

***Case No COMP/M.3612 -
HENKEL / SOVEREIGN***

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**REGULATION (EC) No 139/2004
MERGER PROCEDURE**

Article 6(1)(b) NON-OPPOSITION
Date: 22/12/2004

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 22.12.2004

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In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EC) No 139/2004 concerning non-disclosure of business secrets and other confidential information. The omissions are shown thus [...]. Where possible the information omitted has been replaced by ranges of figures or a general description.

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6 (1) b DECISION

To the notifying party

Dear Sir/Madam,

**Subject: Case No COMP/M.3612 – HENKEL / SOVEREIGN
Notification of 18 November 2004 pursuant to Article 4 of Council
Regulation No 139/2004**

1. On 18 November 2004, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings¹ (“the EC Merger Regulation”) by which the undertaking Henkel KGaA (“Henkel”, Germany) acquires within the meaning of Article 3(1)(b) of the EC Merger Regulation sole control of the undertaking Sovereign Specialty Chemicals, Inc. (“Sovereign”, United States).
2. The transaction was cleared by the Federal Trade Commission in the United States of America on 15 November 2004.

I. THE PARTIES AND THE OPERATION

3. Henkel is a German public company, active in the production and supply of laundry and home care products, cosmetics and toiletries, surface treatment products, sealants and adhesives.
4. Sovereign is a U.S. corporation, active in the development, production and supply of specialty adhesives, coatings and sealants for packaging and converting, construction and industrial applications.

¹ OJ L 24, 29.1.2004, p. 1.

5. The proposed concentration is structured as follows: (i) Henkel Merger Corporation, an indirect wholly owned subsidiary of Henkel, will be merged into Sovereign, and (ii) the company surviving the merger will be an indirect wholly owned subsidiary of Henkel.
6. Through the Sovereign acquisition, Henkel intends to introduce its European product portfolio in North America, where Sovereign is predominantly active and achieves approximately 88% of its turnover, and thereby strengthen its consumer, craftsmen, and industrial adhesives business in that region.

II. CONCENTRATION

7. The operation ultimately will lead to Henkel acquiring sole control of Sovereign and therefore constitutes a concentration within the meaning of Article 3(1)(b) of the EC Merger Regulation.

III. COMMUNITY DIMENSION

8. The operation, although it does not fulfil the requirements for having Community dimension within the meaning of Article 1 of the EC Merger Regulation, is deemed to have a Community dimension pursuant to Article 4(5) of the EC Merger Regulation. On 22 October 2004 Henkel informed the Commission in a reasoned submission that the concentration which was capable of being reviewed under the national competition laws of more than three Member States should be examined by the Commission. No Member State competent to examine the concentration expressed disagreement to the request of referral within the period laid down by the EC Merger Regulation.

IV. RELEVANT MARKETS

A. RELEVANT PRODUCT MARKETS

1. Introduction

9. The parties' activities within the EEA overlap in the production and sale of industrial adhesives, in particular adhesives used in the areas of bookbinding/graphic arts, laminating/flexible packaging, automotive, aerospace, packaging, bottle labelling, woodworking and tapes and labels. In addition, Sovereign is also active in heat seal and cold seal cohesives, which constitute a neighbouring market to industrial adhesives for laminating/flexible packaging, as well as in expanded and coated microspheres, which are used by Henkel in the production of certain consumer adhesives as well as in some applications for the automotive industry.

2. Industrial Adhesives

a. General

10. Adhesives can be grouped into adhesives for consumers, adhesives for craftsmen and "Do It Yourself" (DIY), and industrial adhesives. The parties' activities within the EEA only overlap in the sector of industrial adhesives.
11. Industrial adhesives are used for various applications such as in the bookbinding industry, the packaging industry or in the woodworking, automotive and aerospace industries to bond wood, metal or plastic structures, rather than welding or soldering.

12. Adhesives for bookbinding/graphic arts are used for binding hard-cover and soft-cover books, magazines, catalogues and trade journals. These adhesive systems are also used for manufacturing binders and stationery, and for attaching envelopes, postcards and samples to magazines. The customers in this area are typically printing companies and bookbinders. Adhesives for laminating/flexible packaging are used to laminate layers of film, foil and paper to produce packaging for various products such as pet food, stand-up pouches, snacks or frozen foods. Adhesives for packaging are used for paper, cardboard, foil and plastics for products such as folding cartons, bags, sacks and corrugated board. Adhesives for bottle labelling serve to bond paper and plastic labels onto glass and plastic bottles, aluminium cans and containers. Adhesives for woodworking are used for furniture, furniture parts, windows and doors, flooring, panels and wood assembly. Adhesives for tapes and labels are developed for various end markets. Adhesives for the aerospace industry are used in both the commercial and military aircraft industries. Adhesives in the automotive industry are used for the assembly of automobiles in the body in white, the power train and the inner trim.
13. In terms of the adhesive technologies used for the different applications, one can broadly distinguish between water-based adhesives (water-borne natural polymers and water-borne synthetic polymers), hot-melts (various polymers can be used as hot-melts, which are solid products but become liquid in a heated state, the polymers are liquid, and can hence be processed, but on cooling they solidify), reactive adhesives (solvent-based and solvent-free systems), and a number of other technologies less widely used, in the segments in which the parties' activities overlap. Manufacturing is done in mixing/melting vessels under special conditions according to given formulations. Products are offered as liquids, pastes, granules, tapes, mastics, or in ready-to-use foils. Customers in certain areas of application tend to have similar demands with respect to the technical properties and usage of particular adhesives.
14. According to Henkel, the relevant product markets should be defined according to the various applications of such industrial adhesives in which the parties are active: bookbinding/graphic arts, laminating/flexible packaging, packaging, bottle labelling, woodworking, tapes & labels, and the aerospace and automotive industries.
15. Different industrial customer groups have different needs. The bonding of a book requires different bonding properties than the bonding of a foil to paper for a flexible packaging. Accordingly, adhesives in different applications tend to have different technical properties in light of the different materials that are bonded and the difference in production equipment of the different customer groups. In line with this, the different industries often have different needs with respect to order size, performance expectation, service and technical development. For instance, the flexible packaging and transportation industries are characterized by large multi-national customers, who often request tailor-made adhesives, while in other segments the customers tend to be smaller and demand standardised products. Since the interaction of the adhesive with the production equipment of the customer is important for the bonding properties of the adhesive, suppliers active in the various industries have to have some industry-specific know-how.
16. Moreover, a classification by applications is commonly used in the adhesives industry, and both Henkel and Sovereign internally group their adhesives according to their applications.

17. The use of certain technologies depends on the area of application. For example, in flexible packaging, mainly solvent-based reactive adhesives are used, whereas in bookbinding/graphic arts reactive adhesives do not play any role. A broad range of factors needs to be taken into consideration in order to determine which adhesive technology is the most suitable for the specific application. Some of these factors include the need: (i) to withstand high stresses and be capable of bonding with other materials; (ii) for absorbency or non-absorbency, depending on the surfaces the adhesive has been designed to bind; (iii) for transparency; (iv) to possess high bonding or shear strength, instant or delayed tack; (v) to be free of solvents; (vi) to be capable of withstanding the elements; and (vii) to be water resistant.
18. Within each application, different technologies are used. Henkel submits however, that grouping according to technology would be inappropriate because different technologies are used within each application. Moreover, the parties claim that sub-segmentation of the relevant product markets within the applications would constitute *de minimis* markets, which do not reflect economic reality. Furthermore, the adhesive systems (*i.e.*, the combination of the technology and the basic chemical ingredients of the adhesives) are usually of no importance to the individual customers, since they look for solutions for problems characteristic of that particular industry rather than specific adhesive products.
19. The Commission has not dealt with the question of product market definition in the industrial adhesives industry in previous decisions. The Commission's investigation in the present case confirmed Henkel's view that a subdivision of the overall industrial adhesives sector by application is appropriate. It however also revealed some indications that at least for some applications, in particular bookbinding, a further subdivision based on technologies within the respective industrial adhesive applications may be necessary.
20. However, for the purpose of the present decision, the precise definition of the relevant product markets may be left open, since the notified operation does not raise competition concerns both under the assumption of markets segmented by application and in the case of a further subdivision based on technologies within each application.

b. Adhesives for bookbinding/graphic arts

21. According to Henkel, the adhesive technologies used in bookbinding include (i) EVA hot-melts (approximately 43% of total European consumption), (ii) EVA dispersions (31%), (iii) adhesives based on natural polymers (14%), (iv) PU hot-melts (5%) and (v) rubber-based hot-melts (3%). However, not all technologies are used for the same purpose. For the endsheet (*Vorsatzklebung*), spine (*Rückenleim*) and sideglue (*Seitenleim*) of a book, PU hotmelts, EVA hot-melts and dispersions can be used. For the spine, a combination of dispersion adhesives and hot-melts (so-called hot-cold combination) may also be used. Proteins and EVA/rubber-based hot-melts are used for the casemaking (*Deckenfertigung*) and crash attachment (*Hinterklebung*), whereas dispersions are used for the casing-in (*Einhängen*) and bookmark (*Lesebandeinklebung*), and dispersions or EVA/rubber-based hot-melts can be used for add-in and add-on applications such as bonding address labels on catalogues. The Commission's market investigation has broadly confirmed this description of the adhesive technologies used in the bookbinding industry.

22. The decision on which adhesive technology to use depends on factors such as the requested page integrity and security and the quality of the processed paper sheets, as well as on whether the final product belongs to a lower quality range with only temporary use (e.g. mass production of magazines and catalogues) or to a high-end range of more valuable products (e.g. expensive hard-cover books and high quality magazines). PU hot-melts are a higher value product than EVA hot-melts and therefore tend to be used in more valuable end products. EVA hot-melts are used in the lower-end of the product range, and allow faster production than dispersions that are similar in price and can be used alternatively in the above applications.
23. Despite these differences in quality and intended use, Henkel is of the view that all adhesive technologies used in bookbinding are part of the same relevant product market, because it is ultimately up to the individual customer to decide which adhesive is used for a particular product. Henkel submits that customers can switch from one technology to another within a short time frame and at non-prohibitive costs, since most customers use modular machines that are able to process various adhesive technologies. On the supply side, according to Henkel a narrow approach to market definition does not make sense either, since most suppliers offer a comprehensive product range and compete at the level of these product ranges rather than at the level of individual technologies.
24. However, the market investigation has shown some indications that the market for bookbinding adhesives may have to be further subdivided according to the technologies used. At least for some customers, switching between various adhesive technologies used in bookbinding is not easily possible. First, some customers do not use modular machines and would therefore have to invest into a completely new machine in order to be able to switch. Second, even those customers who are able to switch aggregates in an existing machine would incur follow-up costs because of the specific characteristics and reactions of the various types of adhesives. Therefore, a majority of responding customers have stated that a hypothetical 5-10% non-transitional price increase in a particular adhesive technology used in bookbinding would not be important enough for them to make switching to a different technology economically feasible.
25. Likewise, responding competitors who supply adhesives for bookbinding are divided as to whether they would consider switching to a different adhesive technology in case of a non-transitional price increase of 5-10% in a particular technology.
26. However, the precise definition of the relevant product market(s) in bookbinding adhesives can be left open since under any of the possible market definitions discussed above the operation would not raise serious doubts as to its compatibility with the common market in this sector.

c. Adhesives for laminating/flexible packaging

27. According to Henkel, the main technologies used in adhesives for laminating/flexible packaging comprise reactive adhesives; polyurethane solvent-based adhesives; polyurethane solvent-free adhesives; and dispersion adhesives (in particular, acrylic, EVA, PVAC, and PU based). Wet laminates are mainly aqueous dispersions that are not dried prior to the actual laminating process, and are well suited to laminate foil or film to paper as the paper absorbs the water. Dry laminates, which consist of adhesives that are dried prior to the actual laminating process, are well suited to laminate

different layers of films, foils or film and foil. In addition, polyurethane (PU) hot-melt adhesives and rubber-based hot-melt adhesives may also be used for certain laminating/flexible packaging applications. The customers' responses to the Commission's market investigation have confirmed Henkel's description of the technologies used for laminating/flexible packaging. In any event, the precise definition of the relevant product market(s) in adhesives for laminating/flexible packaging can be left open since under any of the possible market definitions the operation would not raise competition problems in this sector.

d. Adhesives for packaging

28. According to Henkel, the technologies used for packaging are generally water-based PVAC and EVA dispersions. Hot-melt is used in "end-of-line" packaging. This view has been confirmed by the Commission's market investigation. In any event, the precise definition of the relevant product market(s) in adhesives for packaging can be left open since under any of the possible market definitions the operation would not raise competition problems in this sector.

e. Adhesives for bottle labelling

29. According to Henkel, the adhesives normally used for labelling glass bottles cannot be used for the labelling of plastic containers because they do not adhere sufficiently to plastic. Plastic bottles normally consist of PE (polyethylene), PVC (polyvinyl chloride) and, nowadays, increasingly of PET (polyethylene terephthalate). Containers similar to cans and tablet tubes are also made of polystyrene or polypropylene. EVA-copolymer dispersions and hot-melt adhesives or combinations of both are used for labelling these materials. Adhesives with higher adhesion properties compared with adhesives for PVC bottles must be used for polystyrene and especially for polypropylene. The Commission's market investigation has confirmed, that water-based, EVA hot-melt and rubber-based adhesives technologies are used for the bottle labelling application. In any event, the precise definition of the relevant product market(s) in adhesives for bottle labelling can be left open since under any of the possible market definitions the operation would not raise competition problems in this sector.

f. Adhesives for woodworking

30. According to Henkel, the adhesive technologies used in woodworking are generally EVA and PU hot-melts and dispersions, which has been confirmed by the Commission's market investigation. Areas of application include wood assembly, foam bonding, surface lamination, edge bonding, post forming, profile wrapping and 3 D-wrapping. In any event, the precise definition of the relevant product market(s) in adhesives for woodworking can be left open since under any of the possible market definitions the operation would not raise competition problems in this sector.

g. Adhesives for tapes and labels

31. Labels require adhesives that are permanent or removable, while tapes may need to be single or double sided, clear or masking, cloth or plastic. Both tapes and labels adhesives are applied to certain cover stocks and may be protected by a release paper, before their initial use. In any event, the precise definition of the relevant product market(s) in adhesives for tapes and labels can be left open since under any of the

possible market definitions the operation would not raise competition problems in this sector.

h. Adhesives for the aerospace industry

32. Adhesives for the aerospace industry are typically epoxy based structural adhesives. There are two basic forms of adhesives in the aerospace segment, namely film adhesives (used for bonding larger areas) and paste adhesives (used for bonding smaller areas and often for repair purposes). These adhesives are used to bond structural assemblies (components of two or more materials of the same or different materials, e.g. metal, composites and plastics, that are joined by means of welding, brazing, lasering, soldering, fastening or bonding), which are typically made of aluminium or composites in aircraft. Examples include wing and body fairings, leading and trailing edges, wing access doors, landing gear doors and most of the moving parts on a wing as well as the structure housing the jet engine. The adhesives are used to bond metal-to-metal, composite-to-composite or honeycomb core to composite and/or metal skins. In any event, the precise definition of the relevant product market(s) in adhesives for the aerospace industry can be left open since under any of the possible market definitions the operation would not raise competition problems in this sector.

i. Adhesives for the automotive industry

33. A variety of different adhesives, sealants and coating compounds having a wide spectrum of properties, from high-strength structural adhesives to highly elastic surface-coating compounds, are used in the manufacture of motor vehicles. The boundaries between the different product groups are fluid and cannot be precisely defined. For the purpose of the present decision it can be left open whether all automotive adhesives and sealants form a single product market, or if the market has to be further subdivided according to the adhesive technology used (Sovereign supplying only adhesives, but not sealants), since under any possible market definition no competition problems would arise. In any event, the precise definition of the relevant product market(s) in adhesives for the automotive industry can be left open since under any of the possible market definitions the operation would not raise competition problems in this sector.

2. Heat seal and cold seal cohesives

34. Sovereign is active in heat seal and cold seal cohesives, which are used, for example, for sealing tops to yoghurt containers and are demanded by the same group of customers that also purchase adhesives for laminating/flexible packaging, i.e. converters that laminate different layers of foil, film and/or paper to flexible packaging, imprint these laminated material with the colours and prints demanded by the customers and finally process the flexible packaging (e.g., by applying cold seal or heat seal cohesives to the surface) in order to prepare it for the packaging process. Henkel is not active in this market. For the purpose of the present decision it can be left open whether heat seal and cold seal cohesives are to be considered as a single relevant product market or whether they form two separate markets, since under any possible market definition no competition problems would arise.

3. Microspheres

35. Microspheres are thermoplastic hollow spheres with a size of a few micrometers, which are used as raw material (functional filling material) in a large number of industrial applications such as the PVC compounding industry (shoe soles), fibre glass reinforced plastics (FRP), building materials sealants and automotive applications. When heated, base microspheres expand to up to 40 times and more of their unexpanded size. In their various applications, microspheres may reduce weight and density, improve thickness, stiffness and applicability, and increase friction. According to Henkel, thermoplastic microspheres can easily be substituted by other filling materials in all applications for which Henkel uses them. In any event, for the purpose of the present decision the precise definition of the relevant product market may be left open, since even under the assumption of a relevant product market for thermoplastic microspheres no competition concerns would arise.

B. RELEVANT GEOGRAPHIC MARKETS

1. Industrial Adhesives

36. Henkel proposes that the relevant geographic market is at least EEA-wide for all industrial adhesives applications, since the conditions of competition are sufficiently homogeneous across the EEA. In the case of adhesives for aerospace applications, according to Henkel the market is even global because there are only large multi-national customers. According to Henkel, industrial adhesives are transported over long distances at negligible costs, and this was confirmed by Commission's market investigation. Furthermore, Henkel has also submitted that there are no price differences based on the location of the customer, most customers are large multi-national companies, there are no local purchasing preferences or regulatory barriers, suppliers are present Europe-wide and the parties as well as their competitors supply their products under the same brands across Europe.
37. There are no previous Commission decisions defining the geographic markets in question. The market investigation in the present case has provided strong indications that the geographic market for some applications of industrial adhesives is at least EEA-wide, but that for other applications a narrower geographic market definition, such as national markets or regional markets within the EEA, may be more appropriate.
38. In the case of the aerospace and automotive applications, all customers are large multi-national companies such as aircraft manufacturers Boeing, EADS or Alenia or motor vehicle manufacturers like DaimlerChrysler, Volkswagen, BMW or the PSA group, which source globally or at least on an EEA-wide basis directly from the manufacturers. In line with previous cases where the Commission had accepted that the geographic markets for supply to the aerospace and automotive industries are respectively global or at least EEA-wide in scope², it is concluded that the geographic

² See inter alia Commission Decision of 23 August 2002, Case No. COMP/M.2892– Goodrich/TRW Aeronautical Systems Group, para. 7; Commission Decision of 17 April 2002, Case No. COMP/M.2738 – GEES/Unison, para. 12; Commission Decision of 5 February 1999, Case No. IV/M.1363 – Dupont/Hoechst/Herberts, para. 21; Commission Decision of 11 June 2001, Case No. COMP/M.2421 – Continental/TEMIC, para. 23.

markets for adhesives for the aerospace and automotive industries are also respectively global or at least EEA-wide.

39. In other applications, however, there are also indications for the possibility of national markets. First of all, market shares in a number of applications vary considerably between the different countries of the EEA. Second, even though large multi-national customers are present in markets such as laminating/flexible packaging or bottle labelling adhesives, in other markets such as bookbinding or woodworking adhesives, a considerable proportion of customers are small and medium-sized enterprises which tend to source locally. In markets such as bottle labelling, large multi-national customers with production sites in a number of countries also sometimes source adhesives locally or regionally on the level of each production plant. Third, manufacturers tend to be present by sales representations or via local distributors in the various countries, even though physical delivery of the products sold sometimes takes place cross-border. The market investigation shows that the existence of a good distribution network across Europe is seen by most market participants as a prerequisite for being a successful supplier of industrial adhesives.
40. On the other hand, the market investigation has also revealed that an overwhelming majority of competitors would supply a customer that is located outside their country of operation in the event of a 5-10% increase in price in that country, and by the same token, most customers would switch to a supplier located outside the country in which they are based in the event of a permanent 5-10% price increase in their home country. This indicates that the geographic scope of the markets concerned is likely to be wider than national and to include several neighbouring countries, without necessarily being EEA-wide in scope for all product markets concerned.
41. In any event, for the purpose of the present decision the exact definition of the geographic market for adhesives for bookbinding/graphic arts, laminating/flexible packaging, bottle labelling, packaging, tapes and labels and woodworking can be left open, since both under the assumption of EEA-wide and national markets no competition problems can be identified.

2. Heat seal and cold seal cohesives

42. According to Henkel the market or markets for heat seal and cold seal cohesives are EEA-wide, since the conditions of competition are sufficiently homogeneous across the EEA. Transportation costs are low, the products are frequently transported over long distances, and the main competitors such as Sun Chemical Swale, Rohm & Haas, Bostik, Eukalin and BASF are all pan-European players with only one production facility within Europe for heat seal and cold seal cohesives. For the purpose of the present decision it can be left open whether the market or the markets for heat seal and cold seal cohesives are national or EEA-wide in scope, since under any possible market definition no competition problems would arise.

3. Microspheres

43. The two principal manufacturers of thermoplastic microspheres, Expancel (Sweden) and Matsumoto (Japan), supply customers world-wide. Sovereign does not manufacture microspheres itself, but purchases them from the above mentioned manufacturers, processes them in the United States and sells them, inter alia, to a European distributor. Moreover, in the automotive industry, in which Henkel uses microspheres, customers are the large suppliers of motor vehicle manufacturers. On

this basis it may be concluded that the market for thermoplastic microsphere is at least EEA-wide.

V. COMPETITIVE ASSESSMENT

A. INDUSTRIAL ADHESIVES

1. Adhesives for bookbinding/graphic arts

a. EEA-wide market

44. In an overall EEA-wide market for bookbinding adhesives, which has a total size of EUR [...], the operation would combine the estimated market shares (2003, in value) of Henkel [20-30%] and Sovereign [5-10%], thereby creating a market leader with a [20-30%] market share, followed by National [15-20%], Fuller [5-10%] Bostik [0-5%], Demcopack [0-5%] and Forbo/Swift [0-5%]. This market structure, as well as the post-merger HHI [1,000-1,500] , with a delta of [200-300], does not give rise to concerns with regard the emergence of a dominant position or otherwise to a significant impediment to effective competition.
45. If the various adhesive technologies used in bookbinding were to be considered separate product markets, the following estimated market shares (based on volume) would be achieved by the merged entity and its main competitors:

Technology (volume)	Henkel	Sovereign	Henkel + Sovereign	National	Fuller	Others
EVA hot-melt [...]	[15-20]%	[5-10]%	[20-30]%	[15-20]%	[10-15]%	[40-50]%
Rubber-based hot-melts [...]	[15-20]%	[20-30]%	[40-50]%	[30-40]%	[10-15]%	[0-5]%
Dispersion [...]	[10-15]%	[0-5]%	[15-20]%	[5-10]%	[0-5]%	[70-80]%
PU hot-melt [...]	[60-70]%	[0-5]%	[60-70]%	[10-15]%	[15-20]%	[0-5]%
Protein [...]	-	[0-5]%	[0-5]%	[30-40]%	[0-5]%	[60-70]%
Other [...]	[0-5]%	-	[0-5]%	[0-5]%	[15-20]%	[70-80]%
Total	[10-15]%	[0-5]%	[15-20]%	[15-20]%	[5-10]%	[50-60]%

Data for 2003 in value. Source: Estimates by the parties.

46. The above table shows that for most of the relevant adhesive technologies, including the two technologies that account for the bulk of overall volume (EVA hot-melts and dispersions), market shares are not indicative of any possible competition concerns.
47. In rubber-based hot-melts, the merged entity's position will be considerable, with a [40-50]% market share. However, faced with National's [30-40]% market share and Fuller's [10-15]% share, this is not indicative of single dominance. In PU hot-melts, the merged entity's share would be very strong ([60-70]%), but Sovereign is only a minor player in this possible market, selling products manufactured by a toll manufacturer, so the [0-5]% overlap between the parties' activities is insignificant. In

any event, both above mentioned possible markets are of almost insignificant size ([...]t and [...]t respectively), and the merged entity's competitors in these segments are strong and credible players in the overall market for bookbinding adhesives. It can therefore be excluded that the merged entity's share of the rubber-based hot-melt or PU hot-melt markets would give it the power to unilaterally influence prices or otherwise significantly impede effective competition in these possible markets.

48. For these reasons, there are no serious doubts with regard to a significant impediment to effective competition in an EEA-wide market for adhesives for bookbinding/graphic arts or EEA-wide markets for the different adhesive technologies for bookbinding/graphic arts.

b. *National markets*

On a national level, the parties and their main competitors would achieve the following market shares (in value) in an overall market for adhesives for bookbinding/graphic arts:

Member State	Henkel	Sovereign	Henkel + Sovereign	National	Fuller	Bostik
Finland	[0-5]%	[0-5]%	[5-10]%	[15-20]%	[5-10]%	-
Sweden	-	[15-20]%	[15-20]%	[20-30]%	-	[0-5]%
Norway	[0-5]%	[30-40]%	[30-40]%	[40-50]%	-	-
Denmark	-	[5-10]%	[5-10]%	[50-60]%	-	-
Estonia	-	-	-	-	[40-50]%	-
Latvia	[5-10]%	-	[5-10]%	-	-	-
Lithuania	[0-5]%	-	[0-5]%	-	-	-
Poland	[15-20]%	[0-5]%	[20-30]%	[0-5]%	[0-5]%	[0-5]%
Slovakia	[30-40]%	-	[30-40]%	[0-5]%	[0-5]%	-
Czech Republic	[40-50]%	-	[40-50]%	[0-5]%	[10-15]%	-
Hungary	[10-15]%	-	[10-15]%	[0-5]%	[0-5]%	-
Slovenia	[0-5]%	-	[0-5]%	-		[30-40]%
Austria	[40-50]%	[0-5]%	[40-50]%	[5-10]%	[0-5]%	-
Germany	[30-40]%	[0-5]%	[30-40]%	[5-10]%	[15-20]%	[0-5]%
Netherlands	[20-30]%	[40-50]%	[60-70]%	[5-10]%	[0-5]%	-
Belgium	[10-15]%	[30-40]%	[40-50]%	[10-15]%	[0-5]%	-
Luxembourg	[0-5]%	[10-15]%	[10-15]%	[20-30]%	-	-
France	[15-20]%	[5-10]%	[20-30]%	[5-10]%	[0-5]%	[10-15]%
Spain	[20-30]%	-	[20-30]%	[15-20]%	[0-5]%	-
Portugal	[20-30]%	[0-5]%	[20-30]%	[5-10]%	[20-30]%	-
Italy	[5-10]%	[0-5]%	[10-15]%	[30-40]%	[5-10]%	-
Greece	[15-20]%	[0-5]%	[20-30]%	-	-	-
Malta	[0-5]%	-	[0-5]%	[90-100]%	-	-
Cyprus	[0-5]%	[0-5]%	[0-5]%	[50-60]%	-	-
United Kingdom	[0-5]%	[10-15]%	[10-15]%	[30-40]%	[15-20]%	[15-20]%
Ireland	[20-30]%	[0-5]%	[20-30]%	[20-30]%	[5-10]%	-
Iceland	-	-	-	[90-100]%	-	-
Total	[20-30]%	[5-10]%	[20-30]%	[15-20]%	[5-10]%	[0-5]%

Data for 2003 in value. Source: estimates by the parties.

49. It follows from the above table that the only countries in which the parties achieve both high combined market shares and significant overlaps are Belgium ([40-50]%) and the Netherlands ([60-70]%) with overlaps of [10-15]% and [20-30]% respectively. In Austria and Germany the parties have combined market shares of [40-50]% and [30-40]% respectively but the overlaps do not exceed [0-5]%. In Norway, where the parties have a combined market share of [30-40]%, the overlap is only [0-5]% and there is a significant competitor with an almost 50% market share.
50. There is a group of countries where the combined market share of the parties is between 20-30%, but the overlap does not exceed [0-5]5% (Poland; Portugal and Ireland). In France and Greece there is a significant overlap of [5-10]%, but the combined market share of the parties is below [20-30]%. In countries where the market share of one of the parties exceeds [20-30]%, there is no overlap: Slovakia ([30-40]%); Czech Republic ([40-50]%); and Spain ([20-30]%).
51. According to Henkel, in the presence of strong competitors with estimated EEA sales shares of approximately [15-20]% (National), [5-10]% (Fuller), [0-5]% (Bostik), [0-5]% (Forbo/Swift) and [0-5]% (Demcopack), and roughly 40 smaller suppliers who compete with the larger players at the local level an EEA-wide sales share of [20-30]% is not indicative of single dominance. Moreover, the parties claim that overcapacity in the market means that such competitors could increase output in case of a hypothetical price increase. Also, due to low barriers to entry there is a lot of potential entry of suppliers, already active in certain applications, into other segments.
52. In the same vain, since a significant sales share can be achieved with very few customers, a large sales share does not reflect the real market position of the parties because most of the parties' largest customers already work with alternative suppliers and could switch to these in both the lower and higher end of the product range, if the merged entity were to increase prices.
53. The Commission's market investigation has not shown any particular competition concern with regard to national markets in the Netherlands, Belgium, Germany or Austria. In particular, customers located in these countries have all stated that in the event of a non-transitory significant price increase they would be able to turn their demand to suppliers based in another Member State. This indicates that even under the assumption of national markets, entry barriers are low and there are enough alternative suppliers post-merger. Thus, high market shares of the parties in certain countries may be attributed to traditional customer relationships (in particular in smaller markets were a few individual customers each account for a considerable share of the market) and do not indicate the power to unilaterally raise prices or otherwise significantly impede competition.
54. The competitive analysis would not differ significantly if product markets defined by adhesive technologies in bookbinding/graphic arts were to be considered on a national level. On the basis of such a refined market definition, there is only a small number of possible markets with significant overlaps between the parties' activities, because in a number of countries Henkel and Sovereign's main sales are in complementary technologies.
55. Thus, markets with both considerable combined market shares (2003, based on volume) and significant overlaps would be EVA hot-melts in the Netherlands with a [50-60]% combined market share (Henkel [5-10]%, Sovereign [40-50]%), dispersions

in the Netherlands with [40-50]% (Henkel [15-20]%, Sovereign [20-30]%) and dispersions in Belgium with [30-40]% (Henkel [15-20]%, Sovereign [20-30]%). For these possible markets competition concerns can be excluded for the same reasons as are explained above with regard to possible EEA-wide markets for the various bookbinding adhesive technologies.

56. Therefore, the operation does not raise serious doubts that the notified operation would significantly impede effective competition in national markets for adhesives for bookbinding/graphic arts or for the different adhesive technologies for bookbinding/graphic arts.

2. Adhesives for laminating/flexible packaging

57. In an overall EEA-wide market for laminating/flexible packaging adhesives, the parties' combined market share would be [30-40]% (2003, in value), however, the overlaps are minimal (Henkel [30-50]%; Sovereign [0-5]%). Even on the basis of national markets, in the countries where the combined market share of the parties exceeds [30-40]% and there is an overlap, the market share addition is minimal: Belgium (combined market share of [40-50]% with an overlap of [0-5]%; Finland (combined market share of [40-50]% with an overlap of [0-5]%; Germany (combined market share of [50-60]% with an overlap of [0-5]%; Spain (combined market share of [40-50]% with an overlap of less than [0-5]%). In addition, the parties face strong competition throughout the EEA by competitors such as Rohm & Haas (EEA market share of [20-30]%) Herberts (EEA market share of [5-10]%), COIM (EEA market share of [5-20]%) and Bostik (EEA market share of [0-5]%). Furthermore, in light of the existing over-capacity in the industry, and the fact that according to the Commission's market investigation utilisation rates could be increased, there is a sufficient competitive constraint on the merged entity.
58. The Commission's market investigation shows that customers of laminating/flexible packaging to a large extent operate on a multi-national basis, such as food companies Nestlé or Unilever. Both the customers and the competitors have indicated that customers regularly multi-source for adhesives for laminating/flexible packaging.
59. If the various adhesive technologies used in laminating/flexible packaging were to be considered as separate product markets, the only overlaps would be in reactive adhesives and PU dispersions. Reactive adhesives account for [90-100]% of Henkel's sales in laminating/flexible packaging adhesives but only for [20-30]% of Sovereign's sales in this area, so overlaps both on an EEA and on a national level are even less significant than in the overall market for adhesives for laminating/flexible packaging. In PU dispersions, the parties combined EEA-wide market share (2003, based on volume) is only [10-15]% (Henkel [0-5]%, Sovereign [5-10]%), the parties' activities overlapping only in Italy (Henkel [0-5]%, Sovereign [30-40]%). In any case, the Commission's market investigation has shown that competitors are active in both water-based synthetic polymers as well as reactive adhesives, thus providing a sufficient competitive constraint.
60. Sovereign is active in a neighbouring sector to adhesives for laminating/flexible packaging adhesives, namely heat seal and cold seal cohesives, and has a [50-60]% EEA-wide sales share (2003) in a narrowly defined market for cold seal cohesives only (Sovereign's share of the overall market for heat seal and cold seal cohesives does not exceed [20-30]%). Although in certain countries Sovereign's market share in cold seal cohesives is high, such as Finland ([70-80]%), France ([60-70]%), Germany ([60-

70]%), Greece ([50-60]%), Ireland ([70-80]%), Italy ([70-80]%), Luxembourg ([90-100]%) and Sweden ([80-90]%), Henkel is not active in this market. There are some strong competitors in the market, such as Swale/Sun Chemical ([30-40]% EEA-wide market share), Bostik ([0-5]%), Rohm & Haas ([0-5]%) or BASF ([0-5]%). The Commission's market investigation has indicated that a majority of those suppliers who are active in the adhesives for laminating/flexible packaging market, also supply cold seal adhesives. Under these circumstances, and despite the fact that markets participants active in this neighbouring market confirmed that being present in both adhesives for laminating/flexible packaging and cold-seal adhesives gives an advantage over competitors, the operation would not significantly impede competition in the market for adhesives for laminating/flexible packaging by virtue of conglomerate effects resulting from Sovereign's position in the neighbouring market for cold-seal adhesives.

61. On the basis of the foregoing, there are no serious doubts that the notified operation would lead to a significant impediment to effective competition in an EEA-wide market or national markets for adhesives for laminating/flexible packaging or in EEA-wide or national markets for the different adhesive technologies for laminating/flexible packaging.

3. Adhesives for packaging

62. In an overall EEA-wide market for packaging adhesives, the parties' combined market share would be [10-15]% (Henkel [10-15]%; Sovereign [0-5]%; 2003, in value). Even if the geographic market were national, in the Countries where the combined market share of the parties exceeds 20%, the overlap is below [0-5]%; Czech Republic ([30-40]%); Germany ([20-30]%); Hungary ([50-60]%); Italy ([20-30]%); and Poland ([20-30]%). Only in Belgium would the parties have roughly an equal market position, which would, however, not exceed [20-30]% in combination. In any case, strong competitors who are active in the Belgian market provide sufficient competitive constraint: National ([5-10]%), Fuller ([5-10]%), Bostik ([5-10]%), Jowat ([5-10]%) and Forbo ([0-5]%). Additionally, the market is highly fragmented since small individual companies account for approximately half of the market. These smaller competitors also exercise a competitive constraint on the parties.
63. If the various adhesives technologies used in packaging were to be considered separate product markets, the parties' combined EEA-wide sales share for water-based synthetic polymers was [10-15]% with a [5-10]% overlap; for non PU hot-melts it was [15-20]% with a [0-5]% overlap and for water-based natural polymers it was [20-30]% but with only a [0-5]% overlap.
64. At a Member State level, there are overlapping activities that result in combined sales shares exceeding [10-20]% in a particular adhesives technology in certain countries, but the increment brought about by Sovereign is always below [0-5]%. In Belgium, the parties have combined sales shares of approximately [15-20]% in water-based natural polymers (Henkel [10-15]% and Sovereign [5-10]%), combined sales shares of approximately [15-20]% in water-based synthetic polymers (Henkel [10-15]% and Sovereign [5-10]%), and combined sales shares of approximately [20-30]% in non-PU hot-melts (Henkel [5-10]% and Sovereign [15-20]%).
65. Thus, the operation does not give rise to serious doubts with regard to a significant impediment to effective competition in an EEA-wide market or national markets for

adhesives for packaging or EEA-wide or national markets for the different adhesive technologies for packaging.

4. Adhesives for bottle labelling

66. In an overall EEA-wide market for bottle labelling adhesives, the parties' combined market share would be [15-20]% (Henkel [15-20]%; Sovereign [0-5]%; 2003, in value). The main supplier in this area is National with an estimated [15-20]% sales share. Even if the geographic markets were national, in the countries with market shares above [20-30]%, i.e. Italy ([20-30]%) and Greece ([40-50]%), the overlap does not exceed [0-5]%.
67. If the various adhesive technologies used in bottle labelling were to be considered separate product markets, the parties combined EEA-wide sales share for water-based natural polymers was [10-15]% with a [0-5]% overlap, for water-based synthetic polymers the parties' combined sales share was [15-20]% with a [0-5]% overlap, and for non PU hot-melts the parties' combined sales share was [20-30]% with a [0-5]% overlap. At Member State level, there are overlapping activities that result in combined sales shares exceeding [10-15]% in a particular adhesives technology in certain countries, but the increment brought about by Sovereign is always below [0-5]%. Where the overlap is higher, it does not exceed [0-5]%, and the combined market share is below [30-40]% (France [15-20]%; Italy [30-40]% in water-based natural polymers).
68. Therefore, there are no serious doubts that the operation might significantly impede effective competition in an EEA-wide market or national markets for adhesives for bottle labelling or in EEA-wide or national markets for the different adhesive technologies for bottle labelling.

5. Adhesives for woodworking

69. In an overall EEA-wide market for woodworking adhesives, the parties' combined market share would be [10-15]% (Henkel [10-15]%; Sovereign [0-5]%; 2003, in value) while there are several stronger competitors such as Jowat ([10-15]%), National ([10-15]%) and Fuller ([15-20]%). Even if the geographic market were national, a combined market share of above [20-30]% would be reached only in Greece ([20-30]%) and Cyprus ([20-30]%), whereby there is a market share addition only in Greece which amounts to less than [0-5]%.
70. If the various adhesive technologies used in woodworking were to be considered separate product markets, the parties' combined EEA-wide sales share for water-based synthetic polymers was [5-10]% with a [0-5]% overlap, for EVA hot-melts the combined sales share was [10-15]% with a [0-5]% overlap and for PU hot-melts the combined sales share was [20-30]% with only a [0-5]% overlap. On a national level, only in Belgium do the parties have a combined sales share of [10-15]% in EVA hot-melts (Henkel [5-10]% and Sovereign [5-10]%).
71. Thus, the operation does not give rise to serious doubts that it may lead to a significant impediment to effective competition in an EEA-wide market or national markets for adhesives for woodworking or in EEA-wide or national markets for the different adhesive technologies for woodworking.

6. Adhesives for tapes and labels

72. In adhesives for tapes and labels, the parties' combined market share (2003, in value) does not exceed [10-15]% either EEA-wide or on any national markets. The same is true if the various technologies used for such adhesives were to be considered separate product markets. On this basis, the notified operation does not raise serious doubts that it will significantly impede effective competition in any of these possible markets.

7. Adhesives for the aerospace industry

73. In adhesives for the aerospace industry, the world-wide and EEA-wide market shares of the parties and their main competitors are shown in the following table:

	Henkel	Sovereign	Henkel + Sovereign	Cytec	Hexcel	3M	Vantico Huntsman
EEA	[20-30]%	[0-5]%	[20-30]%	[30-40]%	[15-20]%	[15-20]%	[5-10]%
World	[20-30]%	[0-5]%	[30-40]%	[30-40]%	[5-10]%	[10-15]%	[0-5]%

Data for 2003 in value. Source: estimates by the parties.

74. It follows from the above figures that the operation would only bring a minor increment to Henkel's existing market position both EEA-wide and world-wide, and that the merged entity would only be the second largest player in this market after Cytec. The HHI of [2,000-3,000] post merger with a delta of [0-100] is also indicative of a lack of competition problems.
75. On the basis of a narrower product market definition comprising only reactive adhesives for bonding and surfacing advanced composites, which are the only activities of both Henkel and Sovereign in the aerospace adhesive market, the parties market share post-merger would only amount to [30-40]% EEA-wide and [40-50]% world-wide, with a minor increment of [0-5]% and [0-5]% respectively.
76. On this basis, and taking into account the buyer power of the customers in this industry, which are the large aircraft manufacturers such as Boeing or EADS, there are no serious doubts that the notified operation might significantly impede effective competition in the market for adhesives for the aerospace industry.

8. Adhesives for the automotive industry

77. In adhesives and sealants for the automotive industry, Henkel has a world-wide market share (2003, in value) of [15-20]% and an EEA-wide market share of [30-40]%, but Sovereign's share of the market is *de minimis* in both markets (below [0-5]%). If the different adhesive technologies (Sovereign is not active in sealants) were to be considered separate relevant product markets, the combined market share of the parties would be below [20-30]% for every single technology in which there is an overlap between the parties' activities, both on a world-wide and EEA-wide scale. Therefore the notified transaction does not give rise to serious doubts that it would significantly impede effective competition in a world-wide or EEA-wide market for adhesives and sealants for the automotive industry or for any adhesive technology used for the automotive industry.

B. HOT AND COLD SEAL COHESIVES

78. In the market for hot and cold seal adhesives there is no overlap between the parties' activities, and as it has been explained in section A.2. above, Sovereign's presence in this market does not strengthen the merged entity's position in the neighbouring market of adhesives for laminating/flexible packaging. Therefore the notified operation does not give rise to serious doubts as to a significant impediment to effective competition with regard to the market for hot and cold seal adhesives.

C. MICROSPHERES

79. In an overall EEA-wide market, Sovereign's market share in thermoplastic microspheres (2003, in value) is [0-5]%. Sovereign supplies its spheres to only one customer in Europe, the distributor Lehman & Voss, who further distributes the products, *inter alia*, to Henkel and other suppliers of the automotive industry. The Commission's market investigation has confirmed that most of the parties' competitors that supply adhesives to the automotive industry purchase microspheres.
80. Where Henkel actually uses microspheres, i.e. the manufacture of specific lightweight underbody coatings, Henkel's sales share amounts to only [20-30]% in the EEA. In any case, there are strong competitors such as Expancel ([80-90]%) and Matsumoto ([10-15]%) who supply thermoplastic microspheres in EEA, thus excluding any possible foreclosure effect caused by the operation.
81. For these reasons, there are no serious doubts that the notified transaction might significantly impede effective competition in the market for thermoplastic microspheres or in the downstream market for lightweight underbody coatings.

VI. CONCLUSION

82. For the above reasons, the Commission has decided not to oppose the notified operation and to declare it compatible with the common market and with functioning of the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of the EC Merger Regulation and Article 43 of the EEA Agreement.

For the Commission,

Signed
Neelie KROES
Member of the Commission