EN

Case No IV/M.146 - METALLGESELLSCHAFT / SAFIC ALCAN

Only the English text is available and authentic.

REGULATION (EEC) No 4064/89
MERGER PROCEDURE

Article 6(1)(b) NON-OPPOSITION
Date: 08.11.1991

Also available in the CELEX database
Document No 391M0146

Office for Official Publications of the European Communities
L-2985 Luxembourg

Brussels 8.11.1991

MERGER PROCEDURE -
ARTICLE 6(1)b DECISION

PUBLIC VERSION

To the notifying parties

Dear Sirs,

Subject: Case N° IV/M146 - METALLGESELLSCHAFT/SAFIC ALCAN
Notification pursuant to Article 4 of Council Regulation N° 4064/89.

1. The above mentioned operation, notified on 4 October 1991 concerns the agreement between Metallgesellschaft A.G. (MG) and Safic-Alcan S.A. (Safic) to combine their natural and synthetic rubber business.

2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of application of Council Regulation N° 4064/89 and that it is compatible with the common market.

I. THE PARTIES

3. MG is a major German conglomerate whose share capital is widely owned. Its activities are centered on trade and financial services, particularly in relation to non-ferro metals and engineering services. Its interests extend to chemicals, mining and recycling (environmental protection). It conducts its European rubber activities primarily through Kautschuk GmbH (KG), a wholly owned subsidiary.

4. Safic is a large, medium-sized French undertaking with interests chiefly in rubber trading, but also in vegetable oil trading, the counter trade business in Malaysia and Indonesia, and the distribution of certain chemical products. 78.94 per cent of Safic's share capital is owned by IFINT S.A., a Luxemburg international investment holding company that actively manages a diversified portfolio of income producing assets. 70.5 per cent of IFINT's common shares and 75.1 per cent of its preferred shares are held by the public. The remaining common and preferred shares are held by Mrs. C. Mentzelopoulos and ultimately the Agnelli family.

II. THE AGREEMENT

5. Under the agreement MG will first transfer the shares of KG to Safic. Safic will thereafter increase its capital and issue the new Safic shares to MG. After completion, the ownership of Safic's share capital will be as follows: MG: 44.44%, Ifint: 43.88%, Clinvest, an investment company of Crédit Lyonnais: 4.49%, the general public: 5.08%, Safic: 2.11%.

III. JOINT VENTURE

6. Through the operation, Safic will become a joint venture between MG and Ifint. MG and Ifint have agreed to exercise joint control over Safic. MG and Ifint have agreed to be equally represented on Safic's board. In principle, each will appoint the same number of representatives to the Safic board.

IV. CONCENTRATIVE JOINT VENTURE

7. Safic will be a full function joint venture, established on a permanent basis. All the current activities of Safic and KG will be included in the joint venture.

8. Except for its participation in Safic, Ifint has no interests in rubber trading.

   In addition to KG, MG also has other interests in rubber trading outside Europe. These are conducted through the Ore & Chemical Corporation (OCC), New York and MG (Malaysia) Sdn Bhd. Kuala Lumpur. Both are wholly owned subsidiaries. All rubber business activities of both subsidiaries are to be transferred to the joint venture. MG will therefore completely withdraw from the joint venture's market.

9. The notified operation is therefore a concentration within the meaning of Article 3 of the Merger Regulation.

V. COMMUNITY DIMENSION

10. The aggregate worldwide turnover of MG and Safic exceeds 5000 MECU (MG 9670 MECU, Safic 459 MECU). The aggregate Community wide turnover in the last financial year amounted to 5909 MECU for MG and to 303 MECU for Safic. The parties do not achieve more than two-thirds of its aggregate Community-wide turnover within one and the same Member State. The operation therefore has a Community dimension.

VI. COMPATIBILITY WITH THE COMMON MARKET

a) Affected markets

11. The markets affected by the operation are the trading of natural rubber (solid and liquid) and synthetic rubber. MG and Safic both trade on these markets. However, their activity on the market of synthetic rubber is insignificant. Their combined sales represent less than [ ][a] of the total EEC market and only in Germany does their combined sales actually slightly exceed 1% of the national market. The main affected markets are thus solid natural rubber and liquid natural rubber - so called latex.

b) Relevant product markets

12. The parties have submitted that there are two product markets: natural and synthetic rubber.

The production of natural rubber in 1990 amounted to approximately 5.1 m tonnes of which 10% related to latex. Natural rubber is obtained from a plant called Havea Brasilienis, grown mainly in South-East Asia but also in Africa and to a very small extent in South America. 80% of production is sold directly by producers to major users, principally tyre manufacturers. The remaining 20% is sold by traders. For latex the proportion sold and distributed by traders is much higher and of the order of 80 to 90% in the EEC.

The production of synthetic rubber in 1990 amounted to approximately 10 m tonnes. It is derived from petroleum. Producers of synthetic rubber are mainly subsidiaries of petroleum groups. Production is more widely spread than for natural rubber. 95% of production is sold by the producers through their own distribution network. Only 5% is sold through traders.

13. Two-thirds of natural rubber is used for the manufacture of tyres; one-third, including latex, is used for industrial applications. In its main application, i.e. the manufacture of tyres, solid natural rubber, is not substitutable with synthetic rubber. It is not possible to manufacture tyres exclusively from synthetic rubber. Tyres are usually a mixture of natural and synthetic rubber, with the mixture depending upon the application. Both the parties and competitors consider that solid natural rubber and synthetic rubber represent separate product markets. The Commission shares this view.

14. The parties include solid natural rubber and latex in the same product market. The parties submit that both are produced by the same companies, most traders sell the two categories and that, given the limited size of the latex market, latex would not generate a financially trading activity which could be carried out on an autonomous basis.

Nevertheless, the Commission considers that latex represents a distinct, separate product market. It does so for the following reasons:

---

[a] less than 5%

(i) Production: different machinery is required for the preparation of latex as opposed to solid rubber.

(ii) Applications/substitutability: latex is used in the manufacture of a number of products which are difficult to obtain from solid natural rubber. Its applications are technically and economically limited, e.g.: belts, pipes, surgical gloves, prophylactics, balloons, toys, adhesives and elastic fibres.

(iii) Product characteristics: latex requires to be kept in liquid form. It requires specialist handling and storage in tanks.

(iv) Market structure and demand: unlike solid natural rubber, latex is sold mainly by traders to a larger number of clients of smaller size having limited orders.

(v) Market practice: amongst traders latex is perceived as a separate product market.

15. As regards the competition relationship between latex and synthetic rubber, the price of synthetic rubber is lower than that of latex, and there is a certain scope for substitution. There has been a trend for synthetic rubber to replace latex in a certain number of applications. The correct delimitation of the relevant product market would, however, require considerable study. In the present case the precise definition can be left open since even if the narrow approach were taken, the operation would not create or strengthen a dominant position as a result of which effective competition would be significantly impeded (see below paragr. 23 to 27).

16. The relevant product markets for the purposes of the present decision are therefore solid natural rubber and latex.

c) Relevant geographic market

17. The trade of natural rubber (solid and liquid) is governed by the International Natural Rubber Agreement which was renewed in 1987. The Agreement pursues the objective of stabilizing prices for the benefit of both exporting and importing countries. This objective is achieved by a buffer stock which permits the control of price fluctuations by interventions in the market through purchases or sales of natural rubber.

18. The 1990 consumption of natural rubber was 5.320.000 tonnes; consumption in producer countries was 648.000 tonnes. Ignoring the very minor effects due to changes in buffer stocks, the result is that over 85% of the natural rubber consumed in the world has to be imported.

19. Natural rubber constitutes an international commodity which is traded all over the world. Regarding the sale or distribution of solid natural rubber in the Community, the main users of solid natural rubber are tyre manufacturers. Typically their purchasing requirements are large enough to warrant buying direct from producers. Furthermore there are no barriers to imports into the EEC: the whole volume consumed inside the EEC is imported. Therefore, for solid natural rubber, the Community market is integrated into the world market.

20. As regards liquid natural rubber, i.e. latex, in many Member States a small number of traders have high market shares or even a single trader has a very high market share. However, the Commission does not consider that in this case these high market shares in individual Member States indicate the existence of separate national markets. No Member State constitutes a protected market. In any given Member State the existing traders will be subject to competition from imports from other countries. Traders from other Member States will be able to quickly and easily transfer supply to a given Member State. Although Safic is primarily based in France and KG in Germany, both sell latex in most Member States.

21. The sale and distribution of latex is made to a large number of customers having relatively limited purchasing requirements. Their needs for speedy and flexible supply can in practice only be satisfied by traders having access to latex storage tanks located in the Community. Therefore, the relevant geographic market for sale of latex would seem to be the Community.

d) Assessment of market position of the combined firms

Solid natural rubber market

22. The merger of MG's and Safic's rubber businesses will not give rise to a dominant position on the market for solid rubber because:

(i) The combined market share of the parties in the Community is between [ ] and [ ][b] (calculated on the basis of imports). Furthermore, on the basis of the information available to the Commission the combined market share on a world-wide level is of the order of [ ] to [ ][a].

(ii) Metallgesellschaft and Safic are only traders in this market: 80% of the world production is sold by producers directly to the customers; these direct sales are increasing. MG and Safic have no structural link with producers with whom they have to compete: they can only compete on price and better service (quick deliveries).

(iii) Two-thirds of the world production is for use by the tyre manufacturers: these customers have a considerable buying power because the volumes purchased are very important.

(iv) solid rubber is a commodity market which is subject to fluctuation and speculation (though reduced by the buffer stock mechanism): on this market Metallgesellschaft and Safic are price takers rather than price makers.

(v) new entry into the solid rubber market is not hindered by financial or technical obstacles: trading in solid rubber requires mainly a good logistics system and a transport capability covering a wide geographic area.

(vi) there is no problem of access to supply or sales markets: exclusive supplier-customer arrangements are not a widespread and important practice in this market.

(b) less than 25%

(a) less than 5%

Latex market

23. Traders are much more important than producers in the distribution of latex. The latex market is relatively concentrated within the EEC. In most countries only 5 or 6 competitors are active in the market. The market shares for Safic and MG/KG are much higher. At the Community level, Safic and KG have a market share of approximately [ ][(c)]. It will be by far the largest trader in the Community.

Market shares at the Community level for its principal competitors are much smaller since, unlike Safic and KG, they tend to have a high market share in only one, two or at most three Member States and have no spread of strength accross a larger number of Member States. By way of examples: Symington has a [ ][(c)] market share in the United Kingdom which reduces to approximately [ ][(d)] at the Community level; Guzman has a [ ][(c)] share in Spain which decreases to around [ ][(d)] at the Community level; Wurfbain has a [ ][(e)] share for Belgium/Luxemburg, [ ][(f)] for Italy and [ ][(a)] for Germany giving in the region of [ ][(d)] for the Community; lastly, Nordmann and Rassmann have a [ ][(e)] and [ ][(f)] share for Germany and Italy respectively, which corresponds to [ ][(f)] at the Community level.

24. However, the proposed concentration does not create a dominant position which would significantly impede effective competition in the Common market. The remaining competitors are strong companies having the necessary financial strength to sell in all countries of the Community and to quickly react to any attempt by the new entity to increase prices. These competitors are Nordmann and Rassmann, Symington, Wurfbain, Guzman, Sigla (a subsidiary of Guthrie), Pacol Harborn, Weber and Schaer, Durieu & Co, Marsmann, Lewison and Marshall, Cargill etc. Some of these competitors are linked to producers. This is not the case for MG/Safic.

25. Customers are not tied to MG/Safic by long term exclusive purchase contracts. They may at any time and for each order obtain supplies from other traders.

26. Demand can also at least partially be satisfied for a number of applications by synthetic rubber which is less expensive and produced by several large petroleum groups.

27. The fact that MG/Safic acquires high market shares in three Member States (above 50% in France, Italy and Portugal) does not in this case prevent effective competition from other traders in these countries. There are no significant barriers to entry to these countries which led to the conclusion that the geographic scope of competition is the Community as a whole and not individual Member States.

(c) less than 50%
(d) less than 10%
(e) less than 30%
(f) less than 20%

VII. CONCLUSION

28. Based upon the above findings, the Commission has come to the conclusion that the proposed concentration does not create or strengthen a dominant position as a result of which effective competition would be significantly impeded in the common market or in a substantial part of it.

* * *
* *
*

For the above reasons, the Commission has decided not to oppose the notified concentration and to declare it compatible with the common market. This decision is adopted in application of Article 6(1)b of the Merger Regulation.

For the Commission,