II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 16 January 1996

relating to a proceeding pursuant to Council Regulation (EEC) No 4064/89 declaring a concentration to be compatible with the common market and the functioning of the EEA Agreement

(Case No IV/M.623 Kimberly-Clark/Scott)

(Text with EEA relevance)

(Only the English text is authentic)

(96/435/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European 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 EEA Agreement and in particular Article 57 (1) thereof,

Having regard to the Commission Decision of 12 September 1995 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],

(1) On 8 August 1995 the Kimberly-Clark Corporation of Dallas, United States of America (KC) notified the Commission of its intention to merge its worldwide activities with the Scott Paper Company of Philadelphia, United States of America (Scott). 'Newco', a newly formed wholly-owned subsidiary of KC, will be merged with Scott, subsequent to which the surviving corporation will be controlled by KC.

(2) On 12 September 1995 the Commission concluded that the notified operation falls within the scope of Regulation (EEC) 4064/89 and decided to initiate proceedings in application of Article 6 (1) (c) of the Merger Regulation.

I. THE PARTIES

(3) KC is mainly engaged in the production and sale of a wide range of paper- and related products for personal, business and industrial use on a worldwide basis. It is a leading supplier of a variety of consumer products, such as disposable baby nappies, adult incontinence, feminine protection ('fempro') and sanitary tissue products. Total KC turnover is about ECU 6 200 million of which [. . .] [3] is generated by tissue and related products.

(4) Scott is active worldwide primarily in the manufacture and sale of tissue products for personal care, environmental cleaning and wiping,

[1] OJ No L 395, 30. 12. 1989, p. 1. Corrigendum: OJ No L 257, 21. 9. 1990, p. 13. Merger Regulation.
[2] OJ No C 213, 23. 7. 1996.

[3] Deleted confidential information.

health care and food service. It too is a leading manufacturer of tissue products on a global basis. The company has integrated pulp and timber operations and has a total turnover of about ECU 3 000 million.

II. THE OPERATION

(5) Both KC and Scott are important American paper groups with substantial operations in Europe. The merged entity will form the world's largest manufacturer of tissue products and will also be the foremost producer of tissue products in Europe. KC and Scott will strengthen their market position by combining strong consumer brands and bringing together their considerable production and marketing resources.

III. CONCENTRATION OF COMMUNITY DIMENSION

(6) Through the merger KC will acquire full control of Scott. The operation thus constitutes a concentration within the meaning of Article 3 of the Merger Regulation.

(7) The combined consolidated worldwide turnover of the undertakings concerned exceeds ECU 5 000 million (KC ECU 6 200 million, Scott ECU 3 000 million). Both KC and Scott have more than ECU 250 million turnover in the Community [. . .] [4]. The parties do not achieve more than two thirds of their aggregate Community-wide turnover within one and the same Member State. The notified operation thus meets all the thresholds of Article 1 (2) of the Merger Regulation and constitutes a concentration of Community dimension. In accordance with Protocol 24 of the EEA Agreement on cooperation in the field of control of concentrations, this notification does not qualify as an EEA cooperation case.

IV. COMPATIBILITY WITH THE COMMON MARKET

A. Relevant product markets

(8) The proposed concentration concerns the following products manufactured by Kimberly-Clark and Scott: tissue parent reels, various tissue paper products, both consumer and away from home (toilet-tissue, kitchen-towels, facial tissues, handkerchiefs, napkins, paper wipes, hand-towels).

(9) Proceedings have been initiated with respect to tissue parent reels, toilet-tissue, facial tissues, and handkerchiefs for consumers as well as tissue paper products for the away-from-home (AFH) market.

(10) In addition to the raw materials used, the production process plays an important role in determining the characteristics and quality of the end tissue product. In their notification the parties have placed considerable emphasis on supply-side-substitution and this subject can only be properly examined in the context of the production process.

(i) *The production process*

(11) Whatever the final end product, there are essentially three elements to the production process:

— Stock preparation: wood-paper or waste-paper is treated so as to make it suitable to be run on the paper machine.

— Paper preparation: at the beginning of this stage, the base stock is composed of around 10 % fibre and 90 % water. It is placed onto a paper machine which, effectively, acts as a de-watering facility, rolling and squeezing out moisture from the stock and forming it into a large sheet. This sheet is then dried and the end product placed on a 'parent reel or roll'.

— Converting: the parent reel is converted into the end product. It will be unwound and, depending on the product and finish required, decorated, embossed and perforated. It is then cut into the relevant width for the appropriate product and packaged.

(12) The quality of the raw material is important in determining the characteristics and quality of the end product, but these can also be influenced during the manufacturing process, both at the primary and to a lesser extent at the converter stage of manufacture, by the application of chemicals as well as the use of other, for example mechanical, techniques.

(13) For instance, 'recreping' is a process used by Scott for its premium Andrex product which involves heavily dosing the base stock with chemicals. Another process, 'Through air dried' (TAD) or 'blow drying' creates softness in the end product by forcing the paper fibres to protrude vertically from the sheet. This is an additional process after that of 'paper preparation'. This process creates an exceptionally soft product and it is used by KC on its branded toilet-tissue products as well as by Scott in producing its new super premium 'Andrex

[4] Deleted confidential information.

Gold' brand. Scott has now decided to rebrand it under Scott's pan-European brand 'Scottonelle'.

(14) All major competitors have pointed to the exceptional quality of end product that can be achieved using TAD technology. Indeed, according to one competitor there is no known process other than TAD that can deliver the same combination of softness, absorbency and lower raw material usage. However, with regard to the latter view, the parties and most other major competitors have nuanced the importance of TAD technology and have expressed the following comments:

— TAD is not a new technology and was developed in the USA about 20 years ago. The technology was introduced in Europe 10 years ago by both Kimberly-Clark and Scott,

— TAD technology is very expensive. It has product quality advantages but also has some disadvantages. On one hand, it requires less basic paper than other technologies, on the other hand, it requires more energy and the paper machine has to be operated at a somewhat slower speed than for conventional technology. Moreover, although the technology is available for purchase in the market, specific process know-how is necessary for successful operation,

— TAD products are more developed in the UK compared to the Continent.

(15) In conclusion, although TAD technology appears to be one of the best for the production of super-soft tissue products and the high absorbency of TAD tissue would appear to give it a certain competitive advantage for the production of super-premium kitchen towel, other processes and technologies can match its quality to a comparable or very close extent.

(ii) *Structure of the supply side*

(a) *General*

(16) The supply side includes the supply of pulp, parent reels and finished tissue paper products. Certain operators are fully integrated, from the ownership of forest for timber to the manufacture of the final paper products for the end user. Others are partially integrated; they buy pulp to manufacture parent reels and final paper products. Finally, a third category includes operators who are only active in the operation of converting parent reels into tissue paper products.

(b) *Integrated multinational operators*

(17) These are large multinational companies which operate on a worldwide basis. They produce pulp and parent reels both for their own consumption as well as for sale to third parties. They manufacture and sell final tissue paper products, primarily through premium brands for their own account, but also to retailers for the private label sector. The notifying parties are integrated multinational operators.

(18) Kimberly-Clark has production plants in three European countries: the UK (four plants), France (two plants) and Germany (one plant). All these plants are dedicated to tissue manufacture and converting. The KC plants at [. . .](5) have TAD technology.

(19) Scott owns and operates several facilities in the EEA that are used for the production of paper and/or for the conversion of its consumer and away-from-home products. Scott's facilities are located in Belgium (one plant), France (one plant), Germany (two plants), Italy (three plants), Netherlands (one plant), Spain (four plants), and the UK (two plants). The Scott plants at [. . .](6) possess TAD technology. In terms of production capacity, KC and Scott will become the leading company in Western Europe after the completion of the proposed merger.

(20) Currently, the largest tissue producer in Western-Europe by production capacity is James River/Jamont. They operate facilities in Great Britain (two plants), Northern Ireland (one plant), France (three plants), Netherlands (one plant), Finland (one plant), Spain (one plant), Italy (two plants), and Greece (one plant).

(21) The next producer is SCA/PWA, which is also widely active in Western Europe with three plants in France, two in each of Germany, Spain and the Netherlands, and one in both Austria and Belgium.

(22) The remaining multinational operator is Procter & Gamble (P & G), who entered European markets by the acquisition, in 1994, of the German company, Schickedanz VPS. It has two plants in Germany and one in Italy. Nevertheless, it would seem that for strategic reasons P & G has decided to enter the European tissue market. In fact, the company has substantial interests in North America where it is a major competitor of KC and Scott and P & G produces the leading brand of toilet paper in the United States called 'Charmin'.

(c) *Independent national producers*

(23) This category of producers is usually vertically integrated, producing parent reels and converting them into final tissue paper products. For example,

(5) Deleted confidential information.
(6) Deleted confidential information.

the Italian family-owned company, Carrara, held sixth position for Western European production capacity in 1994. Carrara is Kimberly-Clark's licensee for [. . .] (7) of Kleenex branded products in Italy. More recently, Carrara has expanded and purchased a production plant in Spain.

(24) A UK example is the Kruger Tissue Group which is the result of a five-year major investment programme by a combination of European venture capital and Kruger Inc., an international forest products company. Kruger has four UK-based sites that are partly vertically integrated (tissue paper manufacture and converting). Kruger has invested in additional production capacity which is expected to come on-stream at the end of this year.

(25) Often, and particularly in Italy, the independent national producers own one or more national brands. However, even if they can offer the same quality level as more well-known premium brands, they tend to be secondary brands and are not as widely advertised.

(d) *Independent converters*

(26) In general, the independent converters are small/medium-sized companies which operate locally or nationally but only at the stage of converting. They buy parent reels on a Western European or wider geographic basis. Typically, they manufacture only for the supply of AFH paper products and for private label consumer products at the lower end of the market. It is rare for them to have their own brand.

(iii) *Parent reels*

(27) According to the information at the Commission's disposal, it appears that the different types of parent reels should be considered as belonging to a single relevant product market. Although there are variations in the characteristics and quality of parent reels according to the combination of pulp inputs and the specific production process employed, neither the parties nor any customer, or parent reel manufacturer has stated that there are separate individual parent reel markets. It would appear that all the major manufacturers can obtain products of broadly comparable quality through different production processes. Moreover, in terms of the finished tissue paper product, producers can partially compensate for quality differences in parent reel characteristics by the use of mechanical and other techniques at the converter stage of manufacture. Consequently, the Commission considers that parent reels should be considered as a single relevant product market.

(28) Nevertheless, as regards the downstream tissue paper product markets, it must be recognized that the major manufacturers who produce their own super-soft tissue paper parent reels have a certain advantage in high quality market segments because super-soft tissue paper parent reels are not widely available in the market, especially when general supply conditions are difficult.

(iv) *Tissue paper products*

(29) 'Tissue products' is the term commonly used to describe various thin, soft, absorbent papers used for wiping and drying. Such products comprise toilet paper, handkerchiefs, facial tissues and kitchen towels, which are mainly purchased by private consumers. There are differences in the characteristics of these tissue products, for example kitchen towels place the accent on absorbency, for handkerchiefs and facial tissues softness is important and for toilet paper, strength and softness are both required. Similarly, there are price differences. Kitchen towels are the least expensive while facial tissues are the most expensive. However, the most important factor in relation to relevant product market definition is that consumers buy each specific tissue paper product on a regular basis for its normal purpose, although it cannot be denied that there is some fringe substitution in situations of need.

(30) The main customers for towels, hand wipes and industrial wipes made from tissue paper are industrial and institutional purchasers who buy these tissue products in large quantities, as well as toilet-tissue, for use in factories, offices, workshops and hospitals; they constitute the away from home sector (AFH).

(31) Consumer products are sold through the retail distribution sector, for example hypermarkets, supermarkets, discount stores, the corner shop, and are used mainly in the house. Basically, they are sold either under the brand name of the manufacturer, typically the premium part of the market, or under private or store labels, determined by major retail distributors, for example Sainsbury or Tesco in the UK.

(32) AFH products are mainly sold through specialized distributors. According to the notifying parties and most third parties consulted, a significant and growing share of these products is sold under the customer's label. Examples include national and regional distributors which sell under their own label, and sales to specialist suppliers selling an assortment of products under their own name.

(7) Deleted confidential information.

(33) For the above reasons, i.e. differences in customer, distribution methods, product quality, importance of branded products (as well as price — see below) the Commission considers that consumer products and AFH products constitute distinct markets.

(v) *Consumer tissue paper products*

Supply-side substitutability

(34) According to the notifying parties, considerable supply-side substitutability exists. From a purely technical point of view, it would seem to be the case that tissue manufacturers can, at the level of the production of the parent reel (primary production), switch production on the same machine from one type of paper tissue product to another by altering the mixture of the fibre input. However, while supply-side substitutability also exists at the level of the converter process, it is more limited.

(i) Production of parent reels (primary production)

(35) Fully integrated producers have the advantage of a stable source of pulp which constitutes about 50 to 60 % of the cost of the final tissue product. Parent reel producers are dependent of the availability of pulp and its price level, but this does not appear to be a major competitive handicap. Independent converters are more vulnerable, because they are dependent both on the availability of parent reels and the quality of the underlying tissue paper.

(36) As regards the production of super-soft tissue paper quality, the parties have stated that it is possible to upgrade (retrofit) a traditional CWP machine into a TAD process. While the Commission's enquiries have confirmed that TAD retrofitting is possible from a purely technical point of view, the views of the parties with regard to the practical feasibility of doing so differ with those of competitors.

(37) According to competitors the cost of a TAD retrofit is relatively high (e.g. around US$ 25 million or one third of the cost of a new machine). Moreover, TAD retrofitting may only be feasible on new greenfield sites where no space considerations apply, since it can require the extension of the existing production line by as much as 30 metres. Consequently, in the opinion of some competitors, the option to TAD retrofit is more theoretical than real, since the project is technically feasible but not commercially viable. In fact, prior to the hearing, the Commission was not aware of any case where existing production capacity had been upgraded through a TAD retrofit.

(38) In their response to the statement issued pursuant to Article 18 of the Merger Regulation (the Statement of Objections), the parties disagreed with the costs, time and feasibility of retrofitting a conventional base machine into a TAD machine. They stated that approximately 10 years ago, Scott retrofitted one of its conventional machines at the [. . .][8] facility to include TAD capabilities. The retrofit was completed in the existing facility, within about 10 months, at a cost of about US$ 5 to 7 million. However, the machine was eventually changed back to conventional drying technology because its output could not be profitably sold, given the TAD technology's higher production costs and the undeveloped market for this higher cost 'super-soft' product. The parties also stressed that P & G was by far the largest producer of TAD tissue products in the world with approximately twice the total worldwide KC/Scott capacity, a key advantage of the P & G TAD technology was ease of retrofit and that P & G had retrofitted at least five conventional machines in North America.

(39) However, the Commission notes that almost all of the examples provided by the parties on TAD retrofitting related merely to the identification of conventional machines suitable for a TAD retrofit as well as studies and estimates of the capital costs (between US$ 12 and 20 million) for such retrofits. Moreover, the Commission observes that all of the recent new plants commissioned by the parties in Europe have been purpose-built TAD machines.

(40) As such, the submissions made by various parties to the Commission on TAD retrofitting differ. Based on all the information at its disposal, the Commission draws the following conclusions. It is technically possible to retrofit a traditional CWP machine into a TAD process, but in practice it is very rare as opposed to the construction of purpose-built TAD plants. As such, the commercial feasibility of TAD retrofitting must be considered doubtful in normal circumstances.

(41) According to competitors, high capacity-utilization rates, as indicated below, are necessary for profitability in the process of paper production. One consequence of this, combined with the relatively large capacity for new plant investment, is that a new market entrant would be required to sell a considerable volume of output.

[8] Deleted confidential information.

Table 1

Minimum capacity utilization needed for profitability

A	B	C	D	E	F	G	H	Average
80—85	80—95	90—95	95	85—90	90	90	92—94	90

Source: Competitors' answers to the Commission's request for information.

ii) Converter process

(42) As recognized by the notifying parties, at the level of the converter process, it is not possible to switch between rolled products (toilet paper, kitchen-towels) and folded products (facial tissues, handkerchiefs, napkins, or hand-towels). Moreover, folded-product converting machines are product-line specific and generally do not have the ability to switch between say facial tissues and handkerchiefs.

(43) Nevertheless, switching incurs significant costs and can entail the loss of considerable output, the size of which depends on the frequency of switching. For example, in the UK toilet-tissue paper market, approximately seven different colours are regularly sold for decorative reasons. If the same machine were used to supply toilet paper for this market, considerable switching losses would arise.

(44) In the light of its investigations, the Commission concludes that switching necessitates relatively high costs, particularly for the independent converters who, in general, appear to have traditional and old machines. Consequently, they have to utilize their facilities at a high rate and cannot afford commercially to switch.

Demand-side substitutability

(45) The notifying parties have stated that, from the demand-side point of view, it is possible to use some types of tissue products for the same purpose, in particular, handkerchiefs and facial tissues. In fact, the primary difference between facial tissues and handkerchiefs would seem to be that the former is packaged in boxes while the latter is cellophane-wrapped in smaller, pocket-size quantities. However, for the other tissue products the Commission considers that such substitution is limited. It would appear that in normal circumstances, consumers tend to use the specially developed tissue products each for their specific purpose on a regular basis. Any such substitution is therefore fringe and insufficient to justify a broader relevant product market basis.

(46) More particularly, as regards handkerchiefs and facial tissues, most producers (8 out of 12) and retailers (15 out of 25 on a Europe-wide basis, and all retailers in the UK) responding to the Commission questionnaire indicated that both products constitute one single market. The essential differences would appear to be primarily one of packaging as described above. While both products have the same main end use (blowing the nose), the difference in packaging-size could lead to differences in the place of utilization (facial tissues for use at home, handkerchiefs kept in the pocket or handbag for outside use).

(47) Having regard to the analysis above, the Commission considers that handkerchiefs and facial tissues constitute together a single relevant product market and that toilet-tissue and kitchen towels represent separate relevant product markets.

Private-label/branded products

(48) Branded products play an important role in the market. Although they are nearly always more expensive than comparable private label products, they lead the overall market in terms of quality and particularly product innovation. The share of branded tissue products in the total EEA market for consumer products is about 50%, although this percentage varies by product market and by Member State. Nearly all market participants consider that private label products and branded products belong to the same market. On the basis of its own analysis, which, *inter alia*, shows that in retail stores private label products are priced relative to leading branded products and that some consumers, at least, are willing to switch between branded and private label products in response to promotional campaigns (as noted in paragraphs 136, 175, 176 and 200), the Commission shares this opinion.

Table 2

Percentage of private label sales (value) for each product (1994)

	United Kingdom	Ireland	France	Germany	Italy	Netherlands	Spain
Toilet-tissue	44,9	38	38,6	23,3	17,1	34,8	20,8
Kitchen towels	61,3	41,8	41,5	27,6	18,6	46,5	21,3
Facial tissues	51,6	[40—50]	[40—50]	[20—30]	[0—10]	[50—60]	[30—40]
Handkerchiefs	10,5	[0—10]	[30—40]	[10—20]	[10—20]	30,7	[20—30] (1)

(1) Business secrets replaced by ranges.
Source: Nielsen and parties' estimates.

(49) One feature of the above table is that, leaving aside handkerchiefs which is a niche market in the UK, the percentage of tissue goods sold as private label products in the UK is higher, and often much higher, than in countries of Continental Europe. The only exception to this observation is the case of facial tissues in the Netherlands where private label represents [50—60 %] (9) which is only slightly above the corresponding UK figure of 51,6 %.

(50) In their response to the Statement of Objections, the parties have argued that the 'UK and Ireland have the most well-developed, highest quality and aggressively marketed store brand segments in all of Europe. Similarly, UK and Irish retailers are unquestionably the most sophisticated and competitive retail grocery chains in Europe. Sainsbury supports an extensive research and development department to develop innovative, quality products'.

(51) While the Commission would agree with the parties that the relatively high share of private label products in the UK and Ireland as compared to Continental Europe would support this statement, the Commission, for the reasons which are described below, would not go so far as to say that store brands and retailer power have developed to such a level in the UK and Ireland as to remove the need for effective brand competition.

(52) Across Europe, the market share of private label products has increased and is generally increasing, although the extent and significance of this increase is variable. In the UK, for example, private label products have slowly increased their share in toilet-tissue and facial tissues but have lost share in kitchen towels (see Table 1 in the Annex). In the UK tissue market, the prices for up-market private label products are similar to those of their branded equivalents (e.g. for toilet-tissue 5 to 6 % less), while the general trend in Continental Europe for consumer goods would appear to be that private label products have considerably lower prices and quality than branded goods.

CONCLUSION

(53) For the above reasons, the relevant consumer tissue paper product markets are the following:

— toilet paper,

— kitchen paper, and

— handkerchiefs/facial tissues as a single market,

in each case taking together branded and private label sales.

This relevant product market definition was not contested by the parties, nor by any of the other competitors and retailers present at the hearing.

(vi) *Away-from-home tissue products*

Supply-side substitutability

(54) The Commission recognizes that having regard to quality and colour differences, supply-side substitutability for AFH products may, in relative terms, be less difficult than for consumer tissue products.

Demand-side substitutability

(55) Similar to the position for consumers products, having regard to the different use for the different

(9) Business secrets replaced by ranges.

types of AFH products in normal circumstances, the Commission considers that, from a demand-side point of view, AFH toilet paper, AFH paper hand-towels and AFH paper wipes constitute separate relevant product markets.

Inter-material competition

(56) The notifying parties argue that AFH paper hand-towels and AFH paper wipes are substitutable with other products for hand-drying and wiping, for example with electric hand-drying systems and with textile cloths, mixed rags and non-woven synthetic wipes. However, the parties also recognize that AFH tissue and non-tissue products that are used for the same end uses are not perfectly homogeneous and often have different nominal prices.

(57) However, because the proposed operation does not lead to the creation or the strengthening of a dominant position on the narrowest basis, i.e. separate AFH toilet paper, AFH paper hand-towels and AFH paper-wipe markets, it is not necessary to determine whether the relevant product market includes other products than paper.

(58) The market shares of the parties and leading competitors are shown in Table 3.

Table 3

AFH market shares in the UK and Ireland

	KC	Scott	Total	Jamont	SCA	Others
Toilet-tissue	[20—30]	[20—30]	[50—60]	[20—30]	[0—10]	[20—30]
Hand-towels	[20—30]	[10—20]	[30—40]	[30—40]	[10—20]	[10—20]
Paper wipes	[30—40]	[10—20]	[50—60]	[10—20]	[20—30]	[0—10] (1)

(1) Business secrets replaced by ranges.
Source: Parties.

(59) Although the parties will become the leading supplier of AFH products, in each of the above segments they are faced by strong competitors. Brands are of little significance and product quality is less important. Similarly, advertising plays no role and securing adequate distribution appears not to be a problem. It is also probable that inter-material competition is a constraining factor for tissue paper towels and wipes. Competition problems were not revealed by the Commission's enquiries. Therefore, for all these reasons, the Commission considers that no significant competition issues arise in the AFH market and that it is not necessary to analyse, within the scope of the present decision, the AFH market in great detail. However, in terms of assessing the consumer tissue paper market, there is an important distinction between consumer and AFH tissue products for the purposes of price comparison with Continental Europe. This difference is referred to below.

(60) Consequently, the Commission considers that the focus of the present decision is consumer tissue products in the UK and Ireland.

B. Geographical reference market

(i) *General*

(61) The notifying parties have provided substantial data (European Tissue Symposium 1993) demonstrating that there is considerable inter-Member-State trade for tissue products within the European Union. The parties have advanced this data as justification for a Western European geographical reference market. At the Western European level, imports represent about 3 to 4 % of consumption and exports approximately 2 % of production. The Commission agrees with the parties that this data does not support the adoption of a geographical reference market wider than Western Europe.

(62) However, the above analysis is at an aggregated level combining both parent reels and finished tissue paper products. If this distinction is made, there is an important difference between the position for parent reels and the various finished tissue paper products.

(63) Finished tissue products are bulky and of low value. As such they are expensive to transport. By

way of example, according to a competitor, the cost of transporting toilet paper from Northern Germany to the UK would exceed 15 % of the sales value and for kitchen towels this would be greater than 25 %. Consequently, it is not commercially viable to transport finished products over long distances. Broadly and simply speaking, the area within which a producer can operate competitively can be represented by a circle centred on a production plant whose length of radius is determined by the cost of transporting the finished product. The following table reflects the views of the main European tissue product manufacturers on the length of the said radius:

Table 4

Average maximum distance for viable transportation

(km)

Product	Average radius
Toilet-tissue	690
Kitchen towels	540
Facial tissues	765
Handkerchiefs	865
AFH toilet-tissue	690
AFH paper hand-towels	690
AFH paper wipes	740

Source: Answers to the Commission's enquiry.

(64) On the other hand, the transportation costs of parent reels is much lower. Using the same example as above, costs could be in the order of 5 % of the sales value and in practice parent reels are transported over much greater distances than finished products. By way of example, the basic structure for the country of origin of parent reel imports into the UK is shown in Table 5.

Table 5

Country of origin for UK parent reel imports

Country of origin	Parent reel	
	Imports in tonnes	Expressed as a precentage of total
Nordic countries	33 179	29,0 %
Western Europe	44 242	38,7 %
Eastern Europe	587	0,5 %
Other (mainly South America)	36 236	31,7 %
Total	114 242	100,0 %

Source: ETS 1994.

(65) As such, there are substantial flows of parent reels into the UK from Continental Europe and the Nordic countries and over 30 % of UK imports come from even more distant geographic locations, for example South America, the USA and South Africa. UK parent-reel imports cover between 15 and 20 % of UK tissue paper demand. The geographical reference market for parent reels is therefore, at least, Europe-wide. Consequently, given that after the merger the parties will own less than 20 % of primary tissue production in Western Europe (see Table 3 in the Annex), it is clear that the parties will not acquire a dominant position for the production of tissue paper parent reels.

(66) On the other hand, trade flows for finished tissue paper products are much lower and fall sharply as distance increases. Toilet-tissue flows offer a good example of this trend with trade flows strongest between neighbouring countries, for example UK/Ireland, Spain/Portugal, Italy/Germany. This is demonstrated in Table 6.

Table 6

1994 Transnational flow of tissue products — exports/imports of toilet-tissue (tonnes)

	United Kingdom exports to	Ireland exports to	Italy exports to	Netherlands exports to	Spain exports to	Total (imports)
United Kingdom	—	581	1 522	1 980	0	15 751
Ireland	14 766	—	134	79	0	15 154
Italy	318	0	—	422	81	2 905
Netherlands	1 417	0	4 316	—	15	38 367
Spain	177	0	9 972	453	—	15 577
Others	4 420 (France)	8 (n.a.)	75 792 (Germany)	9 755 (Germany)	10 764 (Portugal)	—
Total	24 622	589	127 624	31 170	13 017	—

Source: Parties ETS.

Similar trends can be observed in the flow of other tissue paper products, such as those of facial tissues and handkerchiefs.

(67) Some conclusions can be drawn from the above table: Irish imports and exports are almost entirely with the UK, while the most important destination of UK exports is Ireland. Italy has a very high volume of exports, but it is a one-way flux as imports are insignificant. This strong flow of exports points to the competitiveness of the tissue paper industry in Italy in relation to neighbouring countries.

(68) The parties recognize the cost constraints on the transport of tissue products described above but argue that these circles of competitive production and transportation interact with one another so that under a 'ripple effect' a relatively homogeneous overall west European geographical reference market is produced. Even so, for the reasons set out below, Great Britain and Ireland must be considered as separate from Continental Europe. In its Article 6 (1) (c) decision, the Commission also identified potential competition problems in Italy. However, in the light of the analysis presented below, the geographical reference for Italy can be left open, since even on the narrowest basis, i.e. a national market, the proposed operation does not give rise to competition concerns.

(ii) *UK and Ireland: Preliminary observation*

(69) In its assessment to determine the proper delimitation of the geographical reference market for the UK and Ireland, the Commission has been confronted with the following difficulty. While it follows from the paragraphs below that both the islands of Great Britain and Ireland are separate from Continental Europe as regards geographical reference market delimitation, the question of whether the island of Great Britain and the island of Ireland represent a single geographical reference market or two separate ones is more finely balanced.

(70) In addressing this issue, the difficulty of the Commission's task has been compounded by statistical difficulties. Some data covers Great Britain (e.g. Nielsen market share data) while other data (e.g. import/export data) relates to the Republic of Ireland and the United Kingdom, ie Great Britain plus Northern Ireland. As such it is difficult to obtain accurate statistical information for Northern Ireland alone and the island of Ireland as a whole. Moreover, given the very much larger size of the Great Britain to the Irish market, there is very little difference between the position for the island of Great Britain alone and that for the UK and Ireland together.

(71) However, the Commission considers for the following reasons hereunder that the islands of Ireland and Great Britain constitute one single geographical market. For ease of presentation the present decision separately analyses data in relation to the islands of Great Britain and Ireland.

(iii) *Great Britain* [10]

Prices

(72) Price appears to be a particularly important difference between Great Britain and Continental Europe. Based on data submitted by the parties the Commission has calculated that the price of consumer toilet-tissue (calculated at the wholesale level on the basis of net revenue per tonne) in the UK is [more than 40 %] [11] higher than in Germany, Italy and Spain. For handkerchiefs the price gap is [more than 100 %] [12]. These contrasts seem very high, even having regard to the considerable transport costs for finished tissue products. A comparison of prices using the data submitted by the parties is contained in the following table.

[10] The Great Britain population corresponds to about 97 % of that of the UK. The Commission has been unable to obtain full and consistent data for Great Britain only, although it understands that Nielsen data is prepared on a Great Britain basis. The difference between the position for the island of Britain compared to the full UK figures is not considered significant so that UK and Great Britain data has been used interchangeably in the text to reflect the Great Britain position.

[11] Deleted confidential information, replaced by 'more than'.

[12] Deleted confidential information, replaced by 'more than'.

Table 7

Price comparison based on average UK and European wholesale prices

Products	United Kingdom	Belgium	Netherlands	Germany	Italy	Spain	France
Toilet-issue	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Kitchen towels	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Handkerchiefs	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Facial tissue	[...]	[...]	[...]	[...]	[...]	[...]	[...]
AFH toilet tissue	[...]	[...]	[...]	[...]	[...]	[...]	[...]
AFH hand-towels	[...]	[...]	[...]	[...]	[...]	[...]	[...]
AFH paper wipe	[...]	[...]	[...]	[...]	[...]	[...]	[...](1)

(1) Deleted, business secret.
Source: Parties' price comparison based on net revenues per ton. (in USD).

(73) At first sight, these price differences seem remarkable in that,

(i) production costs are normally lower in the UK,

(ii) grocery prices are generally lower in the UK than in Continental Europe,

(iii) allowance should be made for the departure of the pound sterling from the EMS three years ago which would tend to depress UK prices.

(74) A particularly interesting point in the context of this comparison is that, again using the parties' submitted data, UK prices for consumer tissue products excluding facial tissues are much higher, whereas for the AFH market, UK prices are much lower than those applying in Continental Europe. Having regard to the points expressed in the preceding paragraph, the price relationship for AFH products is the expected one. The implication is that UK consumer tissue products are priced exceptionally high and provides further strong evidence of a separate UK/Great Britain market for consumer tissue products. Conversely, the low price level for AFH products is an indicator of a more open AFH market.

(75) The notifying parties stated that these price differences could be explained by the difference in weight and quality of the finished product. However, the above price comparison is based on the price per tonne of the finished product and would therefore presumably take account of weight variation caused by packaging differences. Moreover, during the course of its investigations the Commission has found evidence that this price difference in the parties data at the wholesale level matches retail trade price differences as measured by Nielsen.

Table 8

Price comparison based on average UK and European retail prices

Branded products	Average UK price	Average EC price	Index comparison
Toilet-tissue	0,575	0,358	160,6
Kitchen towels	0,747	0,601	124,9
Handkerchiefs	0,241	0,114	211,4

Source: Nielsen.

(76) Immediately prior to the hearing and especially during the course of the hearing, the parties presented more comprehensive and extensive price data demonstrating that the real price differences between Great Britain and Continental Europe were much smaller [. . .][13] and that was due to a variety of factors which were not adequately reflected in the crude data above.

(77) In particular, price comparisons based on net revenue per tonne did not properly take into account differences in quality and pulp usage as well as cost variation caused by the manufacturing process. Similarly, comparisons based on price per roll, which underlie the Nielsen price comparison data, were deficient in that they did not have regard to variations in sheet size, sheet count and especially quality. Moreover, the Great Britain market is a high quality market where consumers have a clear preference for premium quality toilet tissue as compared to Continental Europe (see Table 9).

[13] Deleted, business secret.

Table 9

Analysis of toilet-tissue quality preferences

Quality	United Kingdom	Germany	France	Netherlands
Premium	61,2 %	33,3 %	17,3 %	15,1 %
Standard	9,0 %	—	25,6 %	20,2 %
Economy	29,8 %	66,7 %	57,1 %	64,7 %
Total	100,0 %	100,0 %	100,0 %	100,0 %

Source: Presentation of the parties at the hearing.

(78) Given on the one hand, the considerably higher price of premium toilet-tissue as evidenced by the price range of 1 to 5 in Great Britain and, on the other hand, the much greater weight of the premium sector in Great Britain, a simple price comparison on a net revenue per tonne basis will tend to present a misleadingly inflated Great Britain price.

(79) The Commission has always recognized that the Great Britain and Irish markets for toilet-tissue are more sophisticated with a much greater preference for high quality product. Consequently, it accepts that real price differences are much smaller than indicated by the original data available to the Commission. However, it has not proved possible to take a definitive view on the magnitude of this difference, nor would it appear necessary to do so. An additional indicator for the separate nature of the Great Britain and Irish toilet-tissue markets as compared to Continental Europe is the existence of different customer preferences.

(80) Nevertheless, the Commission still has some reservations. It acknowledges that a simple price comparison of toilet-tissue across Member States is complex. While the more comprehensive data submitted would seem to resolve some cross-border price comparisons, the anomaly with regard to AFH and consumer tissue prices is still not satisfactorily resolved. Also, the Commission notes that a comparison of Scott's UK and European business reveals that Scott's UK profits are a much higher proportion of European profits than the corresponding proportion for turnover, although other important factors could distort this crude comparison. In conclusion, the Commission considers that Great Britain and Irish prices are still marginally higher than in Continental Europe.

Consumers' behavioural patterns

(81) Consumers' behavioural patterns, in terms of the purchase of handkerchiefs as opposed to facial tissues, differ by country and in particular between the UK/Ireland as compared to Continental Europe. For instance, in Continental Europe the consumption of handkerchiefs is very high, while in Ireland and particularly in the UK it is very low. On the other hand, for facial tissues this position is reversed with the sale of facial tissues very high in the UK and Ireland, but relatively low on the Continent. In fact this comparison is an indicator that the UK and Ireland are in a separate geographical reference market as compared to Continental Europe.

Table 10

Consumption of paper handkerchiefs/facial tissues

(in %)

Country	Paper handkerchiefs' share of paper handkerchiefs/facial tissues sales	Facial tissues' share of paper handkerchiefs/facial tissues sales
Belgium	61	39
France	60	40
Germany	87	13
Italy	92	8
Spain	85	15
Ireland	20 (based on volume)	80 (based on volume)
United Kingdom	5	95
West European average	65	35

(82) Handkerchiefs are a niche market in the UK and Ireland, but are the main purchase elsewhere in Europe. Moreover, all UK retailers, who answered the Commission's questionnaire appear to consider that handkerchies and facial tissues belong to the same product market.

Transport costs

(83) Its geographic location combined with the substantial cost for the transport of finished goods, is a further indicator of the separation of the UK from Continental Europe. At a late stage of the proceedings the parties have provided data indicating lower transport costs (of the order of [0—10 %] ([14]) from France to the UK). Nevertheless, price differences still appear to remain significant,, for example the price difference between the UK and Germany for toilet-tissue would more than compensate the additional transport expenses, so that exporting from Germany to UK would appear very profitable. It could be argued that this price difference is explained by superior product quality in the UK compared to Germany. Nevertheless, even in the case of France the price difference is such that there would appear to be sufficient scope for profitable export from France to the UK.

Brands

(84) There are also important brand differences between the UK/Ireland and Continental Europe (as well as within the latter). In the UK the predominant brand of toilet paper is Andrex (sold by Scott). Similarly, Kimberly-Clark only uses the Kleenex Double Velvet brand for toilet paper in the UK and Ireland. These brands are not used to any significant extent in Continental Europe, if at all. Similarly, the number three player in the UK market for branded toilet paper, Jamont, uses the Dixcel brand almost exclusively in the UK. Table 2 in the Annex lists the most important brands by Member State and producer.

Demand side

Consumer products

(85) In particular, the UK retail trade is very concentrated and differs from the retail trade in Germany and France by the fact that it places a greater emphasis on product quality. As such the UK retail trade has developed high quality, private label tissue paper products. This is not the case in other European countries where private label focuses primarily on the lower end of market quality. The UK retail trade has developed these products in cooperation with the major producers such as Kimberly-Clark, Scott and Jamont. With respect to toilet paper, through their own label, UK retailers offer the consumer the super-soft quality.

(86) Both for branded products and private label the UK retailers buy on a national basis and with the exception of niche products do not seek to purchase from suppliers in Continental Europe.

Market entry barriers

(87) There exist substantial market entry barriers (such as existing consumer brand loyalty, the need for substantial advertising expenditure and listing difficulties all of which are analysed below which serve to isolate the British market geographically.

(iv) *The island of Ireland*

(88) The island of Ireland requires special mention as, although the situation is very similar to that on the island of Great Britain, there are some important differences.

(89) The Republic of Ireland has no domestic primary production of tissue. Consequently there are practically no exports from Ireland and all requirements must be imported. Based on the ETS data, 73,4 % of Irish imports come from the UK and 20,5 % from Finland.

([14]) Business secret, replaced by ranges.

(90) Jamont is the only producer with a tissue paper plant in Northern Ireland. A significant share of Irish imports from the UK originate from the Jamont plant in Northern Ireland, especially for private label products. This view is also supported by the fact that in Ireland, unlike the situation in the UK, Jamont has a branded market position comparable to that of KC/Scott. In the UK, KC/Scott are by far the leading producers, whereas in Ireland this position is shared with Jamont. For comparison purposes market share data is given in Table 7.C in the Annex.

(91) The fact that Jamont's plant is located in Northern Ireland would accord with the Commission's understanding that the market share positions in Northern Ireland and the Republic of Ireland are comparable.

(92) Another variation between Ireland and Great Britain is the difference in the identity of retailers on the demand side. (Indeed, this is a characteristic common to Member States throughout the European Union.) In Great Britain, Sainsbury, Tesco and Argyll are the top three retailers (with a combined 43 % market share among retailers) whereas in Ireland, Dunnes Stores, Quinnsworth/Crazy Prices and Musgrave are the leading retailers (with a market share of about 65 %).

(93) On the other hand, the level of consumer tissue products prices in Ireland is akin to that obtaining in Great Britain. In fact, Irish tissue prices for handkerchiefs are very slightly higher, for toilet-tissue and kitchen-towels very slightly lower than in Britain. More importantly, taken across the board the position in Ireland is more comparable to that in Britain than that in Continental Europe.

(94) Another shared characteristic between Ireland and Great Britain is that both Scott and Kimberly Clark sell the Andrex and Kleenex Double Velvet brands in Ireland. However, Jamont uses the Kittensoft brand in Ireland compared primarily to Dixcel in Great Britain.

(95) However, there are signs that the market on the island of Ireland is becoming increasingly integrated with that on the larger island of Great Britain. First, it would appear that the major market players consider Great Britain and Ireland as a single territorial area for product marketing purposes. Secondly, there are close linguistic affinities between the two regions. Thirdly, there would appear to be considerable media overspill between the two, with viewers throughout the island of Ireland being able to see the same television advertising for branded tissue products as in Great Britain. Television viewers in both Northern Ireland and Ireland can see television advertising promoting the sale of Scott and Kleenex tissue products on Channel 4 and UTV. Given that the competition concern in this case arises primarily through the strength of the branded products available to the merging parties, the aspect of media overspill would seem of particular relevance. Fourthly and lastly, this growing integration is also being reflected in market developments. On the one hand, the Commission understands that Jamont is making use of the Kittensoft brand in Britain and on the other, the last few years has seen substantial growth in the combined branded product market share of Kimberly-Clark and Scott, as indicated in Table 1.

Table 11

Development of combined market share of Kimberly-Clark/Scott in Ireland

	1992	1993	1994
Toilet-tissue	[10—20]	[10—20]	[20—30]
Kitchen-towels	[10—20]	[10—20]	[20—30]
Facial tissues	[30—40]	[30—40]	[30—40] (1)

(1) Business secret, replaced by ranges.

(96) Consequently, as demonstrated above there are no significant barriers to entry into the island of Ireland for British competitors (e.g. KC, Scott, AM Paper) and that they fully compete in that country by sourcing from their plants in the UK (15). Therefore, in the competitive assessment of the proposed merger, the Commission will treat the islands of Britain and Ireland as a single geographical reference market.

(v) *Italy*

(97) Structurally, the Italian paper tissue market is characterized by a very low degree of concentration, both on the production and

(15) The 20,5 % imports from Finland which are quoted at paragraph 89 concerned only imports of parent reels.

distribution side. On the production side, besides the multinational integrated producers, such as Scott, Kimberly-Clark (through its licence with Carrara), Procter & Gamble, James River/Jamont, PWA-SCA, there is a multitude of small or medium-sized operators active in the market. Most of them are producers of basic tissue paper (around 30 producers) and they also have their own brand that they sell at local or regional level. On the distribution side, the retail trade is still not very concentrated. The three largest retailers cover only 11 % of the market.

(98) The structure of the Italian retail sector probably explains why the market share of private label products is so low in Italy in comparison with other European countries (see Table 3). Moreover, the existence of a large number of small and medium-sized, national/independent converters or integrated producers, results in secondary brand proliferation with low market shares.

(99) Italian production capacity is substantially higher than domestic demand. Italy is therefore by far the largest exporter of finished tissue paper products in Europe, mainly to Germany and France.

(100) The basic market position of the merging parties in Italy is set out in Table 11 in the Annex. Although Scott has a market share of 35 % for toilet paper and kitchen towels (and substantially less for handkerchiefs and facial tissues), it appears that Scott has suffered substantial systematic market share losses in the past. Against this background, competitors have pointed out that the potential market share addition achievable through the combination of KC's sales through its Italian licensees, Carrara and Progress, are not significant. At the same time there remain significant manufacturers of branded products such as Procter & Gamble, Jamont and Sofass as well as competitive regional producers, for example Tronchetti and Lazzareschi.

(101) Moreover, producers and retailers have stated that the Italian consumer has little brand loyalty; the consumer attaches importance first to price and provided product quality is adequate, the consumer will purchase at the lowest price. Based on the Commission's enquiries small and medium-sized operators are able to provide comparable quality paper products at lower prices than major producers. These results have been corroborated by the separate analysis of the *Autorita Garante della Concorrenza e del Mercato*.

(102) The Commission's own investigations, as well as the analysis of the *Autorita Garante della Concorrenza e del Mercato*, therefore indicate that the Italian market is competitive and that conditions of effective competition will remain after the merger.

(103) It can therefore be left open whether Italy should be assessed as a separate geographical reference market, since even were this to be the case, the Commission considers that the operation does not create or strengthen a dominant position significantly impeding effective competition in Italy.

(vi) *General conclusion on geographical reference market*

(104) In conclusion, the Commission considers that United Kingdom and Ireland together constitutes a single, separate geographical reference market for consumer tissue paper products. With regard to the rest of the Community, since the proposed operation does not create or strengthen a dominant position, it is not necessary to decide the exact geographical dimension of the market.

C. Competitive assessment

(i) *General overview*

Brand combination

(105) With the possible exception of Finland, the notifying parties will be present in all Member States and Norway. The parties will be able to combine strong brand names such as Kleenex, Scottex (Andrex-UK) and Scottonelle/Cotonelle. In fact, their brand strength is such that in some Member States the brand name is eponymous for the particular tissue paper product. They will be the only producers with full pan-European brands.

Production capacity

(106) The merged entity KC/Scott will be the largest manufacturer of tissue products in the world as well as in Europe. It will have a production capacity of 3 700 kt worldwide, of which [. . .](16) kt in Western Europe ([. . .](17) kt in the UK, [. . .](18) kt on the Continent). This is [. . .](19) the capacity of the next following competitor Jamont/James River (1 600 kt worldwide, 130 kt in the UK).

(16) Deleted confidential information.
(17) Deleted confidential information.
(18) Deleted confidential information.
(19) Deleted confidential information.

(107) A general indication of the strength of the parties is given in Table 3 in the Annex which shows the distribution of production capacity in Western Europe broken down by company. This shows that KC/Scott represent [10—20 %] [20] of Western European capacity followed by Jamont with [10—20 %] [21] and SCA/PWA/Mölnlycke with [10—20 %] [22]. The following competitors all have much lower capacity and in no case more than 4 %.

Regional variation

(108) Although the parties would become the strongest European player and are present throughout the European Union, there are regional variations. KC/Scott would be particularly strong in the UK and Ireland and to a lesser extent in Italy and Spain. On the other hand Jamont is the market leader in France and also a major player in Spain and Ireland, while SCA's strength lies in the German-speaking countries (Germany, Austria, Switzerland) and Scandinavia.

(ii) *Assessment for UK and Ireland*

A. GENERAL MARKET OVERVIEW AND CONSIDERATIONS

Importance of toilet-tissue market

(109) The size of the UK consumer tissue markets, i.e. toilet paper, kitchen towels, handkerchiefs and facial tissues as well as the importance of the private label sector is indicated in Table 4 of the Annex. Toilet-tissue accounts for over 70 % of the total tissue market. Given this economic importance, the following analysis will focus primarily on the impact of the proposed concentration on the toilet-tissue market. Although kitchen towels and facial tissues both only represent about 15 % and 13 % respectively of the overall market, they still remain relatively large markets with market sizes of around 200 million. The handkerchiefs segment is very much smaller, less than 1 % of the overall market and with a total value below ECU 10 million.

(110) The corresponding figures for consumer tissue markets in Ireland are indicated in Table 4 of the Annex. As can be seen the structure is very similar except that the size of the market is very much smaller.

Importance of private-label products

(111) Overall private label tissue products amount to about 50 % of the market. For kitchen towels, private label covers over 60 % of the market. This is higher than for facial tissues (52 %) and toilet paper (45 %) and is perhaps indicative of the fact that kitchen towels are not as personal product as a toilet-tissue and facial tissues. However, marketing considerations would also seem to play an important role. Advertising expenditure on kitchen towels has been relatively limited. Table 5 in the Annex shows that advertising expenditure on kitchen towels is only 13 % of that on toilet tissue.

(112) In this connection it is interesting to note that the percentage of the overall market represented by private label is lower for toilet paper (45 %) than for facial tissues (52 %). Intuitively and *a priori* this would seem to run counter to considerations of the personal nature of the product purchased. However, this may be explained by the much greater volume of advertising expenditure on toilet-tissue than on facial tissues. For instance, UK advertising expenditure on toilet-tissue is about five times that of facial tissues. Consequently, this could be considered as indirect evidence that heavy advertising can reduce the market penetration of private label products and therefore help explain why branded products are a higher percentage of the total market for toilet paper than for facial tissues.

Future private-label growth

(113) Private-label supply has grown in the past, perhaps particularly so in the last few years because of the difficult economic climate in the UK and Ireland. However, it would seem mistaken to assume that private-label growth will continue to grow indefinitely and ultimately eliminate all branded products. On the one hand, there is some evidence to suggest that private-label growth is linked to the general economic climate and that in more prosperous times consumers show a greater propensity to purchase branded products. On the other hand, there is considerable evidence indicating that the major retailers sell private-label products against branded products, so that the latter fulfil an important function in providing a price/quality reference point for the sale of store brands. However, in any event, in the time period relevant for assessment of merger cases, there can be no doubt that branded products will continue to play an important market role, as described below.

B. MARKET STRUCTURE: PRODUCTION

(114) The structure of production is set out in Table 6 in the Annex. The primary producers account for

[20] Confidential information, replaced by ranges.
[21] Confidential information, replaced by ranges.
[22] Confidential information, replaced by ranges.

about 650 000 tonnes of tissue paper capacity, i.e. at the parent-reel stage. The merging parties have the two largest plants in Great Britain and together will hold [50—60 %] [23] of the UK productive capacity. The four remaining primary producers are Jamont ([10—20 %] [24]), Fort Sterling ([10—20 %] [25]), Kruger ([0—10 %] [26]) and AM Paper ([0—10 %] [27]). Kruger has undertaken considerable investment with a view to increasing its presence in the private label and AFH sectors. According to press reports this will approximately double its existing capacity by the end of the year.

(115) There is a net import of about 100 000 tonnes of parent reels for domestic consumption. [28] These 100 000 tonnes of net parent reel imports are converted into final end-user products either by independent converters or by the primary manufacturers as above. According to the parties slightly under [0—10 %] [29] of these imports relate to Kimberly-Clark (primarily) and to Scott (to a lesser extent). After including parent reels produced domestically, the combined KC/S entity will sell less than [10—20 %] [30] of total parent reel supplies to non-integrated UK/Irish converters.

[23] Confidential information, replaced by ranges.
[24] Confidential information, replaced by ranges.
[25] Confidential information, replaced by ranges.
[26] Confidential information, replaced by ranges.
[27] Confidential information, replaced by ranges.
[28] In fact, overall, the UK imports about 150 000 tonnes, but it also exports slightly over 50 000 tonnes of which almost half goes to Ireland.
[29] Confidential information, replaced by ranges.
[30] Confidential information, replaced by ranges.

(116) Based on the Commission's enquiries there are five main converters, LPC, Pennington, FH Lee, SCA/PWA and Goulds. The remaining converters are about 10 to 15 in number and have individually on average relatively insignificant capacity, for example about 0,25 to 0,5 % of the total market. By way of illustration, the combined KC/S entity will have a production capacity [. . .] [31] than thes converters.

C. THE MARKET POSITION OF THE PARTIES

High production and market shares

(117) The combined production and market shares of the notifying parties are indicated in Table 7 in the Annex. This table indicates the parties market/production share for the sale of:

(a) branded products (market share);

(b) private label products (production share);

(c) both branded and private label products (production share).

Production and market shares are always calculated by reference to the total relevant product market i.e. including both branded and private-label sales (see paragraph 53).

(118) The market share of the parties and their leading competitors for branded products is indicated in Table 12.

[31] Deleted confidential information.

Table 12

UK and Ireland market shares for branded tissue paper products

	Scott	Kimberly-Clark	Total	Jamont	Fort Sterling	SCA/PWA
Toilet paper	[30—40]	[10—20]	[40—50]	[0—10]	[0—10]	[0—10]
Kitchen towels	[10—20]	[0—10]	[10—20]	[0—10]	[0—10]	[0—10]
Facial tissues/ handkerchiefs	[0—10]	[30—40]	[30—40]	[0—10]	[0—10]	[—] [1]

[1] Business secret, replaced by ranges.
Source: Parties/Nielsen.

(119) In addition to their sale of branded products, where the parties' market position is analysed in detail below, the parties will also be one of the leading suppliers of private label products. As such they will enjoy high total production shares, ranging between approximately [40—60 %] [32] per cent (see Table 7 in the Annex). In the important toilet-tissue market they will hold almost

[32] Business secret, replaced by ranges.

[50—60 %] [33] of the market. The table demonstrates the strength of the parties across the whole tissue paper sector in the UK and Ireland, particularly in the important toilet-tissue market.

Comparison with competitors

(120) KC/S will become by far the largest supplier of tissue paper and will have production shares of [. . .] [34] of the next following competitor, Jamont. Compared to the next major competitor again, namely Fort Sterling, KC/S will also be [. . .] [35] for kitchen towels but for toilet-tissue and facial tissues it will be very much stronger, having a production share about [. . .] [36] for toilet-tissue and [. . .] [37] for facial tissues. Lastly, compared to Kruger, an independent paper manufacturer in Great Britain which has shown strong growth in the last few years, the combined KC/S entity will be approximately [. . .] [38] in the large toilet-tissue market.

Private-label sales

(121) The production shares of the parties includes private label products that they manufacture for retailers. The parties consider that private-label sales should be attributed to the retail distributor [39]. Indeed they point out this has been the practice of the Commission in other cases.

(122) On the one hand, the Commission considers that to fully attribute private-label sales by retailers to the parties and place these sales on the same footing as their branded sales, could overstate the market strength of the parties. On the other hand, in the particular circumstances of this case, the Commission considers that to ignore completely the fact that overall about [30—50 %] [40] of private-label sales are manufactured by KC/S for retailers would understate the strength of their true market position.

(123) The essential question is whether retailers would be able to seek valid alternative suppliers for their private-label sales if the merger were allowed to proceed. If this is the case, then in terms of the normal competitive assessment, it would be correct to disregard the fact that a high proportion of private-label sales are manufactured by KC/S. However, the Commission considers that regard must be had to the following considerations:

(a) First, KC/S is today [. . .] [41] suppliers of private-label sales. It is true that Jamont and Fort Sterling are also important suppliers of private-label products, but the Commission understands that, [. . .] [42] UK primary producers are operating at full or close to full capacity. Consequently, no or little free additional primary production exists.

(b) Secondly, except for minor niche products none of the retailers who responded to the Commission's survey is today purchasing supplies from outside Great Britain. Given the bulky, low-value nature of the product, the additional transport costs engendered and the complicated supply logistics, such an approach would not seem commercially sound. Indeed, if it were so, it is surprising that retailers have not already made use of such a supply channel given the apparent product price differentials between island Great Britain and Continental Europe. This is corroborated by the fact that of the five major retailers, one indicated that overseas supply provided no benefits, one stated that there was greater flexibility for customer and supplier to purchase nationally and the remaining three pointed to the weight of the additional transport costs purchasing abroad.

(c) Thirdly, super-soft tissue makes up about two thirds of the UK toilet-tissue market and is growing, particularly the super-premium part of the market. There are no valid, alternative suppliers within Great Britain of any significance. Indeed, one major retailer specifically confirmed this point.

(d) Lastly, and most importantly, KC/S will enjoy the No 1 and No 2 brands in the market. Given their brand dominance, KC/S will be in a position to pursue a tied sales policy linking the availability of essential branded products to the continued supply of private-label. This point was most acutely expressed by competitors to the merging parties.

Nevertheless, the Commission considers that the true competitive significance of the proposed operation lies in its impact on the branded tissue products market. Here, the market position of

[33] Business secret, replaced by ranges.
[34] Deleted business secret.
[35] Deleted business secret.
[36] Deleted business secret.
[37] Deleted business secret.
[38] Deleted business secret.
[39] Opposite the Great Britain position, there appears to be an inconsistency in the manner in which the parties attribute branded sales in Italy. The notifying parties have informed the Commission that Kleenex products [business secret] by an independent third party in Italy, namely Carrara. According to the parties [business secret].
In Italy, therefore, the parties attribute sales to the manufacturer and not the brand owner, whereas in Great Britain for private-label sales, the parties attribute sales to the brand owner, i.e. the retailer and not the manufacturer. This appears inconsistent.
[40] Business secret, replaced by ranges.
[41] Deleted business secret.
[42] Deleted business secret.

KC/S will become particularly strong, as demonstrated below.

Position for branded products

(124) The percentage of branded products represented by the notifying parties combined brands for each consumer tissue in the UK and Ireland are shown below with the corresponding brands:

— Toilet-tissue [70—80 %] ([43])
Kleenex, Andrex, Scottonelle

— Kitchen-towels [50—60 %] ([44])
Kleenex, Andrex, Fiesta, Scottowel

— Facial tissues/Handkerchiefs [70—80 %] ([45])
Kleenex, Andrex, Scotties

It should be noted that these figures have been presented by the parties by adjusting the Nielsen figures downwards to reflect a certain lack of distributional coverage.

(125) Further details with the corresponding percentage represented by competitor's brands are shown in Table 8 in the Annex.

(126) It is evident that the parties' brands will be the clear market leaders across the full range of consumer tissue products and especially for toilet-tissue, handkerchiefs and facial tissues where the percentage of branded products held by the parties exceeds [70—80 %] ([46]) or more. For kitchen towels it should be remembered that the sector has not been the target of extensive publicity, although Andrex has recently started to heavily publicize its new Andrex kitchen towel. However, the impact of this advertising is not reflected in the above data.

([43]) Business secret, replaced by ranges.
([44]) Business secret, replaced by ranges.
([45]) Business secret, replaced by ranges.
([46]) Business secret, replaced by ranges.

(127) For toilet-tissue, the market share corresponding to the combined brands held by the parties is a multiple of [0—10] ([47]) compared to the next following competitor, Jamont (Dixcel brand). Fort Sterling (Nouvelle brand), the next again competitor, has branded product sales below those of Jamont. Lastly, SCA has negligible branded sales with a market branded share of only [0—10] ([48]) for toilet-tissue and kitchen towels respectively.

Importance of brands

(128) Brand owners benefit from the leverage and loyalty that their brands engender. Brands often support premium prices, achieve distribution more readily, and sustain an ongoing and reasonably projectable revenue stream because of the consumer propensity for long-term brand loyalty and/or repeat purchases, particularly for major brands. For these reasons branded products will find distribution when shelf space is limited, for example in smaller shops or where products are bulky and require large amounts of storage space, as is the case for tissue-paper products. Even in the major retailers, where private-label sales have become increasingly important, their continued presence is 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 can be evaluated.

(129) In Great Britain the top retailers (the multiples) account for about 75 to 80 % of sales in the household sector. Details of tissue product sales (value basis) by distribution channel are set out in Table below. It can be seen that with the exception of facial tissues, over 75 % of the sales of toilet-tissue and kitchen-towels take place through the multiples.

([47]) Business secret, replaced by ranges.
([48]) Business secret, replaced by ranges.

Table 13

Details of tissue product sales (value basis) by distribution channel in Great Britain

(1994 value)

	Toilet-tissue	Kitchen-towels	Facial tissues
Multiples	76,5	79,6	69,0
Independents	6,4	9,0	5,0
Chemist	3,8	5,0	2,3
Coop	7,6	1,4	16,0
Other	5,8	5,0	7,7
Total	100,0	100,0	100,0

(130) In order to obtain their views on a series of subjects the Commission has therefore sent an extensive questionnaire to the following major retailers: Asda, Kwik-Save, Safeway, Sainsbury, Somerfield, Tesco and Waitrose. Replies have been received from all except two. Sales of household products by those multiples responding cover about two thirds of all British household sales. The Commission therefore considers that the replies received provide an accurate reflection of retailing conditions for tissue-paper products.

(131) It could be argued that the views of the multiples do not adequately reflect the position of the non-multiples and therefore that any conclusions based on the views of only the multiples could be significantly misleading with respect to the significance of branded products on the British market.

(132) The Commission considers that such an objection is not valid. First, the non-multiples cover a much smaller percentage of the market (i.e. 20% as opposed to 80%) and the forecasts at the Commission's disposal indicate that their coverage will decrease further in the future. Second, there is no *a priori* reason to consider that they hold alternative views. Thirdly, frequently the position of leading brand manufacturers is stronger because (a) the non-multiples will have lower buyer bargaining power than the multiples and (b) shelf space in non-multiples tends to be more limited. The latter has the effect of limiting brand choice only to market leaders, i.e. Kimberly-Clark and Scott products.

Importance of Kimberly-Clark/Scott brands for retailers

Actual stocking policy

(133) All five of the multiples responding to the Commission's questionnaire currently stock Kimberly-Clark and Scott brands (ie Kleenex and Andrex) for toilet-tissue, kitchen-towels and facial tissues.

Need to stock

(134) The Commission also enquired whether Kimberly-Clark and Scott brands could be replaced and whether Kleenex or Andrex or any other premium branded tissue product was an essential brand for the retailer. The replies were as follows:

Retailer A
'There are no suitable replacement brands available on the market. Both Kleenex and Andrex tissue products are essential brands.'

Retailer B
'Given the brand leadership that Kleenex and Andrex brands have, they remain important to us in offering our consumer a credible choice.'

Retailer C
'Branded products play an important part in the overall product mix for ... (retailer C).'

Retailer D
' ... we do prefer to always stock the market leaders.'

Retailer E
'We stock the Kimberly-Clark and Scott brands ... and would not consider replacing them. Both brands are essential ...'

(135) There can be little doubt that it would be extremely difficult for the multiples, who enjoy the greatest buyer bargaining power in the retail sector, to replace either Kleenex and/or Andrex with alternative brands.

Brand loyalty as seen by retailers

(136) The Commission also requested the multiples to comment on brand loyalty. The replies were as follows:

Retailer A
'The brands spend considerable sums of money in marketing their products while private label uses mainly its store image to promote the product.

There are loyal customers to both brand and private label. On the other hand, there are customers who are prompted by promotional activity who will switch from one to another.'

Retailer B
'consumers, in our view, do show loyalty to branded products especially in toilet-tissue, due to the historically known softness of the product.'

Retailer C
'There is strong brand loyalty in the toilet-tissue market and in the facial tissue market, with Andrex dominating branded toilet-tissue sales and Kleenex dominating branded facial tissues.

In the kitchen towel market, own label dominates but this is partly to do with the fact that there is not one strong brand in the market, but several secondary brands which when put together, add up to a significant percentage of total market sales.'

Retailer D
'Consumers do show loyalty to branded tissue products primarily due to the heavy weight of marketing spend.'

Retailer E
'Brand loyalty varies by sector and can be influenced by promotional and advertising activity.

Toilet-tissue: significant brand loyalty due to the dominance of the leading Andrex and Kimberly-Clark brands . . ., which are both long-standing and heavily supported brands. However, despite continuing heavy promotional activity, own brand continues to increase steadily.

Kitchen towels: dominated by private label and secondary/tertiary brands, with no dominant brand leaders. Brand investment in this sector has been relatively small.

Facial tissues: Kleenex, as the brand leader, commands strong loyalty, particularly in man-size tissues.'

(137) Brand loyalty appears most marked for toilet-tissue with Andrex enjoying considerable brand loyalty followed by Kimberly-Clark's brand, Double Velvet. For facial tissues, Kleenex commands strong loyalty. Lastly for kitchen towels there are currently no dominant brands but this has to be seen in the context of the much lower advertising spending.

(138) In conclusion it appears that:

(a) the combined entity, KC/S, will enjoy of the leading position for household tissue products;

(b) given the degree of brand loyalty and the need for retailers to stock these essential brands, KC/S would, if the merger proceeds, be able to pursue a tied branded product policy;

(c) there is likely to be considerable scope to link the sale of essential branded products to the sale of private-label products.

Advertising expenditure

(139) The preceding remarks of retailers have demonstrated the importance of advertising expenditure for branded products; both short term with regard to immediate success as measured by market share achieved, and longer term in building the value of a brand and developing established consumer brand loyalty by sustained publicity. The following comments will show that there is a strong correlation between market share and advertising expenditure.

(140) Table 5 in the Annex presents details of 'above the line' advertising expenditure by the major brands (and therefore by manufacturer) in the Great Britain market over the period 1990 to 1994 for toilet-tissue, facial tissues and kitchen towels separately. A repeat table for each of these product markets shows individual brand expenditure as a percentage of overall advertising expenditure. Examination of this data leads to the following conclusions.

(141) Advertising expenditure is considerable. In 1994 almost £ 13 million was spent on toilet tissue and £ 3,3 million on facial tissues. Expenditure on kitchen towels is lower and more variable.

(142) There would seem to be a correlation between advertising volume expenditure and consumer brand loyalty. For toilet-tissue and facial tissues expenditure is high and consumer brand loyalty great. For kitchen towels expenditure is much lower except when a major new product is launched, for example Andrex in 1993 and more recently Andrex Ultra during the summer of 1995 and correspondingly consumer loyalty is less.

(143) Perhaps the most remarkable feature is that advertising expenditure is completely dominated by Andrex (includes Fiesta) and Kleenex. Their combined expense on publicity calculated as a percentage of total advertising expenditure over the five years 1990 to 1994 is as follows:

Table 14

Advertising expenditure 1990 to 1994

	Combined Kimberley-Clark/ Scott advertising expenditure	Percentage of total advertising expenditure
Toilet-tissue	51 million	88
Facial tissues	11 million	93
Kitchen towels	6 million	82

(144) Their percentage of total advertising expenditure can be compared with 1994 market shares as below:

Table 15

Comparison of market share with advertising expenditure

	Combined branded products market share of Kimberly-Clark/Scott	Percentage of total advertising expenditure
Toilet-tissue	[70—80 %]	88
Facial tissues	[70—80 %]	93
Kitchen towels	[50—60 %] (1)	82

(1) Business secret, replaced by ranges.

(145) Any new entrant to the branded product market sector who does not enjoy the strength of an existing major brand would have to compete with the financial strength and resources of the combined KC/S entity. Moreover, advertising expenditure and market share is self-reinforcing. On the one hand, there is the virtuous circle where high market share allows high profitability to engage in sustained advertising to support the brand. On the other hand, there is a vicious circle where low market share means low profits and inadequate resources to implement the necessary advertising campaign to boost flagging sales.

(146) This problem would become particularly acute for the new No 2 player in the market, Jamont with the current No 3 brand, Dixcel. The same comparison of branded product market share and percentage of total advertising expenditure for Dixcel is as follows:

Table 16

Comparison of market share with advertising expenditure

	Branded product market share of Dixcel (Jamont)	Percentage of total advertising expenditure
Toilet-tissue	7,6	6
Facial tissues	11,0	6
Kitchen towels	11,6	4

(147) While it is true that the ratio of branded product market share to percentage of advertising expenditure may at first sight seem favourable, closer examination of Table 5 in the Annex provides some evidence that Dixcel is cutting back its advertising expenditure and is allowing its sales to slowly dwindle by defaulting on adequate brand support. The same table shows that since 1991 and 1992 there has been no advertising expenditure on the Dixcel brand for kitchen-towels and facial tissues respectively. Similarly for toilet-tissue, there is some evidence to suggest that since the peak of 1992, brand expenditure on Dixcel has been pruned.

(148) Confirmation of this view can also be found in the fact that two of the five retailers responding to the Commission questionnaire confirmed that the Dixcel brand had been delisted in the last five years. Moreover, as shown below the market shares of both Jamont and Fort Sterling have been in decline over the last three years.

Success of Scott publicity for the Andrex brand

(149) Apart from the sheer volume of advertising expenditure by Scott on the Andrex brand in the UK, the publicity itself is very successful in commercial terms and popular with the British public. In a certain sense it could be argued that the golden Labrador puppy employed by Scott in its Andrex commercials since 1972 has become something of a British institution.

(150) It would be possible to describe this success and popularity at some length but in the interest of brevity the Commission will restrict its confirmation of this point to three references.

(151) Andrex is one of the strongest UK brands in any consumer products category. Mintel's 1992 Market Intelligence Report commented on the importance of Andrex in toilet paper as follows:

'Andrex, with its golden Labrador puppy, has become something of a British institution. The puppy was first used in 1972 . . . The 73rd puppy commercial . . .ran in summer 1992 . . .. The brand outsells all its competitive products in the market combined, and is one of the top five grocery brands in the UK.'

(152) Similarly, the formidable strength of the Andrex brand is well known and its success has been extensively analysed in an award winning paper entitled 'Andrex Sold on a pup' submitted to the Institute of Advertising Practioners in 1992. The paper underlines the following points:

(i) Andrex has been the dominant toilet-tissue brand for over 30 years, i.e. the biggest and most expensive brand and the fastest selling (pages 53 to 55 of the paper).

(ii) Andrex has almost single-handedly prevented toilet paper becoming a commodity product in the United Kingdom (pages 53 and 73).

(iii) Andrex has consistently enjoyed a very substantial premium over the market average (up to 40 % at times) and has retained a substantial premium even in recessions.

(iv) Andrex price premium far exceeds anything justifiable on the basis of product quality (i.e. 'the superiority of the brand over the product'). Even where blind tests show consumers prefer a rival product (e.g. Kleenex Velvet), his/her perceptions of Andrex have been more favourable than for the rival product (i.e. 'consumer perception of Andrex quality exceeds the reality') (page 71).

(v) 'Price realization, effectively a measure of inherent profitability, is higher in the UK than in any other toilet-tissue market in the world' (page 74).

(vi) Andrex buyers are extremely loyal (one third of Andrex buyers never buy any other brand of toilet-tissue). As a result, there is a 'growing trend for Andrex to lock in its brand users, thereby making them less vulnerable to competitive attack' (pages 55 and 62).

(vii) Andrex investments are exceptionally well remembered and popular (an Andrex advertisement is eight times more effective than the average TV commercial in generating awareness) (page 56).

As a final point it is perhaps worth mentioning that the only other brand mentioned in the paper is Kleenex, whose owner Kimberly-Clark is acquiring the Andrex brand through the proposed operation. There is no mention of Dixcel, or of Nouvelle.

(153) Lastly, an article in the September 1993 issue of *Marketing* is a testimony to the long-term popularity of Andrex puppy advertising with the British consumer. This magazine runs a league table of the most-liked adverts called 'Adwatch'. The Adwatch 93 article stated:

'Andrex was the undisputed victor of last year's Adwatch, but this time round it has to settle for the runner-up slot. As an ongoing campaign though ... it has settled into a remarkable rhythm in the past four years. In the 1988—99 chart it was in third place with 76 % recall; it dropped slightly to fifth place in 1989—90 with 72 %; the following year it rallied to pole position with just under 80 %; and now it stands proud with 77,3 %. That set of statistics is unmatched by any other brand over the past five years and is a testimony to the consistency of the puppy campaign, now in its 21st year.'

The success of the product technology behind Kleenex Double Velvet

(154) While publicity has been the driving force behind the continuing success of the Andrex toilet-tissue brand, in the case of Kleenex Double Velvet and Quilted toilet-tissue, the motor behind market success has been product quality. Although consumers appreciate and enjoy Andrex' publicity campaigns, marketing success does not appear able to fully overcome product quality shortcomings.

(155) Over the period 1990 to 1994, Andrex has seen its market share fall from 34 % to 28 %. In contrast, over the same period, Kleenex Double Velvet has, notwithstanding the growth in store brands, been able to slightly increase its market share from 11 % to 12 %. This would appear primarily due to the product quality made possible by the TAD technology employed at KC's Prudhoe plant for the production of Double Velvet and Quilted toilet-tissue.

(156) While it is true that KC also spends substantial sums on publicity, over the last five years the total publicity spend on advertising toilet-tissue is under half that of Andrex. Moreover, and notwithstanding the renown of the Kleenex name in facial tissues, Kleenex marketing for toilet-tissue does not appear to enjoy the same popular acclaim as Andrex. On the other hand, based on information submitted by the parties to the Commission, it would seem that on a blind test basis, consumers prefer Double Velvet to Andrex by seven to three.

(157) Consequently, the Commission considers that the success of Kleenex Double Velvet toilet-tissue is product rather than publicity driven. Indeed, this view was expressly stated by a number of competitors at the hearing. Furthermore, through the merger the parties would be able to combine the publicity success of Andrex to the product performance of Kleenex Double Velvet to the detriment of future competition in the branded segment.

Why it is important to maintain competition in the branded segment of the market

(158) The parties recognize that with the Andrex and Kleenex brands combined the KC/S entity will play a predominant role in the branded sector of the market. However, they point to the growing importance of private-label products (see Table 1 in the Annex) and argue strongly that the Andrex

and Kleenex brands will be competitively restrained by the apparently growing influence of store brands.

(159) The Commission does not consider this to be the case. Retailers will become dependent on the parties for essential brands needed to attract shoppers and against which store brands are priced. Moreover, they will be physically dependent on the parties for the supply of private-label products for toilet paper in the growing premium sector of the market. Indeed, one retailer has commented that:

'If the merged company were to concentrate their business on brands, it is doubtful whether the other British companies' combined capacity could meet own label requirements. In this respect, its market dominance could have a significant input on this sector and could result in reduced competition and higher prices to consumers.'

(160) In their response to the Statement of Objections, the parties have strongly contested this view, pointing out that there is a plentiful alternative supply of toilet-tissue. The Commission would agree that it is technically possible to obtain alternative sources but the feasibility and commercial quality of this supply is a different matter. Supply would essentially have to come from converters which would be subject to the difficulties described below. In particular, there would be problems in obtaining adequate supply of super soft tissue, a segment of the toilet-tissue market showing strong growth. By way of example, the parties have referred to one major UK retailer which has 11 different suppliers of toilet-tissue. This is true but only three can supply super-soft tissue and of those three, two correspond to Kimberly-Clark and Scott.

(161) Effective competition in the branded segment is important because branded, and not private-label, products promote innovation and product quality improvement. Consequently, one effect of the merger would be to eliminate this source of innovation and quality improvement.

(162) Product innovation is a key competitive tool in consumer product markets. It is well established in almost all consumer product markets that product innovation is pioneered by branded producers and that private-label products follow. In general, private-label products are rarely innovative products that generate new users and new occasions of consumption. Instead they tend to be price followers and product imitators. Indeed, manufacturers of branded products develop innovative products in part to slow, halt or reverse private-label growth, as well as to take sales from other branded products.

(163) The prime motor for product innovation has been the inter-brand competition between Andrex and Kleenex. More particularly, given the leading position of Andrex leading position in the toilet-tissue market, it is not surprising to find that the main proponent of innovation has been Kleenex and not Andrex. In particular the importance of product quality to the growth of the Kleenex Double Velvet toilet-tissue has been described above.

(164) There is a variety of evidence supporting this view.

(i) The 1992 marketing paper 'Sold on a pup' specifically states that 'Andrex has rarely been the first to innovate' (page 73).

(ii) In the trade magazine, *The Grocer* of 15 October 1994, Mr Stephen Booty, General Trading Manger, said with respect to Andrex It has been eight years since we undertook any major redevelopment of the brand . . .'.

(iii) More recently, in June 1995, Kimberly-Clark relaunched its Velvet line calling the new product Double Velvet which is said to be fluffier and softer. At the relaunch Mr Iain Hamilton, Marketing Director, stated, 'People think of toilet-tissue as a saturated, commodity market, but 60 % of the volume and 65 % of the value is from premium and super-premium lines. People pay a lot more for quality and the market is very brand responsive'.

(165) There can be little doubt that the merger will suppress this important inter-brand competition as after the merger both Andrex and Double Velvet will belong to the same owner.

UK tissue market studies

(166) The parties and a major competitor have submitted studies which address the impact of the operation on competition in the UK toilet-tissue market. The studies submitted were all commissioned for the purpose of the proceedings of this case, and they come to quite different conclusions on these issues.

(167) The parties have submitted three studies:

— 'Competition in the UK market for toilet tissue' by the consultancy firm London Economics,

— 'Competition between private label and branded toilet tissue in the UK' an econometric study by the consultancy firm Cambridge Economics, Inc,

— 'Competition in the UK toilet tissue market' a report by the consultancy firm Boston Consulting Group.

(168) A major competitor of the parties has submitted two studies:

— 'The role of brands in the UK tissue market and the competitive strength of Andrex and Kleenex' prepared by Professor Patrick Barwise, Professor of Management and Marketing at the London Business School.

— 'Price elasticity estimates: UK toilet tissue', an econometric study prepared by the consultancy firm Lexecon.

(169) The studies submitted mainly focus on the importance of brands in the UK toilet-tissue market, and particularly on whether prices on branded products are constrained by prices on private-label products.

(170) London Economics in their study prepared for the parties gives the impression of the UK toilet-tissue market being a commodity type of market, where brands and advertising are not important factors. The study argues that toilet-tissue is a short-term experience good with low switching costs where the quality of the product is known immediately after use. According to London Economics such products normally exhibit low brand loyalty. Particularly, the study concludes that private labels constrain the pricing of branded products because:

— 'manufacturer brands and own brands are regarded by many consumers as substitutes;

— switching costs are very low in the toilet-tissue market

and

— competition takes places mainly in terms of price. Advertising is often used to support this form of competition,

— advertising does not represent a significant barrier to entry into this market. This is especially true for a potential branded supplier such as Procter & Gamble or SCA/PWA

and

— due to the vigorous nature of competition between UK retailers, shelf space is not a significant barrier to entry. This is because consumers attach value to the choice as well as to price and quality, of products that the retailer stocks. Retailers will always do better by stocking a wider range of successful products.' (London Economics, pp. 26 and following).

(171) Professor Barwise in his paper prepared for a major competitor reaches four main quite different conclusions:

— 'First, brands are important in UK tissue markets: innovation and pricing are led by brands with private-label products playing a secondary role. The leading brands attract strong brand loyalty and command a high price premium.

— Second, there are only two important UK tissue brands, Kleenex and Andrex. These two brands compete directly. Other UK brands are poorly advertised and exhibit weak brand loyalty.

— Third, given the strength of Andrex and Kleenex, a successful new entry from a rival brand would be difficult, expensive and a particularly risky investment.

— Fourth, any company that controlled both Andrex and Kleenex would have considerable scope to raise prices and to engage in strategic conduct designed to exclude rival brands and potential new private-label suppliers.' (Barwise, p. 2)

(172) The studies by the Boston Consulting Group, Cambridge Economics and Lexecon all attempt to address directly the issue of whether prices of branded products are constrained by prices of private labels by direct inference from price quantity data. Boston Consulting Group use a graphical methodology, whereas Cambridge Economics and Lexecon have attempted to estimate price and cross price elasticities using econometric techniques. The focus is here on the latter two studies.

(173) Both the study by Cambridge Economics as well as the study by Lexecon estimate price elasticities for the whole market and price and cross price elasticities for the branded and the private-label segments respectively. Both studies use weekly Nielsen supermarket scanner data.

Table 17

Comparison of key elasticity estimates

OVERALL MARKET

	Cambridge Economics	Lexecon
Overall market	[. . .]	[. . .](1)

(1) Deleted confidential information.

INDIVIDUAL SEGMENTS

	Cambridge Economics		Lexecon	
	Branded	Private label	Branded	Private label
Branded	[. . .]	[. . .]	[. . .]	[. . .]
Private label	[. . .]	[. . .]	[. . .]	[. . .](1)

(1) Deleted confidential information.

. . .(49)

(174) The market price elasticities estimated by Cambridge Economics and Lexecon both show the overall market demand for toilet-tissue to be inelastic. This is also intuitively what would be expected for a basic, inexpensive, necessity good like toilet-tissue. The elasticity estimates may, from this perspective, even be on the high side. However, neither the parties nor the major competitor have disputed that overall market demand for toilet-tissue is price inelastic.

(175) The results from the two studies are quite different, when it comes to the own price and cross price elasticity estimates. As can be seen from Table 17 Cambridge Economics estimate the cross price elasticity of the private label segment with respect to the branded segment to be [. . .](50), whereas Lexecon estimates this elasticity not to [. . .](51). The conclusion from the estimate of Cambridge Economics is that private label to a certain extent will constrain pricing in the branded segment. The conclusion from the estimate of Lexecon is that this will not be the case.

(176) In the hearing of the case Lexecon stated that Cambridge Economics had had broader data from a longer time period than had been available to Lexecon. Cambridge Economics has therefore been able to produce a better study. Lexecon in their study also estimated brand level own price and cross price elasticities. In particular these estimates show a cross price elasticity of private label with respect to Andrex of [. . .](52). This would seem to confirm a certain price competition between the private label and branded segments.

(177) Therefore, based on the studies submitted it cannot be excluded that private labels compete with branded products. Indeed it is quite normal to have a certain degree of competition between various product categories even in differentiated product markets. From a common sense perspective this would also seem reasonable for the British toilet-tissue market given that some private labels are positioned as high quality brands. However, the overall characteristics of the British toilet-tissue market means that it simply cannot be accepted that this should be a commodity market where brands are of little importance. Firstly, branded products account for almost half of the market, and Andrex, the most important brand, has almost [30—40 %](53) of the market. Secondly, the two leading brands command a high price premium. This is in itself an indication of the presence of brand loyalty and brand equity. Thirdly, the two leading brands are 'must carry goods' and serve as reference points for the whole market. Therefore, considering all the facts it would rather seem that possession of the two leading brands in combination with the position as a leading supplier of super soft private labels would give Kimberly Clark/Scott Paper considerable leverage on the whole market of branded as well as private-label toilet-tissue. In this case the inelastic price elasticities for total toilet-tissue demand estimated by both Cambridge Economics and Lexecon ([. . .] respectively(54))

(49) Deleted confidential information.
(50) Deleted confidential information.
(51) Deleted confidential information.
(52) Deleted confidential information.
(53) Business secret, replaced by ranges.
(54) Deleted confidential information.

certainly mean that there would be scope for the parties to abuse their position on the whole British market for toilet-tissue following the merger.

Competitive pressure exerted by independent converters

(178) The parties have laid considerable emphasis on the ability of independent converters in the UK to produce tissue paper products and thus constrain the behaviour of the combined KC/S entity. The Commission disagrees with this analysis.

(179) The independent converters have minimal capacity. They are primarily active in the AFH market or in the economy or value sector of the consumer private-label market. They have no or, in some cases negligible, activity in the branded products market. The parties have emphasized the profitability of these producers by reference to their return on capital employed. The Commission considers that these figures will be flattering precisely because these producers have machinery that is generally old, out-dated and thus already fully depreciated. This would be in broad accord with the lower quality/low end of market products they supply, although one or two notable exceptions exist.

(180) In absolute terms, their profits, net assets and sales are a tiny fraction of KC/S. They have indicated that were super-soft parent reels available in the market they would wish to purchase them. They experience difficulty in obtaining a secure supply of guaranteed parent reel quality. Moreover, some are partly dependent on Scott or Kimberly-Clark for supplies while the greater part are subject to the vagaries of the relationship between international supply and demand for parent reels. The Commission's enquiries have confirmed that the rapid rise in international pulp prices has led in some cases to existing parent reel suppliers refusing to continue to supply.

(181) In order to assess the competitive position of converters in more detail the Commission has conducted a survey with the larger companies concerned. Replies were received from seven converters. The Commission asked the converters to rank the ease (score = 1) or difficulty (score = 5) with which they could supply branded and private-label products in the following segments: super-premium, premium, value and economy. The results were as follows:

Table 18

Average ranking for supply of tissue products by British converters

(1 = easy, 5 = difficult)

	Branded	Private Label
Super-premium	4,4	2,7
Premium	3,4	2,0
Value	2,2	1,2
Economy	2,2	1,9

With average scores of 4,4 and 3,4, the Table 18 shows that converters have particular difficulty in supplying premium and super-premium products for the branded sector.

(182) In the same survey the Commission also asked converters to rank (1 = no problem, 5 = major problem) various handicaps converters might experience relative to integrated suppliers with respect to the following parameters:

Table 19

Average ranking for various handicaps of British converters relative to integrated paper manufacturers

(1 = no problem, 5 = major problem)

	Average score
Recycling of waste product	2,3
Double-handling of parent reels	2,6
Availability of super soft parent reels	4,4
Parent reel quality	3,4
Security of supply	3,6
Switching costs	3,0

The above table shows that availability of super-soft parent reels and security of supply were the two largest handicaps faced by converters compared to integrated suppliers. In fact only two of the seven had not experienced difficulties with super-soft parent reel supply: one because it had a long-standing relationship with Scott, the other because it had a long-term supply agreement with a non-European supplier. Moreover, six indicated that they would wish to buy super-soft parent reels if they were available in the market — the seventh

did not wish to do so as it only supplied the AFH market.

(183) For all these reasons, the Commission considers that these converters cannot constrain in any significant way the future behaviour of the merged KC/S entity, particularly in the branded products sector.

Conclusion

(184) The combined entity, KC/S, would therefore enjoy a dominant position in the UK and Ireland in consumer markets for toilet-tissue and facial tissues/handkerchiefs, which would not be capable of effective challenge by existing competitors.

With regard to kitchen towels, the Commission recognizes that the percentage of the market covered by private-label products is higher than for toilet-tissue and facial tissues/handkerchiefs and that the market position of KC/S in relation to the sale of branded kitchen towels is not as strong as that for toilet-tissue and facial tissues/handkerchiefs. Nevertheless, the Commission considers the combined entity would quickly acquire a dominant position for kitchen towels incapable of adequate control by competitors. Immediately after the merger KC/S would become the clear market leader for branded products. While its market share for branded products would be only 19,8 %, it would supply over half the market's current branded product requirements and would have a branded products market share four times larger than its next competitor and eight times greater than the next again. Including its share of private-label sales, KC/S would have a production share in the market of [40—50 %] ([55]). It would hold the two strongest brands and possess the only TAD plant in the UK, the TAD production technology being particularly suitable for the production of high-quality kitchen towels. By building on its strength across the range of consumer tissue products and engaging in a vigorous marketing and publicity campaign, the Commission considers that it would be in a position to acquire, relatively quickly, a dominant position for kitchen towels. Indeed, as is evident from the data quoted in Table 5 in the Annex, advertising expenditure has been limited for kitchen towels and as remarked by retailers, before the merger there is no strong brand leader and brand investment has been relatively small. This position would of course change after the merger. In this light the Commission considers that the parties will hold a dominant position for kitchen towels.

Retailer buyer bargaining power

(185) The parties have pointed to the buyer bargaining power of UK and Irish retailers, particularly the multiples. The Commission does not consider that UK and Irish retailers would be able to exert any significant restraining power on the market behaviour of the parties after the merger.

(186) In summary, these reasons are:

(i) dependency of retailers on the parties for essential brands;

(ii) dependency of retailers on the parties for private-label supplies due to inadequacy of supply alternatives, particularly for the growing super-soft segment of the market;

(iii) even if retailers could in a long-term perspective secure valid alternative supply for private-label products and, it is true that the independent UK paper manufacturer, Kruger, has undertaken new investment and is showing strong sales growth, the combined strength of the parties in the branded sector is such as to allow the merging parties to pursue a tied branded/private-label sales policy.

(187) The parties have also made reference to the buyer bargaining power multiples enjoy by belonging to transnational purchasing groups for the supply of tissue products. The Commission's investigations have confirmed that none of the multiples responding did in fact belong to such a transnational purchasing group. Moreover, such a policy would be confronted by logistic difficulties and additional transport costs.

(188) Indeed an example of the differential strength of brand leaders in financial negotiation opposite retailers can be seen in the different trading margins retailers secure on Andrex, Kleenex and private-label products. Based on information made available, the Commission understands that the trading margin (difference between purchase price from manufacturer and retail price in the store) is as follows:

— Andrex: [. . .] [15—25 %],

— Kleenex: around [20—30 %],

— Private label: around [30—40 %] ([56]).

([55]) Business secret, replaced by ranges.

([56]) Business secret, replaced by ranges.

(189) Since retailers can reasonably be expected to strive to secure as large a margin as possible, these margins could be seen as an indicator of negotiating strength. Retailers have less strength opposite the market leader, Andrex, than against the market No 2 brand, Kleenex. If the merger proceeds and the Andrex and Kleenex brands are controlled by a single party, the scope and the financial incentive to pursue a tied branded product policy is immediately obvious.

Subsequent retailer support for the merger

(190) Against this the Commission is aware that during the later stage of the present proceedings' a large number of retailers (and other customers in the AFH sector) have, subsequent to their initial response to the Commission questionnaire, written to express their support in favour of the merger. However, the Commission considers that any assessment of these comments should be tempered by the consideration that there is a certain parallelism in the interests of retailers and the merging parties.

(191) The phenomenal commercial success of Andrex built on the strength of its advertising would appear to have allowed tissue paper manufacturers and retail sellers in the UK and Ireland to charge consumers prices for toilet paper that are among the highest, if not the highest, in the world. This view is supported not only by the price comparison developed above but also by the statement in the paper 'Andrex — sold on a pup' that:

'Price realization, effectively a measure of inherent profitability, is higher in the UK than in any other toilet-tissue market in the world' (page 74).

(192) Consequently, the price leadership enjoyed by Andrex and the high price-level made acceptable by the success of its advertising, has allowed retailers in the past to follow Andrex price increases upwards for the sale of their own store brands. There is little evidence that this situation will change in the future.

(193) On general grounds the Commission considers that the consumption of toilet-tissue is likely to be relatively inelastic. Indeed, quantitative analysis in both the Hausman and Lexecon studies support this view (estimate of own price demand elasticity for toilet-tissue significantly below 1). Consequently the consumer, even if Andrex is too highly priced, has little alternative but to pay the higher charge on private-label products. Moreover, through their position as a leading supplier of private-label products, a loss of sales on increasing the price of branded products will be at least partially compensated for KC/S [57].

(194) Hence, at the retailer level, the case can be made that provided all UK retailers are broadly subject to the same price level for essential branded toilet-tissue products, price increases can be successfully passed on to consumers, to the mutual benefit of retailer and supplier. At least, this appears to be what has happened in the past.

(195) In their response to the Statement of Objections, the parties have contested what they call this 'cosy cartel' view of UK supermarket behaviour and have pointed to the fierce price competition between UK retailers. The Commission recognizes the strong competition in the UK retail market and is aware of the substantial price decreases that have taken place in the grocery sector in recent years. Nevertheless, the Commission does not consider that this observation nullifies the validity of the general incentive for UK retailers to follow upwards price increases made more palatable to the consumer by price rises for Andrex. Retailers can still follow a general upward price trend on a long-term basis while delaying price increases on a short-term basis to give a temporary competitive advantage vis-à-vis other retailers. Certainly, the Commission is aware that such situations have occurred with respect to the implementation of price rises for Andrex. Consequently, strong intra-retailer competition coupled with private-label products shadowing brand leader price movement seem compatible.

(196) In conclusion retailers could also be expected to share in gains arising from higher price levels in the market for UK toilet-tissue.

New entry

(197) Based on the analysis below the Commission does not consider that potential dominance by the merging parties could be adequately checked by the future entry of new suppliers.

High degree of concentration

(198) UK markets for consumer tissue products exhibit a high degree of concentration. This concentration is most marked in the large toilet-tissue market where the combined branded/private-label market

[57] This is only true for the larger British market as neither Kimberly-Clark nor Scott supply private-label products in Ireland, where Jamont is by far the leading private-label supplier.

share of KC/S is almost [50—60 %] ([58]). The next supplier, Jamont, has a market share of just under [10—20 %] ([59]) so that the two largest suppliers cover almost [60—80 %] ([60]) of the market. A high degree of concentration increases the risks associated with new entry in the sense of increasing the likelihood of a reaction by the dominant supplier against newcomers with a view to defending the acquired market position and profitability.

(199) In the particular circumstances of this case, the Commission considers that the degree of concentration in the branded products part of the market is more relevant. Here the position of the parties is particularly strong and incapable of adequate challenge.

Brand loyalty

(200) The existence of a relatively high level of brand loyalty in favour of Kleenex and Andrex for toilet-tissue and facial tissues can make it difficult to persuade users ([61]) to switch and therefore for suppliers to enter the market. Table 9 in the Annex compares the degree of brand loyalty of these products with other well-known consumer products in the UK.

(201) In their response to the Statement of Objections the parties have rebutted this analysis. In particular they point out that the Nielsen 'Brand loyalty' methodology does not measure price-insensitive brand loyalty. Instead, the Homescan service merely answers the question:

'Of those members of a sample consumer panel group who bought at least one roll of Andrex toilet-tissue in the past year, what percentage of those consumers' total toilet-tissue requirements were met with Andrex?'

(202) As such, the parties point out that the Homescan data only indicates that of those panel members who bought at least one roll of Andrex, 43 % of their requirements were met by Andrex. More significantly, they state that the Homescan data does not provide answers to the following two questions:

(i) How many panel members purchased at least one roll of Andrex (e.g. 1 000 or 7 000 out of the 8 000 UK households included in the Homescan panel)?

(ii) Whether those that did purchase at least one roll of Andrex 'always' purchase Andrex (regardless of price) or only 'usually' or 'sometimes' purchase Andrex?

(203) Furthermore, the parties have also provided additional Homescan data demonstrating that private-label products, using the same measurement technique, also dispose of relatively high degrees of brand loyalty. In fact as they point out, the corresponding brand loyalty statistic for private-label toilet paper is above that of Kleenex toilet paper. This is shown in the figures below:

Table 20

Homescan brand loyalty data for British toilet paper

(in %)

Toilet paper	Brand loyalty figure
Andrex	47
Kleenex	31
Premium private-label	41
Economy private-label	38

(204) The Commission accepts the validity of the comments expressed by the parties and recognizes the limitations of the Homescan data in providing a precise measure of price insensitive brand purchasing loyalty.

(205) Nevertheless, the Commission understands that the Homescan data are commonly used by manufacturers and retailers as an approximate measure of product loyalty. Moreover, the data in Table 9 show that these tissue paper products do possess surprisingly high loyalty figures compared to other well-known branded products in the grocery sector. Therefore in terms of assessing the likelihood of entry in the branded segment of the market, the simple fact that these figures are relatively high must at least act to discourage the entry of a new branded product. Hence, the Commission considers the Homescan data remain relevant although their interpretation is necessarily constrained by the limitations of the statistical methodology used for calculation.

Market growth

(206) The UK and Irish toilet-tissue markets are relatively saturated markets. It is true that consumption of tissue products is forecast to grow

([58]) Business secret, replaced by ranges.
([59]) Business secret, replaced by ranges.
([60]) Business secret, replaced by ranges.
([61]) The Commission recognizes that promotional efforts can attract a significant number of users to switch from private-label products to Andrex for the duration of the promotional campaign. However, there remains an underlying and substantial class of regular Andrex purchasers who remain loyal irrespective of the availability or not of special offers. Moreover, the fact that there is a large number switching out of private label to Andrex or Kleenex on a temporary basis, only serves to underscore the reputational characteristics of the brand with non-regular purchasers.

in the future but this is primarily for sanitary products. According to the 1995 Datamonitor report, the toilet-tissue and facial-tissue market (in value terms) is forecast to grow by only 1,4 % and 1,5 % respectively on a annual compound basis in the period up to the year 2000 and for kitchen towels the forecast is a fall of 2,5 %. This low rate of growth renders market entry less attractive in general terms.

(207) However, the Commission recognizes that the actual market situation for toilet-tissue is more complicated. In recent years there appears to be a certain polarization taking place in the market with some customers moving to the luxury end of the market and others gravitating towards economy products.

(208) As evidence of the former, the following paragraph taken from the October 1995 issue of the UK trade magazine *Checkout*:

'The trend towards super-premium tissue rolls signalled by the introduction of quilted and cushioned goods in 1993 is still very much in evidence. Toilet-tissue is being positioned through sophisticated advertising as a luxury commodity product rather than a functional necessity. As a result, the premium brands which dominated the 1994 market with a 60,5 % share are losing sales to the super-premium brands which have grown from a 0,4 % share in 1993 to a projected 5,4 % share by the end of 1995.'

(209) As an example of the latter, the Nielsen consumer sales data for toilet-tissue show in the private-label sector over the period August 1994 to July 1995 a decrease in the standard segment from 9,6 to 6,8 % (i.e. -2,8 %) and an increase in the economy segment from 10,8 to 13,2 % (i.e. +2,4 %).

(210) Of course branded products compete in the premium and super-premium market segment. As far as the Commission is aware, currently only the parties and to a certain extent, Jamont, have super-premium products, although it is understood the new Kruger plant will have the capacity to produce super-premium tissues.

Advertising sunk costs

(211) The establishment of a new brand would require heavy investment in advertising and promotion in order to persuade brand loyal customers to switch away from their usual brand. Such expenditure is a sunk cost and adds to the risk of entry.

(212) One competitor of the parties has estimated the costs to launch a new product in the UK toilet-tissue market including both advertising and promotional expenditure could amount to ECU 40 million for the first year alone. This figure does not seem unreasonable compared to the reported ECU 37 million to be spent by Scott on supporting the Andrex brand in 1995 and the ECU 15 million spent by Kimberly-Clark to relaunch Kleenex Double Velvet in June 1995.

Access to shelf space and distribution difficulties

(213) In general terms, tissue paper products are bulky and have low value. They require substantial shelf space. These characteristics mean that new market entrants will experience exceptional difficulty to secure adequate distribution with retailers. Clearly, even the largest retailers will not be able to stock a full product range for all brands. As a result it is already difficult to obtain shelf space for existing brands, let alone new brands. In fact, one major competitor stated that

'the fight for shelf space is continual, brutal and vicious'.

(214) Moreover, branded entry to the premium and super-premium segments will be particularly difficult because a new entrant will have to be able to provide a reasonable choice of toilet-tissue colour. As already mentioned earlier, one of the distinguishing characteristics of the UK toilet-tissue market is the importance of coloured tissues. This is demonstrated by the table below:

Table 21

Colour of toilet paper purchased in 1994 (value percentage)

(in %)

White	Pink	Peach	Green	Blue	Pattern	Yellow	Total
43	17	21	8	3	3	7	100

The above table tends to underestimate the significance of colour choice for premium and super-premium brands, since white is typically more frequently used for economy private label. Colour therefore will be a factor aggravating market entry difficulty.

(215) More particularly, subsequent to the merger the parties will dominate retail shelf space for branded products. Because of more severe shelf space restrictions, the situation will almost certainly be more critical for secondary brands in smaller retailers. Indeed, even for the multiples, the Commission's enquiries have revealed that two have delisted Dixcel products in the last few years.

(216) The Commission does not have precise quantitative data on shelf space allocation for toilet-tissue. However, the Datamonitor Report on UK disposable paper products does provide a broad breakdown. These data are shown in Table 10. As regards branded products, these data clearly show that the No 3 brand has only a fraction of the shelf space made available to the two leading brands. For example, in Tesco and Sainsbury, the two largest multiples in the UK covering approximately 40 % of the market, the No 1 and No 2 brands are granted 82 % and 77 % respectively of the shelf space made available to branded products. Similarly, photographs showing that the parties will enjoy approximately 90 % or more of shelf space for branded toilet-tissue in the largest UK retailers, have been submitted to the Commission.

(217) Given the low value/high volume characteristics of toilet-tissue, the Commission considers these quantitative data provide strong evidence of the future dominance the parties will enjoy with regard to retailer shelf space.

(218) As a result of the merger, KC/S will become the unchallenged market leader for branded consumer toilet-tissue products. This will provide them with a strong influence on product layout and display within a retailer. As such they are likely to be able to gain more subtle, but nevertheless real, advantages with regard to product display at eye level and in a manner harmonious with normal aisle flow.

(219) In conclusion, all of these physical and other shelf space advantages will accrue to the merging parties and render the chance of successful market entry by a new branded supplier much more difficult.

(220) The Commission is aware that past experience has shown that it is possible in some cases for entrants to overcome shelf space impediments and to successfully launch new products. However, these have required sustained and very substantial financial resources. The new entrant may need to offer retailers 50 % margins and be willing to suffer considerable financial losses for several years or more. Only the very largest of companies could consider such a strategy. Given the particular characteristics of the toilet-tissue products, the established brand loyalty, the degree of existing and enhanced profitability and the volume of advertising and promotion expenditure that would be enjoyed by the combined KC/S entity in the UK market, the overall difficulty encountered by a new market entrant renders the probability of such entry, and its effectiveness, well below what could be considered as necessary to eradicate the competition concerns identified above.

(221) In making their defence the parties have also pointed to the possible entry by Procter & Gamble into the UK and Irish tissue paper markets. Indeed, they observe that Procter & Gamble in its own submissions to the Commission have stated that:

'It has also been desirable for us to plan further European expansion including an entry into the UK/Irish markets. To that end, we have looked at and reviewed entry to the UK market and have also conducted product testing and market research in the UK.'

(222) However, the Commission does not consider that this observation invalidates its analysis with respect to the difficulty of branded market entry. In particular, P & G's market research relates to the *ex-ante* situation and not to the new *ex-post* merger situation. On the basis of the information provided and the representations made by P & G, the strength that KC/S will enjoy in the branded segment must be considered such as to cause P & G to review this strategy and the increased risks must render that entry much less likely now.

(223) Moreover, there are other substantial barriers to market entry that a new supplier would have to overcome.

Physical production required for market entry

(224) Additional to the marketing difficulties of entry as described above, a new entrant will experience major difficulties with the physical manufacture of the paper tissue products required to enter the

market. Essentially production can take place at two levels: conversion of parent reels or tissue-paper production followed by conversion.

Entry at conversion level

(225) The parties have laid considerable emphasis on the ability of independent converters in the UK to produce tissue paper products and thus constrain the behaviour of the combined KC/S entity. The Commission disagrees with this analysis.

(226) It is true that the cost of conversion equipment is much lower than that of paper production. The estimates received by the Commission during the course of its enquiries vary considerably: from as low as ECU 0,6 million for a capacity of 4 500 tonnes to as much as ECU 18 million for 15 000 tonnes capacity. However, for the reasons already described above, existing converters are unable to constrain, to any significant extent, the competitive behaviour of the parties and these reasons are equally valid for any new entrant or expansion of existing capacity.

Entry at paper production level

(227) In order to play any significant role in the UK, particularly in the branded sector where it is essential to have super-premium products, a new entrant would require to establish a new production plant for the primary manufacture of tissue paper parent reels. Irrespective of the time required to locate a suitable site and secure regulatory planning permission, the estimated time for the construction of such a plant would be in the order of two years.

(228) Capital costs are very substantial. Here again the Commission's enquiries have shown some variation in the capital cost and the corresponding minimum plant size for efficient operation. However, in general, figures vary from about ECU 50 million for 40 000 tonnes to as much as ECU 180 million for 50 000 to 70 000 tonnes of capacity. These figures must be increased to allow for working capital requirements and other incidental costs.

(229) Additional to the considerable capital outlay on the new plant investment, the new entrant would also be confronted by the need to sell approximately 50 000 tonnes of tissue products. This corresponds to about 7 % of current UK requirements. Given the entrenched position the merging parties would hold and the level of profits enjoyed on their branded products, it would be a very hazardous proposition to assume that the new entrant would be able to take successfully the required degree of market share from the incumbents.

(230) In the light of the major financial investment required and the difficulty to secure the market sale of the new output coupled with the substantial marketing barriers to entry, the Commission does not consider that, subsequent to the merger, new market entry will be likely, timely or effective.

Entry by transport of finished goods from Continental Europe

(231) The fact that today UK toilet-tissue prices are higher than in some Member States in Continental Europe while transport costs for the finished tissue products are lower would seem to provide compelling evidence of the difficulty of new market entry by import of finished goods from Continental Europe. This too cannot be considered a realistic means of market entry. Moreover, as indicated above, retailers were unanimous in identifying the difficulties of overseas supply.

(232) For these reasons, the Commission considers that new entry, either at the converter or primary manufacture stage, or by finished product import, is not likely, timely or effective.

Parties' proposed remedy

(233) In the light of the competition concerns identified by the Commission with regard to the impact of the proposed merger on tissue paper markets in the UK and Ireland, the parties have offered to modify the original concentration plan by entering into the following commitments:

'Divestment of brands and businesses

1. The parties agree to divest Kimberly-Clark's Double Velvet, Velvet, Recycled and Quilted toilet-tissue brands and businesses in the UK and Republic of Ireland, together with the copyright in the packaging, advertising and promotional materials used in relation to the products sold under these brands. The parties also agree to enter into a 15-year agreement with the purchaser containing the following provisions:

   (a) an initial three-year royalty-free exclusive licence for the purchaser to use in the UK and Republic of Ireland the

Kleenex trade mark in conjunction with Double Velvet, Velvet, Quilted and Recycled brands in relation to consumer toilet-tissue;

(b) a unilateral option for the purchaser to renew the licence on an annual basis for up to seven additional years at a royalty to be agreed with the purchaser, payable on the sales of consumer toilet-tissue products bearing the Kleenex trade mark;

(c) an agreement by the parties not to use, in the UK and the Republic of Ireland the Kleenex trade mark, any similar trade mark or any packaging, advertising or promotional materials similar to those described in paragraph 1 in relation to consumer toilet-tissue for the remaining duration of the 15-year agreement.

2. The parties agree to divest to the same purchaser all of Kimberly-Clark's rights in the trade mark Velvex and the trade mark application for Velvet in the UK.

3. The parties agree to divest to the same purchaser Scott's Handy Andies pocket handkerchiefs brand and business in the UK and Republic of Ireland, together with the copyright in the packaging, advertising and promotional materials used in relation to the products sold under the Handy Andies brand. The parties agree to remove Scottex from the packaging of Handy Andies pocket handkerchiefs sold by them within as short a period as is practicable.

4. The parties agree to grant to the same purchaser a perpetually renewable, exclusive royalty-free and assignable 25-year licence to use the Scotties brand exclusively in relation to the manufacture and sale of consumer boxed facial tissues in the UK and Republic of Ireland, together with the copyright in the packaging, advertising and promotional materials used in relation to the products sold under this brand.

5. The parties agree:

(a) not to use, in the UK and the Republic of Ireland, the Andrex trade mark in relation to consumer facial tissues/handkerchiefs for an indefinite duration; and

(b) to divest Kimberly-Clark's branded consumer kitchen-towel business in the UK and Republic of Ireland to the same purchaser and to enter into a 15-year agreement with the purchaser containing the following provisions:

(i) an initial three-year royalty-free exclusive licence for the purchaser to use in the UK and Republic of Ireland the Kleenex trade mark in relation to consumer kitchen towels;

(ii) a unilateral option for the purchaser to renew the licence on an annual basis for up to seven additional years at a royalty to be agreed with the purchaser, payable on the sales of consumer kitchen towel products bearing the Kleenex trade mark;

(iii) an agreement by the parties not to use in the UK and the Republic of Ireland the Kleenex trade mark, any similar trade mark or any packaging, advertising or promotional materials similar to those used by the parties in relation to consumer kitchen towel products sold under the Kleenex trade mark for the remaining duration of the 15-year agreement;

(c) not to use in the UK and the Republic of Ireland the Scottex trade mark in relation to consumer facial tissues/handkerchiefs for the duration of the 15-year agreement referred to in paragraph 5 (b).

Divestment of production capacity

6. The parties agree to divest Kimberly-Clark's 80,000 tonne-per-year Prudhoe, England tissue facility comprising the tissue mill, converting factory and the consumer tissue products converting equipment to support the businesses described above, warehousing and offices and the adjacent regional distribution centre but excluding (a) the Unifibre recycling plant; (b) the converting equipment located at Prudhoe currently used by Kimberly-Clark's away-from-home business and (c) the following converting equipment located at Prudhoe: one PCMC 2,5 m (two colour) kitchen-towel winder, one PCMC 1,7 m (plain) kitchen-towel winder, one Cobden Chadwick off-line printer and one Optima LBX4 bagger. Kimberly-Clark will be responsible for removing the said excluded equipment from Prudhoe at its own expense and in accordance with a schedule consistent with the supply agreement referred

to at paragraph 8. The parties will also sell to the purchaser, adequate converting equipment for consumer facial tissues and handkerchiefs and will, at the purchaser's request and expense, install the same at Prudhoe.

Additional provisions

7. In order to enhance its commercial viability to prospective purchasers, the divestiture package would include, to the extent permitted by law or contract, the following, unless not required by the purchaser:

   (a) transfer of sales staff currently engaged in the UK consumer tissue categories;

   (b) transfer of production and administrative personnel currently dedicated to the Prudhoe facility;

   (c) provision of manufacturing technical assistance at the Prudhoe facility, for a period of not more than 12 months from the date of the sale;

   (d) assignment of existing pulp and other input supply contracts and services (e.g. effluent treatment) contracts to the extent related to the Prudhoe facility; and

   (e) the parties' best efforts to procure the assignment to the purchaser of existing contracts or business with retailers for the supply of an agreed amount of store brand tissue products to the extent related to the Prudhoe facility.

8. Since the Prudhoe mill currently produces AFH tissue products for Kimberly-Clark the parties require a one-year supply agreement with the purchaser for the supply to Kimberly-Clark of not less than [. . .](62) of tissue from the P1 machine at Prudhoe (to be supplied either in parent reel or finished product form as agreed with the purchaser) to facilitate the transfer of production to other locations.

Implementation

9. Kimberly-Clark and Scott undertake to the Commission with respect to the brands and businesses referred to in paragraphs 1 to 5 above and the Prudhoe facility (which are together referred to as 'the divested business') the following:

   (1) The parties will, as soon as practicable after the Commission has notified to the parties a favourable decision and in any event no later than two weeks thereafter, appoint an independent trustee (such as a merchant bank) approved by the Commission (such approval not to be withheld without good cause) (the 'Trustee') to act on their behalf in overseeing the ongoing management of the divested business to ensure its continued viability and market value and the rapid and effective divestiture of the divested business from the rest of KC/Scott's activities as more fully set out in subparagraph (7).

   (2) The parties undertake that they will give the Trustee an irrevocable mandate to find a valid purchaser for the divested business, it being understood that such purchaser shall be a viable existing or prospective competitor independent of, and unconnected to KC or Scott and possessing the financial resources and proven expertise in consumer product markets enabling it to maintain and develop the divested business as an active competitive force in competition to the parties' consumer tissue business on the various markets concerned (the purchaser standards). The Trustee will invite indicative offers to be submitted by third parties not later than [. . .](63) from the Trustee's appointment and final offers to be submitted by shortlisted third parties not later than [. . .](64) from such appointment. The parties undertake to give, on an arm's length basis, all assistance requested by the Trustee prior to the sale of the divested business to a third party.

   (3) The Trustee shall submit its first report to the Commission within two weeks after receipt of all indicative offers from prospective purchasers. Subsequent reports on the progress of the divestiture will be submitted every two months. The initial Trustee report shall identify each bidder that the Trustee believes satisfies the purchaser standards. The first report shall also contain complete copies of all indicative offers, and shall further

(62) Deleted business secret.

(63) Deleted confidential information.

(64) Deleted confidential information.

contain sufficient information to enable the Commission to assess whether each bidder satisfies the purchaser standards. If within two weeks of receipt of the Trustee's first report the Commission does not formally indicate its disagreement with the Trustee's assessment of each prospective purchaser submitting an indicative offer, any offeror identified as acceptable by the Trustee may proceed to the final offer stage.

(4) KC/Scott shall sign a binding purchase agreement with a purchaser meeting the purchaser standards and complete the sale by [. . .](65), regardless of the final price(s) offered. KC/Scott alone shall be free to accept any offer or to select the offer it considers best in case of a plurality of offers. The parties will take all reasonable steps to encourage the relevant personnel currently employed at the Prudhoe mill including production and administrative personnel and other relevant employees, to take up employment with the purchaser.

(5) Where a binding agreement for the sale of the divested business has been signed, the purchaser will be associated forthwith with any ongoing contractual negotiations for the supply of consumer tissue products by the divested business to retailers in the UK and Republic of Ireland in order to ensure that the viability of the divested business is preserved. Until such a binding sales agreement exists, the Trustee shall be associated with these negotiations.

(6) The parties recognize the Commission's twofold objectives to maintain the viability, marketability and competitiveness of the divested business and to provide sufficient management services and functions for this purpose. In order to accomplish these objectives, KC/Scott undertake to do the following:

(a) To ensure that the divested business is held separate and managed as a distinct and saleable business with its own management accounts and to ensure that production capacity and selling activities are maintained, pursuant to good business practices, at their current level, and that all contracts necessary to preserve the business are entered into or continued in accordance with their terms, consistent with past practice and the ordinary course of business;

(b) To maintain all administrative and management functions relating to the divested business which have been carried out at all appropriate headquarter levels in Kimberly-Clark and/or Scott in order to maintain the viability, marketability and competitiveness of the divested business until the divestiture is completed or until such time as the Trustee advises Kimberly-Clark that such functions are no longer necessary, whichever occurs earlier;

(c) To establish and facilitate the management structure selected by the Trustee as set out under subparagraph (7) (a).

(7) The Trustee will:

(a) In consultation with appropriate personnel at Kimberly-Clark and Scott, determine the best management structure to ensure the viability, marketability and competitiveness of the divested business;

(b) Monitor the operation and management of divested business to ensure its continued viability, marketability and competitiveness. For the purpose of, and to the extent necessary for such monitoring, the Trustee will have access to the personnel and facilities as well as the document, books and records of Kimberly-Clark and Scott including those which do not form part of the divested business. The Trustee will also have access to such other personnel, facilities, books and records which may have an impact on the conduct of the divested business (in particular central purchasing and ongoing R&D related to consumer tissue businesses);

(65) Deleted confidential information.

(c) Act as Kimberly-Clark's investment banker in conducting good faith negotiations with interested third parties with a view to selling the divested package by the date specified at point (4);

(d) The Trustee shall be remunerated by Kimberly-Clark. As an incentive to the Trustee to use its best efforts in arranging a prompt value-maximizing sale of the divested business, the Trustee's remuneration will provide incentives for a prompt divestiture;

(e) Provide written reports in accordance with point (3);

(f) Provide to the Commission, with a copy to Kimberly-Clark, a written report every two months concerning the monitoring of the operation and management of the divested business;

(g) At any other time, provide the Commission, at its request, with a written or oral report on the matters referred to at point (3) and subparagraph (f) above. Kimberly-Clark shall receive a copy of such written reports and shall be informed of the content of oral reports;

(h) Cease to perform its duties as Trustee with regard to the divested business package after the closing of the sale of the divested business. The purchaser may retain the Trustee's services at its own expense after this date.

(8) Kimberly-Clark and Scott shall take all steps necessary to ensure that the divested business will be maintained as an economically viable, ongoing business concern, manufacturing and selling the same tissue products, and in the same manner, as currently. To ensure this viability, KC and Scott shall

(a) provide and maintain sufficient working capital and lines of credit for the divested business;

(b) use all reasonable efforts to maintain the sales of the divested business's tissue products in the UK and the Republic of Ireland;

(c) otherwise maintain the divested business as an active competitor in the UK and the Republic of Ireland.

(9) Notwithstanding any other provision of these undertakings Kimberly-Clark and Scott may receive, on a regular basis, from the divested business aggregate financial information necessary to allow them to prepare consolidated financial reports, tax returns and personnel reports.

(10) KC and Scott will agree to keep confidential and not to use in relation to their remaining businesses any confidential information regarding the divested business that they have in their possession or of which they are aware.

(11) Without prejudice to the Commission's powers under Article 8 (2) of the Merger Regulation, any dispute between the parties and the third party purchasing the divested business arising out of or in connection with the implementation of these undertakings will be submitted to independent arbitration.'

V. ASSESSMENT OF PROPOSED MODIFICATIONS

(234) In the light of the assessment of the operation which demonstrates the need for maintained competition in the branded segment, notwithstanding the growing importance of private-label goods, the Commission considers that the proposed remedy is adequate to facilitate the entry of an effective competitor to the merging parties in the UK and Ireland for the supply and marketing of the following consumer tissue paper products, toilet-tissue, kitchen towels and facial tissues/handkerchiefs. As a result the operation will not lead to the creation of a dominant position.

(235) The proposed remedy addresses all three relevant product markets and as a result of the modifications proposed to the operation the parties will acquire post-merger combined market share for branded products in each relevant product market which does not exceed the greater of either before the merger. This is shown below:

Table 22

Post-merger market share (branded products) under modified operation

	KC	Scott	Post-merger
Toilet-tissue	[10—20]	[20—30]	[20—30]
Kitchen-towels	[0—10]	[10—20]	[10—20]
Facial tissues/handkerchiefs	[20—30]	[0—10]	[20—30] (1)

(1) Business secret, replaced by ranges.

(236) The sale of the businesses, plant and brands to be divested will allow the entry of an effective competitor in the UK and Ireland across the three tissue product markets concerned.

(i) For toilet-tissue, the purchaser will be able to make use of the complete range of the brand names 'Double Velvet', 'Quilted' and 'Recycled' currently being sold under the umbrella Kleenex trade mark. In particular, the purchaser will be able to acquire the modern Prudhoe plant and thus maintain the high quality of the Kleenex toilet-tissue currently being manufactured under the TAD technology. As such production technology will be matched to the brand licensed/ divested.

(ii) For kitchen towels, the purchaser will be able to make use of the Kleenex umbrella trade mark in relation to consumer kitchen towels. Quite apart from the necessity to remedy the identified competition problem for consumer kitchen-towels on its own, the Commission attaches considerable importance to the need for the purchaser of the Kleenex toilet-tissue business to have control of the Kleenex kitchen-towel business during the rebranding exercise. The reason is that, unlike the case for facial tissues and handkerchiefs, toilet-tissue and kitchen towels have a similar size and packaging and are often sold adjacent to one another on supermarket shelves. While it would appear not impossible for a purchaser to successfully develop an effective branded toilet-tissue business having access only to the use of the Kleenex trade mark for 'Double Velvet', 'Quilted' and 'Recycled', the probability of the success of the exercise is increased if the purchaser has control over the use of the Kleenex trade mark for both toilet-tissue and kitchen-towels during the rebranding period.

(iii) For facial tissues/handkerchiefs, the purchaser will be able to use on an indefinite basis, the well known 'Scotties' (for facial tissues) and 'Handy Andies' brands. Since Scotties is currently used in the facial tissues segment, and Handy Andies corresponds to all of Scott's business in the handkerchiefs segment, the purchaser will immediately be able to compete in both segments of the facial tissues/handkerchiefs relevant product market. Furthermore, distribution space will also be created by the indefinite withdrawal of the Andrex facial tissue.

(237) It is true that ultimately the umbrella Kleenex trade mark will revert to the parties. In the very specific circumstances of this case, the Commission considers that the modalities of the operation are sufficiently favourable as to allow the creation of an effective competitor in the branded segment. In particular, the duration of the licensing of the Kleenex umbrella trade mark is sufficiently long, i.e. for a maximum 10-year period, the parties are not permitted to re-enter the toilet-tissue and kitchen-towel markets for the full 15-year period, and the purchaser will retain the 'Double Velvet', 'Quilted' and 'Recycled' names as well as the copyright in the packaging, advertising and promotional materials used to sell these products. Most importantly, the purchaser will have the modern Prudhoe plant and thus be able to maintain the high quality of the Kleenex products in the toilet-tissue and kitchen towel markets.

(238) It is true that for toilet-tissue and kitchen-towels the purchaser will have to engage in a rebranding exercise, which is not necessarily easy or devoid of a certain degree of risk. Nevertheless, given the modalities of the operation as described above, the Commission considers that the probabilty attached to this exercise is sufficiently high. In particular, the package of assets to be divested is highly profitable and based on the parties' submissions as well as the information available to the Commission, there are a significant number of existing tissue-paper manufacturers in addition to other candidates who have indicated or confirmed a strong interest in purchasing the package divested. This serves to underline the commercial feasibility of the package.

(239) As part of the package, the parties will also divest a significant amount of primary production capacity in the UK and Irish market. The Prudhoe plant has a capacity of 80 000 tonnes which corresponds to 12,3 % of the UK and Irish market. As such the parties will see their share of primary tissue-paper plant-production capacity fall from [50—60 % to 30—40 %] [66]. Moreover, the purchaser will have the only TAD tissue paper in the UK and Ireland.

(240) Currently, half of the Prudhoe plant is used for AFH production. After the expiry of transitional arrangements, this capacity will become available to the purchaser. The Commission understands that the AFH machine at Prudhoe is capable of high quality tissue paper production and could, with the necessary changes, be used for the

[66] Confidential information, replaced by ranges.

production of high quality consumer tissue paper products. The purchaser would therefore have additional capacity to expand either branded product sales and/or high quality private-label sales. The latter is still showing strong growth in the UK market (see Table 1 in the Annex).

VI. OVERALL CONCLUSION

(241) Consequently, the modified operation will not create or strengthen a dominant position as a result of which effective competition would be significantly impeded in the common market or in a substantial part of it.

(242) Furthermore, if any of the obligations accepted by Kimberly-Clark in its commitment are breached before the divestiture is completed, the Commission reserves the rights pursuant to Article 8 (5) to revoke its decision.

(243) These actions will be taken without prejudice to the Commission's right to impose fines pursuant to Article 14 (2),

HAS ADOPTED THIS DECISION:

Article 1

Subject to the full compliance with all conditions and obligations contained in Kimberly-Clark's commitments *vis-à-vis* the Commission as set forth in paragraphs 233 and following above, the concentration notified by Kimberly-Clark on 8 August 1995 relating to the acquisition of Scott Paper Company is declared compatible with the common market and the functioning of the EEA agreement.

Article 2

This Decision is addressed to:

KIMBERLY-CLARK CORPORATION
PO Box 619 100,
Dallas, TX 75261-9100,
USA

Done at Brussels, 16 January 1996.

For the Commission
Karel VAN MIERT
Member of the Commission

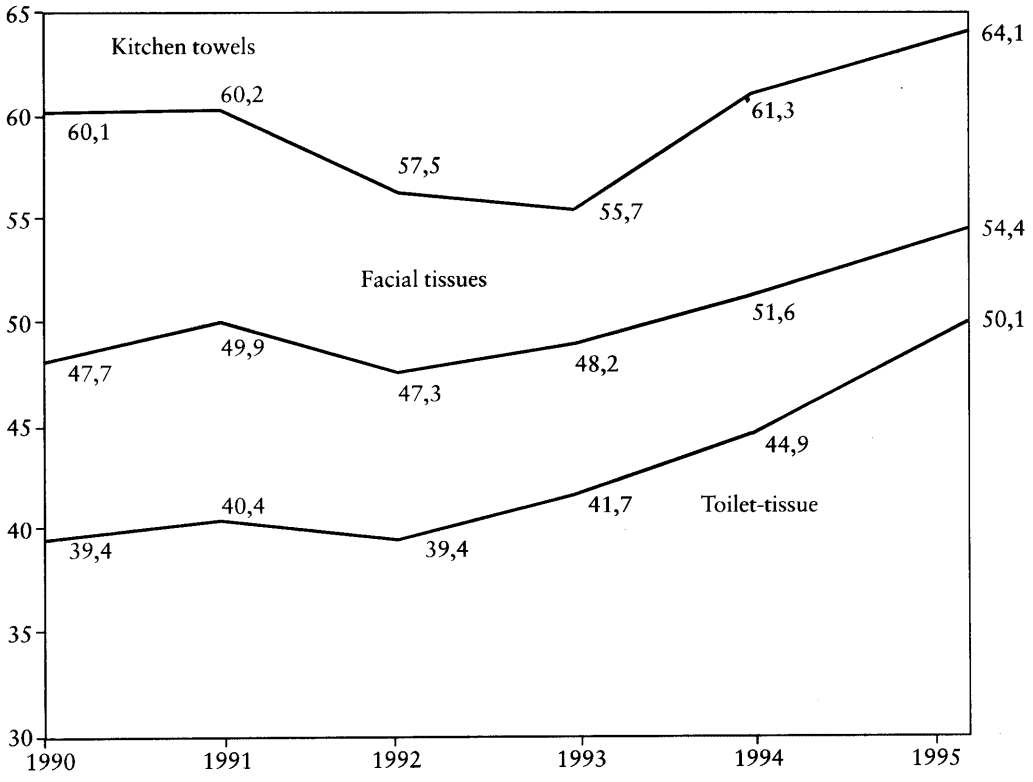
ANNEX

Table 1

UK tissue products private label evolution 1990 to 1995

Percentage of private label/year

	1990	1991	1992	1993	1994	1995 (ytd)
Toilet-tissue	39,4	40,4	39,4	41,7	44,9	50,1
Kitchen-towels	60,1	60,2	57,5	55,7	61,3	64,1
Facial tissues	47,7	49,9	47,3	48,2	51,6	54,4



Source: Parties.

Table 2.1

Consumer tissue brands

Toilet-tissue	United Kingdom	France	Germany	Belgium	Netherlands	Italy	Spain	Portugal
KC	Kleenex	Kleenex	—	—	Kleenex	Kleenex	—	Kleenex
Scott	Andrex	Scottex Cotonelle Letrèfle Page	Cotonelle Servus	Scottex Page Scottonelle	Cotonelle Page Popla Scottonelle	Scottonelle Scottex	Cotonelle Scottex Cel Garby	Scottex Cel
Jamont/James River (1)	(Dixcel)	Lotus (Moltonel)		(Moltonel)	(Celtona)	Lotus (Tenderly)	(Colhogar)	—
PWA	—	Domex Sept Domex	Zewa Danke	Domex	Domex Danke	—	—	—
P&G	—	—	Bess Beluga	—	Beluga	—	—	—

(1) Please note that Jamont is to name all tissue brands 'Lotus' by January 1996.

Table 2.2

Consumer tissue brands

Kitchen-towels	United Kingdom	France	Germany	Belgium	Netherlands	Italy	Spain	Portugal
KC	Kleenex	Kleenex	Kleenex	—	—	Kleenex	—	—
Scott	Andrex Fiesta Scottowel	Scottex Page Popla	Scottex Servus Page	Scottex Page Popla	Page Popla	Scottex	Scottex Cel (1)	Scottex
Jamont/James River	Dixcel	Lotus Okay	—	—	—	Lotus Tenderly	Colhogar	Colhogar
PWA	—	Sept Domex	Zewa Danke	Domex	—	—	—	—
P&G	—	—	Tempo Beluga Bluemia	—	—	Tempo	—	—

(1) Under elimination.

Table 2.3

Consumer tissue brands

Handkerchiefs	United Kingdom	France	Germany	Belgium	Netherlands	Italy	Spain	Portugal
KC	Kleenex	Kleenex	—	—	—	Kleenex	Kleenex	Kleenex
Scott	Scottex Cotonelle	Scottex Cotonelle	Servus Scottex	Scottex Scottonelle	Page Popla Cotonelle	Scottex Scottonelle	Scottex Cotonelle Cel (1)	Scottex Cotonelle
Jamont/James River	—	Lotus	Lotus	Lotus	Celtona	Lotus Tenderly	Colhogar	Colhogar
PWA	—	Sept	Zewa Danke	Domex	Domex	—	—	—
P&G	—	Tempo	Tempo Beluga Bluemia	Tempo	Tempo	Tempo	Tempo	Tempo

(1) Under elimination.

Table 2.4

Consumer tissue brands

Facial tissue	United Kingdom	France	Germany	Belgium	Netherlands	Italy	Spain	Portugal
KC	Kleenex	Kleenex	Kleenex	—	Kleenex	Kleenex	Kleenex	Kleenex
Scott	Andrex Scotties	Scottex Cotonelle Page	Servus	—	Scottex Page	Scottex	Scottex	Scottex
Jamont/James River	Dixcel	Lotus	Lotus	—	Lotus Celtona	Lotus	Colhogar	Colhogar
PWA	—	Domex Sept	Danke	—	Domex	—	—	—
P&G	Tempo	—	Tempo Bluemia	—	Tempo Beluga	Tempo	—	—

Table 3

Largest tissue producers in Western Europe (1)

Company/group	Production capacity	
	Thousand tonnes	Percentage
Kimberly-Clark	[. . .]	[0—10]
Scott Paper	[. . .]	[10—20]
KC/Scott	[. . .]	[10—20]
James River/Jamont	[. . .]	[10—20]
SCA/PWA/Mölnlycke	[. . .]	[10—20]
Metsä Serla	[. . .]	[0—10]
Carrara	[. . .]	[0—10]
Halstrick	[. . .]	[0—10]
Procter & Gamble	[. . .]	[0—10]
Lazzareschi	[. . .]	[0—10]
Attisholz	[. . .]	[0—10]
Fort Sterling/Howard	[. . .]	[0—10]
Others	[. . .]	[30—40]
Total	[4 500—5 500]	[100]

(1) Business secrets have been deleted or replaced by a range.

Table 4

UK and Ireland 1994 market size, importance of branded and private label products (1)

Tissue product (consumer)	UK			Ireland		
	Market size (in ECU millions)	Percentage of total	Branded products	Market size (in ECU millions)	Percentage of total	Branded products
Toilet-tissue	[. . .]	71 %	55 %	[. . .]	66 %	54 %
Kitchen-towels	[. . .]	15 %	39 %	[. . .]	16 %	45 %
Handkerchiefs/ facial tissues	[. . .]	14 %	50 %	[. . .]	18 %	54 %
Total	[1 000—1 500]	100 %	52 %	[30—50]	100 %	52 %

(1) Business secrets deleted or replaced by a range.
Source: Parties.

Table 5

Advertising expenditure on UK consumer tissue products

Toilet-tissue

	1990	1991	1992	1993	1994	Total
Andrex	5 011	6 828	7 001	7 107	8 411	34 358
Kleenex	2 650	3 538	2 921	4 035	3 706	16 850
Dixcel	578	664	801	550	644	3 237
Hakle	133	410	394	501		1 438
Nouvelle	1 191					1 191
Helping Hand	468					468
Other	43	2	33	186	161	425
Total	10 074	11 442	11 150	12 379	12 922	57 967

	1990	1991	1992	1993	1994	Total
Andrex	50 %	60 %	63 %	57 %	65 %	59 %
Kleenex	26 %	31 %	26 %	33 %	29 %	29 %
Dixcel	6 %	6 %	7 %	4 %	5 %	6 %
Hakle	1 %	4 %	4 %	4 %	0 %	2 %
Nouvelle	12 %	0 %	0 %	0 %	0 %	2 %
Helping Hand	5 %	0 %	0 %	0 %	0 %	1 %
Other	0 %	0 %	0 %	2 %	1 %	1 %
Total	100 %	100 %	100 %	100 %	100 %	100 %

Facial tissues

	1990	1991	1992	1993	1994	Total
Kleenex	2 145	2 784	973	1 140	3 209	10 251
Andrex	522	0	1 001	0	0	1 523
Dixcel	62	268	387	0	0	717
Other	0	10	88	43	97	238
Total	2 729	3 062	2 449	1 183	3 306	12 729

	1990	1991	1992	1993	1994	Total
Kleenex	79 %	91 %	40 %	96 %	97 %	81 %
Andrex	19 %	0 %	41 %	0 %	0 %	12 %
Dixcel	2 %	9 %	16 %	0 %	0 %	6 %
Other	0 %	0 %	4 %	4 %	3 %	2 %
Total	100 %	100 %	100 %	100 %	100 %	100 %

Kitchen towels

	1990	1991	1992	1993	1994	Total
Andrex	0	0	0	2 357	255	2 612
Fiesta	1 216	750	0	0	0	1 966
Kleenex	0	0	439	823	304	1 566
Nouvelle	0	0	232	451	0	683
Dixcel	62	268	0	0	0	330
Spontex	0	0	222	0	0	222
Other	9	33	64	6	18	130
Total	1 287	1 051	957	3 637	577	7 509

	1990	1991	1992	1993	1994	Total
Andrex	0 %	0 %	0 %	65 %	44 %	35 %
Fiesta	94 %	71 %	0 %	0 %	0 %	26 %
Kleenex	0 %	0 %	46 %	23 %	53 %	21 %
Nouvelle	0 %	0 %	24 %	12 %	0 %	9 %
Dixcel	5 %	25 %	0 %	0 %	0 %	4 %
Spontex	0 %	0 %	23 %	0 %	0 %	3 %
Other	1 %	3 %	7 %	0 %	3 %	2 %
Total	100 %	100 %	100 %	100 %	100 %	100 %

Source: Datamonitor.

Table 6

UK 1994 production and conversion capacity

1994 UK production capacity and actual conversion

Firm	Production (1)	% production	Conversion (1)	% conversion
KC	[...]	[20—30]	[...]	[20—30]
SP	[...]	[20—30]	[...]	[20—30]
KC + SP	[...]	[50—60]	[...]	[40—50]
Jamont	[...]	[20—30]	[...]	[10—20]
Fort Sterling	[...]	[10—20]	[...]	[10—20]
Kruger	[...]	[0—10]	[...]	[0—10]
AM paper	[...]	[0—10]	[...]	[0—10]
Turner	[...]	[0—10]	[...]	[0—5]
Total integrated	[...]	[90—100]	[...]	[80—90]
Celtech (manufacturer only)	[...]	[0—5]	[...]	[...]
LPC	[...]	[...]	[...]	[0—10]
Pennington	[...]	[...]	[...]	[0—10]
Goulds	[...]	[...]	[...]	[0—10]
Staples	[...]	[...]	[...]	[0—10]
Waveline	[...]	[...]	[...]	[0—5]
F.H. Lee	[...]	[...]	[...]	[0—10]
SCA/PWA	[...]	[...]	[...]	[0—10]
Others (estimate)	[...]	[...]	[...]	[0—10]
Total converters	[...]	[...]	[...]	[10—20]
Grand total	[...]	100	[...]	100

(1) When conversion capacity was not available, sales figures have been used.
Business secrets deleted or replaced by a range.

Sources: ETS, parties' position paper and correspondence, competitors' answers.

Table 7.A

1994 UK – tissue products market shares (parties and main competitors)

1. UK consumer private label market (1)

	Private label market size (ECU million)	% of the market	Parties' shares			Main competitors' shares						
			SP	KC	SP—KC	Jamont	Fort Sterling	SCA/PWA	A & M	Kruger	F.H. Lee	Others
Toilet-tissue	[...]	[40—50]	[0—10]	[10—20]	[10—20]	[10—20]		[0—10]		[0—10]	[0—10]	[0—10]
Kitchen towels	[...]	[60—70]	[0—10]	[20—30]	[20—30]	[0—10]	[10—20]		[0—10]		[0—10]	[0—10]
Handkerchiefs and facial tissues	[...]	[40—50]	[0—10]	[10—15]	[10—15]							[30—40]

(1) Business secrets deleted or replaced by a range.

2. UK consumer branded products market (1)

	Branded products market size (ECU million)	% of the market	Parties' shares			Main competitors' shares						
			SP	KC	SP—KC	Jamont	Fort Sterling	SCA/PWA	A & M	Kruger	F.H. Lee	Others
Toilet-tissue	[...]	[50—60]	[20—30]	[10—20]	[40—50]	[0—10]	[0—10]	[0—5]				[0—10]
Kitchen towels	[...]	[30—40]	[10—20]	[0—10]	[10—20]	[0—10]	[0—10]	[0—5]				[10—20]
Handkerchiefs and facial tissues	[...]	[50—60]	[0—10]	[30—40]	[30—40]	[0—10]	[0—5]					[0—10]

(1) Business secrets deleted or replaced by a range.

3. UK consumer total (branded products and private label) market (1)

	Market size (ECU million)	% of the market	Parties' shares			Main competitors' shares						
			SP	KC	SP—KC	Jamont	Fort Sterling	SCA/PWA	A & M	Kruger	F.H. Lee	Others
Toilet-tissue	[...]	100	[30—40]	[20—30]	[50—60]	[10—20]	[0—10]	[0—10]		[0—10]	[0—10]	[0—10]
Kitchen towels	[...]	100	[10—20]	[30—40]	[40—50]	[10—20]	[10—20]	[0—5]	[0—10]		[0—10]	[20—30]
Handkerchiefs and facial tissues	[...]	100	[0—10]	[30—40]	[40—50]	[0—10]	[0—5]					[40—50]

(1) Business secrets deleted or replaced by a range.

Table 7.B

1994 Ireland — tissue products market shares (parties and main competitors)

1. Consumer private label products market(1)

	Private label market size (ECU million)	% of the market	Parties			Competitors			
			SP	KC	SP+KC	Jamont	Fort Sterling	Metsä Serla	Others
Toilet-tissue	[...]	[40—50]	[0—5]	[0—5]	[0—5]	[30—40]	[0,5]	[0—10]	[0—10]
Kitchen towels	[...]	[50—60]	[0—5]	[0—5]	[0—5]	[40—50]	[0,5]	[0—10]	[0—10]
Handkerchiefs and facial tissues	[...]	[40—50]	[0—5]	[0—5]	[0—5]	[30—40]	[0,5]	[0—5]	[0—10]

(1) Business secrets deleted or replaced by a range.

2. Consumer branded products market(1)

	Branded products market size (ECU million)	% of the market	Parties			Competitors			
			SP	KC	SP—KC	Jamont	Fort Sterling	Metsä Serla	Others
Toilet-tissue	[...]	[50—60]	[10—20]	[10—20]	[20—30]	[20—30]	[0—5]	[0—5]	[0—5]
Kitchen towels	[...]	[40—50]	[0—10]	[10—20]	[20—30]	[20—30]	[0—5]	[0—5]	n.a.
Handkerchiefs and facial tissues	[...]	[50—60]	[0—10]	[30—40]	[30—40]	[10—20]	[0—5]	[0—5]	[0—5]

(1) Business secrets deleted or replaced by a range.

3. Consumer total (branded product and private label) market(1)

	Market size (ECU million)	% of the market	Parties' shares			Main competitors' shares			
			SP	KC	SP—KC	Jamont	Fort Sterling	Metsä Serla	Others
Toilet-tissue	[...]	100	[10—20]	[10—20]	[20—30]	[50—60]	[0—5]	[0—10]	[10—20]
Kitchen towels	[...]	100	[0—10]	[10—20]	[20—30]	[60—70]	[0—5]	[0—10]	[10—20]
Handkerchiefs and facial tissues	[...]	100	[0—10]	[30—40]	[30—40]	[50—60]	[0—5]	[0—5]	[10—20]

(1) Business secrets deleted or replaced by a range.

Table 7.C

1994 Combined UK and Ireland — tissue products market shares (parties and main competitors)

1. UK and Ireland consumer private label market (1)

	Private label market size (ECU million)	% of the market	Parties' shares			Main competitors' shares						
			SP	KC	SP—KC	Jamont	Fort Sterling	SCA/PWA	A & M	Kruger	F.H. Lee	Others
Toilet-tissue	[. . .]	[40—50]	[0—5]	[10—20]	[10—20]	[10—20]	[0—5]	[0—5]	[0—5]	[0—10]	[0—5]	[0—10]
Kitchen towels	[. . .]	[60—70]	[0—5]	[20—30]	[20—30]	[0—10]	[10—20]	[0—5]	[0—10]	[0—5]	[0—10]	[0—10]
Handkerchiefs and facial tissues	[. . .]	[40—50]	[0—5]	[10—20]	[10—20]	[0—5]	[0—5]	[0—5]	[0—5]	[0—5]	[0—5]	[30—40]

(1) Business secrets deleted or replaced by a range.

2. UK and Ireland consumer branded products market (1)

	Branded product market size (ECU million)	% of the market	Parties' shares			Main competitors' shares						
			SP	KC	SP—KC	Jamont	Fort Sterling	SCA/PWA	A & M	Kruger	F.H. Lee	Others
Toilet-tissue	[. . .]	[50—60]	[20—30]	[10—20]	[40—50]	[0—10]	[0—10]	[0—5]	[0—5]	[0—5]	[0—5]	[0—10]
Kitchen towels	[. . .]	[30—40]	[10—20]	[0—10]	[10—20]	[0—10]	[0—10]	[0—5]	[0—5]	[0—5]	[0—5]	[0—20]
Handkerchiefs and facial tissues	[. . .]	[50—60]	[0—10]	[30—40]	[30—40]	[0—10]	[0—5]	[0—5]	[0—5]	[0—5]	[0—5]	[0—10]

(1) Business secrets deleted or replaced by a range.

3. UK and Ireland consumer total (branded products and private label) market (1)

	Market size (ECU million)	% of the market	Parties' shares			Main competitors' shares						
			SP	KC	SP—KC	Jamont	Fort Sterling	SCA/PWA	A & M	Kruger	F.H. Lee	Others
Toilet-tissue	[. . .]	100	[30—40]	[20—30]	[50—60]	[20—30]	[0—10]	[0—10]	[0—5]	[0—10]	[0—10]	[0—10]
Kitchen towels	[. . .]	100	[10—20]	[20—30]	[40—50]	[10—20]	[10—20]	[0—5]	[0—10]	[0—5]	[0—10]	[0—30]
Handkerchiefs and facial tissues	[. . .]	100	[0—10]	[40—50]	[40—50]	[0—10]	[0—10]	[0—5]	[0—5]	[0—5]	[0—5]	[40—50]

(1) Business secrets deleted or replaced by a range.

Notes UK:

All tables are based on 1994 figures, measured in value, with respect to the total (branded product and private label) market.

Table 1: Private label shares.

Table 2: Branded products shares (here private label sales are attributed to the brand owner).

Table 3: Branded and private label shares (here private label sales are attributed to the manufacturer). Total market estimates are based on Nielsen data adjusted by the parties (letter of 29 August 1995). Percentages of private label were provided by the parties in their letter of 20 September.

Source: Notification and parties' correspondence.

Notes Ireland:

All tables are based on 1994 figures, measured in value, with respect to the total (branded product and private label) Republic of Ireland market.

Table 1: Private label shares.

Table 2: Branded products shares (here private label sales are attributed to the brand owner).

Table 3: Branded and private label shares (here private label sales are attributed to the manufacturer).

Source: Notification and parties' correspondence. (Letters of 8 September, 17, 26 and 29 October).

Table 8

UK branded products: market share relative to branded products (1)

(in ECU million)

Tissue product (consumer)	Branded market size	Scott	Kimberly-Clark	Total KC/Scott	Jamont	Fort Sterling	SCA/PWA
Toilet-tissue	[. . .]	[50—60]	[20—30]	[70—80]	[0—10]	[0—10]	[0—5]
Kitchen towels	[. . .]	[30—40]	[10—20]	[50—60]	[10—20]	[0—10]	[0—5]
Handkerchiefs	[. . .]	[20—30]	[60—70]	[90—100]	[0—5]	[0—5]	[0—5]
Facial tissues	[. . .]	[10—20]	[50—60]	[70—80]	[10—20]	[0—10]	[0—5]

(1) Business secrets deleted or replaced by a range.

Table 9

UK brand loyalty across major brands and categories

Rank	Brand	Loyalty (%)	Category
1	Nescafe	57,9	Instant coffee
2	Lenor	57,0	Fabric softener
3	Tampax	51,8	Sanitary protection
4	Colgate	50,5	Toothpaste
5	Kleenex facial tissues/handkerchiefs	50,0	Facial tissues/handkerchiefs
6	Comfort	49,0	Fabric softener
7	Always	46,4	Sanitary protection
8	Tetley tea	45,5	Tea
9	Head and Shoulders	44,3	Shampoo
10	Andrex toilet paper	43,1	Toilet paper
11	Andrex kitchen towels	42,7	Kitchen towels
12	Pantene	41,4	Shampoo
13	PG Tips	40,3	Tea
14	Pedigree Chum	37,4	Dog food
15	Nescafe Gold Blend	35,6	Coffee
16	Dolmio pasta sauce	34,8	Cooking sauces
17	Whiskas	33,2	Cat food
18	Kleenex kitchen towels	32,7	Kitchen towels
19	Carling Black Label	32,5	Beer
20	Kleenex toilet paper	31,1	Toilet paper
21	Muller	30,5	Yoghurt
22	Coca-Cola	30,1	Carbonated drinks
23	Flora margarine	28,3	Yellow fats
24	Kit-Kat	25,1	Chocolate biscuits
25	Fosters	21,8	Beer
26	Anchor	21,6	Butter
27	Scott facial tissues/handkerchiefs	21,0	Facial tissues/handkerchiefs
28	Ski	19,0	Yoghurts
29	Kellogg's Cornflakes	18,2	Cereals
30	Pepsi	17,9	Carbonated drinks
31	Pal	16,9	Dog food
32	Frosties	16,3	Cereals

Table 10

Percentage allocation of shelf space in major UK retailers

(in %)

	Private label	Total branded products	No 1 brand	No 2 brand	No 3 brand
Somerfield	46,8	53,2	20,1	14,2	7,1
Tesco	41,1	58,9	29,2	19	5,9
Safeway	39,2	60,8	27,9	19,8	7,5
Sainsbury's	36,7	63,3	21,9	26,6	7,5
Waitrose	30	70	33	27,6	8,5
Kwiksave	29,7	70,3	25,5	20,4	3,7
Asda	16,4	83,6	24,6	21,1	8

Source: Datamonitor 1995, p. 23.

Allocation of shelf space relative to branded products

(in %)

	Private label	Total branded products	No 1 brand	No 2 brand	No 3 brand	Shelf space for Nos 1 and 2
Somerfield	n.a.	100	38	27	13	64
Tesco	n.a.	100	50	32	10	82
Safeway	n.a.	100	46	33	12	78
Sainsbury's	n.a.	100	35	42	12	77
Waitrose	n.a.	100	47	39	12	87
Kwiksave	n.a.	100	36	29	5	65
Asda	n.a.	100	29	25	10	55

Source: Datamonitor 1995, p. 23.

Table 11

1994 Italy: consumer tissue products market shares (parties and main competitors)(*)

Italy branded products market

	Market size (ECU million)	Parties shares			Main competitors' shares			Private label shares		
		SP	KC(1)	SP—KC	Jamont	Soffass	Others	Jamont	Soffass	Others
Toilet-tissue	[. . .]	[30—40]	[0—10]	[30—40]	[0—10]	[0—10]	[20—30]	[0—10]	[0—10]	[0—10]
Kitchen towels	[. . .]	[30—40]	[0—10]	[30—40]	[10—20]	[10—20]	[20—30]	[0—10]	[0—10]	[10—20]
Handkerschiefs	[. . .]	[20—30]	[10—20]	[30—40]	[0—10]	[0—10]	[30—40](2)	[0—10]	[0—10]	[10—20]
Facial tissues	[. . .]	[10—20]	[50—60]	[60—70]	[0—5]	[0—5]	[30—40](3)	[0—5]	[0—5]	[0—5]

(*) Business secrets deted or replaced by a range.
(1) Through its licencees, Carrara and Progress.
(2) Of which [20—30] P & G.
(3) Of which [20—30] P & G.

Based on 1994 figures, measured in value, with respect to the total (branded products and private label) market.

Source: Notification, parties' correspondence and answers to Commission request for information.