



U.S. Department of Justice

Antitrust Division

City Center Building  
1401 H Street, NW  
Washington, DC 20530

April 24, 2003

Mr. Christopher M. Curran  
White & Case  
601 Thirteenth Street, N.W.  
Suite 600 South  
Washington, D.C. 20005-3807

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Re: *United States v. UPM Kymmene Oyj*,  
Civ. No. 03 C 2528 (N.D. Ill., complaint filed April 15, 2003)

Dear Chris:

This letter responds to your demand raised for the first time yesterday afternoon that the Department agree to allow the defendants to take a minimum of 50 depositions during the pre-hearing discovery period, which, under the proposed scheduling order filed yesterday with the Court, ends on May 21, 2003. We find your demand wholly unreasonable for the reasons explained below and propose an alternative of up to 20 depositions per side, exclusive of experts.

As you know, the proposed order listed several issues on which we had been unable to reach agreement, including the number of depositions that each side should be permitted to take before the preliminary injunction hearing, over the ten allowed by Fed. R. Civ. P. 30(a)(2)(A) without leave of court. During negotiations, when we proposed a limit of fifteen depositions for each side, you told us that you would not counterpropose any alternative number until you reviewed our disclosures to be served on April 25. We consequently agreed to try to resolve this and other issues after April 25 and file submissions with the Court by April 29 on any issues on which we have failed to reach agreement. When I telephoned you yesterday afternoon to resume negotiations on the three issues that are clearly not dependent on your receipt of information on April 25, you ultimately turned the discussion to your demand for a minimum of 50 pre-hearing depositions and urged that we respond within about an hour by 5:00 p.m.

You asserted your demand was based on our TRO brief's citation to 27 affidavits and 12 investigative depositions. Your position fails to consider, however, that a number of the affidavits are from persons who submitted comments to the Department about the merger at defendants' request. Moreover, the Department took only 8 non-party investigative depositions, so many of the depositions cited in our brief are of defendants' employees. Your position also fails to consider any

effort to negotiate a limit on the number of affidavits and depositions that might be offered to the Court at the preliminary injunction hearing. This is one of the other issues we hope to reach agreement with you on by April 29.

My colleagues and I have now had last evening to consider your demand and are countering with an offer that the number of depositions be limited to 20 per side (plus experts) between now and May 21. As a practical matter, once the inevitable lag in scheduling is taken into account, a total of 40+ depositions will likely mean 3-4 will be taken per day up to May 21, which is in the middle of expert disclosure. We believe this is a pace that, at best, will strain everyone's ability to prepare for the preliminary injunction hearing to the limits. Your demand for a minimum of 50 depositions, combined with additional depositions that we would take, would mean about 6-7 depositions per day over the same period. Such a pace would be wholly unworkable to enable us to prepare for a preliminary injunction hearing scheduled for early June.

We consequently urge you to reconsider your demand and agree to limit the number of depositions to be taken by May 21 to twenty per side (plus experts). Contrary to your suggestion during negotiations, the hearing set for early June is a preliminary injunction hearing, rather than a trial on the merits. As you know, even before the Complaint was filed, we offered you a seven-month schedule for a trial on the merits to which you never responded. If your client wants a trial on the merits, we remain open to negotiating an ambitious, but reasonable schedule for one. Until then, let's focus on an ambitious, but reasonable process for the pre-hearing discovery period.

We look forward to your response.

Sincerely yours,

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Steven Kramer

cc: Richard A. Duncan (by facsimile)