

***Case No COMP/M.3753 -
KODAK / CREO***

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

Article 6(1)(b) NON-OPPOSITION
Date: 03/05/2005

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 03.05.2005

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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 Where possible the information omitted has been replaced by ranges of figures or a general description.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.3753 – KODAK/CREO
Notification of 29/03/2005 pursuant to Article 4 of Council Regulation
No 139/2004¹

1. On 29/03/2005, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 by which the undertaking Eastman Kodak Company (“Kodak”, USA) acquires within the meaning of Article 3(1)(b) of the Council Regulation control of the whole of the undertaking Creo Inc. (“Creo”, Canada) by way of purchase of shares.
2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of Council Regulation No 139/2004 and does not raise serious doubts as to its compatibility with the common market and the EEA Agreement.

I. THE PARTIES AND THE OPERATION

3. Kodak is an international group active in the development, manufacture and sale of “info-imaging” products and services, including various devices (digital cameras), image management infrastructure (delivery system for images), media and other consumables (lithographic plates, films) that enable people to capture, access, analyse and print images.

¹ OJ L 24, 29.1.2004 p. 1.

4. Creo is active in the development, manufacture and sale of lithographic pre-press products including digital and analogue imaging equipment for offset printing applications, digital photography and, to a lesser extent, digital offset printing plates.
5. The present transaction would cause Creo to fall under sole control of Kodak by way of acquisition by Kodak of 100% of Creo's issued and outstanding shares.

II. COMMUNITY DIMENSION

6. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 2.5 billion. In each of at least three Member States, the combined aggregate turnover of all the undertakings concerned is more than EUR 100 million and in each of at least three of these Member States [...], the aggregate turnover of the undertakings concerned is more than EUR 25 million but they do not achieve more than two thirds of their Community-wide turnover within one and the same Member State. The notified operation therefore has a Community dimension.

III. RELEVANT MARKETS

The relevant product market

Digital Plates

7. This transaction relates to the pre-press sector of the printing industry which involves the preparation of the printing process for books, newspapers, magazines, packaging etc. There are various products needed for this process: there is the pre-press equipment used to prepare printing plates (eg. platesetters and plate processors) as well as pre-press consumables i.e. printing plates and pre-press chemicals. During the pre-press phase an image is transferred from a computer onto a printing plate. There are two ways of transferring an image from a computer onto a printing plate: the analogue or computer-to film method ("CtF") and the more recent digital or computer-to-plate ("CtP") method. With the CtF method, the image is first transposed onto a film and subsequently copied onto a printing plate. With the CtP method, the image is directly transferred to the printing plate.
8. Kodak through its subsidiary KPG produces conventional (analogue) plates for computer-to-film (CtF) lithographic pre-press operations, and digital plates for computer-to-plate (CtP) lithographic pre-press operations. Creo produces only digital plates for lithographic pre-press operations.
9. In the Agfa-Gevaert/Lastra decision², the Commission found that analogue and digital plates did not belong to the same product market. This was because customers were constrained to use the type of plate that corresponds to the pre-press equipment installed. The parties therefore have considered digital plates as a relevant distinct market.
10. There are also two different types of digital printing plates - thermal and visible light (VL). These vary according to laser wavelength used to transfer images onto them. KPG

² Case N° COMP/M.3439 Commission Decision of 09/08/2004 pursuant to Art. 6 (1) (b).

produces thermal plates [...]. Creo recently commenced the production of thermal plates and has no VL capability.

11. In the Agfa-Gevaert/Lastra case, the Commission left open the question of whether thermal and VL plates are part of the same relevant market. Although separate market definitions might be justified on the basis of customer use it was found nevertheless that “thermal competed head-on with VL in virtually all printing sectors and that they act as a mutual strong competitive constraint”. It was also found that there was a degree of supply-side substitutability.
12. The parties have accordingly argued that thermal and VL plates should be included in the same market. They submit that thermal and VL plates compete with each other because their cost amounts to $\frac{3}{4}$ of the overall cost of ownership of a pre-press installation and hence customers choose in consideration of their projected life-cycle costs of plates.
13. The market investigation has confirmed the Commission’s findings in the Agfa case. Thus, from a demand-side perspective, it has been confirmed by some customers that thermal and VL plates were still separate product technologies, requiring different imaging light wave and processing system configurations; but others submit that both technologies are used on printing presses and that performance differences are getting smaller. In fact, it appears that the two types of plates compete when a decision of investing in new equipment is to be taken (but not after the decision has been made: the switch from thermal to VL and vice versa will not happen because of the different laser wavelength). The price for consumables, including plates, is one important factor that customers consider in this process. If the price for one type of plate were to be significantly higher than the price for the other, this would impact on the total cost of ownership for the customer, who might be dissuaded from investing in a solution based on such technology. The supply-side substitutability has been considered as feasible at no significant cost or risk by the manufacturers. Even if manufacturing lines are generally dedicated to either thermal or visible light production, some switching can occur.
14. In any event, for the purposes of this decision, the precise definition of the product market can be left open, since under no alternative product market will the proposed operation significantly impede effective competition in the common market or a substantial part of it in particular as a result of the creation or strengthening of a dominant position.

The relevant geographic market

15. In the Agfa/Lastra decision the Commission determined that the relevant geographic market for pre-press equipment and consumables is at least EEA-wide on the basis that all suppliers sell such products from a few manufacturing locations and transport costs are relatively low. The market investigation has not revealed any new elements which would suggest a change in the geographic scope of the market. The geographic scope of the market for the purposes of this decision is therefore the EEA.

IV. COMPETITIVE ASSESSMENT

Horizontal relationships

Digital plates

16. The only affected market in this case is the overall market for digital plates. On this market the new entity would have a market share of [30 – 40%] ([30 – 40%] for Kodak and [0 – 10%] for Creo), behind Agfa [40 – 50%] and ahead of Fuji [10 – 20%] and Ipagsa [0 – 10%].
17. In a separate hypothetical market for thermal plates, the market shares of the parties will amount to [50 – 60%] (Kodak [50 – 60%], Creo [0 – 10%]), ahead of Agfa [20 – 30%], Fuji [10 – 20%] and Ipagsa [0 – 10%]. Whilst this constitutes a significant market position, it does not equate to an impediment of effective competition as all the above mentioned European players are active in this market and none of the customers have indicated that they would encounter difficulties in switching suppliers if the new entity were to raise prices.
18. In addition the parties have submitted that there is a considerable number of other competitors who could be expected to expand their plate output if competitive conditions were to warrant their doing so. Some of these are already active in the EEA (Anocoil, IBF, MPM, Presstek) and others are believed capable of selling in EEA (Citiplate, Southern, Asian manufacturers). The Commission's investigation has confirmed the parties' submission in regard to the capability of these companies.

Vertical relationships

19. The parties are not engaged in product markets which are upstream or downstream of each other. The merger does not therefore lead to any vertically affected markets.
20. The rationale of the acquisition is to allow Kodak to offer a more fully integrated pre-press solution, looking alike the main player Agfa, with the ability to develop and manufacture its own equipment, consumables and workflow software. Until now, Kodak was focused on production and sale of consumables while Creo was an equipment supplier.
21. The parties claim that there is therefore no risk of foreclosure of non- integrated manufacturers. Furthermore even the current fully integrated players (Agfa, Fuji) package their plates with digital pre-press equipment from independent competitors. They claim that the incentives to continue such business conduct will remain after the transaction.
22. Furthermore the competitive conditions on these markets are not such as to give rise to a position of single dominance or otherwise to a significant impediment of competition. In relation to digital platesetters (equipment used to produce an image on non- reusable digital plates before the plates are mounted in a printing press), Creo holds in the EEA a [20 – 30%] market share behind Agfa [20 – 30%] and Dainippon [20 – 30%] and ahead

Heidelberg [0 – 10%] and Fuji [0 – 10%]. For the analogue pre-press sector, on the analogue imagesetters' activity (imagesetters are the platesetters of the analogue technology), Creo holds a [30 – 40%] EEA market share, ahead Dainippon [20 – 30%], Fuji [20 – 30%], Agfa [0 – 10%] and Heidelberg [0 – 10%]. In the analogue plates' activity, Kodak has a [30 – 40%] EEA market share, Agfa [30 – 40%], Fuji [10 – 20%] and Ipagsa [0 – 10%]. For the pre-press recording film, Kodak has [30 – 40%] market share in EEA behind Agfa [40 – 50%], Fuji [10 – 20%] and Konika [0 – 10%]. On the "workflow" software activity (consisting of programmes managing the movement of text and images from a data file to a film or plate), Creo has in the EEA a [20 – 30%] market share, Agfa [20 – 30%], Dainippon [10 – 20%], and EskoGraphics [10 – 20%].

23. The parties point to some features of the market described in the Agfa-Gevaert/Lastra case: technical innovation obliges players to compete to maintain their business; there is a high degree of inter-operability - most operators apply an "open system" approach which allows the products sold by the manufacturers or their distributors to be included in a wide variety of pre-press solutions; equipment manufacturers provide certification for a range of plates in order to ensure that their equipment is not devalued. Also customers tend to purchase solutions assembling products of various manufacturers. This practice of packaging various components brings a non-transparent character to negotiations often led through tendering processes.
24. The parties claim further that customers³ are free to choose whether to buy a fully integrated solution, only parts of a complete package, or their equipment, consumables and software separately. Because package deals normally last for 2-3 years (to finance the equipment portion of the package) and pre-press equipment last for 7-10 years, separate demand is generated. Kodak makes around [...] of its EEA sales in integrated solutions. It is also claimed that Agfa and Fuji continue to sell equipment, consumables and software separately.
25. The market investigation has confirmed the claims made by the parties in this regard. A large number of competitors and customers responded that there are still numerous suppliers of each package components. The freedom to choose all or part of a package is therefore effective for customers who wish to do so. And the interoperability standard ensures products can be integrated. Furthermore, if changing digital plates from one supplier to another can be more complex than a switch in respect of analogue plates, it appears that the factors involved are not prohibitive for the customer.
26. According to the parties there are at present 23 plate suppliers in the world, of which at least 10 are currently active in Europe. The parties' claim that virtually any of the existing plate suppliers worldwide who are not currently selling plate in the EEA could start to do so if competitive conditions were to warrant such entry. In addition there are now at least a dozen manufacturers of digital plate worldwide, including Agfa, Anocoil, Citiplate, Fuji, IBF, Ipagsa, Juguang, MPM, Presstek and Southern Lithoplate. Many of the current manufacturers of digital plate migrated to that business with the use of equipment on which they previously manufactured analogue plate. The costs and time of such migration are small. Indeed all but two of Kodak's digital plate production facilities were originally used for the production of analogue plates. The market investigation has confirmed the parties' claims in this regard.

³ Kodak believes there are approximately 37,000 commercial printers, 2200 newspaper publishers and 800 distributors dealing in lithographic pre-press equipment and consumables in the EEA.

V. CONCLUSION

27. It can therefore be concluded that the concentration will not significantly impede effective competition in the common market or in a significant part of it, in particular as a result of the creation or strengthening of a dominant position.
28. For the above reasons, the Commission has decided not to oppose the notified operation and to declare it compatible with the common market and the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of Council Regulation (EC) No 139/2004.

For the Commission

(signed)
Neelie KROES
Member of the Commission