II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 4 May 1993

relating to a proceeding under Council Regulation (EEC) No 4064/89 (Case IV/M. 291 - KNP/BT/VRG)

(Only the English text is authentic)

(93/466/EEC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 4064/89 of 21 December 1989 on the control of concentrations between undertakings [1], and in particular Article 8 (2) thereof,

Having regard to the Commission Decision of 18 January 1993 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 [2],

Whereas :

I. NATURE OF THE PROCEEDINGS

(1) These proceedings relate to a concentration that was notified to the Commission pursuant to Article 4 of Regulation (EEC) No 4064/89 ('The Merger Regulation') on 8 December 1992.

The concentration concerns the proposed merger of NV Koninklijke KNP (KNP), Bührmann-Tetterode NV (BT) and VRG-group (VRG). KNP has been transformed into a holding company (NV Koninkijke KNP BT) which made a public offer for all the shares of BT and VRG on 8 February 1993. The offer became unconditional on 5 March 1993.

In its Decision of 18 January 1993, the Commission declared that the proposed concentration raised serious doubts as to its compatibility with the common market. The Commission therefore initiated proceedings in this case pursuant to Article 6 (1) (c) of the Merger Regulation.

II. THE PARTIES

(2) KNP is one of the leading European producers of paper, board and packaging. KNP has three divisions : the fine paper division which produces wood-free coated paper ; the publication paper division which produces wood-containing coated paper ; and the solid board division which produces graphic board, solid board and wooden packaging.

(3) BT is a significant paper and packaging group. It has three main areas of activity in Europe, these being the graphic and business systems division which distributes printing and office systems, the graphic paper division which acts as an independent paper merchant, and the packaging divisions which produce flexible and protective packaging and solid board.

[1] OJ No L 395, 3. 12. 1989, p. 1 ; Corrigendum in OJ L No 257, 21. 9. 1990, p. 13.
[2] OJ No C 231, 27. 8. 1993, p. 5.

(4) VRG is a distributor of paper and printing systems. Its paper division acts as an independent paper merchant, the graphic systems division distributes printing systems, and the business systems division distributes office systems.

(5) KNP and BT own two 50/50 joint ventures, RP Europe BV and Corrugated Europe BV, involved in the production of corrugated board and boxes respectively.

KNP holds a controlling stake in Leykam-Mürztaler Papier (50,4 %) which is an Austrian paper company. KNP also holds a 50,6 % stake in VRG.

III. COMMUNITY DIMENSION

(6) The proposed concentration has a Community dimension. In 1991, the combined aggregate world-wide turnover of KNP, BT and VRG was ECU 5 579 million and each of the undertakings achieved more than ECU 250 million of their turnover in the Community (KNP, ECU 1 380 million, BT, ECU 1 909 million, VRG, ECU 1 038 million). The Parties did not achieve more than two-thirds of their Community-wide turnover in one and the same Member State.

It is not decisive for this conclusion to establish whether or not VRG is controlled by KNP.

IV. CONCENTRATION

(7) The merger between KNP, BT and VRG is a concentration within the meaning of Article 3 (1) (a) of the Merger Regulation.

V. COMPATIBILITY WITH THE COMMON MARKET

(8) The new group will have two main areas of activity of roughly equal size. The first brings together KNP and BT's paper and packaging manufacturing operations. The second will consist of the trading and distribution activities of BT and VRG in graphic paper, graphic systems, and information systems and office products.

A. Distribution and servicing of printing presses

1. *Market definition*

Product market

(9) The distribution of graphic systems includes the distribution of:

(i) equipment used to prepare images such as printing plates, scanners, etc. (pre-press);

(ii) printing presses;

(iii) equipment used for all finishing operations such as paper cutting, stitching machines, folding machines, collators and binding equipment (after-press);

(iv) printing supplies such as ink, film, foils, etc.;

(v) second hand presses.

Distribution of graphic systems also includes the servicing of the equipment sold.

The main area of interest within graphic systems is that of distribution and servicing of printing presses. BT and VRG achieve (...)[1] and (...)[2] respectively of their graphic systems turnover from printing presses. In other areas, there is little or no overlap and/or the combined market shares of the parties do not raise any competition concerns under the Merger Regulation. The assessment of the proposed concentration will focus therefore on distribution and servicing of printing presses.

(10) BT distributes and services Heidelberg printing press equipment in Belgium, the Netherlands, Luxembourg, France, Greece, Italy and Spain. This is organized on a country by country exclusive distributor basis. Heidelberg is the main European manufacturer in the market of general printing equipment. Heidelberg distributes and services its machines directly in Germany, the United Kingdom and Ireland.

(11) VRG distributes and services MAN-Roland printing press equipment in Belgium and the Netherlands, either as agent or distributor on an exclusive basis. This is carried out by separate national subsidiaries of VRG. MAN-Roland is the main competitor of Heidelberg.

(12) In general, manufacturers and distributors supply a complete range of printing press equipment. There are two main categories of printing press systems: sheet-fed (i.e. feeding of each page) and rotary web-fed (i.e. feeding with a big roll of paper). Within these two categories there are different types and configurations of machines (small-, medium- and large-size presses, and different permutations of number of colours, perforating,

[1] In the published version of the decision, some informations has hereinafter been admitted pursuant to the provisions of Article 20 (2) of the Merger Regulation.
[2] Roughly half.

numbering and coating capabilities etc). However, the activity of the parties consists in the provision of a service (distribution and servicing of printing presses) rather than in the manufacture of goods. Therefore, for the purposes of assessing the impact of the proposed concentration, it is not necessary to define different product markets for each type of machine according to their technical characteristics.

(13) The customers in this market are printers, e.g. of children's books, comics, labels, playing cards, advertising brochures, annual reports and, to a lesser extent, of newspapers and magazines. The printing presses constitute capital equipment for the printers and represent important investments for them.

A typical printing press would cost around ECU 0,5 million. Printers would have several presses depending on the size of the business. Equipment is regularly updated. Service and maintenance are crucial factors, since the activity of printers obviously depends on the proper functioning of their presses.

Geographic market

(14) It is stated in the notification that the markets for distribution of printing presses remain national. This is confirmed by the Commission's enquiries. Distribution is in practice organized by press manufacturers on national lines. Furthermore, most printers rely on local distributors for service and maintenance. In practice, this has led printers to buy locally because of their dependency on the distributors to service their machines.

(15) Purchasing patterns for printing presses confirm that the markets for distribution and servicing of printing presses tend to be national. Printers, including the main customers of the parties, regard availability of local service as an 'important' or in most cases an 'essential' factor when considering which printing press to buy. In general, availability of quick, or even immediate service is more important than price as a purchasing criterion. Even those printers who are large enough to develop their own in-house technical support depend to a large extent on local service for specialized and major repairs. Typically, a printer requires assurance that the distributor has a well developed local network and adequate expertise before purchasing a press. The further the distributor is from the client, the greater the delay in servicing a defective press, and the greater the risk of having to stop printing completely. Although it is difficult to establish with accuracy a precise limit for an acceptable distance, industry sources have indicated that they would consider a maximum of four to five hours' travel from the distributors' base to their own premises.

(16) Furthermore, as stated in recital 14, press manufacturers organize distribution on a national basis. These arrangements, especially the exclusive distributorships often granted by the main manufacturers of printing presses at national level reinforce the local character of the distribution and servicing market. In particular, customers in Belgium and the Netherlands contacted by the Commission have stated they would hesitate to bypass the national distributor and go directly to the manufacturer of the printing press.

(17) Prices. There seems to be a significant gap between prices of printing presses in Belgium and the Netherlands on the one hand, and in neighbouring countries on the other. Customers and their professional organizations estimate that the prices in these two countries exceed prices in Germany, for instance, by more than can be explained simply by transport costs.

Conclusion

(18) In view of the above, and taking into account the overlap of the distribution activities of BT and VRG in the area of printing presses, the relevant markets in which to assess the impact of the proposed concentration are those of the distribution and servicing of printing presses in Belgium and in the Netherlands.

2. *Assessment*

(19) Market shares for distribution of printing presses have been estimated by the parties as follows (% 1991):

	BT	VRG	BT + VRG
Belgium	(...)	(...)	(...)(1)
The Netherlands	(...)	(...)	(...)(1)

(1) In excess of 60 %.

The approximate value of the printing press markets in these countries is estimated at around ECU 200 million. Customers and their professional associations have confirmed that these estimates are in their view correct.

(20) BT and VRG currently compete against each other in the Netherlands and in Belgium. There is some competition to both mainly from the Japanese company Komori ([...] % market share in Belgium [...] % in the Netherlands). Komori distributes and services its own machines. The other printing press manufacturers Mitsubishi ([...] % in the Netherlands) and König & Bauer-Planeta have been quoted as potential suppliers by customers. Their current market shares, are, however, very low. These alternative suppliers do not have the service network, and the long established reputation of Heidelberg and MAN-Roland printing presses distributed by the Parties. In addition, they are not able to offer to printers the entire range of products distributed by the Parties (pre-press equipment, after-press equipment, printing supplies, graphic paper).

(21) The combination of BT and VRG as distributors of Heidelberg and MAN-Roland presses in the Netherlands and in Belgium would lead to the creation of a single entity in the distribution and servicing market controlling more than two thirds of the total market value. Moreover, Heidelberg and MAN-Roland are the main manufacturers of printing presses in neighbouring geographic markets.

(22) Customers would have little countervailing power towards the new entity. Demand is very fragmented. There are around 3 500 printing companies in the Netherlands and around 2 000 in Belgium (an estimated 96 % of which employ less than 50 persons). No single customer of the Parties currently accounts for more than 2 % of the Parties' sales.

(23) These customers would in addition be dependent on the new entity for maintenance and after-sales service because of the lack of adequate alternatives. Some independent providers of maintenance service do exist in Belgium and the Netherlands. However, they do not seem to constitute a satisfactory alternative for printers. They are mainly small local companies employing three to four persons, and their activities are often limited to either mechanical or electrical repairs. In addition, printers contacted by the Commission consider that independent companies would not guarantee repairs for major breakdowns, because they are not linked to the manufacturers of the presses and do not have direct access to the manufacturers' technological expertise. Resort to independent providers of maintenance service thus implies a considerable risk and in any case it is generally limited to smaller repairs.

(24) Customers would experience serious difficulties in switching to another make of printing presses in order to exert pressure on the merged entity. Printing presses have an average life of five to 10 years depending on technology and level of usage. In addition, given their cost, presses are only replaced progressively. In general, a press is usually replaced by another press of the same manufacturer after its usual useful life. Ordering presses from another manufacturer would increase the number of makes being used by each company. This would require additional staff for operating the new presses and/or additional training costs for staff, as well as increasing in-house stocks of frequently needed spare parts. The above are often cited by customers as obstacles to the purchase of presses from alternative suppliers.

(25) In view of their extensive service network, their position in the overall Community market and their long-established reputation, Heidelberg and MAN-Roland printing presses are the basic alternatives quoted by Dutch and Belgian printers for a choice of a press. If availability and/or service for either of these makes was not offered in satisfactory terms, the main alternative for a printer would to be turn to the other German manufacturer. The realistic threat of customers switching to presses of the other German manufacturer constitutes in itself the main competitive constraint on each of BT and VRG. Heidelberg and MAN-Roland are perceived both as offering similar quality presses and a sufficient and well structured distribution network. Larger printers tend to purchase simultaneously from both makes and they therefore have established relations with both BT and VRG subsidiaries. As a consequence of the proposed merger, the main competitive constraint on BT and VRG in Belgium and the Netherlands would be eliminated.

Barriers to entry

(26) Successful entry into the distribution and servicing market is closely linked to the reputation and technological complexity of the printing presses to be distributed. Printing presses are high technology products, and their manufacture requires significant investment in research and development and considerable product innovation. Only established manufacturers or distrubutors fully backed by a well known manufacturer are realistically in a position to gain a foothold and attain a significant share in the market for distribution of printing presses in Belgium and the Netherlands. Unlike in other distribution markets, the number of likely

candidates for entry in the relevant market is necessarily limited because of the technological skills required for servicing printing presses and the very reduced number of well established makes in these two countries.

(27) In view of the purchasing patterns prevailing in Belgium and the Netherlands, new entrants in the affected market would have to first develop an extensive local service network in these two countries. The time needed to build a brand name and reputation for quality of service comparable to that a MAN-Roland and Heidelberg is considerable. Customers believe that it would be difficult for newcomers to recruit staff with the necessary expertise. Customers would also need to be convinced of th manufacturer's commitment to a national market before taking the risk of switching suppliers.

(28) To a certain extent, customers also take into account the possibilities of selling printing presses in the second hand market when considering the purchase of a new press. According to several printers, only MAN-Roland and Heidelberg machines can be sold in a well developed second-hand market at adequate prices. In particular, there is no second-hand market for Japanese makes.

(29) Even if a potential entrant were ready to make the necessary investment to enter the Belgian and Dutch distribution markets, he would be aware of the constraints customers face in switching to another make of presses. It would necessarily need several years to start to gain market shares from the established position of the German manufacturers. This is particularly so since demand for printing services is stable and not expected to grow in the medium term which means that demand for printing presses in the next two to three years will be geared to replacing current stock, usually with the same makes.

Conclusion

(30) The merger between BT and VRG would therefore create a dominant position in the markets of distribution and servicing of printing presses in Belgium and the Netherlands. The structure of the markets concerned indicates that this dominant position is not likely to be quickly eroded. This dominant position is therefore not merely temporary and will significantly impede effective competition.

B. Board

1. *The market*

The product

(31) The parties are active in the processing of waste paper into board and subsequently into board boxes. Most board is used for transport packaging and graphic applications. The categories of board affected by this case are corrugated, solid, graphic and laminated board. Board made from virgin fibre or pulp (generally called folding box board) is not related to the proposed concentration.

(32) Corrugated board and solid board are mainly used for transport packaging. Corrugated board consists of liner board with a corrugated fluting while solid board is a heavy type of paper. In principle the board products are one-way packaging products which can be recycled.

Graphic board can be described as solid board for 'stiff material uses'. It can be defined as a heavy-weight solid board, with special properties, like rigidity and stability, which make it suitable for processing into, amongst other things, book covers, lever arch files and other filing systems, games boards and jigsaw puzzles.

Laminated board is a produkt made by gluing two or more layers of board and/or paper together, and it is used in similar applications to graphic board.

Manufacturing processes

(33) Both KNP and BT produce solid board and graphic board. This processing activity consists of mixing waste paper with water and certain additives, to obtain a paste which is further processed into rolls of greyboard. Greyboard, a term often used in the industry to refer to both solid and graphic board, can be described as an almost homogeneous material.

The equipment needed to treat waste paper and subsequently process it into board represent a substantial capital investment. Greyboard can be manufactured in different degrees of thickness (calliper) and density (grammage, usually expressed in grams per suqare metre). Grammage may range from 250 to 300 grams per square metre (generally recognized dividing line between paper and board) up to 2 000 grams per square metre. Greyboard of higher grammage is used for graphic applications. High grammages may be produced in-line (specialized machines) or by laminating off-line sheets of board of lower grammage.

(34) From the supply side, the transition from one category of board products to another is a gradual one and depending on the type of machinery installed, this homogeneity enables manufacturers to produce for either packaging end-uses, or graphic applications. For instance, two of the major competitors of solid board could use more than 50 % of their capacity to produce graphic board on multi-purpose equipment.

(35) Corrugated board is made by laminating two sheets of test liner with a fluting paper inserted between them. Sheets of kraftliner may also be used for the outer face.

Uses

(a) Transport packaging

(36) Technical characteristics. In transport packaging, corrugated board is the most widely-used material accounting for an estimated 54 % of total transport packaging material used in Europe in 1992. Solid board accounted for 8 % of this overall market. The main other materials used are wood and plastic.

(37) Solid board and corrugated board are used to make boxes. Solid board has traditionally had a technical advantage over corrugated board for those applications involving wet, chilled and freezing environments, because of superior water resistance. Solid board also has the advantage of being more compact and resistant to pressure and to transport conditions. Furthermore, it has a better printability.

Because of its special characteristics, solid board is often used in applications such as packaging of agricultural, horticultural and frozen products, transportation of tools and pointed or sharp objects and for packaging of objects for public display. In particular, because corrugated board does not perform well in an extremely wet environment and does not have the strength of solid board, there is a market segment where solid board has an advantage over corrugated board. But even in this marginal segment, corrugated boxes are being used more and more. The parties have provided information to illustrate this point in the area of, for example, frozen foods.

(38) The main application of corrugated board is the packaging of dried products. Technological developments in machines converting corrugated board into boxes has made it possible to manufacture corrugated board boxes that can withstand most humid and wet conditions at comparable cost to solid board boxes. The relative strength of corrugated board has also improved because of technical developments in the recycling process of waste paper. Because of the improvements in technical characteristics, and reduction in the cost of corrugated board boxes, corrugated board is tending to replace solid board in traditional packaging applications such as for vegetables, e.g. tomatoes and cucumbers, and meat.

(39) Prices. When no special treatment is required, corrugated board boxes tend to be cheaper than solid board boxes. The parties estimate the cost difference at an average of [...] %. As mentioned above, corrugated board can be trated to improve its water resistance, printability and appearance. This additional processing would narrow the price differential with solid board.

In certain applications, one of the main clients of the parties accounting for [...] of their turnover, has confirmed that price differences between the corrugated and solid boxes it purchases for the same purpose can range from [...] to a maximum of [...] %.

(40) Conclusion. The question of whether corrugated and solid board belong to the same product market can be left open for the purpose of assessing this case. Even if a separate market for solid board were considered to exist, the proposed merger would not raise concerns as to its compatibility with the common market (see assessment below).

(b) Graphic applications

(41) From the demand side, buyers of graphic board do not consider corrugated board as a satisfactory substitute. Because of its internal fluting, corrugated board has a soft centre which makes it less rigid and more liable to bend and fracture when processed in the machines generally used in the industry. Plastic can be used only to a limited extent.

Graphic board is not substitutable by any other sort of board by reason of its characteristics and considerably higher price.

Geographical market

(a) Board for transport packaging

(42) Based on a 1990 McKinsey report, it is suggested in the notification that the relevant geographic markets for board products for packaging consist largely of regional markets crossing national

borders. One region for example would consist of the Benelux countries, northern France and central Germany. Another would consist of southern Germany, eastern France, Austria and Switzerland.

(43) Around 70 % of total Community sales are in the Netherlands, Belgium, France and Germany. There are indications that this block of countries is distinct from other relevant geographic markets. There are significant trade flows between these countries. This is the area where most producers and most customers are located. In principle, there are geograpical constraints to supply imposed by transport costs. In the past, at least, shipments have tended to travel not more than 500 kilometres, although some producers and customers have quoted larger distances.

(44) Transport costs. Most of the parties' centres of production are located in the Benelux and Germany. Cost for delivery of solid board boxes from the Benelux to the centre of France/north Italy amount to around Fl [...] per box and for delivery to Central Spain/South Italy they amount to [...] to Fl [...]. For example, the price in the Netherlands for boxes range from Fl [...] for a cucumber box to Fl [...] for a box for flowers and can be much higher for boxes used for other purposes. Thus, depending on the price of the box, transport costs for delivery to a distance of approximately 2 000 to 2 500 kilometre range between 17 % and 22 % for the cheaper boxes and between 7 % and 9 % for the more expensive boxes.

(45) Other barriers. The buyers of solid board or boxes generally require fast delivery, and their requirements are generally for custom-made boxes. As a result nearby producers have a substantial advantage over remote ones. There are no other major barriers to trade in board such as technical standards, lack of distribution networks, brand loyalty etc.

(b) Graphic board

(46) Users of graphic board buy readily outside their own Member State within the European Community. By contrast, although the parties sell some products to the Far East and to North America, for example, there is no indication that European customers buy from non-European suppliers. Imports into the Community are currently very limited. There is in any case an average common customs tariff of 10 % which does not apply to EFTA countries.

2. *Assessment*

(47) On the basis that corrugated and solid board constitute one single market, the merged entity would attain market shares below 20 % in the Community as a whole or in any regional market.

Even if corrugated board and solid board were considered to be separate markets, the proposed concentration would not lead to the creation or reinforcement of a dominant position for the following reasons.

BT and KNP have already put together their corrugated board activities in two 50/50 joint ventures. One which produces corrugated case materials and one which produces corrugated cases. The proposed merger has no direct impact on the companies' corrugated board activities. It is estimated that the parties have around 4 % of the overall sales of corrugated board cases in Europe making it the fourth largest European producer behind SCA [...], Smurfit and St Gobain. There are many other suppliers.

(48) If solid board were to be considered a completely distinct market, the market shares of the parties would be of significance in certain regional markets. However, it is not considered that the proposed concentration would lead to the creation of a dominant position for the reasons given below.

(49) Installed capacity in the Community for processing waste paper into greyboard can be estimated at least at two million tonnes. The actual figure would be higher if all small competitors were to be included. A list of the companies included in this estimate together with their respective capacity is provided in Annex I. The merged entity would account for around [...] % (1) of this capacity. Smurfit and British Plaster Board are the main competitors with shares of roughly [...] % (2) each. There are several other competitors with capacity to produce between [...] and [...] tonnes, located in Germany (such as Varel and Leinfelder), north of Italy (Rodano/Ovaro), north of Spain (Videcart/Catalana) and France (David Smith) and several smaller ones with tonnage below 50 000 (such as VPK in Belgium, Köhler in Germany, Oudin in France etc). In addition, there are many small producers (Danapack, Elfeler Pappenfabrik, La Rochette, etc.) whose capacity is not included.

(1) Less than 40 %.
(2) Less than 25 %.

(50) According to industry sources, spare capacity is estimated at 10 to 15 %. The Parties themselves have a rate of capacity utilization of 85 %. Although this level of capacity utilization is not unusually low for industry generally, it is an indication that competitors could expand their production if price levels were to increase. High capacity utilization rates are required in the paper and board sector to attain a reasonable level of profitability.

(51) The sales of the parties of solid board in tonnes for the last three years are given in Annex II for the two main applications of solid board (transport packaging and graphic uses).

(a) Transport packaging

(52) There are no reliable estimates for overall consumption of solid board for transport packaging in the European Community. Cepac (the professional association of pulp, paper and board manufacturers) estimates the market for all packaging board other than corrugated materials at roughly 2,4 millions tonnes. Industry sources estimate that of this figure, around 1,7 million tonnes would consist of solid board for packaging purposes. On the basis of these broad estimates, the Parties would hold a share of around [...] % (1) of total Community consumption. In order to verify the validity of these estimates, the Commission has contacted a number of manufacturers of solid board (see Annex II).

On the basis of the sales achieved by this sample of manufacturers, the Parties' combined market share would be around [...] %. This market share is only a maximum, since it was not possible for the Commission to contact all the smaller manufacturers of greyboard for transport packaging in the Community. Should these smaller manufacturers be included in the sample, the Parties' combined market share would be correspondingly lower.

It can be concluded from the above that in any case, the Parties' combined market share is certainly below 45 %.

(53) Within the area where transport costs represent between 5 to 10 % of the price of board (Benelux/France/Germany/North of Italy) the shares of the Parties would be at most [...] (2) of production. The capacity of production in this area is listed in Annex I. BPB, Smurfit, Varel, Leinfelder and David Smith's mill in Alsace are producers of waste-paper-based solid board in the area.

(54) In view of the shares attained by the parties, the available capacity of production in the area, the existence of spare capacity and the number of alternative suppliers inlcuding strong competitors such as Smurfit and BPB, the proposed merger does not lead to the creation or reinforcement of a dominant position, even under the assumption that substitution from corrugated board is to be totally excluded.

(b) Graphic board

(55) In the European Community overall, the parties have together about [...] % of total consumption of graphic board. This market share is based on overall estimates of consumption of board for graphic uses. Under the same approach followed for transport packaging (see recital 52 above), the maximum share attained by the parties would be around [...] % (2) (see Annex II). The first competitor of the new entity will be Smurfit with a market share of more than [...] %. Other significant competitors with shares up to [...] % such as British Plaster Board, David Smith, Reno, Rodano-Ovaro and Köhler will Smith, Reno, Rodano-Ovaro and Köhler will remain on the market. In view of the market share of the Parties and the existence of strong competitors and the high supply-side substitutability (see recital 34 above), the proposed merger does not lead to the creation or reinforcement of a dominant position.

C. Distribution of graphic paper

(56) Graphic paper is the common name for different kinds of coated and uncoated general printing and writing paper. This definition excludes newsprint. BT and VRG distribute graphic paper throughout the Community.

About one third of the paper which VRG sells and about one tenth of the paper that BT sells is produced by KNP. KNP has only a very small amount of direct sales.

(57) Graphic paper can be sold on the market either directly from the paper manufacturer to customers (direct sales) or through merchants (wholesalers). Merchants can supply paper either out of their warehouses or via the 'indent' method, i. e. the customer's order is exectued by the producer but is placed with the merchant, who takes care of the invoicing and receives a commission from the producer. Sales through agents of the paper manufacturers or other intermediaries on a commission basis also take place.

Merchants attract customers who need quick deliveries of small quantities and those who want a choice between a wide range of products. Producers attract customers who need bulk delivery at lower prices.

(1) Less than 35 %.
(2) Less than 45 %.

Distribution through merchants may be considered as a market distinct from direct sales by producers.

(58) With regard to the distribution of graphic paper, there is a geographical overlap between the activities of VRG and BT only in the Netherlands, Belgium and the United Kingdom.

The Parties state that the market for distribution of graphic paper by merchants is geographically restricted due to the need for prompt delivery of small quantities to customers who want to avoid stock maintenance.

Even taking the narrowest market definition in this respect, that is distribution of graphic paper through merchants in an individual Member State, the combined market shares of the new group will be around [...] % (1) in the Netherlands, around [...] % (2) in Belgium and around [...] % (3) in the United Kingdom, according to the Parties.

The Parties base their estimates on the following market volumes for distribution of graphic paper through merchants: 695 000 tonnes for the Netherlands, 540 000 tonnes in Belgium and 1 780 000 tonnes in the United Kingdom.

In all these markets there are significant other competitors such as Stora, Modo, International Paper (Scaldia), Graphisch Papier (PWA) and Arjo Wiggins in the Netherlands with market shares around [...] % — [...] % each; Stora (market share [...] %), Arjo Wiggins [...] %, Igepa [...] % in Belgium; Arjo Wiggins, Bunzl, Modo and PWA in the United Kingdom. These competitors include large paper manufacturers with international distribution networks and substantial expertise and resources.

There are several other smaller distributors, such as Finpaka, JVA and Nordland in Belgium and the Netherlands.

The presence of the same players in different Member States is an indication of the trend for paper manufacturers to set up distribution network throughout the Community. Recent entries at the merchant level in the three abovementioned Community countries included Modo in Belgium, Schneider and International Paper (the latter through the acquisition of Scaldia Paper) in the Netherlands.

(1) Less than 45 %.
(2) Less than 25 %.
(3) Less than 20 %.

Moreover, customers in these three countries contacted by the Commission stated that after the merger there would be sufficient alternative suppliers of graphic paper outside the merged entity able to provide the whole range of products supplied by BT and VRG. These customers have indicated that they currently purchase graphic paper from seven to 12 suppliers and all of them have been able to quote other potential sources of supply to which they could switch their orders.

(59) The cost of starting up distribution of graphic paper in small Member States such as Belgium and the Netherlands is relatively low. There are several alternative ways of entering into distribution of paper (agency, indent, purchase of a warehouse).

Industry sources consider that costs of entry would amount to an initial expenditure of around Bfrs [...] million, and start-up losses during four to five yeas of around Bfrs [...] million per year.

(60) In view of the above, it is considered that the new group will not have a dominant position in the market for distribution of graphic paper in Belgium or the Netherlands.

D. Other main areas of activity

Paper

(61) KNP has total sales of around ECU 600 million from paper production almost all in the Community, whilst Leykam is estimated to have total sales in the Community of around ECU 250 million. BT and VRG do not produce paper.

(62) KNP and Leykm together are estimated to account for [...] % (4) of the Community sales of woodfree coated paper, and [...] % (4) of the Communty sales of wood containing coated paper. The market leaders are the Swedish company Stora [...] % (4) overall grouping the two categories and the Finish company Kymmene [...] % (4). Arjo Wiggins is also a significant competitor with a share of [...] % (4) in this overall market.

(63) It does not appear that the level and scope of vertical integration of the new group would confer a significant further competitive advantage in the paper markets *vis-à-vis* the other strong competitor.

(4) Below 25 %.

Other markets

(64) The question of whether the new group would have significant buying power for waste paper supplies which would enable it to foreclose the market to completing buyers has also been examined.

There is no current shortage of waste paper supplies and it is generally expected that supply will increase in the next few years. There is no indication that an economic upturn would lead to any imbalance in supply an demand. In these circumstances it is not considered likely that foreclosure is possible.

E. Conclusion

(65) For all the reasons outlined above, the Commission concludes that the proposed merger between KNP, BT and VRG would create a dominant position as a result of which effective competition would be significantly impeded in a substantial part of the common market within the meaning of Article 2 (3) of Council Regulation No 4064/89. This is due to the position which the merged entity would obtain in the markets of distribution and servicing of printing presses in the Netherlands and Belgium.

VI. COMMITMENTS PROPOSED BY THE PARTIES

(66) The parties have offered to modify the original concentration plan as notified by entering into the following commitments :

'1. KNP, BT and VRG formally and irrevocably undertake to terminate, at the latest by 31 December 1993 the relationship with either MAN-Roland or Heidelberg for Belgium and the Netherlands, either in accordance with the terms of the agreement in question or by mutual consent.

2. In order to ensure that the undertaking in point 1 is properly implemented, KNP, BT and VRG (or the merged entity) undertake to divest, at the latest by 31 December 1993, of the assets related to the distribution and servicing of those printing presses for which the relationship with either MAN-Roland or Heidelberg, will be terminated. The sale of those assets shall include the transfer of the necessary staff and existing servicing contracts, in order to ensure that the purchaser is able to continue distribution and servicing of either MAN-Roland or Heidelberg printing presses in Belgium and the Netherlands from the moment it acquires those assets. Such sale shall not take place to natural or legal persons that would prevent it from achieving its full effect (i. e. continuation in Belgium and the Netherlands of distribution and servicing by third parties of those printing presses in respect of which the relationship is terminated). To that purpose, KNP, BT and VRG (or the merged entity), undertake to enter into good faith negotiations with any third party willing to purchase those assets on commercially reasonable terms.

3. If the Parties are not able to fulfil their undertaking to divest by 31 December 1993, this time limit may be extended by further periods of six months each, to a maximum of two extensions. Each request of extension shall be duly motivated. In particular, the Parties shall inform the Commission of the companies with which they have entered into negotiations, and they shall provide a description of those negotiations together with the reasons for which the negotiations were not successful.

4. During the abovementioned good faith negotiations, and in order to avoid any disruption in the provision of servicing on printing presses already distributed by the parties, nothing in these undertakings shall be construed as preventing the parties from complying with their present servicing obligations towards their customers, in particular any warranty obligations under existing distribution or servicing agreements.

5. Following implementation of the undertakings mentioned in points 1 and 2, neither KNP, BT, VRG, nor the merged entity shall carry out, directly or indirectly, any distribution or servicing activities for those printing presses for which the relationship is terminated in Belgium and the Netherlands. This obligation shall last as long as KNP, BT, VRG or the merged entity distributes and services either MAN-Roland or Heidelberg printing presses in those two countries. In addition, and without prejudice to their obligations under the Merger Regulation in respect of concentrations of Community dimension, KNP, BT, VRG or the merged entity undertake to inform the Commission in writing of any new distribution and/or servicing agreement with any third party, other than the remaining printing press manufacturer (either Man-Roland or Heidelberg), which they would enter into for Belgium nd the Netherlands, for a period of five years from the date of the Commission decision.

6. KNP means :

— the company KNP or any company controlling it directly or indirectly,

— any company controlled directly or indirectly by KNP or by a natural or legal person controlled directly or indirectly by KNP,

— any person acting on behalf of a company referred to in the two indents above.

BT means:

— the company BT or any company controlling it directly or indirectly,

— any company controlled directly or indirectly by BT or by a natural or legal person controlled directly or indirectly by BT,

— any person acting on behalf of a company referred to in the two indents above.

VRG means:

— the company VRG or any company controlling it directly or indirectly,

— any company controlled directly or indirectly by VRG or by a natural or legal person controlled directly or indirectly by VRG,

— any person acting on behalf of a company referred to in the two indents above.

The merged entity means:

— the entity resulting from the proposed concentration or any company controlling it directly or indirectly,

— any company controlled directly or indirectly by the merger entity or by a natural or legal person controlled directly or indirectly by the merged entity,

— any person action on behalf or a company referred to in the two indents above.'

(67) These commitments have to be taken into account in the assessment of the impact of the proposed concentration on the Dutch and Belgian markets for distribution and servicing of printing presses.

(68) The termination by the Parties of the relationship with either Heidelberg or MAN-Roland would mean that the distribution and servicing of the two main makes of printing presses will not be carried out by one single entity in Belgium and the Netherlands. The divestiture of the related assets, under the conditions set out in the commitments of the parties, will ensure that any third party will be in a position to take over the distribution and servicing activities of either BT or VRG without disrupting the existing arrangements. Competition between distributors of MAN-Roland and Heidelberg will therefore continue to be possible in Belgium and the Netherlands and the basic alternative choice customers of BT and VRG in these two countries had in the past will not be affected by the concentration.

(69) Consequently, the effects of the concentration outlined above in Secion A under Assessment, would not arise. The concentration, as modified by the undertakings entered into by the Parties, would not create or reinforce a dominant position as a result of which effective competition would be significantly impeded in a substantial part of the common market within the meaning of Article 2 (3) of the Merger Regulation.

(70) In view of the modification of the proposed concentration, and subject to full compliance with conditions and obligations within the meaning of the second subparagraph of Article 8 (2) of the Merger Regulation, the Commission is able to declare the concentration compatible with the common market.

(71) However it should be noted that if the relationship with either MAN-Roland or Heidelberg is not terminated within the time period set out in the Parties' commitment, or if any of the other obligations accepted by the Parties are breached, then the Commission has the right, pursuant to Article 8 (5), to revoke the present Decision,

HAS ADOPTED THIS DECISION:

Article 1

Subject to full compliance with the conditions and obligations contained in the Parties' commitments *vis-à-vis* the Commission as set out in recital 66 of this Decision, the concentration notified by the Parties on 8 December 1992 is declared compatible with the common market.

Article 2

This Decision is addressed to :

1. Bührmann-Tetterode NV,
   Paalbergweg 2,
   NL-1105 AG Amsterdam,
   The Netherlands.

2. NV Koninklijke KNP,
   Bonairelaan 4,
   NL-1213 VH Hilversum,
   The Netherlands.

3. VRG-Groep NV,
   Hoogooddreef 62,
   NL-1101 BE Amsterdam-Zuidoost,
   The Netherlands.

Done at Brussels, 4 May 1993.

For the Commission
Karel VAN MIERT
Member of the Commission

ANNEX I

(in 1 000 tonnes)

Wastepaper board exluding corrugated	Capacities	
KNP BT		
Combined	[...]	[...] %
Smurfit BPB VPK Videcart Rodano/Ovaro Varel Leinfelder Reno de Medici David Smith Oudin Albert Köhler Mayr-Meinhof		
Total	2 339	100 %

ANNEX II

(in 1 000 tonnes)

Graphic uses	Sales in the European Community			
	1989	1990	1991	
KNP	[...]	[...]	[...]	
BT	[...]	[...]	[...]	
Combined	[...]	[...]	[...]	[...] %
Smurfit				
BPB				
VPK				
Videcart				
Rodano/Ovaro				
Varel				
Leinfelder				
Reno de Medici				
David Smith				
Kohele				
Others				
Total			388	100 %

(in 1 000 tonnes)

Transport Packaging	Sales in the European Community			
	1989	1990	1991	
KNP	[...]	[...]	[...]	
BT	[...]	[...]	[...]	
Combined	[...]	[...]	[...]	[...] %
Smurfit				
BPB				
VPK				
Videcart				
Rodano/Ovaro				
Varel				
Leinfelder				
Reno de Medici				
David Smith				
Kohele				
Others				
Total			1 169	100 %