposed transaction could raise the barriers-to-entry for the Nordic markets. The difficulties of entering in Sweden are further illustrated by the fact that Fort James, which has production facilities in neighbouring Finland, has hardly achieved any market share in Sweden.

Conclusion

- (212) The Commission, therefore, concludes that the proposed operation would result in the creation of a dominant position in the markets for AFH toilet tissue, hand wiping tissue, general wiping tissue and health care tissue in Sweden.

Norway

- (213) According to SCA, in 1999 the AFH hand wiping market was the largest with EUR [20-30]* million, followed by the toilet tissue market, which was worth EUR [10-20]* million, and the general wiping market of EUR [5-15]* million. The markets of health care and napkins were worth EUR [< 5]* million and EUR [0-10]* million respectively.
- (214) SCA's estimates of the parties' market shares (measured by volume) for AFH products in Norway in 1999 are set out in Table 12.

Table 12: SCA's estimates — AFH Norway

Market shares	SCA	MT	SCA/MT	FJ	KC	Munksjö	Skjaerdal	Other
Toilet tissue	[10-20]* %	[40-50]* %	[60-70]* %	< 5]* %	< 5]* %	[5-15]* %	< 5]* %	[20-30]* %
Hand wipe	[40-50]* %	[50-60]* %	[90-100]* %	< 5]* %	< 5]* %	< 5]* %	< 5]* %	< 5]* %
General wipe	[30-40]* %	[30-40]* %	[60-70]* %	< 5]* %		< 5]* %	[20-30]* %	[10-20]* %
Health care	[0-10]* %	[10-20]* %	[10-20]* %	< 5]* %	< 5]* %	< 5]* %	< 5]* %	[80-90]* %

(215) The general structure remains the same irrespective of whether value based data or data from 1997 or 1998 are studied. The Commission's market investigation has, with the exception of health care, also broadly confirmed the parties relative market shares. The parties' own figures indicate that they would have very strong combined positions in the markets for toilet tissue ([60-70]* %), hand wiping ([90-100]* %) and general wiping ([60-70]* %).

(216) For health care products SCA estimates that the combined market share of the parties is [10-20]* % with all sales going through distributors. The Commission has contacted all manufacturers with known sales of tissue products in Norway. These companies all responded that they had no sales of AFH health care tissue products. The parties' Norwegian customers did not indicate any other companies with sales of AFH health care products. SCA, when approached by the Commission, did not subsequently identify any other tissue product manufacturer with confirmed sales in this product market. Nor did SCA in the Reply identify any such manufacturer. Based on the information from manufacturers with known sales of tissue products in Norway and the parties' AFH customers in Norway, the Commission's market investigation therefore indicates that SCA after the merger would be the only supplier in the AFH health care market in Norway.

(217) However, even if there were other very small manufacturers, unknown to the Commission and the parties, with some sales of AFH health care products in Norway, they would not be in a position to provide a competitive constraint on the parties. AFH health care products (e.g. examination couch covers) are sold to hospitals along with other AFH tissue products such as toilet tissue and hand wiping. Since none of the parties' competitors in these markets have any presence in health care and SCA would be dominant in the three major AFH tissue products markets (toilet tissue, hand wiping and general wiping), the results of the

Commission's investigation can only lead it to conclude that SCA would after the merger be the dominant supplier of AFH tissue products to the health care sector.

(218) In the markets for toilet tissue, hand wiping and general wiping the parties are at present the two largest competitors and the only other competitors with market presence are Munksjö and Skjaerdal, who are both small local players with little ability or capacity to challenge the parties. Fort James and Kimberly-Clark are barely present in these AFH markets in Norway.

(219) The Commission's market investigation has indicated serious concerns from AFH customers. One wholesaler said: 'this merger will not be good for competition and the development of tissue products in Scandinavia ... prices will increase ... consumers will not have the same choice as today'. Another said: 'It will take a long time for new competitors to become established in the market. It must have access to production capacity in Scandinavia.'

Countervailing buyer power

(220) According to SCA, the demand side in the AFH markets is not as concentrated as that in the consumer product markets. This is due to the number and variety of the different distribution channels in the AFH markets. As outlined in the section on geographic markets, the majority of AFH customers are wholesalers, which are on average much smaller than the major retail chains in the consumer segment, leading to a significantly more dispersed customer base. Multinational corporate buyers only account for a minority of purchases in the AFH segment and cannot significantly alter the overall distribution of bargaining power between tissue manufacturers and AFH customers. Furthermore, the operation would create strong or dominant market positions of SCA/MT across a wide range of products in Norway. Therefore, as explained in the section on the

Norwegian markets for branded consumer products, the Commission finds that such 'buyer power' as may exist would not prevent the creation of a lasting dominant position as a result of the merger.

Market entry

- (221) New entry into the Norwegian market is not likely for the reasons outlined in the sections on consumer tissue products. Any new entry into Norway would have to come from manufacturers that could deliver from their existing plants. This is, however, also unlikely because of the combination of high transportation costs and the difficulty of developing a distribution network through wholesalers who are already supplying the parties' products. The obstacles to entering the Norwegian AFH market are further compounded by the country's low population density, long transport distances and the smaller order sizes typical for AFH customers. Market participants do therefore not consider it likely that other large-scale producers with a wide range of AFH products would enter the Norwegian AFH markets. In fact, some market participants consider that the proposed transaction could raise the barriers of entry for the Nordic markets. The difficulties of entering in Norway is further illustrated by the fact that Fort James, which has production facilities in neighbouring Finland, has hardly achieved any market presence in Norway.

Conclusion

- (222) The proposed concentration would result in the creation of a single firm with market shares in excess of [55-65]* % in three AFH markets (toilet tissue, hand wiping and general wiping). The present competitors in this market are unable to provide sufficient competitive restraint on the parties and new entrants are unlikely to emerge in the near future.
- (223) The Commission, therefore, concludes that the proposed operation would result in the creation of a dominant position in the markets for AFH toilet tissue, hand wiping tissue, general wiping tissue and health care tissue in Norway.

An alternative, Swedish-Norwegian geographic market

- (224) As described in the section on geographic market definition, the Commission considers that there are several arguments that point to the conclusion that geographic markets are national. However, even if Sweden and Norway were considered one geographic market, the proposed operation would lead to the

creation of a dominant position in the markets for AFH toilet tissue, hand wiping tissue, general wiping tissue and health care tissue in such a geographic market.

- (225) Many market characteristics such as the fact that entry is not likely, the large capacity of the parties relative to that of their competitors and the transport cost advantage relative to the large-scale competitors, Fort James and Kimberly-Clark, have already been described in the assessment of the Swedish and the Norwegian markets. These market characteristics are equally valid for a combined Swedish-Norwegian geographic market.
- (226) The Commission's market investigation has shown that the position of the parties in such a combined Swedish-Norwegian market would be very strong. The parties would have a combined market share of around [70-80]* % in the market for toilet tissue, [80-90]* % in the market for hand wiping and [70-80]* % in general wiping. Munksjö would be the largest competitor with around [15]* % in toilet tissue and general wiping and around [10]* % in hand wiping. Skjaerdal would have around [10]* % in general wiping. Fort James would have around [5]* % in both toilet tissue and general wiping and less than [5]* % in hand wiping. Kimberly-Clark would have less than [5]* % in toilet tissue, hand wiping and general wiping. The parties would have [more than four times]* the market share of the largest competitor in all three product markets. Furthermore, Munksjö and Skjaerdal are small local manufacturers, while Fort James and Kimberly-Clark are disadvantaged by having production facilities further away from Sweden and Norway than the parties. In AFH health care the Commission's market investigation has shown that the parties would be by far the largest supplier with a market share over [50-60]* % and with no competitor with more than [5]* %. As explained in the assessment of the Norwegian AFH markets, AFH health care tissue products are purchased with other AFH tissue products. Since SCA would be dominant in the three major AFH tissue products markets (toilet tissue, hand wiping and general wiping), this reinforces the conclusion that SCA would after the merger be the dominant supplier of AFH tissue products to the health care sector.
- (227) Even on the basis of a wider geographic market definition the proposed operation would result in the creation of a dominant position in the markets for AFH toilet tissue, hand wiping tissue, general wiping tissue and health care tissue.

Finland

- (228) According to SCA, the hand wiping market of EUR [10-20]* million in 1999 was the largest AFH market, followed by the toilet tissue market, which was worth EUR [10-20]* million and the general wiping market of

EUR [10-20]* million. The markets of health care and napkins were worth EUR [< 5]*million and EUR [< 5]* million respectively.

(229) SCA's estimates of the parties' market shares (measured by volume) for AFH products in Finland in 1999 are set out in Table 13.

Table 13: SCA's estimates — AFH Finland

Market shares	SCA	MT	SCA/MT	FJ	Other
Toilet tissue	[< 5]* %	[30-40]* %	[40-50]* %	[20-30]* %	[20-30]* %
Hand wiping	[0-10]* %	[60-70]* %	[60-70]* %	[30-40]* %	[< 5]* %
General wiping	[< 5]* %	[30-40]* %	[40-50]* %	[20-30]* %	[30-40]* %

(230) In Finland, as in Sweden and Norway, the market is characterised by the very strong position of the two domestic producers, which here, however, are MT and Fort James. SCA can only be described as a minor player on the Finnish AFH tissue markets, its largest position being in the hand wiping market where it accounts for [0-10]* % of the market. The volume based market shares given by SCA for toilet tissue and general wiping for 1998 are very similar to those given for 1999. In hand wiping, however, SCA gives the parties a combined position of [70-80]* % in 1998 and Fort James [20-30]* %. If value figures are used SCA gives MT's market share for toilet tissue in 1999 as [50-60]* % and for general wiping as [20-30]* %.

Fort James and MT have at present over capacity in their Finnish plants and with the exception of SCA there is little prospect of new significant-scale entry in Finland. Similarly to the consumer segment, the geographic proximity of SCA's Swedish operations places the company in a much stronger position than any other company to effectively compete in Finland. The parties' argument in their Reply that Kimberly-Clark and Procter & Gamble constitute equally likely entrants to the Finnish market can therefore not be confirmed. In addition, both Kimberly-Clark and Procter & Gamble emphasised in their replies to the Commission's market investigation that they consider the barriers of entry to the Nordic tissue markets as higher than in other regions.

(231) The Commission has contacted all manufacturers identified by the parties as having sales of tissue products in Finland. Besides the parties and Fort James, only two of those manufacturers have confirmed that they have sales in the AFH markets in Finland. These two manufacturers together have [less than 5]* % of the total sales of the five manufacturers with confirmed sales in Finland. The remaining sales are divided between the parties and Fort James, with MT having [around 60]* % for general wiping and [around 60]* % for toilet tissue and hand wiping, SCA [above 5]* % in all three markets, and Fort James [around 25]* % in toilet tissue and hand wiping and [30]* % in general wiping.

Countervailing buyer power

(232) The Commission's market investigation therefore indicates that MT already holds a dominant market position in these three AFH markets and that the addition of SCA's market share will strengthen this position. Fort James is the only other sizeable competitor in these markets, but it has substantially less market presence than MT and it is unlikely that Fort James could restrain the behaviour of the merged entity.

(233) According to SCA, the demand side in the AFH markets is not as concentrated as that in the consumer product markets. This is due to the number and variety of the different distribution channels in the AFH markets. As outlined in the section on geographic markets, the majority of AFH customers are wholesalers, which are on average much smaller than the major retail chains in the consumer segment, leading to a significantly more dispersed customer base. Multinational corporate buyers only account for a minority of purchases in the AFH segment and cannot significantly alter the overall distribution of bargaining power between tissue manufacturers and AFH customers. Furthermore, the operation would create strong or dominant market positions of SCA across a wide range of products in Finland. Therefore, as explained in the section on the Finnish markets for branded consumer products, the

Commission finds that such 'buyer power' as may exist would not prevent the creation of a lasting dominant position as a result of the merger.

Market entry

(234) New entry into the Finnish market is not likely for the reasons outlined in the sections on consumer tissue products. Any new entry into Finland would have to come from manufacturers that could deliver from their existing plants. This is, however, also unlikely because of the combination of high transportation costs and the difficulty of developing a distribution network through wholesaler who are already supplying MT's and/or Fort James' products. The obstacles to entering the Finnish AFH market are further compounded by the country's low population density, long transport distances and the smaller order sizes typical for AFH customers. Market participants do therefore not consider it likely that the other large-scale producers with a wide range of AFH products would enter the Finnish AFH markets. In fact, some market participants consider that the proposed

transaction could raise the barriers of entry for the Nordic markets.

Conclusion

(235) The Commission, therefore, concludes that the proposed operation would result in the strengthening of a dominant position in the markets for AFH toilet tissue, hand wiping tissue and general wiping tissue products in Finland.

Denmark

(236) SCA provides the following market sizes for AFH products in Denmark in 1999: hand wiping was the largest AFH market worth EUR [10-20]* million, the toilet tissue market was worth EUR [10-20]* million and the general wiping market was EUR [10-20]* million. The market for health care tissue products was EUR [< 5]* million and the napkin market was EUR [5-15]* million.

(237) SCA's estimates of the parties' market shares (measured by volume) for AFH products in Denmark in 1999 are set out in Table 14.

Table 14: SCA's estimates — AFH Denmark

Market share	SCA	MT	SCA/MT	FJ	KC	Other
Toilet tissue	[20-30]* %	[20-30]* %	50-60)* %	[10-20]* %	[10-20]* %	[20-30]* %
Hand wipe	[30-40]* %	[30-40]* %	[60-70]* %	[10-20]* %	[10-20]* %	[< 5]* %
General wipe	[20-30]* %	[10-20]* %	[40-50]* %	[10-20]* %	[10-20]* %	[20-30]* %

(238) The general pattern emerging remains unchanged if value based data or data from 1997 or 1998 are studied. It should be noted, however, that SCA's figures indicate that MT has been losing market share in toilet tissue (from [40-50]* % in 1997). The Commission's market investigation has confirmed that the parties would have a strong combined position in toilet tissue, hand wiping and general wiping. In all three markets the new entity would have [more than 50]* % market share and be [more than twice]* as large as the next competitor, Fort James. SCA has considerably overestimated the market shares of Kimberly-Clark; in fact, the combined market share of SCA and MT would be [more than ten times]* that of Kimberly-Clark in all three markets. The other two manufacturers, which have indicated sales of AFH tissue products in Denmark, each sell [less than 10]* % of the combined sales of SCA and MT

(239) Denmark is supplied mainly with AFH products from SCA and MT warehouses in Sweden, although some products could originate from the German or Dutch plants. Kimberly-Clark and Fort James supply the market from further afield and can not be relied upon to provide sufficient competitive restraint on the merged

entity. Kimberly-Clark, for example, does not believe it competes significantly on the AFH markets in Denmark. This is because Denmark is situated at the boundary of the distance where Kimberly-Clark can economically supply. Second-tier companies located in Germany, the Netherlands or Belgium can similarly not be relied upon to provide competitive restraint on the Danish AFH market. They are unlikely to be able to gain access to wholesalers owing to their inability to provide the range of products and the level of service required and they mainly operate in niche markets (such as products made from recycled paper or supplies to smaller customers).

(240) In addition, the second-tier firms are disadvantaged by high transport costs and limited flexibility in production. Given their more limited scale and scope (both with regards to product range and geographic coverage), most second-tier players consider that any attack on the first-tier firms in their core markets would be met with retaliatory action (such as targeted price reductions) that could ultimately drive them out of business. Contrary to the view expressed by the parties in the Reply, it is therefore unlikely that any of the smaller companies located further away would be able

to compete effectively against a merged SCA/MT on the Danish market.

(241) The Commission's market investigation revealed that several wholesalers had serious concerns as to the impact of the merger, because the choice of suppliers would become extremely narrow if the operations of SCA and MT were combined.

(242) The AFH hand wiping market is the most important AFH market in Denmark. The merger would combine the two largest competitors, which would then control [more than two thirds]* of the market. Even now each of SCA and MT are [more than twice]* the size of their closest competitors. For AFH toilet tissue SCA would have a combined market share [over three times]* the size of its next competitor, and in the market for general wiping SCA would be [more than twice]* the size of its competitors.

Countervailing buyer power

(243) According to SCA, the demand side in the AFH markets is not as concentrated as that in the consumer product markets. This is due to the number and variety of the different distribution channels in the AFH markets. As outlined in the section on geographic markets, the majority of AFH customers are wholesalers, which are on average much smaller than the major retail chains in the consumer segment, leading to a significantly more dispersed customer base. Multinational corporate buyers only account for a minority of purchases in the AFH segment and cannot significantly alter the overall distribution of bargaining power between tissue manufacturers and AFH customers. Furthermore, the operation would create strong or dominant market positions of SCA across a wide range of products in Denmark. Therefore, as explained in the section on the Danish markets for branded consumer products, the Commission finds that such 'buyer power' as may exist would not prevent the creation of a lasting dominant position as a result of the merger.

Market entry

(244) New entry into the Danish market is not likely for the reasons outlined in the sections on consumer tissue products. Any new entry into Denmark would have to come from manufacturers that could deliver from their existing plants. This is, however, also unlikely because of the combination of high transportation costs and the difficulty of developing a distribution network through wholesaler who are already supplying the parties' products. Market participants do therefore not consider

it likely that other large-scale producers with a wide range of AFH products would enter the Danish AFH markets. In fact, some market participants consider that the proposed transaction could raise the barriers of entry for the Nordic markets.

Conclusion

(245) The proposed transaction would bring together the two largest AFH suppliers in Denmark setting them apart from the rest of the competitors, thereby substantially changing the market structure in Denmark. In the absence of strong competitive restraint from the present incumbents or from potential entrants the proposed transaction would give rise to a dominant position of SCA.

(246) The Commission, therefore, concludes that the proposed operation would result in the creation of a dominant position in the markets for AFH toilet tissue, hand wiping tissue and general wiping tissue in Denmark.

Conclusion on AFH products

(247) The Commission concludes that the proposed operation would result in the creation of a dominant position in the markets for AFH toilet tissue, hand wiping and general wiping in Sweden, Norway and Denmark and in the health care tissue market in Sweden and Norway and in the strengthening of a dominant position in the markets for AFH toilet tissue, hand wiping tissue and general wiping tissue products in Finland.

V. COMMITMENTS

(248) Commitments were offered by SCA during the first phase of the Commission's investigation pursuant to Article 6(2) of the Merger Regulation to form the basis for a decision pursuant to Article 6(1)(b). Those commitments were rejected as they did not fully address the concerns identified by the Commission. The same commitments were re-submitted on 10 January 2001 with a view to obtaining a decision pursuant to Article 8(2) of the Merger Regulation. They comprised the following divestitures: [...]*

(249) SCA submits in its Reply to the Commission's Statement of Objections that these remedies are sufficient to resolve the concerns raised by the Commission in branded consumer tissue products in Sweden, Norway and Denmark, private label consumer tissue products in Sweden and AFH tissue markets in Sweden, Norway and Denmark. SCA furthermore argues that no remedies are

necessary for private label consumer tissue products in Denmark and for Finnish tissue products.

(250) However, from the competitive assessment made in Section IV it follows that the Commission considers the proposed commitments insufficient because they do not address any of the competition issues identified for consumer and AFH tissue products in Finland or for private label consumer tissue products in Denmark.

(251) For the other markets SCA submits that the commitments offered would lead to substantial reductions in market shares and would therefore remedy the problems identified. The Commission considers that the divested production capacity would not be sufficient for the buyer to compete effectively with the merged entity. The historic market shares of the divested brands do therefore not reflect the competitive restraint that the buyer of the divestment package would be able to exert in these markets.

(252) Of MT's three Swedish mills, only [...] are configured to produce high quality virgin fibre-based consumer products. Both [...], the major brands included in the divestment package, require high quality virgin fibre-based inputs. [...] is not included in the divestment package while capacity figures provided by the parties suggest that a buyer of the divestment package relying only on the capacity of the [...] to produce high quality consumer tissue products would be capacity constrained in satisfying the current demands of [...] and other high quality consumer tissue products from MT's Swedish mills. A new owner would therefore not have the capacity to compete aggressively in the markets for branded consumer toilet tissue and kitchen towels in Sweden, Norway and Denmark, since it would not have the spare capacity to meet additional demand. By the same reasoning, it would not have the capacity to enter the Finnish market with high quality consumer products or to compete for high quality virgin fibre-based private label contracts anywhere in the Nordic region.

(253) The Commission considers that the buyer could not economically produce high quality virgin fibre-based consumer products at the [...]. The production process for these products is different to the production processes for AFH grade virgin fibre based tissue and recycled fibre based tissue, which are the products produced at the [...]. SCA has informed the Commission that producing premium quality virgin fibre-based consumer products at the [...] would as a minimum involve changing the configurations of the

[...] paper machines and adapting the machinery used in the converting lines. However, the current converting machines at [...] would not be optimal in producing small series of high-quality products; therefore, it would be better for such machines to be replaced with more flexible converting equipment. According to SCA, in order to produce a substantial quantity of high-quality virgin-fibre based consumer tissue at the [...] mill the new owner would be likely to find it economically preferable to replace one of the current paper machines, which would involve a total investment of approximately EUR 50 million. Furthermore, the operation of the [...] mill is optimised to utilise fully its de-inking capacity in order to produce recycled fibre-based tissue. Changing that structure in order to produce more high quality virgin fibre-based tissue may mean that the capacity of the de-inking plant and energy plant would not be fully used.

(254) In addition, the buyer of the divested assets would not be able to compete in the Finnish markets for consumer and AFH products using [...] brands, since SCA proposes to divest these brands only in Sweden, Norway and Denmark. The buyer of the divested assets would therefore not be in a position to exert the same competitive restraint that SCA exerts today on the two main competitors in Finland (MT and Fort James).

(255) For these reasons, the Commission concludes that the commitments offered are not sufficient to address all competition problems identified.

VI. CONCLUSION

(256) For all the above reasons, the Commission concludes that the notified concentration is incompatible with the common market and the functioning of the EEA agreement, since it would create or strengthen a dominant position in the markets for branded consumer toilet tissue and kitchen towels in Sweden, Norway and Denmark, a duopolistic dominant position in the markets for branded consumer toilet tissue and kitchen towels in Finland, a dominant position in the markets for private label consumer toilet tissue and kitchen towels in Sweden and Denmark, AFH toilet tissue, hand wiping and general wiping in Sweden, Norway and Denmark and the AFH health care tissue markets in Sweden and Norway and in the strengthening of a dominant position in the markets for AFH toilet tissue, hand wiping tissue and general wiping tissue products in Finland, as a result of which effective competition would be significantly impeded in the common market.

The operation is therefore to be declared incompatible with the common market pursuant to Article 8(3) of the Merger Regulation and with the functioning of the EEA Agreement pursuant to Article 57 thereof,

HAS ADOPTED THIS DECISION:

Article 1

The operation notified by SCA Mölnlycke Holding BV (SCA) on 11 August 2000, whereby SCA would acquire sole control of Metsä Tissue Corporation, is hereby declared incompatible with the common market and the functioning of the EEA Agreement.

Article 2

This Decision is addressed to:

SCA Mölnlycke Holding BV
Arnhemse Bovenweg 120
670 AR Zeist
The Netherlands

Done at Brussels, 31 January 2001.

For the Commission

Mario MONTI

Member of the Commission
