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### **PUBLIC RECORD**

**Investigation 548 (the investigation) – Certain kraft paperboard exported from the United States of America (US)**

**Submission on behalf of Graphic Packaging International LLC and Graphic Packaging International Australia Converting Ltd (GPI) to the Anti-Dumping Commission (ADC)**

**Application for publication of dumping duty notice (the application) by Visy Glama Pty Ltd (Visy) addressing the ADC's *Issues paper: like goods with respect to the goods under consideration* (the issues paper)**

Dear Leisa

GPI is grateful for the opportunity to make submissions on the issues paper. A number of the submissions below draw on submissions and evidence previously provided by GPI; these submissions bear repeating, particularly so in light of the fact that Visy has shown itself unreliable on key considerations for the ADC in the investigation. GPI's submissions are:

1. Microflute is not physically, commercially or functionally alike good to kraft paperboard (see section 1 below).
2. Expert evidence obtained by GPI from Charles P Klass confirms that microflute and kraft paperboard are not like goods (see section 2 below).
3. Visy is not the only producer of microflute in Australia: Orora produces substantial amounts of microflute (see section 3 below).
4. The goods are large rolls of unprinted kraft paperboard, not beverage can multipacks as Visy argues, neither are they printed sheets of corrugated cardboard (see section 4 below).
5. Microflute is the result of *converting* paper products; kraft paperboard imported to Australia has had no converting process (see section 5 below).
6. Visy has demonstrated that it cannot be relied upon in its statements regarding like goods, microflute and E flute. Any decision that the ADC might make based on Visy's



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continuously shifting positions and demonstrably wrong statements would be unsound. See section 6 below.

GPI addresses the specific questions asked by the ADC in the issues paper in section 7 below. Section 7 also raises other issues that relate to the specific questions in the issues paper, including that substantial unfairness has been imposed on GPI through the failure of Visy's application (or subsequent submissions by Visy) to adequately describe what are the like goods and that this key foundational question remains unanswered at this late stage in the investigation.

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## Submission on behalf of Graphic Packaging International

## 1. Microflute is not physically, commercially or functionally alike to kraft paperboard

1. As GPI observed in its submission of 13 May 2020, microflute is not physically, commercially or functionally alike to kraft paperboard.
2. Packaging industry literature confirms that the differences between microflute and kraft paperboard are fundamental. The packaging industry does not regard microflute as a type of paperboard at all (let alone as alike to kraft paperboard). The *Handbook for Pulp and Paper Technologists*<sup>1</sup> devotes a chapter to paperboard (of which kraft paperboard is a type), describing it in the following terms:<sup>2</sup>

Paperboard can be loosely defined as “stiff and thick paper”. The line of demarcation between paper and paperboard is somewhat vague but has been set by the ISO at a grammage of 224 g/m<sup>2</sup>.

3. In contrast, microflute (a type of corrugated board) is not any type of paper or paperboard but is the result of *converting* paper products.<sup>3</sup> Corrugated board (including E, F, G and N flute) is not a paper product *per se*, but an *end use* of paper products, ie it is at a different level in the packaging supply chain.<sup>4</sup> The physical specifications used by the packaging industry are different for microflute and kraft paperboard: kraft paperboard specifications are stated in grams per square metre (as for paper products generally) whereas microflute specifications are stated in thickness and number of “flutes” per metre.<sup>5</sup>
4. GPI considers that microflute is demonstrably not alike to kraft paperboard physically (see section 1.a below), commercially (see section 1.b below) or functionally (see section 1.c below).<sup>6</sup>

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<sup>1</sup> Gary Smook, *The Handbook for Pulp and Paper Technologists*, also known as the Smook Book is now in its fourth edition. The Technical Association of Pulp and Paper Industry describes it as “the “Must Have” book for professionals in the Pulp & Paper Industry” and “the preferred and most widely used P&P text by companies, colleges, and universities”, <https://www.tappi.org/publications-standards/books/deals/smook-book/>.

<sup>2</sup> *The Handbook for Pulp and Paper Technologists*, 3ed, at chapter 19.

<sup>3</sup> *The Handbook for Pulp and Paper Technologists*, 3ed, generally at chapter 23 and specifically at section 23.1.

<sup>4</sup> *The Handbook for Pulp and Paper Technologists*, 3ed, at chapter 23.

<sup>5</sup> Hye Jung Youn, Hyun Seung Kwon and Hak Lae Lee, *Evaluation Methods for Flat Crush Resistance of Corrugated Fiberboard with Microflutes*, in J. of Korea TAPPI 41(5) 2009 at page 8.

<sup>6</sup> As even Visy admits, the production differences between microflute and kraft paperboard are stark: the different layers in Visy’s microflute are made on different machines, at different plants and from different materials. One of the layers is then printed in roll form and wound back up. The layers are then combined, using adhesives, on yet another machine. In contrast, kraft paperboard is produced in a single run on a single paper making (fourdrinier) machine (see the Klass Reports).

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a. Microflute is not physically alike to kraft paperboard

5. As GPI observed in its submission of 13 May 2020, microflute is not physically alike to kraft paperboard.
6. The following photograph shows GPI's kraft paperboard (on the left) and Visy's microflute (on the right). The Visy microflute pictured was used in beverage packaging for the contract that Visy lost (and on which its sole claim to injury is based). The kraft paperboard pictured is used in the beverage packaging for the same customer for a similar sized package.



*Figure 1 - kraft paperboard and microflute*

7. The products are clearly not physically alike:

- a. **Layers v solid:** The edge of the microflute shows three distinct layers with the middle layer being corrugated and made from different material; the kraft paperboard is solid.
- b. **55 per cent thicker:** The microflute is substantially thicker (at 0.85 millimetres thick) than the kraft paperboard (at 0.55 millimetres thick); the microflute is 55 per cent thicker than the kraft paperboard.
- c. **Washboard undulations:** The surface of the microflute has distinctive parallel “washboard” undulations because of the underlying corrugated inner layer. The kraft paperboard has a flat surface, which is good for printing and tends to be more visually appealing on supermarket shelves.

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8. In addition, compared physically at the correct level in the supply chain<sup>7</sup> microflute is colour printed and in sheets<sup>8</sup> but kraft paperboard is not printed and is in large rolls.<sup>9</sup> See section 4 below.
9. The substantial physical differences are not limited to appearance. For example:
- a. One or more of the layers in microflute are made with recycled fibres whereas kraft paperboard is made primarily with virgin pine fibre. Virgin fibres are longer than recycled fibre giving kraft paperboard greater inherent strength.
  - b. Microflute contains adhesives that hold the three layers together and its strength and rigidity come from combining the liner board outer layers with the fluted layer to create an “I beam” effect. Kraft paperboard does not contain adhesives; its (less rigid) strength comes by virtue of its long pine wood fibres and the much higher “basis weight”<sup>10</sup> of a solid fibreboard sheet.
  - c. The different underlying physical structure of microflute means that has less inherent flexibility than kraft paperboard and cannot bend significantly before it forms unsightly irregular creases.
  - d. Microflute quickly delaminates and becomes soggy and unstable when it becomes wet whereas wet strength treated kraft paperboard retains its shape and strength. This is an important difference for beverage packaging because:
    - i. Filling systems and packaging lines in beverage factories are wet environments.
    - ii. Beverages are subject to a wide range of temperatures in the supply chain resulting in condensation.
    - iii. Packages of beverage are often stored by consumers in ice and ice water prior to consuming.

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<sup>7</sup> The correct level in the supply chain for the comparison of the goods is when GPI’s kraft paperboard comes over an Australian dock and when the three layers are joined to form Visy’s microflute.

<sup>8</sup> The application at section A-3-3.

<sup>9</sup> The application at section A-3-1; the kraft paperboard shown in Figure 1 was printed in Australia.

<sup>10</sup> Basis weight is the weight of paper cut to the basic size for a particular grade of paper. Basis weight strongly influences the strength properties of a paper, as well as such other properties as thickness, opacity, and runnability. See [http://printwiki.org/Basis\\_Weight](http://printwiki.org/Basis_Weight).

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b. Microflute is not commercially alike to kraft paperboard

10. As GPI observed in its submission of 13 May 2020, microflute is not commercially alike to kraft paperboard.
11. Important commercial facts stem from the material physical differences between microflute and kraft paperboard. In particular, **[confidential pattern of sales of kraft paperboard: [REDACTED]** and GPI understands that most microflute produced in Australia does not compete with wet strength treated kraft paperboard (see section 3 regarding other producers of microflute in Australia). So, microflute and kraft paperboard are not commercially alike and the microflute industry (properly defined to include all producers and uses of microflute in Australia)<sup>11</sup> is highly unlikely to have suffered material injury from kraft paperboard.

**[Start confidential – GPI production and sales of different sized beverage packages]**

[REDACTED]

[REDACTED]

[REDACTED]

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<sup>11</sup> See the discussion below at paragraphs 18 ff regarding Visy’s response to question A-3-9 regarding the Australian industry.



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[REDACTED]

16. [REDACTED]

17. [REDACTED]

**[End confidential – GPI production and sales of different sized beverage packages]**

*Most microflute produced and sold in Australia does not compete with wet strength treated kraft paperboard sold in Australia*

18. Visy’s application at question A-3-9 (asking Visy to supply a list of the names and contact details of other Australian producers of like goods) claimed that it was the sole manufacturer of like goods in Australia.<sup>13</sup> That statement was simply incorrect, as evidenced in section 3 below Visy is not the only producer of microflute in Australia. Orora produces substantial amounts of microflute.

19. Visy’s application also omitted to say is that microflute is used in a variety of packaging applications, not only beverages; these applications include consumer packaging generally, display packaging and packaging for fast food,<sup>14</sup> electronic products and cosmetics.<sup>15</sup>

20. Indeed, Visy's own website states that,<sup>16</sup> in addition to beverage packaging, it also supplies packaging for retail, fruit and produce, meat and seafood, pharmaceutical / health and beauty, food; GPI understands that much of this packaging may be microflute. For example, Visy supplies food trays to McDonald’s and Hungry Jack’s at least some of which is made from similar thickness microflute to that which it uses for beverage packages; these contracts held by Visy for microflute end uses that are

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calculating market shares has to be based on value rather than volume. In this way high value items are given their correct weight relative to low value items.”

<sup>13</sup> The application at A-3-10.

<sup>14</sup> A common fast food application where microflute is used (and kraft paperboard is not used) is in pizza boxes. Kraft paperboard cannot compete with microflute in this application because of the substantially different physical characteristics, namely the greater rigidity and insulating properties of microflute.

<sup>15</sup> Gary A Smook, *Handbook for Pulp & Paper Technologists*, 3ed at page 351; Hye Jung Youn, Hyun Seung Kwon and Hak Lae Lee, *Evaluation Methods for Flat Crush Resistance of Corrugated Fiberboard with Microflutes*, in J. of Korea TAPPI 41(5) 2009 at page 8.

<sup>16</sup> See [www.glamapak.com.au](http://www.glamapak.com.au), accessed 9 May 2010.

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not beverage packaging would be very substantial. Figure 4 below shows examples of food trays supplied to McDonald's and Hungry Jack's.

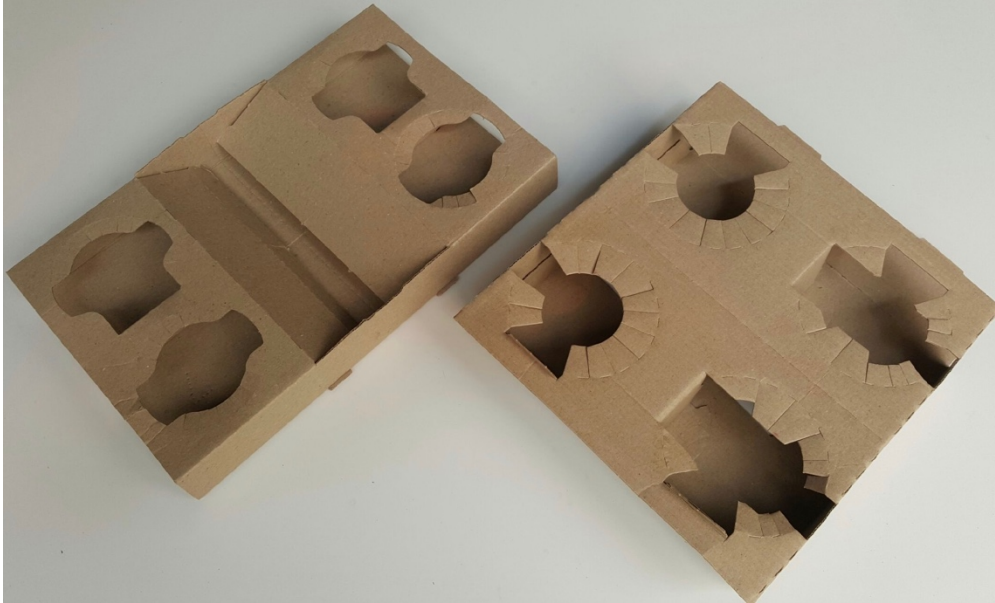


Figure 4 - food trays supplied by Visy to McDonald's and Hungry Jack's

21. Visy has not disclosed its (and that of any related entity) complete production and sale of microflute, including microflute used for end use applications other than beverage packaging. GPI submits that the ADC should consider Visy's injury claims taking all of Visy's microflute sales into account. GPI submits that Visy's injury claims are likely to be materially overstated by only taking into account a fraction of microflute sales (ie beverage multipacks).
22. GPI estimates that, with Opal's microflute production and Visy's non-beverage microflute production, most Australian microflute is used in end uses other than beverage packages.
23. The simple fact is that kraft paperboard that is wet strength treated is specifically designed for use in beverage packaging and so does not compete with microflute in these other applications (ie it is not commercially alike).
  - c. Microflute is not functionally alike to kraft paperboard
24. As GPI observed in its submission of 13 May 2020, microflute is not functionally alike to kraft paperboard.
25. Visy's like goods argument fixates on the *end use* of microflute and kraft paperboard as beverage packaging,<sup>17</sup> its application even endeavours to cast the Australian

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<sup>17</sup> See for example the application at sections A-3-4 a), A-3-4 b); as the Manual states at section 2.3, end use or functional likeness will not of itself establish like goods.

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industry in terms of end use.<sup>18</sup> However for the same reasons set out in section 1.b above there are many applications where microflute and kraft paperboard have functionally different end uses. In particular, a substantial amount of microflute produced in Australia is used in end uses other than for beverage packaging.

d. The overarching purpose of the legislation does not allow Visy to sidestep a proper like goods assessment

26. Visy's second submission appears to suggest that the overarching purpose of the legislation allows it to sidestep a proper like goods analysis.<sup>19</sup>

27. GPI submits that such a vague approach of "overarching purpose" cannot be the correct approach, rather the ADC is required by the legislation to ensure that all of the required statutory elements are satisfied before it recommends that measures are imposed. One of those required statutory elements, one that GPI submits is absent in this matter, is that there must be an Australian industry producing like goods (s 269TB(1)(b)).

2. Expert evidence from Charles P Klass confirms that microflute and kraft paperboard are not like goods

28. As GPI observed in its submission of 26 July 2020, expert evidence obtained by GPI confirms that microflute and kraft paperboard are not like goods.

29. Charles P Klass was retained by GPI to directly answer the key question in the investigation:<sup>20</sup> is microflute a like good to the goods under consideration? Mr Klass's conclusion was unambiguous, microflute and kraft paperboard are not like goods. For the reasons stated in his report, "they are very different products".<sup>21</sup>

a. Klass Reports are impartial, Federal Court-ready evidence from a highly qualified and experienced expert in the field of paper and packaging

30. Mr Klass was retained on condition that he would be familiar with and act in accordance with the current Federal Court of Australia practice note on providing expert evidence.<sup>22</sup> That practice note required Mr Klass to not act as an advocate for GPI and his paramount duty, overriding any duty to GPI, was to assist in the matter impartially on matters relevant to his area of expertise.<sup>23</sup>

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<sup>18</sup> See the application at section A-3-9 and GPI's discussion of Visy's response to question A-3-9 at paragraphs 29 ff of GPI's 13 May 2020 submission.

<sup>19</sup> Visy's second submission at pages 1 to 5.

<sup>20</sup> Klass Report at page 2.

<sup>21</sup> Klass Report at page 2.

<sup>22</sup> Klass Report at page 2.

<sup>23</sup> See Annexure A to the practice note at [2].

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31. Mr Klass has almost 60 years working in the paper industry and for over 20 years has been Adjunct Professor of Paper Engineering, Chemical Engineering and Imaging at the Western Michigan University.<sup>24</sup> Mr Klass also teaches internationally. Mr Klass has authored numerous publications in the field of papermaking and packaging and was selected to update several chapters of the latest edition of the *Handbook for Pulp & Paper Technologists*,<sup>25</sup> also known as the Smook Book.<sup>26</sup> Mr Klass's experience and qualifications are further described in the Klass Report and his curriculum vitae is at Appendix B of the Klass Report.
- b. Klass: there are "dramatic differences in the two materials"
32. Mr Klass made his assessment of the differences between microflute and kraft paperboard in terms of their physical likeness,<sup>27</sup> commercial likeness,<sup>28</sup> functional likeness<sup>29</sup> and production likeness.<sup>30</sup> Mr Klass found that microflute and kraft paperboard were not alike having regard to any of those considerations and his overall conclusion was that microflute and kraft paperboard are not like goods.<sup>31</sup>
33. In particular, Mr Klass found that there were "significant physical differences" between microflute and kraft paperboard. Those differences stemmed from the very different ways in which they are produced.<sup>32</sup> Mr Klass observed that they may appear alike when printed and in end use applications but there were nonetheless "dramatic differences in the two materials".<sup>33</sup> Kraft paperboard is a solid product produced completely on a fourdrinier paper making machine whereas corrugated board such as microflute is produced as separate layers on a number of machines and then converted on a corrugator.<sup>34</sup> A full assessment of the physical differences between microflute and kraft paperboard is contained at pages 5 to 14 of the Klass Report.

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<sup>24</sup> Klass Report at page 3.

<sup>25</sup> Klass Report at page 3.

<sup>26</sup> The Technical Association of Pulp and Paper Industry (TAPPI) describes the Smook Book it as "the "Must Have" book for professionals in the Pulp & Paper Industry" and "the preferred and most widely used P&P text by companies, colleges, and universities", <https://www.tappi.org/publications-standards/books/deals/smook-book/>.

<sup>27</sup> Klass Report at page 5 and following.

<sup>28</sup> Klass Report at pages 14 to 15.

<sup>29</sup> Klass Report at pages 15 to 16.

<sup>30</sup> Klass Report at page 16.

<sup>31</sup> Klass Report at page 2.

<sup>32</sup> Klass Report at page 5.

<sup>33</sup> Klass Report at page 5.

<sup>34</sup> Klass Report at pages 5 to 8; the Klass Report also observes that box blanks may be die cut and converted to box blanks "in line" at the end of the corrugator (ie in a continuous process), in which case microflute (as distinct from its end use as packaging) would only exist fleetingly inside the converting machinery.

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34. Visy's submissions on likeness rarely rise above assertion or argumentation. Little in the way of evidence is provided by Visy because apparently it is "*self-evident* that microflute is a like good" (emphasis added).<sup>35</sup> Similarly Visy asserts that "it is *self-evident* from the commercial background to this case that the products sold by Visy Glama and GPI are completely substitutable and there should be no controversy around this issue" (emphasis added).<sup>36</sup> In effect, Visy asks the ADC to take Visy's preferred answer to a critical question in the investigation on faith. However, for the reasons set out in section 6, GPI considers that Visy cannot be relied upon in its claims regarding like goods, microflute and E flute.

c. Klass: ISO 534:2011 formula for bulk confirms "significantly different goods physically"

35. In the Supplementary Klass Report, and having reviewed Visy's first submission, Mr Klass remained firmly of the view that microflute and kraft paperboard are not like goods.<sup>37</sup>

36. In the Supplementary Klass Report, Mr Klass undertook further analysis of the physical differences of microflute and kraft paperboard by reference to ISO standard *ISO 534:2011 - Paper and board — Determination of thickness, density and specific volume*. Under ISO 534:2011 the bulk of paper and board is expressed as cubic centimetres per gram. Mr Klass used the ISO mandated formula to calculate the bulk of Visy's microflute and GPI's kraft paperboard and found that, at a given grams per square metre, microflute has more than 50 per cent greater bulk than kraft paperboard.

37. Mr Klass concluded that this confirms his earlier findings that microflute and kraft paperboard are "significantly different goods physically" and states that measures of bulk (such as that in ISO 534:2011) "provide a very informative comparison of microflute and kraft paperboard".<sup>38</sup>

d. Microflute is a paper based product, that does not assist Visy

38. Visy seized upon a statement in the Klass Report that kraft paperboard and microflute are both "paper based products".<sup>39</sup> However being a paper based product does not make microflute a like good to kraft paperboard.

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<sup>35</sup> Visy's first submission at page 5.

<sup>36</sup> Visy's first submission at page 1.

<sup>37</sup> Supplementary Klass Report at pages 2 to 3.

<sup>38</sup> Supplementary Klass Report at page 9.

<sup>39</sup> See Visy's first submission at page 10 referring to a statement at page 2 of the Klass Report. Visy also appears to base one of its varying positions on what constitutes the like goods on this statement – see section 6.c, *Visy's conflicting position 3 on like goods – Visy's niche microflute of 0.7mm*.



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39. Other paper based products are described in the Smook Book as products of converting processes. These paper based products include paper bags, envelopes, writing tablets and paper towels.<sup>40</sup> It cannot be said that these paper based products are like goods to kraft paperboard. Accordingly, that microflute is a paper based product does not assist Visy.

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<sup>40</sup> Smook Book, 4th edition at page 358.

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## 3. Visy is not the only producer of microflute in Australia: Orora produces substantial amounts of microflute

40. As evidenced in the addendum to its submission of 26 July 2020, Visy is not the only producer of microflute in Australia. Orora produces substantial amounts of microflute.
41. It was always GPI's submission (see GPI's first submission dated 13 May 2020) that Visy was not the only producer of microflute in Australia.<sup>41</sup> GPI gave the example of Orora, observing that Orora is a substantial producer of microflute packaging and a direct competitor with Visy in the Australian packaging market. That was based on common industry knowledge that Orora has two high capacity Asitrade machines that are capable of producing microflute, one in Botany, NSW and the other in Regency Park, South Australia. GPI estimated that, with Opal's microflute production and Visy's non-beverage microflute production, around three quarters of Australian microflute is used in end uses other than beverage packages.<sup>42</sup>
42. In response, Visy claimed that GPI falsely stated that there was another producer of microflute in Australia because, Visy claimed, Orora does not produce microflute.<sup>43</sup> The statement regarding Orora in Visy's first submission is set out below in full (emphasis added):<sup>44</sup>

*GPI falsely states that Visy is not the only producer of microflute in Australia. Orora (now Opal packaging) does not in fact produce microflute (it does produce E flute products that are then converted into different final products such as wine cartons and nappy boxes). Orora / Opal does not manufacture can multi-packs for sale to the beverage industry. A search of the Orora / Opal website shows that it doesn't use the word 'microflute', as it doesn't manufacture N flute and recognises that E flute is not microflute. Further GPI states that "kraft paperboard that is wet strength treated is specifically designed for use in beverage packaging and so does not compete with microflute in these applications". Visy agrees that products produced by Orora / Opal do not compete with the GUC, but Orora's products are not microflute.*

43. The photographs below in Figure 5 and Figure 6 show Orora produced microflute used in packaging by Australia's largest chocolate producer.
44. Figure 5 below shows that Orora's microflute has a thickness of 0.89mm; that comes within Visy's preferred definition of microflute (see section 2.e of GPI's second submission regarding Visy's statement that microflute has a thickness of 0.9mm or

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<sup>41</sup> GPI's first submission at [35].

<sup>42</sup> GPI's first submission at [35].

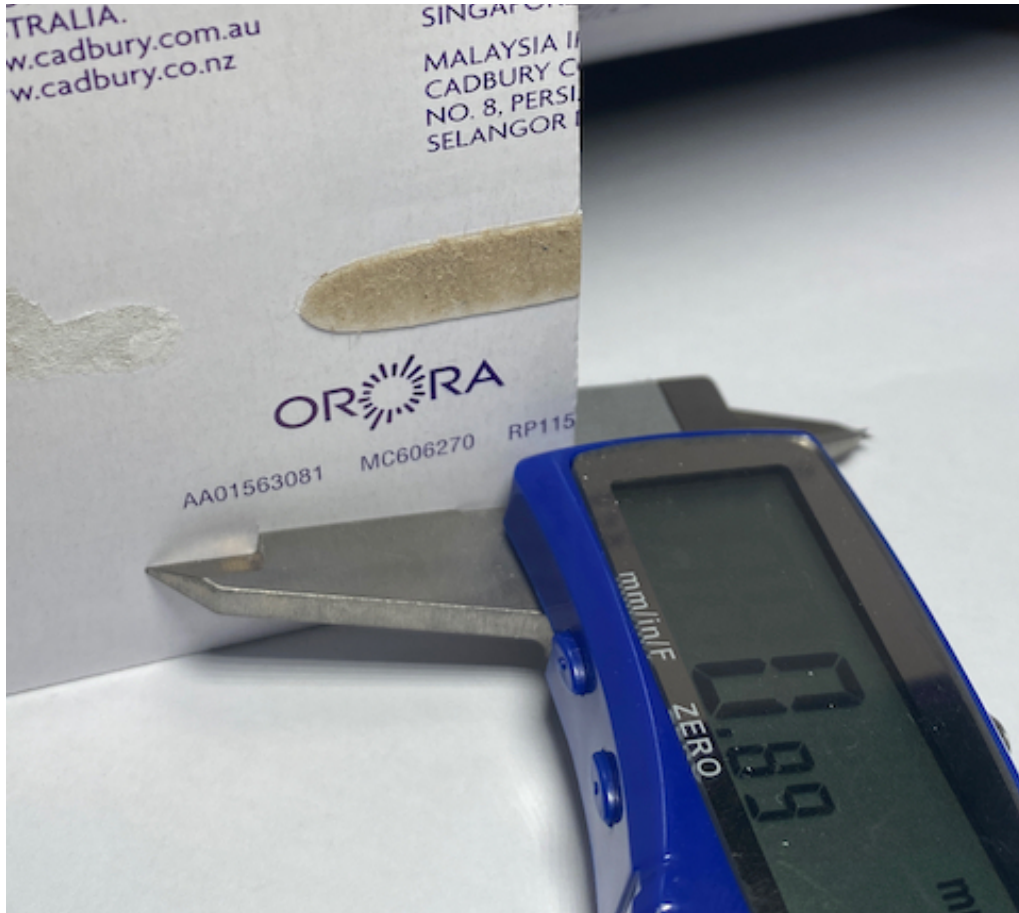
<sup>43</sup> Visy's first submission at section 3.8 at page 9.

<sup>44</sup> Visy's first submission at section 3.8 at page 9.

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less).<sup>45</sup> Indeed, the thickness of Orora's microflute is very close to the thickness of the microflute used in Visy's beverage packaging, which is 0.85mm (see GPI's submission of 13 May 2020 at paragraph 17 and the Klass Report at page 10).

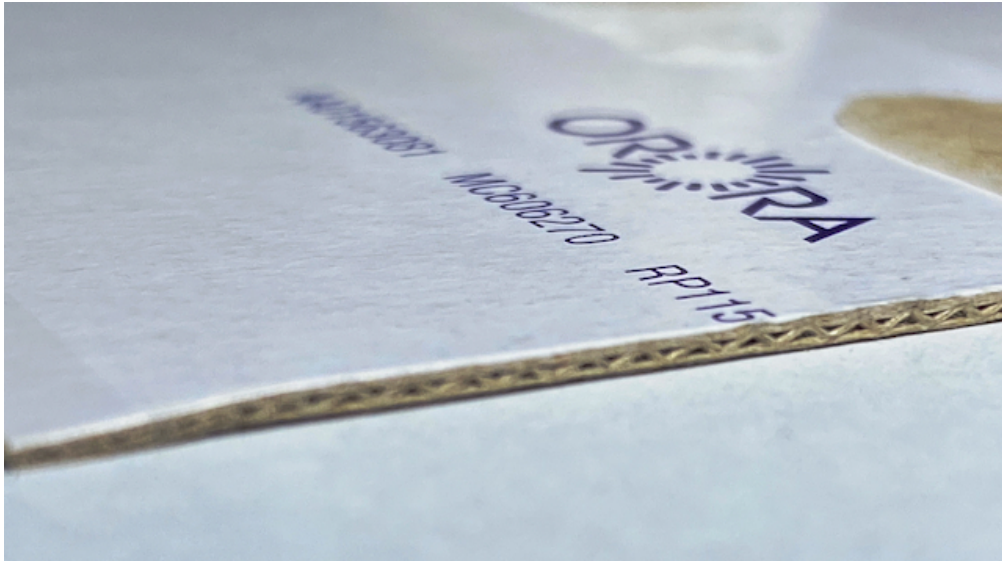


*Figure 5 - Orora microflute with thickness 0.89mm*

45. Figure 6 below shows an edge view of Orora's microflute with the fluting clearly visible.

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<sup>45</sup> Although that thickness was of the flute layer only, see section 2.e of GPI's second submission.



*Figure 6 - Orora microflute (edge view)*

46. The Orora produced packaging is demonstrably microflute and very similar to Visy's microflute. Visy's statements that Orora does not produce microflute are demonstrably wrong.
47. GPI submits that there is a clear conclusion to be drawn from this evidence and the fact that a substantial proportion of Australian microflute is used in end uses other than beverage packages. Microflute and kraft paperboard are not commercially alike because they do not compete in the majority of uses; kraft paperboard the subject of the investigation is wet strength treated and so it does not compete for confectionary packaging, or other non beverage packaging, in Australia. That strongly supports GPI's view that microflute and kraft paperboard are not like goods.
48. If Visy continues to claim that microflute is a like good to kraft paperboard, then Visy must accept, at the very least, that Australian production of microflute is substantially greater than Visy has claimed. On that basis Visy's claims of injury to the Australian industry (properly defined to include Orora and other non beverage uses of microflute produced by Visy) are substantially overstated.

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4. The goods are large rolls of unprinted kraft paperboard, not beverage can multipacks as Visy argues, neither are they printed sheets of corrugated cardboard
49. GPI submits that the goods under consideration are large rolls of unprinted kraft paperboard. These are clearly not like goods to beverage can multipacks, neither are they like sheets of printed microflute prior to die cutting.
50. GPI has repeatedly observed that Visy is making the like goods comparison of the *wrong products* by comparing the end use product ie beverage can multipacks. Visy's first submission continues to make that wrong comparison in attachments to its first submission at Attachments VG-4 and VG-5. Visy also insists that the Australian industry is not Australian producers of microflute<sup>46</sup> but rather the Australian industry is Australian manufacturers of finished beverage can multipacks.<sup>47</sup>
51. GPI's first submission observed that the correct like goods comparison was a comparison to GPI's (or WestRock's) kraft paperboard as it comes over the Australian docks.<sup>48</sup> GPI's first submission also observed that it was highly inconvenient to Visy's like goods argument that kraft paperboard, as it crosses the Australian docks, is not printed whereas Visy's microflute is already printed at the time it comes into existence as a distinct product.<sup>49</sup> As stated in the application Visy prints the outer layer before the layers are glued together in the corrugator.<sup>50</sup>
52. The photograph in Figure 7 below shows a reel of GPI's kraft paperboard as it comes over the Australian docks. [REDACTED]  
[REDACTED]  
[REDACTED] **Confidential information regarding GPI exports**] At risk of stating the obvious, these physical characteristics and Figure 7 below demonstrate that Visy's completed beverage multipacks are not like goods to kraft paperboard as it enters Australia.
53. GPI's first submission proposed a better argument for Visy, namely that the closer comparison would be of microflute prior to its further conversion into end uses.<sup>51</sup>

<sup>46</sup> As GPI suggested was its better position, see GPI's first submission at [29] and following.

<sup>47</sup> Visy's first submission at section 3.7 confirming its statements in the application at A-3-9.

<sup>48</sup> GPI's first submission at footnote 21.

<sup>49</sup> That microflute comes into existence as a discrete product proceeds on the assumption that die cutting and scoring of the packaging is not done "in line" with the corrugator. If the box blanks are formed in line with the corrugator then microflute may not actually exist as a distinct product except in transitory form during the larger conversion process. GPI refers for the ADC's consideration Visy's statements that it has invested heavily, and continues to invest, in capital for its microflute production (Visy's first submission at pages 3 and 12).

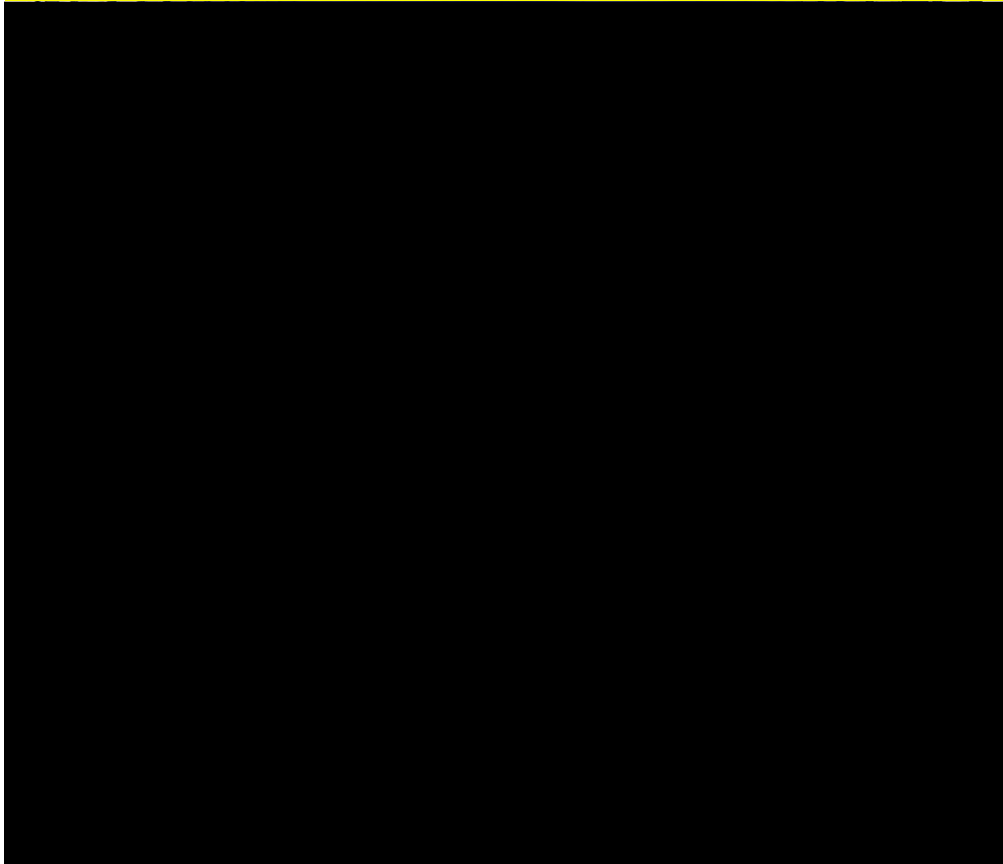
<sup>50</sup> The application at page 11.

<sup>51</sup> GPI's first submission at [29] and following.

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Visy's first submission emphatically rejected that proposal<sup>52</sup> however, for the sake of completeness and to assist the ADC to make the like good assessment, GPI observes that microflute prior to conversion is not a like good to kraft paperboard as it enters Australia. Microflute prior to conversion is not a like good to kraft paperboard as it enters Australia because microflute is printed<sup>53</sup> and GPI understands that Visy's microflute is in the form of separate cut sheets; in contrast, kraft paperboard is unprinted and in large rolls.<sup>54</sup> These differences are in addition to the other substantial physical, commercial, functional and production differences set out in GPI's submissions and the Klass Reports.

**[Confidential start: image of GPI exports**



**Confidential end]**

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<sup>52</sup> Visy's first submission at section 3.7.

<sup>53</sup> See the application at page 11.

<sup>54</sup> GPI understands that microflute cannot be formed as rolls because of its greater rigidity and so the likelihood of creasing and crushing of the flute layer.

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5. Microflute is the result of converting paper products; kraft paperboard, in the form that it enters Australia, has had no converting processes
54. As GPI observed in its submission of 26 July 2020, microflute is correctly described as the result of a *conversion process*.
55. As the Klass Reports observe, kraft paperboard is produced entirely, and in a single run, on a papermaking machine (known as a fourdrinier machine).<sup>55</sup> The *Handbook for Pulp & Paper Technologists* (known as the Smook Book) aptly describes paperboard as “stiff and thick paper”.<sup>56</sup> Corrugated board, including N flute, is described in an entirely different chapter of the Smook Book entitled “Introduction to Paper End Uses”.<sup>57</sup> In that chapter, the Smook Book describes converting as “all those remanufacturing steps which change the dimensions, shape, surface characteristics or properties of the paper product”.<sup>58</sup> Converters use “paper or paperboard to make such products as bags, envelopes, writing tablets, boxes and paper towels”.<sup>59</sup> The manufacture of corrugated board,<sup>60</sup> including N flute,<sup>61</sup> is also stated to be a converting process.<sup>62</sup>
56. On that basis, the paper making industry categorises microflute as an end use of paper together with other paper based products such as paper bags, envelopes, writing tablets and paper towels. Those end uses are achieved through one or more converting processes. Kraft paperboard, in the form that it enters Australia, has had no converting processes.

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<sup>55</sup> Klass Report at page 5; Supplementary Klass Report at pages 5 to 6.

<sup>56</sup> Smook Book, 4th Edition at Chapter 19.

<sup>57</sup> Smook Book, 4th Edition at Chapter 23.

<sup>58</sup> Smook Book, 4th Edition at page 358.

<sup>59</sup> Smook Book, 4th Edition at page 358.

<sup>60</sup> Smook Book, 4th Edition at page 363.

<sup>61</sup> Smook Book, 4th Edition at page 364.

<sup>62</sup> The manufacture of corrugated board, including N flute comes under section 23.2 of the Smook Book; that section is entitled “Converting”.

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6. Visy cannot be relied upon regarding like goods, microflute and E flute
57. GPI submits that Visy has repeatedly shown that it cannot be relied upon when it makes statements regarding like goods, microflute and E flute.
58. Visy, in its application and submissions makes:
  - a. a number of materially different, conflicting claims regarding what the ADC should consider constitute like goods; and
  - b. a series of demonstrably wrong statements about microflute and E flute corrugated board.
59. Any decision that the ADC might make based on Visy's continuously shifting positions and demonstrably wrong statements would be unsound.
60. In particular, as demonstrated in the sections below:
  - a. Visy has variously claimed that like goods are:
    - i. microflute of any thickness (see section 6.a below);
    - ii. finished beverage can multipacks (see section 6.b below);
    - iii. Visy's niche microflute of 0.7mm (see section 6.c below);
    - iv. microflute excluding E flute (see section 6.d below);
    - v. N flute with a flute layer caliper of 0.9mm or less (see section 6.e below);
  - b. Visy wrongly states that Figure 1 in GPI's first submission is E flute (see section 6.f below);
  - c. Visy wrongly states that flutes in its microflute are microscopic and there are no visible undulations (see section 6.g below);
  - d. Visy wrongly states that E flute is not used for beverage packaging (see section 6.h below); and
  - e. Visy wrongly states that the food trays in Figure 4 in GPI's first submission are both E flute, Hungry Jack's food trays are N flute (see section 6.i below).

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a. Visy's conflicting position 1 on like goods – microflute of any thickness

61. Visy's application claimed that microflute was a like good; Visy did not specify a thickness for microflute and neither did Visy state that a narrower specification only such as N flute determined like goods.
62. Rather Visy stated what it considered like goods as: "... a form of fibre packaging for beverage packaging known as Microflute ('**Like Goods**')" (bold definition in original).<sup>63</sup> That statement defining the like goods was not qualified by reference to any thickness (or specification that would determine a thickness).
63. Visy's application appeared to accept that microflute could be greater than 1mm in thickness when it described the microflute of 1mm or less that was designed for a particular end use, ie an unspecified number of beverage cans:

Microflute of 1mm or less in thickness is designed for use to package larger multipack beverage can containers holding 12 or more beverage can containers. Visy Glama typically would manufacture microflute packaging to packages between [ deleted text - number] cans.

64. The term microflute is used elsewhere in the application extensively and without qualification. On that basis GPI was fully justified in referring in its first submission to an independent industry description of microflute as including E flute.<sup>64</sup>
65. GPI submits that microflute of any thickness is not a like good to kraft paperboard and refers to the evidence provided in its submissions and in the expert evidence in the Klass Reports.

b. Visy's conflicting position 2 on like goods – finished beverage can multipacks

66. Form B108 at A-3.9 asked Visy to provide details of Australian producers that produced the product that Visy claimed to be a like good. Visy's response to the question was (emphasis added):<sup>65</sup>

Visy Glama is the sole manufacturer of like products. There are no other Australian manufacturers of **finished beverage can multipacks**.

67. Indeed, Visy's overriding fixation with one of the end uses of microflute (ie finished beverage can multipacks) is clear throughout its application; this includes for the

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<sup>63</sup> The application at page 11.

<sup>64</sup> Hye Jung Youn, Hyun Seung Kwon and Hak Lae Lee, *Evaluation Methods for Flat Crush Resistance of Corrugated Fiberboard with Microflutes*, in J. of Korea TAPPI 41(5) 2009 at page 8.

<sup>65</sup> The application at A-3.9, page 14.

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important considerations of physical and commercial likeness at A-3.4 in Visy's application.<sup>66</sup>

68. GPI's first submission pointed out that the goods under consideration are not any sort of beverage packaging and so the industry that produced beverage packages are not the industry that produces like goods.<sup>67</sup> If Visy's response to question A-3-9 of Form B108 is correct then GPI AU-NZ, WestRock Australia and others must also form part of the Australian industry.<sup>68</sup> Visy's first submission confirmed and stood by Visy's answer to A-3-9;<sup>69</sup> accordingly it is Visy's confirmed position that the Australian industry producing like goods are Australian manufacturers of finished beverage can multipacks.
69. Visy's position that the comparison should be between finished beverage can multipacks is confirmed by attachment VG-4 to Visy's first submission. Visy's first submission states that VG-4 is "a photograph providing an *accurate visual comparison between kraft paperboard and microflute*" (emphasis added).<sup>70</sup> The photograph at VG-4 shows two finished beverage can multipacks. That is simply wrong, rather an accurate visual image of the goods under consideration is not an image of a finished beverage can multipack but is large rolls of flat unprinted kraft paperboard as shown at Figure 7.
70. GPI submits, at risk of stating the obvious, that finished beverage can multipacks are not like goods to kraft paperboard. If, as Visy stated in its application and confirmed in its submission, the Australian industry producing like goods are Australian manufacturers of finished beverage can multipacks then GPI AU-NZ and WestRock Australia must form part of that industry. GPI does not export finished beverage can multipacks to Australia.
- c. Visy's conflicting position 3 on like goods – Visy's niche microflute of 0.7mm
71. Following GPI's critique of Visy's likeness claims in Visy's application, Visy's first submission (provided more than 3 months after its application) stated that Visy was rather seeking protection "for its niche microflute business, being a 0.7mm thick premium quality paper based product (also known as 'N' flute)".<sup>71</sup>
72. The most charitable description of Visy's statement is that it is wholly unclear; footnote 10 of Visy's first submission indicates that its measurements are of *the*

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<sup>66</sup> The application at A-3.4, page 12.

<sup>67</sup> GPI's first submission at [30].

<sup>68</sup> GPI's first submission at footnote 30.

<sup>69</sup> Visy's first submission at pages 8 and 9.

<sup>70</sup> Visy's first submission at page 8.

<sup>71</sup> Visy's first submission at pages 1 to 2.

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*fluting layer only*<sup>72</sup> and caliper measurements by GPI<sup>73</sup> and expert evidence provided to the ADC in the Klass Report show that the thickness of Visy's microflute is 0.85mm.<sup>74</sup> GPI submits that Visy's statement is better described as sophistry intended to narrow the (substantial) difference in thickness between kraft paperboard and Visy's microflute.

73. GPI submits that microflute with a fluting layer of 0.7mm is not a like good to kraft paperboard and refers to the evidence provided in its submissions and in the expert evidence provided to the ADC in the Klass Reports.

d. Visy's conflicting position 4 on like goods – microflute excluding E flute

74. Visy's first submission takes issue with GPI including E flute in GPI's assessment of Visy's like goods claims in GPI's first submission (notwithstanding that GPI included E flute based on industry sources<sup>75</sup> and Visy's application stated that microflute, without qualification, was a like good).<sup>76</sup>

75. Excluding E flute from microflute is at least an arguable proposition<sup>77</sup> although it was not one put by Visy in its application. But there are problems with Visy's position on E flute: firstly, Visy's first submission makes demonstrably wrong statements about microflute and E flute for the reasons set out below in sections 6.f, 6.g, 6.h and 6.i; secondly, it is clear from expert evidence provided to the ADC in the Klass Reports that microflute *excluding E flute* is not a like good to kraft paperboard.

76. Visy first submission made protestations that expert evidence provided in the Klass Report included E flute in microflute when it concluded that microflute and kraft paperboard are not like goods.<sup>78</sup> Those protestations are simply incorrect; as stated in the Supplementary Klass Report the expert's view that microflute and kraft paperboard are not like goods did *not* include E flute in the definition of microflute.

77. Accordingly, GPI submits that microflute even *excluding E flute* is not a like good to kraft paperboard.

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<sup>72</sup> Visy's first submission at footnote 10.

<sup>73</sup> GPI's first submission at [17].

<sup>74</sup> Klass Report at page 10.

<sup>75</sup> See GPI's first submission at footnote 31.

<sup>76</sup> See this submission above, section 6.a *Visy's conflicting position 1 on like goods – microflute of any thickness*.

<sup>77</sup> See Supplementary Klass Report at page 3.

<sup>78</sup> Visy's first submission at section 4.

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- e. Visy's conflicting position 5 on like goods – N flute with a flute layer caliper of 0.9mm or less

78. Visy's first submission states:<sup>79</sup>

Microflute is a class of fluted products generally known as "N flute". It is a narrow caliper product with a thickness of 0.9 mm or less (typically 0.5-0.8mm).

79. Within the course of 3 pages in Visy's first submission the like goods have inexplicably expanded over 25 per cent from 0.7mm to 0.9mm. Furthermore, the footnote to this passage of Visy's first submission states that this measurement refers *only to the height of the fluting layer*.<sup>80</sup> That would indicate that the *actual* thickness of microflute claimed in this part of Visy's first submission would be up to 1.1mm in thickness.<sup>81</sup>

80. For the reasons stated in expert evidence provided to the ADC in the Klass Reports GPI submits that N flute with a flute layer caliper of 0.9mm is not a like good to kraft paperboard.

f. Visy's wrong statement that Figure 1 in GPI's first submission is E flute

81. Visy's statements regarding Figure 1 of GPI's first submission are demonstrably incorrect and raise more questions than they answer.

82. Visy's first submission states that the photograph at Figure 1 of GPI's first submission does not show microflute but rather E flute.<sup>82</sup> E flute is, according to Visy, significantly thicker, typically 1.5-1.8mm.<sup>83</sup> Visy claims that the Visy product shown in Figure 1 is not used for beverage can multipacks.<sup>84</sup> Visy's first submission claims that the Visy product shown in Figure 1 is produced by a separate Visy company at separate manufacturing facilities; that separate company does not make microflute.<sup>85</sup> Visy's submission regarding Figure 1 of GPI's first submission states (footnotes omitted):<sup>86</sup>

There are a number of instances in GPI's submission where it has misrepresented the likeness between Visy Glama's microflute product and certain kraft paperboard

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<sup>79</sup> Visy's first submission at page 4.

<sup>80</sup> Visy's first submission at footnote 10.

<sup>81</sup> See Supplementary Klass Report at pages 7 to 8 showing that the top and bottom layers in Visy's microflute contribute approximately 20 per cent to the thickness (ie Visy's microflute with thickness 0.85mm has a flute layer of 0.7mm).

<sup>82</sup> Visy's first submission at page 7, paragraph 1.

<sup>83</sup> Visy's first submission at page 2.

<sup>84</sup> Visy's first submission at pages 7-8.

<sup>85</sup> Visy's first submission at page 8.

<sup>86</sup> Visy's first submission at pages 7-8.

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as defined by the GUC. In this regard, the ADC should be aware of the following matters:

- i. The photograph on Figure 1 of GPI's submission purports to depict kraft paperboard and microflute. However, the product pictured on the right is in fact of E flute, it is not microflute. Contrary to what GPI says, it is not the product used for beverage can multi-packs. It is evident from the writing on that product that it is manufactured by Visy Board (which is a separate company, and has entirely separate manufacturing facilities and target markets to Visy Glama). Visy Board does not manufacture microflute.

83. These statements are demonstrably incorrect. Figure 1 from GPI's first submission (regarding which Visy makes the claims stated above) is reproduced below in Figure 8 of this submission.<sup>87</sup> GPI's first submission observed that kraft paperboard and Visy microflute were not physically alike for reasons that included the visible corrugated layer in microflute and the fact that Visy microflute used for beverage packaging is 55 per cent thicker than kraft paperboard used for the same packaging.<sup>88</sup>



Figure 8 - reproduction of Figure 1 from GPI's first submission "kraft paperboard and microflute"

84. The photograph below shows that the microflute in Figure 1 (which Visy claims is E flute and not microflute) has a thickness of 0.86mm.<sup>89</sup> According to Visy the material in Figure 1 is E flute and therefore should be 1.5-1.8mm thick.<sup>90</sup> Figure 9 clearly shows that Visy's claim (that the material in Figure 1 is E flute) is wrong.

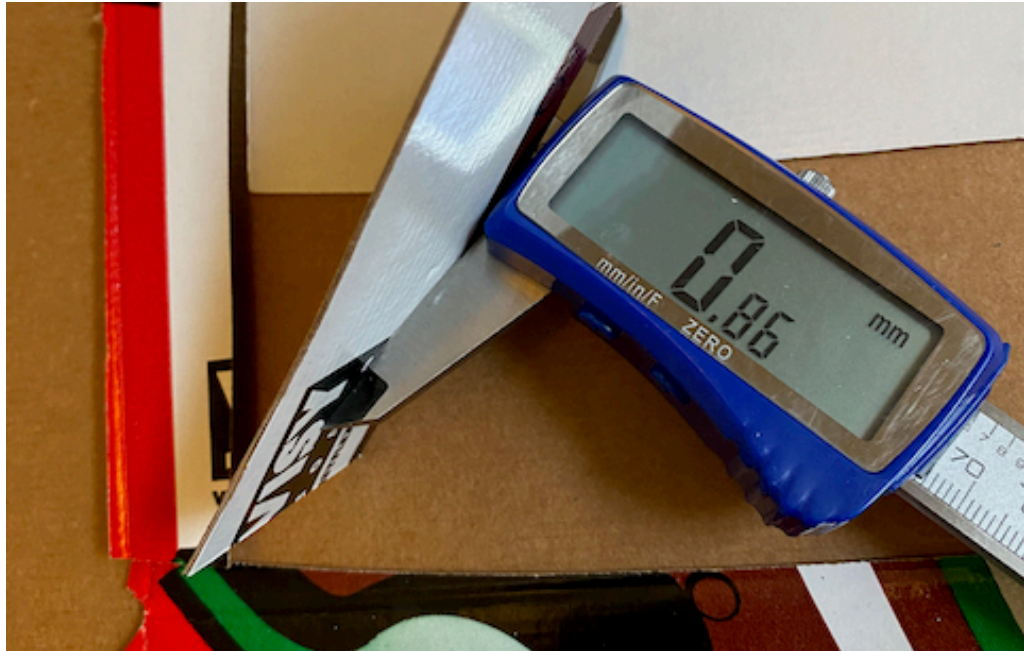
<sup>87</sup> Sample provided to ADC for inspection.

<sup>88</sup> GPI's first submission at [17].

<sup>89</sup> Sample provided to ADC for inspection.

<sup>90</sup> Visy's first submission at page 2.

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*Figure 9 - thickness of microflute material in Figure 1 is 0.86mm*

85. The photograph below shows the microflute in Figure 1 (which Visy claims is not microflute and not used for beverage multipacks) with the beverage packaging it was cut from.<sup>91</sup>



*Figure 10 – microflute from Figure 1 of GPI’s first submission with the beverage packaging it was cut from*

<sup>91</sup> Sample provided to ADC for inspection.

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86. According to Visy's first submission the product shown in Figure 1 is not used for beverage can multipacks<sup>92</sup> and is produced by a separate Visy company at separate manufacturing facilities that does not make microflute.<sup>93</sup> Figure 10 clearly shows that the material in Figure 1 comes from a beverage can multipack and that Visy is wrong when it states that it does not.
87. Figure 9 and Figure 10 also show that Visy's statement that the separate company, Visy Board, does not make microflute<sup>94</sup> appears to be wrong; Visy's statements, on which it based its application, that it is the sole manufacturer of like goods in Australia<sup>95</sup> would also be wrong on that basis. GPI would urge the ADC to: query Visy on the statements it has made regarding the Australian industry; and include manufacturing and sales by Visy Board in any assessment of injury.
88. GPI reiterates that any injury assessment should take into account all microflute sales of all Visy companies whether or not the end use of the microflute is beverage multipacks. GPI has demonstrated that microflute has a much wider application than beverage multipacks and an assessment of injury for microflute that is only used for beverage multipacks artificially and substantially amplifies the actual injury (if any).
- g. Visy's wrong statement that flutes in its microflute are microscopic and there are no visible undulations**
89. GPI submits that Visy is wrong when it states that the flutes in its microflute are microscopic and that there is no visible "washboard" effect in its microflute.
90. Visy claims that the fluting in its microflute is "microscopic"<sup>96</sup> and that there are no visible "washboard" undulations on its microflute.<sup>97</sup>
91. Visy's claim that the fluting in Visy's microflute is microscopic is simply incorrect; the photograph of Visy's microflute in Figure 8 was taken with a normal mobile phone camera without the aid of a microscope or other lens.
92. Visy's claim that its microflute has no visible washboard undulations is demonstrably wrong. The photograph below in Figure 11 shows a section of the photograph shown in Figure 10; the horizontal undulations are clearly visible.<sup>98</sup>

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<sup>92</sup> Visy's first submission at pages 7-8.

<sup>93</sup> Visy's first submission at page 8.

<sup>94</sup> Visy's first submission at page 8.

<sup>95</sup> The application at page 14 responding to question A-3.9.

<sup>96</sup> Visy's first submission at pages 6 and 8.

<sup>97</sup> Visy's first submission at page 8.

<sup>98</sup> Sample provided to ADC for inspection.



Figure 11 - Visy microflute showing "washboard" undulations

h. Visy's wrong statement that E flute is not used for beverage packaging

93. GPI submits that Visy is wrong in stating that E flute is not used in beverage can multipacks.
94. Visy's first submission claims that GPI seeks to create confusion and conjecture by aggregating Visy's microflute with thicker E flute cardboard.<sup>99</sup> Visy states that E flute cardboard has a wide variety of uses in food and industrial packaging but that E flute is "not used for beverage multi-pack packaging".<sup>100</sup> Visy states that "E Flute does not run through the can packing machinery due to its greater thickness and lesser flexibility".<sup>101</sup> GPI rather considers that any confusion arises from Visy's own flawed statements in its application and its submission; certainly Visy's statement that E flute is rarely if ever used in beverage can multipacks is demonstrably wrong.
95. The following figure, Figure 12, shows cardboard packaging for 24 cans of beverage.<sup>102</sup> The thickness of the cardboard is 1.77mm, putting it within the range that Visy says is E flute.<sup>103</sup>

<sup>99</sup> Visy's first submission at page 2.

<sup>100</sup> Visy's first submission at page 7; see also Visy's first submission at page 2 stating that E flute "is rarely, if ever, used in beverage can multipacks".

<sup>101</sup> Visy's first submission at page 7.

<sup>102</sup> Sample provided to ADC for inspection.

<sup>103</sup> See Visy's first submission at page 2.

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Figure 12 - Visy E flute beverage can multipack with thickness 1.77mm

96. GPI would make the following observations about the beverage packaging in Figure 12: it is E flute (according to Visy's own definition); it appears to have been produced recently (it shows a best before date of January 2021 and what appears to be a production date stamp of February 2020, "FEB 20"); the packaging is for one of Australia's most popular brands of beer;<sup>104</sup> the packaging is produced by Visy.
97. On that basis Visy's statement that E flute is "not used for beverage multi-pack packaging"<sup>105</sup> is demonstrably wrong. If E flute is used as packaging for one of Australia's bestselling beers it cannot be said that it is not (or not even "rarely, if ever") used for beverage packaging as Visy claims. Furthermore, this fact must surely have been known to Visy as it (or a related company)<sup>106</sup> produced the packaging shown.
98. (A brief recent survey of a local liquor store by Kinsman Legal suggests that there are quite a number of other beverage brands that are packaged using E flute. Given Visy's substantial involvement in the Australian packaging industry it would be curious if Visy claimed to be unaware of these uses of E flute packaging.)
99. Visy's second submission states that the packaging in Figure 12 is R flute<sup>107</sup> as if that settles the matter. If like goods are corrugated cardboard used in beverage multipacks as Visy consistently argues, then R flute corrugated cardboard must be included in the like goods assessment and injury must be assessed against in industry that includes producers of R flute and Visy's sales of R flute during the injury

<sup>104</sup> According to this website it is in the top ten bestselling brands of beer: <https://galaxytraining.com.au/Pages/10-best-selling-beers-in-australia/>.

<sup>105</sup> Visy's first submission at page 7.

<sup>106</sup> Visy and its related entities are privately held companies and therefore the relationships between Visy and its related entities are opaque.

<sup>107</sup> Visy's second submission at page 7.

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assessment period then should also be included in the consideration of injury by the ADC.

- i. Visy's wrong statement that the food trays in Figure 4 in GPI's first submission are both E flute, Hungry Jack's food trays are N flute

100. Visy's statements regarding Figure 4 of GPI's first submission are demonstrably incorrect and raise more questions than they answer. Hungry Jack's food trays are microflute according to Visy's preferred definition.
101. Visy claims that the McDonald's and Hungry Jack's food trays shown in GPI's first submission "are manufactured using E flute and not microflute".<sup>108</sup> Visy's first submission variously states the thickness of E flute as 1.5mm to 1.8mm,<sup>109</sup> 1.2mm to 1.8mm,<sup>110</sup> 1.5mm to 1.7mm in Australia<sup>111</sup> and having thickness no less than 1.6mm.<sup>112</sup>
102. GPI has measured the thickness of the McDonald's and Hungry Jack's food trays shown in GPI's first submission. The figures below show that the McDonald's food tray is 1.5mm thick (Figure 13), that would come within the definition of E flute. But the Hungry Jack's food tray is 1.1mm thick (Figure 14), that comes within Visy's preferred definition of microflute.<sup>113</sup>
103. It seems likely that the contract for Hungry Jack's N flute microflute food trays in Australia would be substantial.<sup>114</sup> However, what is more troubling for Visy's foundational claims regarding like goods is that there is no clear dividing line between different thicknesses of corrugated cardboard (be they N flute or E flute) and different end uses (be they E flute and N flute food trays as discussed here or E flute and N flute beverage multipacks as discussed in this submission at section 6.h above); E flute and N flute corrugated board are demonstrably substitutable for at least two end uses (food trays and beverage packaging). That is highly problematic for Visy's like goods claims, which claims are primarily based on end use as beverage can multipacks only.<sup>115</sup> Again, it appears that Visy's injury claims are substantially

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<sup>108</sup> Visy's first submission at page 5.

<sup>109</sup> Visy's first submission at page 2.

<sup>110</sup> Visy's first submission at page 7.

<sup>111</sup> Visy's first submission at page 7.

<sup>112</sup> Visy's first submission at page 5.

<sup>113</sup> Visy takes a number of different positions on how microflute should be defined however Visy's first submission at page 4 states that N flute microflute is up to 0.9mm measured at the flute layer. Microflute with a flute layer of 0.9mm would have an overall thickness of 1.1mm, see paragraph 79 of this submission.

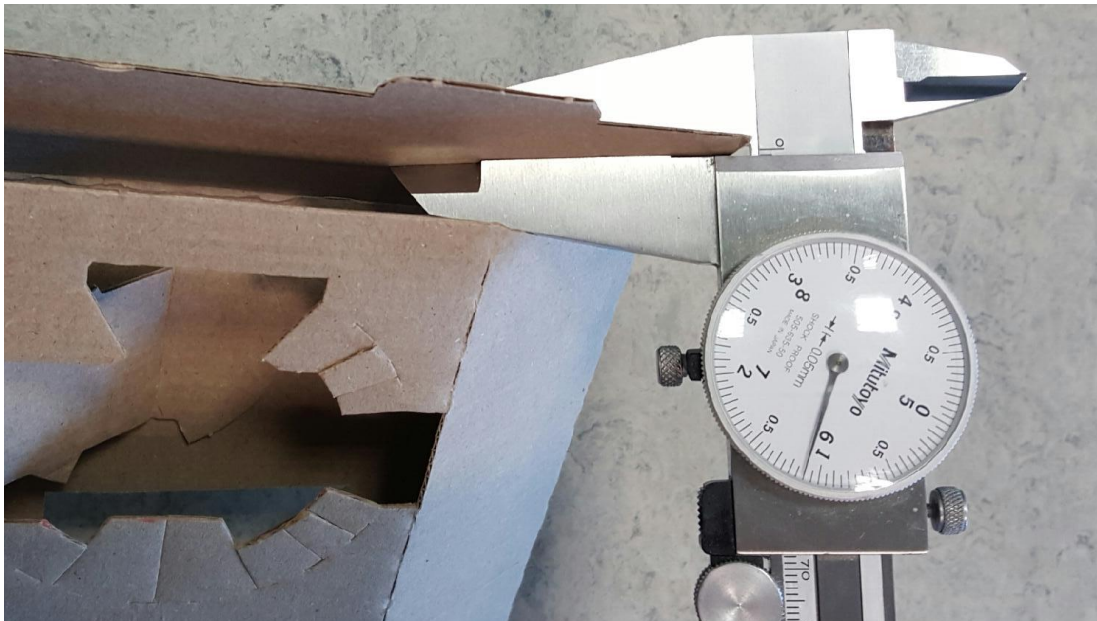
<sup>114</sup> Footnote 13 and the associated text of Visy's first submission is redacted however it seems clear from the context that these are substantial contracts.

<sup>115</sup> See GPI's first submission at section 2.c and the application at sections A-3-4 a), A-3-4 b) and A-3-9.

Submission on behalf of Graphic Packaging International inflated because Visy conveniently ignores other product groups that use its corrugated boards.



*Figure 13 - thickness of McDonald's food tray, 1.5mm*



*Figure 14 - thickness of Hungry Jack's food tray, 1.1mm*

104. Visy's second submission now argues, against the photographic evidence, that the Hungry Jack microflute is actually 1.5mm.<sup>116</sup> The claim is that the product was compressed during importation. Firstly, it seems unlikely that a company of the size of Hungry Jack would accept damaged goods from its suppliers. Secondly, the fact

<sup>116</sup> Visy's second submission at page 6.

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that there are goods being imported to Australia that are much more alike to Visy's microflute than kraft paperboard only highlights that Visy is wrongly alleging that kraft paperboard is a like good based on end use.

105. Therefore, if the ADC proceeds on the basis that wet strength treated kraft paperboard is like to Visy's corrugated boards (against the evidence provided by GPI), GPI submits that the ADC's injury assessment must include all corrugated boards manufactured by companies in the Visy group with less than 1.1 mm overall thickness (whether or not such corrugated boards are used for beverage multipacks). If all these corrugated boards are included in the injury assessment (as they should be), the injury experienced by the Australian industry (if any) would be substantially less than Visy claims in its application.

## 7. Answers to the ADC's questions in the issues paper

- a. Whether microflute, particularly N-flute produced by the applicant, is a like good with respect to the goods under consideration

106. Microflute, even if that term is defined to be N flute only, is not a like good with respect to the goods under consideration; this is for the reasons stated, and based on the evidence set out, in the Klass Reports and GPI's submissions (including the evidence and submissions set out in sections 1 to 5 above).

107. GPI is disappointed that the key and foundational question of like goods remains unanswered almost six months after the investigation was initiated and over 4 months since GPI first identified that this was a live issue in the investigation.<sup>117</sup> Clearly, much of the blame for this state of affairs lies at the feet of Visy, who has taken a number of different and conflicting positions and made a number of demonstrably wrong claims regarding like goods as set out above in section 6.

*Substantial unfairness through key foundational questions remaining unanswered*

108. At the very least, it would impose substantial unfairness on GPI if the ADC was to decide that key and foundational question only at the point of the statement of essential facts; that would be substantially unfair because the ADC's practice is that key facts determined in a statement of essential facts are rarely, if ever, revisited following the publication of the statement of essential facts.

109. Another key foundational question depends crucially on the identification of like goods; that other key foundational question is the question of *material injury and causation*. Clearly the questions of injury materiality and causation can only be assessed against like goods and any Australian industry producing like goods. As it stands, GPI has been substantially deprived of any meaningful opportunity to make submissions on injury; this is due to Visy's constantly shifting position and that the question of like goods remains unanswered at this very late juncture.

110. GPI submits that the only approach in the investigation that accords with due and substantive fairness is to find that the foundational allegations made in Visy's application regarding like goods have not been made out. On that basis, and on the basis that Visy's application cannot be cured at this late stage, the investigation should properly be terminated.

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<sup>117</sup> GPI's first submission dated 13 May 2020.

Submission on behalf of Graphic Packaging International

- b. Whether, in the case that microflute is a like good with respect to the goods under consideration, the like goods are restricted to N-flute or extend to other fluted products such as F-flute or G-flute

111. There seems no basis to restrict like goods to N flute in circumstances where the goods can compete with any product that is used to make beverage packaging; that position is the most consistent with Visy's (flawed) application and properly reflects GPI's business in Australia. If E flute, R flute (as Visy claims is the product shown in Figure 12) and any other product is used for beverage packaging then GPI can produce substitute packaging using the goods; all of those products need to be included as like goods and injury assessed by reference to total production of those products (ie not just that part of those products that are used for beverage packaging).

- c. Whether there are other domestic producers of like goods in Australia in respect of the goods under consideration

112. GPI considers that there is at least one other domestic producer of like goods in Australia; that much is clear from the evidence of Orora's microflute shown in section 3 above.

113. Visy emphatically denied that Orora produced microflute in its first submission<sup>118</sup> but Visy's second submission now appears to grudgingly admit that Orora does produce microflute.<sup>119</sup> That admission only came following the irrefutable evidence provided by GPI in the addendum to GPI's second submission. It appears that Visy was not going to inform the ADC, in its application or subsequently, of Visy's microflute production, notwithstanding that it is common industry knowledge that Orora produces microflute (see section 3 above above).

114. GPI submits that that failure to provide the ADC with relevant information regarding the Australian industry must be added to the reasons set out in section 6 above for why Visy cannot be relied upon. Visy made a formal declaration in its application that the information contained in the application was complete and correct,<sup>120</sup> it now appears that the information contained in the application was not complete and correct and that Visy has substantially broken faith with the ADC in a headlong drive to damage its competitors by any means.

Sincerely

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<sup>118</sup> See section 3 of this submission.

<sup>119</sup> Visy's second submission at page 6.

<sup>120</sup> Visy's application at page 2.



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Submission on behalf of Graphic Packaging International

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