COMMISSION

COMMISSION DECISION

of 12 July 2000

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

(Case COMP/M. 1813 — Industri Kapital (Nordkem/Dyno)

(notified under document number C(2000) 1988)

(Only the English text is authentic)

(Text with EEA relevance)

(2001/432/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to the Agreement on the European Economic Area, and in particular Article 57(2)(a) thereof,

Having regard to Council Regulation (EEC) No 4064/89 of 21 December 1989 on the control of concentrations between undertakings [1], as last amended by Regulation (EC) No 1310/97 [2], and in particular Article 8(2) thereof,

Having regard to the Commission Decision of 3 August 1999 to initiate proceedings in this case,

Having given the undertakings concerned the opportunity to make known their views on the objections raised by the Commission,

Having regard to the opinion of the Advisory Committee on Concentrations [3],

Whereas:

(1) On 24 January 2000, the Commission received a notification pursuant to Article 4 of Regulation (EEC) No 4064/89 (the Merger Regulation) of a proposed concentration by which the Industri Kapital group (Industri Kapital) would acquire within the meaning of Article 3(1)(b) of the Merger Regulation control of the whole of the undertaking Dyno ASA (Dyno), Norway.

(2) After examination of the notification, the Commission concluded by Decision of 25 February 2000 that the notified operation falls within the scope of the Merger Regulation and raises serious doubts as to its compatibility with the common market. The Commission therefore decided to initiate proceedings pursuant to Article 6(1)(c) of the Merger Regulation and Article 57 of the EEA Agreement.

[1] OJ L 395, 30.12.1989, p. 1; corrected version OJ L 257, 21.9.1990, p. 13.
[2] OJ L 180, 9.7.1997, p. 1.
[3] OJ C 166, 9.6.2001.

I. PARTIES

(3) Industri Kapital manages and controls a number of private equity funds. These funds control numerous undertakings. Among the undertakings controlled is Neste Chemicals Oy (Neste), a chemical company and Arca, a company active in materials handling systems.

(4) Dyno is the parent of a group of companies active in explosives, chemicals and plastic packaging. Dyno's two core businesses are chemicals and explosives. Dyno's chemical business can be divided into industrial resins, wood and speciality adhesives, paper overlays, coating resins, oil field chemicals, methanol, plastics and speciality polymers. Dyno has joint control together with CVC of the Polimoon Group (Polimoon), a company active, *inter alia*, in materials handling systems and plastic packaging.

II. OPERATION

(5) Industri Kapital 1997 Fund (IK 97) and Industri Kapital 2000 fund (IK 2000) will acquire all the shares in Dyno through a Norwegian holding company, Nordkem AS. Dyno's explosives operations will be transferred to a holding company (NewCo Explosives) which will be jointly owned by IK 97 fund and IK 2000 fund. The

shares in Dyno, which will be the remaining chemicals operation, will be owned by the two funds, through Nordkem AS and Nordkemi. IK 97 fund and IK 2000 fund, through their respective investment managers, will be in control of both Nordkemi and NewCo Explosives.

(6) The rationale of the operation is to create a strong Nordic-based speciality chemicals and explosives company. In speciality chemicals, the aim is to capture synergies in resins, wood and speciality adhesives and paper overlays and, according to the papers presented to the board members, become the world market leader. Industrial resins account for [< 60]* % (*) of the new entity's business.

(7) Industri Kapital acquired Neste from Fortum Corporation on 30 November 1999. Neste is the largest resin producer worldwide with a strong presence in Europe and North America. Based on the 1998 sales figures, Neste produced 1 980 million tonnes of resins worldwide. Borden Chemical UK Ltd (Borden) was the second largest producer with 1 950 million tonnes and Georgia Pacific the third with some 1 500 million tonnes. Dyno is currently number four in the world in resins with a strong presence in Europe and Asia. In 1998, Dyno produced [some 1 billion] * tonnes of resins.

(8) Industri Kapital has submitted that Neste's and Dyno's most important customers of formaldehyde used resins are found in the wood panel industry, i.e. in the manufacture of plywood, particle board, medium density fibreboard (MDF) and oriented strand board (OSB).

III. **CONCENTRATION**

(9) IK 1997 and IK 2000 are private equity funds. They are not legal entities but the result of contractual arrangements between the funds' respective investment management companies, IK 97 Ltd and IK 2000 Ltd and the investors. IK 97 Ltd and IK 2000 Ltd are incorporated under the laws of Jersey. They exercise the voting rights in the portfolio companies. The investors have no voting rights.

(10) IK 97 Ltd and IK 2000 Ltd are wholly owned by Industri Kapital Europa BV which in turn is owned by Industri Kapital NV Industri Kapital has claimed in the notification that through 'undertakings' made to certain investors in IK 1997 a number of investors are guaranteed representation on the board of IK 97 Ltd. Furthermore, Industri Kapital stated in the notification that it is a precondition for IK 97 Ltd's permission to conduct business as an investment management company under the laws of Jersey that the investors, for whom IK 97 Ltd manage investments, shall be represented by a majority on IK 97 Ltd's board. Industri Kapital states therefore, that it can be argued that IK 97 Ltd and Industri Kapital Europa BV form separate economic entities.

(11) However, in a response to a formal request for information, Industri Kapital has confirmed that the 'undertakings' referred to have been given orally, that Industri Kapital has not made any notes or minutes which refer to these undertakings on the occasions where they were given and that in Industri Kapital's view the 'undertakings' are not legally binding. Furthermore, Industri Kapital has confirmed that, contrary to its previous statement, it is not a requirement under the laws of Jersey that the investors are represented in the board of the investment management company. According to IK 97 Ltd's permit to conduct business, it has only to report changes in the composition of directors to the relevant authority. Therefore, the composition of the board of IK 97 Ltd can be determined by its only shareholder, Industri Kapital Europa BV.

(12) On the basis of the foregoing the Commission concludes that Dyno will ultimately be controlled by Industri Kapital NV.

IV. **COMMUNITY DIMENSION**

(13) Industri Kapital and Dyno have a combined aggregate worldwide turnover in excess of EUR 5 000 million (Industri Kapital, EUR 6 475 million; Dyno, EUR 1 200 million). Each of them has a Community-wide turnover in excess of EUR 250 million (Industri Kapital, EUR 4 427 million; Dyno, EUR 250 million), but they do not achieve more than two thirds of their aggregate Community-wide turnover within one and the same Member State. The notified operation therefore has a Community dimension. It constitutes a cooperation case pursuant to Article 57 of the EEA Agreement and Article 2(1)(c) of Protocol 24 to that Agreement and thus the case is to be assessed by the Commission in cooperation with the EFTA Surveillance Authority in accordance with Article 58 of the EEA Agreement.

V. **COMPETITIVE ASSESSMENT**

(14) The transaction will result in horizontal overlaps between Dyno and Neste. Moreover, horizontal overlaps will arise between the Industri Kapital controlled company Arca and Polimoon in plastic materials handling systems.

A. RELEVANT PRODUCT MARKETS

1. **Formaldehyde-based resins**

(15) Both Dyno and Neste are active as producers of formaldehyde based resins. They produce resins for more or less the same applications, in particular for wood application.

(*) Parts of this text have been edited to ensure that confidential information is not disclosed; those parts are enclosed in square brackets and marked with an asterisk.

(16) Industri Kapital submits that urea formaldehyde based resins (UF/(M)UF resins) and phenol formaldehyde based resins (PF/P(R)F resins) may be delivered in different mixes with different characteristics, such as difference in water and/or heat resistance and hardness. UF/(M)UF resins are combined with melamine for heat, light, moisture and water-resistant applications or applications, which require a high degree of hardness. PF/P(R)F resins are combined with resorcinol to get strong bonding characteristics, for example in glue-bonded timber beams. UF/(M)UF resin is a non-coloured product whereas PF/P(R)F resin is reddish.

(17) Industri Kapital submits that UF/(M)UF resins are primarily used for bonding as adhesives in various kinds of wood panel applications, for instance particleboard, MDF, OSB and plywood. Industri Kapital submits further that also PF/P(R)F resins are used to a significant degree in wood panel applications. According to Industri Kapital, both UF/(M)UF and PF/P(R)F resins are also used for glue-bonded timber beams, veneer, parquet, paper lamination and impregnation, insulation bonding and in foundry processes. While Industri Kapital argues that, from the demand side, UF/(M)UF and PF/P(R)F resins can to a certain degree be used for the same applications, Industri Kapital nevertheless submits that UF/(M)UF resins and PF/P(R)F resins should be regarded as belonging to separate product markets due to, for instance, cost considerations and tradition. In this respect, Industri Kapital has provided information, which shows that PF/P(R)F resins are 60 % to 70 % more expensive than UF/(M)UF resins.

(18) Industri Kapital further submits that, for some applications, non-formaldehyde based resins (Iso Cyanate (P-MDI) and Polyvinyl Acetate (PVAc)) are effective substitutes for formaldehyde based resins. Industri Kapital argues that P-MDI is often used as a substitute for water-resistant wood panels and PVAc is used in non-structural wood applications, for instance in joiners.

(19) Industri Kapital finally argues that, from the supply side, most producers of formaldehyde based resins produce both UF/(M)UF and PF/P(R)F resins. Industri Kapital submits that the basic production principles, the basic technology and know-how are the same for all kinds of formaldehyde based resins and for different applications. Industri Kapital argues further that the production lines can easily be switched from the production of UF/(M)UF resins to PF/P(R)F resins without significant cost.

a) *Demand-side*

(20) The Commission's investigation confirms that UF/(M)UF resins and PF/P(R)F resins should be regarded as belonging to separate product markets from the demand side. Customers in the wood panel industry, resin impregnated papers, insulation materials and foundry business have indicated that substitutability between the two resins is limited due to technical reasons. These technical reasons relate both to the product in question, the inherent properties of the resins and to the technical processes used. In comparison with PF/P(R)F resins, UF/(M)UF resins are light in colouring, faster curing and provide superior hardness and arc resistance. However, UF/(M)UF resins are less durable, tend to break down in hot and cold water and have less resistance to a variety of chemicals. The investigation also shows that substitutability is not possible due to considerable price differences, PF/P(R)F resins being more expensive.

(21) More particularly, the manufacturers of plywood have indicated that UF/(M)UF and PF/P(R)F resins are not substitutes in plywood production as UF/(M)UF resins are not weatherproof and not suitable for the plywood producers' main applications, which are in the construction and transport industries. In this respect, customers have indicated that while the moisture resistance of an UF/(M)UF resin based glue can be improved by adding melamine, this does not make the glue weatherproof.

(22) As for the question whether it is possible to substitute resins developed for one industry with resins used in another industry, the investigation shows that the substitutability is very limited. Customers have indicated that resins are tailored for each end application and that they differ in respect of the solids content, the degree of polymerisation and additives. According to customers, these factors have an impact on the reactivity, viscosity, cold tack (pre-pressing properties) and the surface activity of the glue together with the hardener system that is used.

(23) The investigation shows further that formaldehyde based resins are not, in general terms, substitutable with non-formaldehyde based resins. Customers have indicated that any substitution would affect the product quality and require changes to the production process, such as building new production lines. Moreover, customers who replied to the Commission's questionnaires have indicated that substituting formaldehyde based resins for instance with PVAc is not a realistic alternative, as PVAc is some five times more expensive than PF/P(R)F resins. Furthermore, the investigation shows that PVAc and PMD-I are dangerous substances and their use is regulated in a number of Member States. In sum, the investigation shows that the limitations to use PVAc and PMD-I are such that factors such as costs, equipment, process and health considerations effectively limit substitution.

b) *Supply-side*

(24) The investigation confirms Industri Kapital's submission that the manufacturing process and the equipment for both types of resins are largely similar. All types of formaldehyde based resins are made by mixing various

reactants together. The target molecule distribution of the final resin is reached by adjusting various parameters like temperature and pH. The molecules of the reactants are chained together, in other words polymerised, while the viscosity of the liquid increases. When the target is reached, the remaining water is in some cases further removed in an evaporation step.

(25) UF/(M)UF resins are produced by the controlled reaction of formaldehyde with urea. PF/P(R)F resins are produced by condensation from phenol or substituted phenol with formaldehyde. The investigation shows that the manufacturing process is relatively straightforward, the polymerisation technology generally well known and has been established for many years.

(26) The investigation shows, however, that switching production is in general terms time-consuming and costly if the manufacturer is producing only one type of formaldehyde based resin. With regard to switching from producing UF/(M)UF resins to PF/P(R)F resins, Industri Kapital has submitted that reactions between formaldehyde and phenol release large amounts of excess heat. Therefore, and due to the toxic nature of phenol, proper cooling and safety systems must be installed. Competitors have confirmed the exothermic nature of PF/P(R)F resins and the need to have more heat transfer area. The investigation also shows that PF/P(R)F resins are in general manufactured in smaller capacity reactors than UF/(M)UF resins. Moreover, specific environmental permits are required for the production of any products containing phenol. With regard to switching from producing PF/P(R)F resins to UF/(M)UF resins, Industri Kapital has argued that a reactor for PF/P(R)F production does not require any alterations for the production of UF/(M)UF resins besides possibly the installation of a new charging system for dry products since urea and melamine are dry products whereas phenol, according to the parties, is liquid. Industri Kapital has submitted that such an investment can be made within a few months and without significant costs.

(27) While it may be true that switching from manufacturing PF/P(R)F resins to UF/(M)UF resins may be easier than the reverse, the investigation shows that neither switch can be made without delay and additional costs. Moreover, as for the question whether manufacturers are able to alternate between the production of different types of resins on the same production line, competitors have indicated that while it may be possible to move in and out of the production of resins for various end-applications, switching requires specific technical installations. Attention must be paid to issues such as cross-contamination, temperature controls, reactor cleansing and storage regimes. Although Industri Kapital has submitted that so called multipurpose reactors allow the switching between producing both kinds of resins, almost all competitors who replied to the Commission's enquiries have separate production lines for each resin.

(28) Competitors have indicated that they manufacture resins for a variety of end applications and that the composition and condensation of a particular type of resin varies according to the end-use and the application method. It has nevertheless been indicated to the Commission that switching from manufacturing one type of resin to another is not difficult, provided that the resins belong to the same family of resins (UF/(M)UF or PF/P(R)F).

(29) With regard to the manufacture of P-MDI and PVAc resins, the investigation shows that these resins cannot be produced at plants designed for formaldehyde based resins. The production process of for instance P-MDI resins is both complex and hazardous, the technology not in the public domain and some of the most important raw materials are not generally available.

c) *Conclusion*

(30) On the basis of the foregoing and for the purposes of this Decision, the Commission draws the conclusion that UF/(M)UF resins and PF/P(R)F resins constitute separate product markets from the demand side. Furthermore, the Commission draws the conclusion that there is not a sufficient degree of supply-side substitutability to justify placing UF/(M)UF and PF/P(R)F resins in the same market from the supply side. In view of the fact that the activities of Dyno and Neste overlap mainly in wood applications, the question whether narrower submarkets should be defined for each type of resin can be left open for the purposes of this Decision as the operation as notified would lead to the creation of a dominant position regardless of whether the operation was assessed at the overall level of PF/P(R)F resins or at the level of the wood application resins.

2. **Formaldehyde**

(31) Formaldehyde is made from methanol and is a colourless gas compound which is dissolved in water (formalin). It is primarily used in the manufacture of UF/(M)UF and PF/P(R)F resins, in plastics and for a variety of special industrial chemicals, for instance as preservative in some paints and coating products.

(32) Both Dyno and Neste manufacture formaldehyde primarily for captive use in their production of resins. [< 30]* % of Neste's production and [< 15]* % of Dyno's production of formaldehyde is sold to third parties.

(33) Industri Kapital submits that formaldehyde constitutes a separate product market since it has no realistic substitutes as a chemical building block and in terms of price. This has been confirmed by the Commission's investigation.

Conclusion

(34) On the basis of the foregoing and for the purposes of this Decision, the Commission concludes that formaldehyde constitutes a separate relevant product market.

3. **Methanol**

(35) Methanol is a clear, colourless liquid primarily obtained from natural gas. It has two main applications: methanol is used in the production of formaldehyde, acetic acid and a variety of other chemical additives which form the foundations of a large number of secondary derivatives. Methanol is also used in the fuel industry in the production of unleaded gasoline. Industri Kapital submits that methanol constitutes a separate relevant product market.

(36) Both Dyno and Neste buy methanol from Methanor, a joint venture between Dyno, Akzo Noble and DSM Melamine. Dyno owns 40 % of Methanor, Akzo Nobel and DSM Melamine 30 % each. Dyno and Neste also distribute small quantities of methanol to third parties. Therefore, there is both a horizontal and a vertical relationship between Dyno and Neste.

Conclusion

(37) The Commission considers methanol to be a separate product market [4].

4. **Materials handling systems**

(38) Both Industri Kapital, through its subsidiary Arca Systems AB (Arca), and Polimoon produce plastic materials handling products. For the production of plastic materials handling systems different techniques can be used, injection moulding as well as blow moulding and rotation moulding. These products consist in principle of containers (stack-nest containers and stackable containers) and pallets which are used for the transport and storage of goods in the manufacturing, distribution and retail sector and of beverage container trays and crates, which are used by manufacturers and retailers of food and beverages to transport and to store bottles or other packaging for liquids. Materials handling systems are often designed to be used in pooling system, which collects the transport packaging for reuse by the distribution company or the manufacturer. Producers manufacture standard materials handling products but also products according to the customers' specifications. In the course of the investigation Industri Kapital stated that plastic foldable pallet containers, plastic pallets and plastic small-parts storage systems also form part of the market of materials handling products.

(39) Industri Kapital has identified in the notification three areas of overlap between Arca and Polimoon in materials handling products: stackable containers, stack-nest containers and bottle trays.

(40) Stackable containers are used primarily in the manufacturing industry for in-house materials/components handling.

(41) Stack-nest containers are mainly used for the handling and transport of food. They are available either with or without a lid in different sizes. Arca produces sizes ranging from 18 to 87 litres and Polimoon specialises in two types of containers, a 37-litre and a 50-litre container. Stack-nest containers will sit in each other when empty.

(42) Bottle trays are used for the transport of beverage bottles to the retail outlet and for the display of these bottles in the place of sale. Bottle trays are a relatively new product and have recently begun to replace traditional bottle crates. Bottles in trays are more visible than in crates and are therefore attractively displayed. The use of trays also makes loading easier and more flexible. At present, bottle trays are used primarily for PET bottles. Industri Kapital submits that bottle trays are normally produced according to customers' specific demands since their bottles differ in shape and size. Therefore, different bottles cannot be stacked in the same type of trays due to differences in shape and size. Industri Kapital nevertheless submits that a manufacturer delivering to one customer can easily switch production to meet other customers' specifications.

(43) Both companies also produce plastic bottle crates for the storage and transport of bottles. Furthermore, both companies produce plastic pallets and plastic small-parts storage systems. Arca also produces plastic foldable pallet containers.

(44) Industri Kapital submits that the relevant product market covers all types of materials handling products and that a further distinction according to the type of the product is not necessary. Industri Kapital further submits that materials such as wood, metal, cardboard or plastic are largely substitutable for materials handling products. Overall, Industri Kapital submits that the relevant product market is the market for materials handling products including all kinds of materials.

[4] See also Commission Decision of 31 March 1993, Case IV/M.331 — *Fletcher Challenge/Methanex*.

(45) As for the substitutability between different materials, the Commission's investigation shows that substitutability is limited both from the demand and the supply side. The investigation shows that almost all customers use containers or trays made of plastic and that, in the face of a 5 % to 10 % price increase, they would not switch to other materials. Plastic products can therefore not be substituted by products made out of other materials. From the supply side, competitors have indicated that changing materials and processes is very difficult and the inherent differences between wood, metal and plastic make direct conversion impossible. By way of example, it has been indicated to the Commission that the entry cost for a wooden container manufacturer to switch to producing injection moulded plastic containers would be EUR 15 million. Such entry would also require specific know-how and take up to two years.

(46) In principle, different materials handling products cannot be substituted by the user with other material handling products. With regard to bottle trays, customers have indicated that switching is difficult as trays form part of an integrated system. Some third parties have indicated that stack-nest containers and stackable containers are substitutable. However, containers used in the food industry must be suitable and approved for the handling of food. Furthermore, prices and transportation costs between the two types of containers differ. Although most producers of materials handling systems are able to manufacture a range of different products, considerations of supply-side substitution do not lead to the result that all materials handling products form one product market. A switch of production which would require investment in new moulds would involve substantial costs.

Conclusion

(47) On the basis of the foregoing, it seems to be appropriate to analyse the effects of the concentration for each product group separately. However, according to the figures provided by Industri Kapital the concentration would also lead to the creation or strengthening of a dominant position if all plastic material handling products were to constitute one product market. The exact market definition can, therefore, be left open.

5. **Plastic containers**

(48) Dyno, through its subsidiary Superfos AS (Superfos), and Polimoon are both active in the manufacture of plastic containers used for packaging. These are canisters, pails, buckets and drums made out of plastic which are used in the distribution and retail sectors, for example in the food industry, the chemical industry and the pharmaceutical industry.

(49) Industri Kapital submits that Superfos and Polimoon are not primarily active in the same segments of the packaging market. While Polimoon has specialised in high volume (up to 50 litres) canisters and drums primarily for the chemical/technical industry and in the food packaging sector, Superfos specialises in lower volume (50 ml to 33 litres) containers for the food, chemical/technical and pharmaceutical industry. Industri Kapital has identified overlapping activities in the following segments: pots and tubs below 2 litres, containers between 2 and 35 litres, and bottles and canisters below 5 litres.

(50) Industri Kapital submits that the relevant product market is the packaging market which consists of all kinds of packaging made out of all kinds of materials (metal, glass, cardboard, plastic). However, customers have indicated that in particular for marketing reasons, they would not be able to switch from a particular type of container to another. Tailored or custom-designed products play an important role in certain consumer products such as lubricant oils, food, baby care and cosmetics. In addition, switching to a different type and size of a container could require technical changes to the filling lines and would therefore not be possible without changes to the machinery and tooling and investment. This applies even more to the arguments concerning switching between different materials.

(51) From the supply side, the Commission's investigation shows that different techniques are used in the production of plastic containers. For instance, it has been indicated to the Commission that closed and open top containers can be made using the blow moulding technique while open top containers with lids are commonly injection moulded or thermoformed. Unless the producer has all these manufacturing processes and lines, the possibility of switch from one production technology to another is limited without investment cost and time. Moreover, it has been indicated to the Commission that few companies cover the whole range of plastic containers but restrict themselves to certain sizes, applications and customer groups.

Conclusion

(52) On the basis of the foregoing, the Commission concludes that there is no justification for placing containers made of all different kinds of materials in the same market. The Commission therefore considers that the relevant market is limited to plastic.

(53) The exact market definition, and whether each of the aforesaid segments constitute separate submarkets, can be left open because the transaction does not raise any competition concerns as to the compatibility of the operation with the common market, regardless of the market definition used.

B. RELEVANT GEOGRAPHIC MARKETS

1. **Formaldehyde based resins**

(54) Industri Kapital submits that UF/(M)UF and PF/P(R)F resins are produced and traded throughout Europe, transported over long distances and frequently traded cross-border. Therefore, Industri Kapital submits, the relevant geographic markets for UF/(M)UF and PF/P(R)F resins are at least EEA wide, but should possibly also include the Baltic States, part of Russia and countries in central and eastern Europe.

(55) For the reasons set out below, however, the Commission considers that, in relation to Finland, the market for formaldehyde based resins is national. With regard to Norway, the market is either national or, at most, comprises also Sweden.

(56) Comments obtained from customers suggest that the effects of the operation should be assessed at national or, at most, regional level. Imports are not generally considered to be a realistic alternative first of all due to high transport costs. Customers, in their replies to the Commission's enquiries, have indicated that transport costs can account for as much as 30 % of the resin sales price and that the radius for transporting formaldehyde based resins is 400 km to 700 km. Formaldehyde based resins are said to sell at a relatively low price in relation to weight and transport is considered to be an important cost factor.

(57) It is to be noted that Industri Kapital itself has submitted that proximity to the customer is important due to the cost of transportation. In this respect, Industri Kapital has supplied information concerning transport costs. According to Industri Kapital, the cost of transportation by truck per tonne and kilometre is [< 1] * DM/tonne per km for customers close by. For distances of 1 000 km and more the cost of transport is [< 0,5] * DM/tonne and [< 0,5] * DM/tonne for distances of 700 km or more. In other words, a customer close by pays up to [< 30] * DM/tonne and a customer within the radius of 100 km to 700 km pays [> 100] * DM/tonne, four times more than customers close by.

(58) The investigation also shows that resins require specific transport conditions due to their perishable nature. In this respect, it has been indicated to the Commission that for instance the transport of PF/P(R)F resins for wood applications and insulation purposes requires specific containers and conditions, as the product is damaged if the temperature drops below a certain level. The requirement for special transport raises the price of the final product but may also affect the shelf life of a resin. Indeed, some customers have indicated that if the temperature rises above 20 Celsius degrees, the storage time of the product decreases significantly. Industri Kapital has itself recognised in the papers presented to the board members, that industrial resins have a short shelf life and cannot be transported over a long distance.

(59) Customers in the plywood and isolation materials industries have also indicated that formaldehyde based resins have an inherently short life span. By way of example, the life span for some resins used in the plywood industry is said to be only three weeks. This limits storage possibilities and makes frequent deliveries necessary, emphasising the importance of suppliers close by. As a result, the industry operates at low inventory levels.

(60) Lastly, the investigation shows that the development of new resins is a slow process where the supplier and the customer have to work in close cooperation. In practice, third parties have indicated that physical proximity of the supplier to the customer's production site facilitates this cooperation.

(61) Customers in the plywood, insulation materials and resin impregnated papers industries in Finland have indicated to the Commission that they source their resins in Finland.

(62) The information provided by Industri Kapital demonstrates that Neste supplies the bulk of its UF/(M)UF resins from its Finnish plant in Finland [< 80] * % and some small amounts to Norway [< 10] * %. Industri Kapital has not explained where the remaining [< 20] * % of the production is delivered. The bulk of Neste's production of PF/P(R)F resins in Finland is sold in that country too [> 80] * %. There are some small deliveries to Sweden [< 10] * % and Norway [< 10] * %. Industri Kapital has not explained where the remaining [< 10] * % of the production is shipped. Dyno's Finnish plant made all its deliveries of formaldehyde based resins in Finland.

(63) An exception of the pattern whereby the bulk of the production is supplied in the country of supply appears to be Norway, where Dyno has two plants producing formaldehyde based resins: one in Lilleström and the other in Engene. In 1998, the Engene plant produced [some 60 000] * tonnes of UF/(M)UF resins and [some 6 000] * tonnes of PF/P(R)F resins. The smaller Lilleström plant produced [some 20 000] * tonnes of UF/(M)UF resins and [some 30 000] * tonnes of PF/P(R)F resins. While the bulk of the production from the larger Engene plant was sold in Norway [< 90] * % of UF/(M)UF resins and [> 80] * % of PF/P(R)F resins, the Lilleström plant supplied only [< 20] * % of its production of UF/(M)UF resins and [< 30] * % of PF/P(R)F resins in Norway. A large part of the production from this plant was exported to Germany [> 20] * %, Austria [> 20] * % and Sweden [> 0] * %. Deliveries of smaller amounts were also made to a number of other Member States. The Commission has estimated, on

the basis of the information submitted by Industri Kapital in the notification and in a subsequent reply to the Commission's questionnaire, that the total exports from the two Dyno plants represent [> 30] * % for UF/(M)UF resins and [> 10] * % for PF/P(R)F resins.

(64) However, while it is true that Dyno exports part of its formaldehyde based resins to other Member States in continental Europe, the investigation shows that imports into Norway from continental Europe are practically non-existent. None of the customers who replied to the Commission's enquiries in Norway have indicated that they source formaldehyde based resins outside the Nordic region. Exports cannot alone be taken as evidence of a wider geographic market because the absence of imports from continental Europe demonstrates that imports are not a competitive alternative for customers located in Norway.

(65) As for continental Europe, the investigation suggests that customers source their resins on a wider than national base and there is evidence of cross-border trade with countries located nearby. Therefore, the markets in continental Europe are larger than national.

(66) Industri Kapital has submitted that customers of formaldehyde based resins could source their supplies from the Baltic States, Russia and countries in central and Eastern Europe.

(67) However, the Commission's investigation shows that none of the resin customers contacted currently source from these countries. Customers do not consider the manufacturers in those countries as a realistic alternative due to high transport costs, the relatively short shelf life of resins, quality considerations, the requirement for frequent supplies and supply security in the long term. Customers have also indicated in their replies to the Commission's enquiries that imports from those countries would not be possible because a number of different resin specifications are needed and the product range and the quality of the suppliers in the Baltic States, Russia and other countries in central and eastern europe is not sufficient due to the outdated technology used. In this respect, customers have indicated that the only producer with sufficient know-how about formaldehyde based resins, Lignums in Riga, is manufacturing resins under the licence of Neste.

Conclusion

(68) On the basis of the foregoing and for the purposes of this Decision, the Commission concludes that Finland constitutes a separate relevant geographic market. With regard to Norway, the question whether Norway should be regarded as constituting a separate relevant geographic market or whether the geographic scope should be extended to include also Sweden can be left open as the assessment of the case would not be materially affected regardless of the market definition used. The possibility cannot be excluded, however, that the geographic scope for various end-application resins other than those for wood applications could be different from what has been indicated in this Decision.

2. **Formaldehyde**

(69) Industri Kapital submits that formaldehyde is an internationally traded commodity and prices are relatively homogenous in all parts of the world. Industri Kapital therefore argues that the relevant geographic market for formaldehyde is at least EEA-wide but probably includes neighbouring countries such as Russia, the Baltic States, Poland, Hungary, Slovakia and Turkey.

(70) Although Industri Kapital argues that formaldehyde can be profitably transported over long distances, it admits that the transportation costs are significant due to the stability problems related to the storing of formaldehyde for long periods of time. Industri Kapital submits further in its reply to the Commission's Statement of Objections that the sale of formaldehyde to third parties is of limited, off the margin nature, which means that the producers do not have more than very limited marketing organisations. According to Industri Kapital, the formaldehyde producers' merchant activities are therefore often restricted to sales nearby. Industri Kapital nevertheless argues that formaldehyde producers in a certain area could fairly easily expand the geographical scope of their marketing efforts if the prices for merchant formaldehyde rose in a nearby area.

(71) The Commission's investigation shows that the scope of the geographic market for trading formaldehyde is narrower than the EEA. Indeed, a number of replies to the Commission's enquires show that formaldehyde is sourced at national or, at most, regional level rather than EEA-wide. All Finnish customers contacted have indicated to the Commission that they buy formaldehyde only in Finland. The reasons for the limited sourcing radius of formaldehyde are set out below.

(72) First, Industri Kapital has explained that formaldehyde stores relatively poorly and large resin manufacturers therefore normally produce their own formaldehyde internally. Indeed, the open market for formaldehyde is relatively small, approximately 10 % of the total capacity.

(73) Second, the Commission's enquiries show that, due to its toxic nature, formaldehyde is normally transported dissolved in water (formaldehyde with high solid contents can be transported over longer distances, but the transport of solid formaldehyde is not usual). Liquid derivatives of formaldehyde have a high level of water content which renders the transport over long distances unprofitable. It has been indicated to the Commission that formaldehyde in liquid form is transported within a radius of approximately 320 km from the production plant. Industri Kapital submits that the costs of transporting formaldehyde are comparable to resin transportation costs.

(74) The information provided in the notification shows that the parties' plants tend to supply formaldehyde on mostly national and, at most, regional bases. By way of example, all Dyno's plants manufacturing formaldehyde (in Norway, Denmark, Finland and Ireland) supply [> 80] * % of their production in the country where the plants are located. Neste's plant in Finland supplies [> 70] * % of the production in Finland and [< 20] * % to Sweden. Industri Kapital has explained in its reply to the Statement of Objections that, for example, Neste's Finnish resin plant suffers from shortage of formaldehyde during peak production periods and, therefore, imports formaldehyde from Neste's plant in the Netherlands and, from time to time, from Casco and Perstorp from Sweden. However, these imports are spot deliveries and do not take place on a continuous basis. Moreover, it is to be noted that the imports axe typically between formaldehyde and resin producers. None of the customers who replied to the Commission's questionnaires import formaldehyde.

(75) With regard to continental Europe, it is to be noted that Neste has no plants in Belgium and it supplies some quantities to Member States which are physically close by, in particular to Germany, from its plants in the Netherlands and Austria.

(76) These distribution patterns show that formaldehyde is not transported over long distances. In this respect, Industri Kapital has submitted that Neste supplies a customer in Norway from its plant in the Netherlands and that this confirms the parties' submission regarding the geographic scope of the market. The Commission notes, however, that these deliveries constitute less than [<5] * % of the total production of that plant and cannot be taken as evidence of a market comprising the whole of EEA.

(77) As to Industri Kapital's submission that suppliers could be found in Russia, the Baltic States, Poland, Hungary, Slovakia and Turkey, the investigation shows that sourcing from these countries is not considered realistic essentially for the same reasons as apply to formaldehyde based resins above. It is not necessary to define any other geographic markets because on any other conceivable geographic market on which the parties' activities overlap the combined market shares would not raise competition concerns.

Conclusion

(78) On the basis of the foregoing and for the purposes of this Decision, the Commission concludes that the relevant geographic market is Finland.

3. **Methanol**

(79) Industri Kapital submits that methanol is traded internationally. However, Industri Kapital submits that due to tariff barriers, transport costs and varying demand, the geographic market should possibly be divided into three main demand areas: Europe, North America and Asia.

(80) Industri Kapital's submission is line with the Commission's previous decision concerning methanol ([5]). In that decision the Commission found that although methanol is internationally traded as a commodity, conditions of competition differ between Europe, North America and Asia.

Conclusion

(81) A precise definition of the relevant geographic market does not need to be established in this case as the concentration will not create or strengthen a dominant position even on the basis of the narrowest geographic market. In line with the Commission's previous decision and for the purposes of this Decision, the market for methanol will be assessed at the EEA-wide level, the narrowest area where conditions of competition are homogenous.

4. **Materials handling systems**

(82) Arca has plants in Sweden, Finland, Germany, France and Spain. Polimoon has plants in Finland, Sweden, England and the Netherlands. Industri Kapital submits that the average transportation distances differ between different kinds of materials handling systems depending on whether they can be folded or nested. Industri Kapital submits that the transport costs for stack-nest containers are relatively low due to the possibility to nest the containers during transportation. Therefore, Industri Kapital submits that the relevant geographic market is EEA wide. As for stackable containers, Industri Kapital submits that these containers cannot be nested but are locked into each other when transported and therefore take up more space. The transport costs are therefore relatively high and Industri Kapital submits the Nordic countries as the relevant geographic market. The same reasoning applies to crates. Lastly, concerning bottle trays, Industri Kapital submits that these are nestable and can therefore be transported over long distances. Despite the fact that standards for bottles and thus for the trays differ from one country to another, Industri Kapital submits that the relevant geographic market for bottle trays is EEA-wide.

(83) The investigation has shown that the transport costs for materials handling systems are relatively high. Polimoon submits that the approximate supply radius for nestable materials handling systems is 400 to 500 km. For beverage tray systems it is submitted that the transport distance is longer, but that the geographic market does not go beyond the Nordic area due to customer service requirements.

([5]) Decision of 31 March 1993, Case No IV/M.331 — *Fletcher Challenge/Methanex*.

(84) Customers have confirmed that transportation costs limit the area where material handling systems are sourced. They have also indicated that proximity of the supplier is an important factor. Empty materials handling systems are a relatively voluminous product in relation to value and weight even if folded or nested. A returnable transport packaging is not intended to be transported over longer distances but between the producer of the product to be packaged and the recipient of that product such as the retail outlet. In addition, in the case of a pooling system, the product is usually specially designed for that system, which is only used in a designated area.

Conclusion

(85) Therefore, on the basis of the foregoing, the geographic market for all types of materials handling systems does not extend beyond Sweden, Finland and Norway nor is it even national.

5. **Plastic containers**

(86) Industri Kapital claims that the geographic market for plastic containers is EEA-wide.

(87) The Commission's investigation shows that empty plastic containers are a low weight but a large volume product. This results in relatively high transport costs and limits to a certain extent the radius within which it is economical to source plastic containers. On the other hand, it has been indicated to the Commission that the transport costs can be outweighed by economies of scale. The investigation shows that large suppliers cover a geographic market which is regional and sometimes even EEA-wide and large customers, in turn, source on a regional and/or EEA-wide basis.

Conclusion

(88) In view of the foregoing, the Commission concludes that geographic markets for plastic containers are at least regional. Given that the activities of Superfos and Polimoon overlap in the Nordic area (Finland, Sweden, Norway and Denmark), for the purposes of this Decision, this area will be considered to constitute the relevant geographic market.

C. ASSESSMENT

1. **Formaldehyde based resins**

Actual competition

(89) Industri Kapital has provided market share figures relating to formaldehyde based resins both including and excluding captive production. However, Industri Kapital's estimates of the market shares excluding captive use do not materially differ from those calculated on the basis of the total market volume.

(90) Industri Kapital has verified and amended the market share information it submitted in the notification for PF/P(R)F and UF/(M)UF resins. Industri Kapital has explained that the new figures are based on new and more complex calculations and give a better indication of the position of Dyno and Neste on these markets. In the Nordic countries, the market position of the new entity is not materially changed in view of the new figures.

a) PF/P(R)F resins

(91) On the assumption of national markets, based on the information submitted by Industri Kapital, Dyno and Neste would attain high market shares in Finland and Norway in the market for PF/P(R)F resins. Dyno and Neste would jointly account for [> 70] * % of the market in Finland (Dyno [> 20] * %, Neste [> 50] * % and [> 60] * % in Norway (Dyno [>55] * % Neste [> 50] * %). Industri Kapital submits that Perstorp has [<10] * % of the market in Finland. In Norway, Industri Kapital submits that Perstorp accounts for [> 20] * % of the market and Casco [> 5] * %. Assuming a regional market comprising Norway and Sweden, the Commission has estimated on the basis of the figures submitted by Industri Kapital that Dyno and Neste would jointly account for [> 20] * % of the market for PF/P(R)F resins in that area (Neste: [> 10] * %, Dyno: [> 10] * %). Perstorp would account for [> 30] * % of the market and Casco would have [> 20] * %. Given that the production of Neste and Dyno is directed mainly to wood application resins, considering this end application area alone, the position of the parties would even be stronger.

(92) In Finland, the market position of Dyno and Neste has been relatively stable over the past three years. By contrast, in Norway Neste has increased its market share from [< 5] * % in 1997 to [> 5] * % in 1999. During the same period, Dyno's market share has dropped 10 percentage points from [> 60] * % in 1997 to [<60] * % in 1999. It can thus be seen that the bulk of the decline in Dyno's market share has been picked up by Neste.

(93) In Sweden, Dyno and Neste would account for [> 20] * % of the market for PF/P(R)F resins (Dyno [< 10] * % Neste [< 30] * % while Casco accounts for some [> 20] * % of the market.

b) UF/(M)UF resins

(94) In UF/(M)UF resins, Dyno and Neste would jointly achieve very high market shares in two Nordic countries: in Finland, the combined market share would be [> 80] * % (Dyno [> 40] * %, Neste [> 30] * % and in Norway [> 80] * % (Dyno [> 80] * %, Neste [< 10] * %. Assuming a regional market comprising Norway and Sweden, Dyno and Neste would jointly account for [> 30] * % of the UF/(M)UF resins market (Dyno: [> 30] * %, Neste: [< 10] * %. On the basis of the figures submitted by Industri Kapital, the Commission has estimated that Casco would account for

[> 40] * % of that market and Elf Atochem for [< 20] * %. Given that the production of Neste and Dyno is directed mainly to wood application resins, considering this end application area alone, the position of the parties would be even stronger.

(95) In Finland and Norway, the new entity's position would be far superior to that of the competitors. Indeed, Industri Kapital has submitted that Casco would have [<10] * % in Finland. In Norway, Casco would be the largest competitor with [> 10] * % of the market while Borden would have [< 10] * % of the market.

(96) On the basis of the foregoing, Neste and Dyno would jointly achieve a very strong position in Finland and Norway with only a few competitors on the market.

Potential competition

(97) In the following, the arguments apply both to PF/P(R)F as well as UF/(M)UF resins.

(98) Industri Kapital argues that new entry to the Nordic market would easily be feasible. According to Industri Kapital, the market for PF/P(R)F resin has been growing slightly above the European average. As for UF/(M)UF resins, Industri Kapital submits that the growth has been slightly below the European average. Industri Kapital adds further that the growth prospects differ significantly depending on application areas. According to Industri Kapital, future growth is expected in the Finnish plywood industry, the glue bonded timber beam industry and the MDF industry. Moreover, Industri Kapital submits that new plants have either been constructed or the construction has been announced in the particleboard industry. Industri Kapital also argues that margins in the Nordic countries do not significantly differ from those in other Member States. Industri Kapital further submits that the probability of market entry post-merger will increase due to customers' multiple sourcing policies. Finally, Industri Kapital argues that the resin customers could invite a new supplier to enter the market.

(99) The Commission notes that there has been no new entry to the Nordic market in formaldehyde based resins in general or in Finland or Norway in particular for the past five years. The investigation shows that new entry is not viable in the foreseeable future either for the reasons set out below.

(100) More particularly, the investigation shows that new entry in the Nordic area is difficult due to the fact that the market for industrial resins is considered to be mature and the supply and demand in balance. The Commission notes that the rate of capacity utilisation in Neste's and Dyno's plants in Finland and Norway for PF/P(R)F resins is [> 40] * % and for UF/(M)UF resins [> 30] * %. Given this excess capacity, Dyno and Neste could use the threat of a temporary capacity increase as a deterrent to discourage new entry. Industri Kapital has submitted in the notification that while a new plant producing formaldehyde based resins may be set up in 12 to 24 months and would cost EUR [> 5] * million, expansion of existing capacity is less expensive (approximately EUR [< 5] * million and could be carried out in a shorter time period, in 6 to 12 months.

(101) New entry is made difficult also due to the fact that customers themselves have no access to the specific resin recipes they purchase. The Commission's investigation shows that customers typically have only limited knowledge of the specific recipes. Therefore, in case of new entry, unless the supplier already has suitable recipes available, the development of a resin must basically begin from scratch. The Commission's enquiries show that it would be difficult for a newcomer to enter the market and develop resins relatively quickly for instance for the plywood industry due to the special know-how required to understand the product itself and the various wood species used in production, unless the producer already has the specific know-how required. In their replies to the Commission's enquiries, customers and competitors have estimated that, for an experienced supplier, it may take up to two or three years to develop a new resin which can be marketed. Some customers have also indicated that they use up to 50 different resins, some of which can only be sourced from Dyno, some only from Neste. Therefore, even if the new entrant was an established resins producer, it appears unlikely that this producer would be able to supply immediately all the resins required by, for instance, plywood manufacturers or paper manufacturers. Therefore, the comprehensive supply response from new entry would not be immediate.

(102) Moreover, the investigation shows that new entry is made unattractive due to the relatively small size of the Nordic market, the isolated geographic location, high capital expenditure requirements and long and difficult processes, for obtaining permits.

(103) Industri Kapital has itself submitted that the manufacture of industrial resins is scale-driven business particularly in raw-material purchase, logistics, production and R & D. Moreover, critical success factors according to Industri Kapital are raw material volume, proximity to customers and leading production technology and application service. Under these conditions, it will be difficult for a new entrant to compete against a dominant supplier.

(104) Industri Kapital argues further that customers who, at present, do not have captive production can set up their own production facilities for the manufacture of formaldehyde based resins in a relatively short period of time. Industri Kapital argues that some of the customers already produce their own resins in-house. However, apart from two producers of insulation materials, no other customer in the Nordic area has the possibility to produce its resins in-house.

(105) All customers contacted by the Commission have indicated that, in case of a price increase of 5 % to 10 %, they would not consider starting to produce formaldehyde based resins themselves. The replies to the Commission's questionnaires show that a resin plant would require not only a significant financial investment but also know-how and expertise in the development of resins. Know-how is not readily available, for instance, in paper impregnation resins and customers are, in any case, reluctant to commit themselves to something which is not their core business. Moreover, customers have indicated that such production would not be profitable due to the relatively small amounts of resins required. Therefore, the Commission concludes that starting in-house production would not be an economically viable solution for customers to react to a price increase.

(106) Customers have also indicated that, in case of a price increase, they would not consider starting to import from Russia, the Baltic states or countries in central and eastern Europe essentially for the same reasons as discussed above in connection with the relevant geographic market. Customers do not consider the manufacturers in these countries as a realistic alternative, *inter alia* due to high transport costs, limited product range, low quality, and the absence of supply security.

(107) On the basis of the foregoing, it is concluded that competitive pressure through potential competition from Russia or the Baltic states or via new entry to the Nordic area is not likely. Given also the limitations relating to the captive production of resins, it is concluded that potential competition is not sufficient to offset the market power of the new entity in the market for formaldehyde based resins in Finland and Norway.

Comments of third parties

(108) Customers situated in the Nordic countries have generally indicated that competition between Dyno and Neste in the two markets for formaldehyde based resins, UF/(M)UF and PF/P(R)F, has been intensive. The comparison of quantities sourced by customers from the two producers over the last three years indeed confirms this and demonstrates that quantities sourced from each producer have changed, often drastically, from one year to another, due to differences in prices and in other supply conditions.

(109) Customers in particular in the plywood industry, insulation materials and resin-impregnated paper have expressed serious concerns over the proposed transaction. Customers have indicated that the operation as notified would lead to price increases, potential foreclosure of the market, reduction of the current product range and reduction in R & D.

(110) Following the operation, Industri Kapital would become the dominant supplier for formaldehyde based resins in Finland and in Norway. In Finland, it would have a de facto monopoly. Given the fact that there are only a few alternative suppliers, who are considerably smaller than the combined entity, and the absence of potential competition, Industri Kapital could act independently on the market and raise prices.

Conclusion

(111) In view of the foregoing, the Commission concludes that the operation would lead to the creation of a dominant position in PF/P(R)F resins and UF/(M)UF resins in Finland. The question whether Norway constitutes a distinct geographic market or forms part of a wider geographic market comprising Norway and Sweden can finally be left open because the undertaking to divest one of the Finnish plants necessarily removes any potential competition problem in Norway.

2. **Formaldehyde**

Actual competition

(112) Neste and Dyno have overlapping activities in the production and sale of formaldehyde only in Finland, where they are the only two producers. Therefore, following the operation, the parties would have a de facto monopoly in the supply of formaldehyde to third parties in that country. Industri Kapital submits that, in addition to Neste and Dyno, Bang & Bonsomer is active as an independent distributor of formaldehyde to small volume customers. However, the Commission notes that Bang & Bonsomer currently distributes formaldehyde produced by Neste and cannot therefore be considered as a competitive alternative to the combined entity.

(113) Industri Kapital has submitted that Caldic Netherland, Synthite, Elf Atochem and Degussa are competitors in the supply of formaldehyde to third parties. The Commission's investigation does not, however, show that any of these producers are active in Finland.

Potential competition

(114) Industri Kapital argues that there are producers close to Finland which all have excess capacity and could start delivering formaldehyde to the Finnish market within a short time period. According to Industri Kapital, these companies include Casco Products in Sweden, Viru Keemia Grupp in Estonia and Akron in Russia.

(115) The Commission's investigation and in particular the comments obtained from customers demonstrate, however, that the prices charged by these producers are higher than those charged by local producers due to the transport costs. The investigation shows that the vast majority of formaldehyde is transported within a radius of 320 km. Therefore, as already discussed, although Industri Kapital claims that Neste has from time to time obtained certain volumes of formaldehyde from its plant in the Netherlands and from Perstorp in Sweden and Dyno has imported formaldehyde from Casco in Sweden to Finland, these imports have been mainly spot deliveries. Customers in general terms do not import formaldehyde. Customers in Finland have indicated that they do not consider Casco as a viable alternative to Dyno and Neste because of transport costs. According to the investigation, customers in Finland have not sourced formaldehyde from Casco. The Commission notes further that some customers have reported that they have attempted to purchase formaldehyde from Russia in the past but that these attempts failed, in particular due to technical difficulties.

(116) Therefore, on the basis of the foregoing and in view of high transport costs, the Commission does not consider that imports from Russia or the Baltic States constitute a competitive alternative for customers located in Finland.

(117) The investigation shows further that there has not been any new market entry to the Finnish market in the last five years. The investigation also suggests that potential competitors are not willing to enter the Finnish formaldehyde market in the near future. This is due to the fact that setting up a new plant would take time and is costly. In addition, the administrative procedures to get the necessary public approvals are considered to be burdensome. Moreover, third parties have argued that because formaldehyde provides as a well-known chemical merely low margins, the likelihood of new market entry is very low given the strong position of a merged entity.

(118) As to the question whether customers would be willing to start own production of formaldehyde, the investigation clearly shows that this is not a realistic alternative essentially for the same reasons as apply to formaldehyde based resins. Customers of formaldehyde have indicated that their need for formaldehyde is relatively small and an economic production would require a certain volume (minimum 20 000 to 25 000 tonnes/year). Therefore, in order to produce formaldehyde on economically profitable terms, they would have to sell their excess capacity on the free market in competition with the considerably stronger new entity. In its reply to the Commission's Statement of Objections, Industri Kapital has submitted that there is formaldehyde technology available based on reactors designed for a production of as little as 6 000 tonnes per year and that formaldehyde production based on this kind of technology would require significantly smaller annual production and still be economically profitable. This has not been confirmed in the Commission's investigation.

(119) In its reply to the Commission's Statement of Objections, Industri Kapital submitted that there is competitive pressure from urea-formaldehyde pre-condensate (UFC) producers. In this respect, Industri Kapital has submitted that formaldehyde can be further developed into UFC, which is an interim product produced in formaldehyde plants by adding urea in the formaldehyde/water absorption column. Industri Kapital has submitted that UFC can be used as a raw material in the production of UF/(M)UF resins in the condensation stage. Industri Kapital has further contended that UFC is very stable, has a high resin content and contains only a small amount of water compared to a standard 37 % solution of formaldehyde. This, Industri Kapital argues, increases the transportability of UFC compared to straight formaldehyde. The Commission's enquires do not, however, confirm Industri Kapital's argument of competitive pressure arising from UFC. None of the third parties contacted by the Commission have indicated that, in the event of an increase in the price of formaldehyde, they could start sourcing UFC.

Comments from third parties

(120) Customers of formaldehyde have expressed serious concern over the transaction. First, since after the operation the parties would enjoy a de facto monopoly in the supply of formaldehyde to third parties in Finland, they would be able to act independently on the market and increase prices. Second, there is a potential threat that those customers which currently buy the low-margin product for their own resin production, would be eventually forced to buy more expensive, higher margin ready-made resins from the new entity. Third, concerns have also been expressed in relation to possible capacity decreases. Several third parties have explained to the Commission that they are concerned that the new entity would reduce sales of formaldehyde to third parties. The operation could therefore lead to the foreclosure of the market.

Conclusion

(121) On the basis of the foregoing, the Commission concludes that the operation as notified would lead to the creation of a dominant position in Finland in the market for the sale of formaldehyde to third parties.

3. **Methanol**

(122) Adverse competition effects are unlikely to arise in the manufacture and distribution of methanol. Neste and Dyno have a combined market share of less than 5 % on the market encompassing the whole of the EEA. As to the vertical relationship, Methanor's market share is approximately 14 % in the EEA, which is unlikely to lead to any adverse competition effects such as the foreclosure of the market.

4. **Materials handling systems**

(123) Arca and Polimoon are the main producers of plastic materials handling systems in the Nordic countries and in particular in Finland, Sweden and Norway. Dyno has joint control together with CVC of Polimoon ([6]). After the operation, Industri Kapital will not only control Arca but through Dyno also Polimoon. Both companies produce the whole range of material handling products, with the exception of plastic foldable pallet containers which are not produced by Polimoon. The operation will lead to a substantial addition of market shares, regardless whether the product market is defined as consisting of all types of materials handling systems or consisting of separate markets defined by each individual product. The market shares of Arca and Polimoon for materials handling systems in value in 1999 are presented in Tables 1 to 7. The figures are based on Industri Kapital's estimates; the term 'Nordic Region' is understood to comprise Finland, Sweden and Norway.

Table 1

All material handling products	Arca	Polimoon	
The Nordic Region	[60 to 70]* %	[10 to 20]* %	[70 to 90]* %
Finland	[70 to 80]* %	[0 to 10]* %	[80 to 90]* %
Sweden	[70 to 80]* %	[0 to 10]* %	[70 to 80]* %
Norway	[20 to 30]* %	[40 to 50]* %	[60 to 80]* %

Table 2

Plastic stack-nest containers	Arca	Polimoon	
The Nordic Region	[50 to 60]* %	[20 to 30]* %	[80 to 90]* %
Finland	[70 to 80]* %	[0 to 10]* %	[80 to 90]* %
Sweden	[70 to 80]* %	[0 to 10]* %	[70 to 90]* %
Norway	[20 to 30]* %	[60 to 70]* %	[60 to 100]* %

Table 3

Plastic stackable containers	Arca	Polimoon	
The Nordic Region	[60 to 70]* %	[10 to 20]* %	[70 to 90]* %
Finland	[70 to 80]* %	[0 to 10]* %	[70 to 90]* %
Sweden	[80 to 90]* %	[0 to 10]* %	[80 to 100]* %
Norway	[20 to 30]* %	[30 to 40]* %	[50 to 70]* %

([6]) Decision of 8 March 1999, Case IV/M. 1349 — CVC *Capital Partners/Dynoplast*.

Table 4

Plastic bottle trays	Arca	Polimoon	
The Nordic Region	[60 to 70]* %	[20 to 30]* %	[90 to 100]* %
Finland	[60 to 70]* %	[30 to 40]* %	[90 to 100]* %
Sweden	[80 to 90]* %	[10 to 20]* %	[90 to 100]* %
Norway	[50 to 60]* %	[30 to 40]* %	[80 to 100]* %

Table 5

Plastic crates	Arca	Polimoon	
The Nordic Region	[50 to 60]* %	[10 to 20]* %	[70 to 80]* %
Finland	[90 to 100]* %	[0 to 10]* %	[90 to 100]* %
Sweden	[10 to 20]* %	[0 to 20]* %	[20 to 30]* %
Norway	[0 to 10]* %	[50 to 60]* %	[50 to 70]* %

Table 6

Plastic pallets	Arca	Polimoon	
The Nordic Region	[50 to 60]* %	[10 to 20]* %	[60 to 80]* %
Finland	[40 to 50]* %	[20 to 30]* %	[60 to 80]* %
Sweden	[50 to 60]* %	[0 to 10]* %	[60 to 70]* %
Norway	[50 to 60]* %	[10 to 20]* %	[60 to 80]* %

Table 7

Plastic small-parts storage systems	Arca	Polimoon	
The Nordic Region	[60 to 70]* %	[0 to 10]* %	[70 to 80]* %
Finland	[30 to 40]* %	[0 to 10]* %	[30 to 50]* %
Sweden	[70 to 80]* %	[0 to 10]* %	[70 to 90]* %
Norway	[60 to 70]* %	[10 to 20]* %	[70 to 90]* %

(124) The operation gives rise to the possibility of either creation or strengthening of a dominant position in the markets for plastic stack-nest containers, plastic stackable containers and plastic bottle trays in Finland, Sweden and Norway where the parties have market shares of [70 to 100] * %. Furthermore, the parties will obtain market shares above [> 60] * % in the market for plastic pallets in Finland, Sweden and Norway and above [> 70] * % for plastic small-parts storage systems in

Sweden and Norway. On the basis of a product market comprising all plastic materials handling products the parties would likewise achieve a dominant position in Finland, Sweden and Norway with market shares of [60-80] * %. Even if the geographic reference market was assumed to be wider including Denmark and Iceland, the parties would still have a market share of [> 60] * % for all plastic materials handling products in this area.

(125) Arca and Polimoon both produce the whole range of materials handling products, i.e. plastic stack-nest containers, plastic stackable containers, plastic bottle trays, plastic crates, plastic pallets and plastic small-parts storage systems, with the exception of plastic foldable pallet containers which are not produced by Polimoon. None of the larger European competitors, Linpac Materials Handling, Allibert, SSI Schäfer and Schoeller Wafin Trepak, have production facilities in Finland, Sweden and Norway, or have substantial sales in these countries. Plastic Form AB is only active in Sweden and Schoeller Plast has only limited sales outside Denmark. Industri Kapital stated in response to a formal decision pursuant to Article 11(5) of the Merger Regulation which requested the names of the five largest competitors for each product group in Finland, Sweden, Norway and Denmark, that it was not able to state more than one competitor per country due to the fact that the remaining competitors had such small market shares that Industri Kapital did not have the necessary information. Arca is by far the strongest operator in the Nordic area and Polimoon is the only substantial competitor to Arca. After the operation Industri Kapital will have a substantial and controlling interest in its major competitor Polimoon. This will significantly weaken the position of Polimoon as an independent competitor to Arca which could exercise a restraining pressure on Arca's behaviour in the market.

(126) There is no indication that competitors from outside the Nordic area intend to enter the market.

Conclusion

(127) On the basis of the foregoing, the Commission concludes that the operation as notified would lead to the creation or strengthening of a dominant position in the markets for plastic stack-nest containers, plastic stackable containers, plastic bottle trays and plastic pallets in Finland and Sweden and Norway, and in the markets for plastic small-parts storage systems in Sweden and Norway or, alternatively, in the markets for plastic materials handling systems in the Nordic region comprising Finland, Sweden and Norway.

5. **Plastic containers**

(128) On the regional market constituted by the Nordic area (Finland, Sweden, Norway and Denmark), the combined market share of Polimoon and Superfos for open top containers between 2 and 35 litres would not exceed [< 40] * %. In all the other product segments, the combined market share would be lower. Competitors active in the Nordic market include such large players as Huhtamaki/Van Leer, Rexam and PLM. A significant number of smaller suppliers are also present.

(129) Customers have not expressed serious concerns over the transaction in relation to plastic containers. Customers have indicated that they have switched suppliers in the past and can do so if facing a price increase of 5 % to 10 %. Most competitors contacted by the Commission have confirmed that competitive conditions would prevail on the market after the transaction.

(130) On the basis of the foregoing, the Commission concludes that the transaction as notified would not lead to the creation of a dominant position in plastic containers in the Nordic area.

VI. **MODIFICATIONS TO THE PROPOSED TRANSACTION**

(131) In order to remove the competition concerns identified by the Commission, the parties have offered the Commission undertakings. The full text of those undertakings is annexed to this Decision. The full text of the annexed undertakings forms an integral part of this Decision.

(132) First, Industri Kapital proposes to divest the formaldehyde and resin plant of Dyno in Kitee, Finland, to an existing or potential competitor. In the event that this transaction does not take place within the time period foreseen, Industri Kapital will divest the formaldehyde and resin plant of Neste in Hamina, Finland. In the case of a divestiture of the Kitee business, Industri Kapital has further undertaken to cause Neste to offer the new owner of the Kitee plant a non-exclusive license to use Neste recipes for the production of impregnation resins in Kitee.

(133) Secondly, Industri Kapital proposes to cause Dyno to sell its shares in Polimoon to purchaser independent of Industri Kapital. Industri Kapital shall be released from this commitment if it divests within the time period foreseen in this Decision its complete holding in Arca to a buyer independent of Industri Kapital.

(134) The Commission considers that all undertakings are sufficient to remove the competition concerns identified in this case.

(135) With regard to formaldehyde based resins in Finland and Norway, the dominant position will disappear if the sale of either the Kitee plant or the Hamina plant is carried out. More particularly, in Finland, the entire overlap between the activities of Neste and Dyno will be removed regardless of which plant is divested.

(136) In Norway, or alternatively in the area covering Norway and Sweden, where the market share increment results from imports from Neste's Hamina plant, the sale of Neste's Hamina plant would remove the entire overlap between Dyno and Neste. In the event that Dyno's Kitee plant is sold, the Commission considers that the new owner could start exporting resins into Norway on an equal basis with the Hamina plant. The parties have provided information on transport costs showing that the Kitee plant would not be in any worse position in this respect. Therefore, should the current customers of Neste in Norway wish to switch to the new owner of the Kitee plant, transport costs would not inhibit the switch.

(137) As for the market for formaldehyde, the divestment of either the Kitee or the Hamina plant will remove the entire overlap between Dyno and Neste in Finland and thus remove the competition concerns arising on this market.

(138) As concerns the market for materials handling systems, either of the undertakings given will remove the entire overlap between Industri Kapital and Polimoon.

VII. **CONCLUSION**

(139) In light of the foregoing, the Commission has reached the conclusion that the notified concentration should be declared compatible with the common market and the functioning of the EEA Agreement, subject to the condition of full compliance with the undertakings given to the Commission,

HAS ADOPTED THIS DECISION:

Article 1

The concentration notified by Industri Kapital on 24 January 2000, whereby Industri Kapital acquires all the shares in Dyno ASA, is hereby declared compatible with the common market and the functioning of the EEA Agreement, subject to the condition of full compliance with the undertakings given by Industri Kapital to the Commission and set out in the Annex.

Article 2

This Decision is addressed to:

Industri Kapital
Birger Jarlsgatan 2
S-114 34 Stockholm.

Done at Brussels, 12 July 2000.

For the Commission
Mario MONTI
Member of the Commission

ANNEX

UNDERTAKINGS

Industri Kapital NV, on its own behalf and on behalf of the group of companies ultimately controlled by it (hereinafter jointly referred to as Industri Kapital), hereby makes the following commitment (the Commitment) to the European Commission in order to obtain the Commission's clearance of Industri Kapital's (through Nordkem AS) notified public bid for the shares in Dyno ASA (the Concentration).

Commitment to sell the formaldehyde and resins plant in Kitee or Hamina

1. Industri Kapital shall cause Dyno ASA (Dyno) to divest either the formaldehyde and resins plant in Kitee (the Kitee Business) or Neste Chemicals Oy to divest the formaldehyde and resins plant in Hamina (the Hamina Business) as an ongoing concern to a Suitable Purchaser as defined under point 4.

2. Industri Kapital will first seek to sell the Kitee Business during the period of time set out in point 9 (the Kitee Period) and will, failing such sale, sell the Hamina Business during an additional period of time set out in point 10 (the Hamina Period).

3. The Kitee Business or the Hamina Business will include personnel and existing assets (including non-exclusive licences and R & D facilities) necessary to continue the production and sale of formaldehyde as well as wood panel resins and impregnation resins in Kitee or Hamina, as the case may be. In the case of a divestiture of the Kitee Business, Industri Kapital shall cause Neste to offer, subject to third-party rights, the new owner of the Kitee Business a non-exclusive licence to use Neste recipes for the production of impregnation resins in Kitee. Such licence shall be granted on reasonable commercial terms which in case of disagreement shall be decided in arbitration between Neste and the new owner of the Kitee Business.

4. A Suitable Purchaser shall be a viable existing or prospective competitor independent of and unconnected with the merged entity with the ability to maintain and develop the Kitee Business or the Hamina Business as an active competitive force in the markets concerned.

5. The Suitable Purchaser shall be approved by the Commission prior to the signing of a final agreement of sale.

6. Within one week from the date of the Commission's decision to clear the Concentration, Industri Kapital shall appoint an independent trustee who shall be an investment bank or a similar institution (the Trustee). The Trustee shall be subject to approval by the Commission.

7. Immediately upon appointment of the Trustee, Industri Kapital shall give the Trustee a mandate whose terms shall have been previously agreed with the Commission and which will include the following functions:

   (i) monitoring the operation and management of the Kitee Business during the Kitee Period and the Hamina Business during the Hamina Period in order to report on its continued viability and marketability;

   (ii) monitoring the satisfactory discharge by Industri Kapital of its obligation to divest first the Kitee Business and the Hamina Business, as the case may be;

   (iii) execution of the sale of the Hamina Business in case such mandate is given to the Trustee pursuant to point 10 below;

   (iv) providing written reports every second month to the Commission, with copies to Industri Kapital, on the management and efforts to sell the Kitee Business and the Hamina Business; and

   (v) providing evidence to the Commission that the sale of the Kitee Business or the Hamina Business, as the case may be, has been finally completed.

8. Prior to and until completion of the sale of the Kitee Business and the Hamina Business, as the case may be, Industri Kapital undertakes to ensure that, during the Kitee Period the Kitee Business, and during the Hamina Period the Hamina Business, is held separate and managed as a distinct and saleable entity with its own management accounts. Industri Kapital further undertakes to ensure that the Kitee Business and the Hamina Business, as the case may be, has its own management, separate and distinct from that of the merged entity and supervised by the Trustee. The management, under the guidance and control of the Trustee, shall be under instruction to manage the Kitee Business and the Hamina Business, as the case may be, on an independent basis in order to ensure its continued viability, market value and independence. In addition, Industri Kapital undertakes to ensure that no structural changes shall be made to the Kitee Business during the Kitee Period or the Hamina Business during both the Kitee Period and the Hamina Period without the prior approval of the Commission.

9. Industri Kapital shall have signed a binding agreement of sale of the Kitee Business (subject to due diligence as well as regulatory and other approvals) with a Suitable Purchaser within [...] months from the date of the Commission's decision to clear the Concentration. This period of time is referred to as the Kitee Period.

10. If Industri Kapital is not able to fulfil its undertaking to divest the Kitee Business by the end of the time period set out in point 9, it shall give the Trustee an irrevocable power of attorney to sell the Hamina Business to a Suitable Purchaser [...] within an additional period of [...] months (i.e. within [...] months from the date of the Commission's decision to clear the Concentration). The period of time running from the end of the Kitee Period until the end of the additional period set out herein is referred to as the Hamina Period.

Commitment to sell the shares in Polimoon Group Ltd

11. Industri Kapital undertakes to cause Dyno to sell its shares (the Shares) in Polimoon Group Ltd (Polimoon) to a purchaser independent of Industri Kapital (the Share Purchaser).

12. The Share Purchaser shall be approved by the Commission prior to the signing of a final agreement of sale.

13. Within one week from the date of the Commission's decision to clear the Concentration, Industri Kapital shall propose an investment bank or a similar institution (the Share Trustee) with whom the share certificates in respect of the Shares shall be deposited pending divestiture of the Shares. The Share Trustee shall be subject to approval by the Commission.

14. The share certificates in respect of the Shares shall be deposited with the Share Trustee within one week from the Commission's approval of the Share Trustee, with an irrevocable instruction:

    (i) not to consult with or seek or take any instructions from Industri Kapital in relation to the exercise of any right pertaining to the Shares;

    (ii) not to provide any privileged information to Industri Kapital which the Share Trustee has obtained by virtue of the Shares;

    (iii) to appoint, on behalf of Dyno but at its sole discretion, a director of the board of Polimoon which director shall not be an owner or in the employ of Industri Kapital or part of its management;

    (iv) to deliver the share certificates in respect of the Shares to the Share Purchaser when advised by Industri Kapital that the Shares have been sold.

15. Industri Kapital shall, within one week from the date of the Commission's decision to clear the Concentration, cause Dyno's nominated director to resign from his current board directorship in Polimoon. Industri Kapital shall thereafter refrain from giving any instructions to any member of the board of directors or the management of Polimoon or otherwise exercising any right by virtue of the Shares or the shareholders agreement pertaining to the Shares.

16. Industri Kapital shall have signed a binding agreement for the sale of all the Shares to the Share Purchaser within [...] from the date of the Commission's decision to clear the Concentration.

17. The Share Trustee shall be instructed by Industri Kapital to immediately confirm in writing to the Commission that the share certificates in respect of the Shares have been deposited with it and shall thereby provide the Commission with a copy of the instructions by Industri Kapital pursuant to point 15 above. The Share Trustee shall report in writing to the Commission when the Shares have been finally divested.

18. Industri Kapital shall be released from this commitment in relation to the Shares in case Industri Kapital divests its complete holding in Arca Systems AB to a buyer independent of Industri Kapital. Such release shall be subject to the prior approval of the Commission.

Miscellaneous

19. The Trustee and the Share Trustee may be the same institution subject to the Commission's approval.

20. Industri Kapital shall pay reasonable remuneration to the Trustee and the Share Trustee for their services.

21. Industri Kapital shall ensure that the Trustee and the Share Trustee are given all information and assistance they may reasonably require in order to carry out their mandates.

22. Industri Kapital, or alternatively the Trustee and/or the Share Trustee, shall provide the Commission with a fully documented and reasoned proposal pursuant to points 5, 12 and/or 18 enabling the Commission to assess:

    (i) whether the prospective purchaser satisfies the relevant purchase criteria;

    (ii) the envisaged time of completion of the divestiture; and

    (iii) whether the purchaser has, or reasonably can be expected to obtain, all necessary approvals from the competent regulatory bodies.

    Prior to approval, the Commission may request to meet the prospective purchaser and, if deemed necessary, ask for the submission of a business plan for the Kitee Business or the Hamina Business, as the case may be.

23. If the Commission has not within two weeks following receipt of a fully documented proposal for a prospective purchaser expressed in writing its disagreement, negotiations with such a party as a valid purchaser shall be free to proceed. In the case that the Commission has to request additional information, the receipt of such information shall constitute the starting point for the two weeks referred to.