

*Case No IV/M.835 -  
RECTICEL /  
GREINER*

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**REGULATION (EEC) No 4064/89  
MERGER PROCEDURE**

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Article 6(1)(b) NON-OPPOSITION

Date: 19/03/1997

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 19.03.1997

PUBLIC VERSION

MERGER PROCEDURE  
ARTICLE 6(1)(b) DECISION

To the notifying parties

Dear Sirs,

**Subject: Case No IV/M.835 - RECTICEL/GREINER**

Notification of 18.02.1997 pursuant to Article 4 of Council Regulation N° 4064/89

1. On 18.02.1997, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89 by which Recticel S.A./N.V. (Belgium) and Greiner Holding AG (Austria) acquire joint control of a new joint venture in the field of the production and distribution of flexible polyether and polyester polyurethane (PU) foams in Germany, Austria and eastern Europe.
2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of Council Regulation (EEC) No 4064/89 and does not raise serious doubts as to its compatibility with the common market and with the functioning of the EEA Agreement

**I. THE PARTIES' ACTIVITIES AND THE OPERATION**

3. **Recticel** is a subsidiary of Société Générale de Belgique, a Belgian company mainly active in energy, insurance, banking, tourism and steel. SGB, in turn, is a subsidiary of Compagnie de Suez, a French company active in industry, real estate, banking and insurance. Recticel is active in Europe and North America in the production and sale of PU foam used in the bedding sector (mattresses), for industrial purposes (filtration, acoustic applications, packaging), home furnishing, automobile industry (seat cushions, dashboards) and insulation purposes (cold storage, industrial insulation, construction). Recticel is also an important manufacturer of bedding products.
4. **Greiner** is entirely family owned. It is active in the production and sale of PU foam used in the furniture and mattress industry, for car, bus and railway seating and in the

insulation industry. In addition, Greiner manufactures foodstuffs packaging, laboratory and hospital products and cork products.

5. The concentration involves: a) the creation of a new JV company (European Kunststoffe GmbH) based in Germany to which Recticel and Greiner will transfer their German plants involved in the production (foaming) and conversion (cutting) of flexible polyester and polyether PU foam; b) the transfer of Greiner activities in Austria in the field of the flexible polyester and polyether PU foam to an already existing JV company (Eurofoam Gesellschaft mbH) between the two parties based in this country; and c) the establishment of a new JV management entity based in Belgium (Eurofoam International), which will head the two JV companies (from now on reference will be made to the above structure, taken as a body, as "the JV")

## **II. THE JOINT VENTURE**

6. The JV will be jointly controlled by Recticel and Greiner. Each of them will hold 50% of the capital and of the voting rights in both the German and Austrian joint ventures companies as well as in the management entity (Eurofoam International). The steering committee of the management entity will be responsible for strategic business decisions [...]<sup>1</sup>. The steering committee will consist of four members, two of which will be appointed by each parent company. It will decide by unanimous vote. Neither party will have a casting vote in the event of a deadlock.
7. The JV will operate on a lasting basis all the functions of an autonomous economic entity. It will manufacture, convert and market flexible polyether and polyester PU foam. The parties will transfer to the JV the assets, know how, staff and intellectual property rights required to develop its activities. In Germany, Recticel will transfer to the joint venture its flexible polyether PU foam plant located in Bexbach (foaming and converting) and Burkhardtsdorf (foaming and converting) and the converting plants located at Bad Ditzgenbach (Süd), Lünen (West), Herford/Hiddenhausen (Nord) and Dörfles-Esbach (K.F.M.). In addition, the flexible polyester PU foam plants at Düsseldorf (foaming and converting) and Troisdorf (converting) will be transferred. In total, Recticel will transfer approximately [...] employees to the JV with a production of approximately [...] t and envisaged sales of approximately DM [...] million. Greiner will transfer its German plants in Ebersbach (foaming and converting plant), Nürtingen, Wabern and Coburg (conversion plants), which are all active in the polyether PU foam business. In addition, Greiner will transfer the polyether and polyester PU foam business of its Austria plants in Linz and Kremsmünster (foaming and converting), and the conversion plants at Graz and Innsbruck. In total in Germany, Greiner will transfer [...] employees and a production volume of [...] with a turnover of DM [...] million to the joint venture. In Austria, PU foam business with a volume of [...] t and a turnover of DM [...] million will be transferred to the JV with [...] employees. In total, the JV will account for an estimated annual turnover of DM 450 million.
8. The JV will operate as an independent buyer and supplier in the market. Greiner will withdraw entirely from the flexible polyether and polyester PU foam markets on a lasting basis and will not remain an actual or potential competitor of the JV. Certain contractual links between on the one hand the JV and on the other hand one or another of the parent companies are envisaged pursuant the Joint Venture

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<sup>1</sup> Business Secrets - deleted for publication

Agreement, being the licensing of intellectual property rights, the use on an arm's length basis of the parents' R&D facilities, some supply from and to the parents of products related to the JV's markets, some services arrangements regarding EDP, accounting, insurance, pension management, etc. These aspects do not prevent this operation from being considered as concentrative, since they are only of minor economic importance with respect to the operation as a whole.

9. In the specific circumstances of this case, it appears that coordination between the parents within the meaning of Article 3(2) of the Merger Regulation is not likely to occur. The operation therefore constitutes a concentration within the meaning of Article 3(1)b of the Council Regulation.

### **III. COMMUNITY DIMENSION**

10. Compagnie de Suez and Greiner group have a combined aggregate worldwide turnover in excess of ECU 5,000 million (Compagnie de Suez, ECU 14,735 million; and Greiner, ECU 353 million). Each of them has a Community-wide turnover in excess of ECU 250 million (Compagnie de Suez, ECU [...] million; and Greiner, ECU [...] million), but they do not achieve more than two-thirds of their aggregate Community-wide turnover within one and the same Member State. The notified operation therefore has a Community dimension, but does not constitute a cooperation case under the EEA Agreement, pursuant to Article 57 of that Agreement.

### **IV. COMPETITIVE ASSESSMENT**

#### **A. Relevant product market**

11. The JV will operate in the sector of PU foams. PU foam is a petrochemical product produced from two raw materials (a polyalcohol and a polysocynate) that undergo a chemical reaction leading to an expansion in volume. PU foams are divided into rigid and flexible foams. Rigid foams are mainly produced as blocks and panels and used for insulation purposes. Flexible foams are produced by pouring the blend of the two raw materials above either onto a rolling conveyor belt (block foam) or into a mould (moulded foam). Moulded foam is mainly used in the automotive industry (seat cushions, headrests). Block foam is cut into slab-stock to be further cut (converted) in accordance with the specifications demanded by customers. Block foam exists in both polyether and polyester form, depending on the nature of the polyol (polyalcohol) that is used. Polyether foams are different from polyester because of their greater flexibility and their homogeneous density. Polyester foams are more brittle and generally more difficult to produce than polyether foams.
12. There is a large variety of polyether and polyester foams that serve several applications. In general terms two main branches can be identified, being omfort polyether foam for the furniture and bedding industry, and technical foam (mainly in polyester form) for various industrial purposes. Technical foam can be further subdivided into three categories, according to the complexity of the technology involved in the manufacturing process, to uses and price differences. Conventional ester does not require significant technology, is produced by nearly all ester foamers and constitutes the larger part of the technical foam market. It is mainly used in the clothing and packaging industry and automotive trims. Specialty ester involves greater technology and know-how to produce. It is generally used in consumer goods such as sponges, painting rolls and sealing uses in automobiles. Post-treated foams

encompass both polyether and polyester foams. Once manufactured, these foams undergo additional processes, such as reticulation, impregnation and densification. Post-treatment processes require substantial technology and know-how. Post-treated foams is mainly used for filtration purposes- building, households and automotive - and acoustics.

13. The parties have submitted that, due to the differences in characteristics, use, price and productive process, the relevant product markets are those for flexible polyether PU foam for comfort uses and flexible polyester PU foam for technical uses. However, it is not necessary to further delineate the relevant product markets because, in all alternative market definitions considered, effective competition would not be significantly impeded in the EEA or any substantial part of that area.

### **B. Relevant geographic market**

14. The parties claim that markets for flexible polyether and polyester PU foams are not of a national but rather of a regional dimension, comprising several national markets, if not the entire Community.
15. A large part of polyether and polyester foams appear to be homogeneous mass products that show identical specifications throughout Europe and the world. DIN standards exist for polyether foams. Most polyester foams (in particular conventional esters) are standardised products that show identical properties throughout the EEA. Relatively important transport costs and the need to guarantee just-in-time delivery do limit the radius within which such products can be sold to about 500 km from the factory. However, due to the overlapping radii of the production plants of some most important foam producers across Europe, market conditions and prices tend to be homogeneous in particular throughout the central region of the Community. As regards higher value segments of technical foam (special and post-treated foam), transport costs are of lesser importance and the market could have an even wider dimension.
16. However, it is not necessary to further delineate the relevant geographic markets because, even in the narrowest geographic market definitions considered, effective competition would not be significantly impeded in the EEA or any substantial part of that area.

### **C. Impact of the concentration**

17. The JV will be active in the manufacturing and distribution of comfort polyether and conventional technical foams in Germany, Austria and Eastern Europe. Germany is the only country where the parties' activities overlap.
18. As regards polyether comfort foams, the JV will have [...] of the EEA production (Recticel [...] and Greiner [...]), based on figures 1995. Major competitors include British Vita ([...]<sup>2</sup>%), the US group Carpenter ([...]<sup>3</sup>%), Olmo ([...]<sup>4</sup>%) and Shell ([...]<sup>5</sup>%). In Germany, the JV's market share will be [...] % (in 1995: Recticel [...]<sup>2</sup>%,

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<sup>2</sup> Business Secrets - between 15 - 25%

<sup>3</sup> Business Secrets - between 15 - 20%

<sup>4</sup> Business Secrets - < 5%

<sup>5</sup> Business Secrets - < 10%

<sup>6</sup> Business Secrets - between 25 - 35%

Greiner [...]%)<sup>5</sup>). Major competitors are British Vita ([...]%)<sup>7</sup>, Löhr ([...]%)<sup>8</sup>, Carpenter ([...]%)<sup>9</sup>, Conti ([...]%)<sup>10</sup> and some Belgian, French and Italian companies with market shares ranging from [...]%)<sup>11</sup>. If Austria, where Greiner has [...] % of the market (Recticel is not present), is added to Germany to form a sole market, the JV' share is increased to [...]%)<sup>6</sup>.

19. This market is characterised by decreasing demand, mainly because downstream producers are moving production to Eastern Europe, and by excess in production capacity for all producers. It appears that customers would therefore not encounter substantial difficulties in switching their supplier in light of the fact that polyether PU foam is a standard commodity product that is sourced by customers depending on price. In addition, barriers to market entry seem low, as is shown by two examples of business (Carpenter, Löhr) successfully entering the market in Germany in the last five years. Therefore, although the operation can be seen as a further step within the general trend towards concentration in this market, it appears that the operation will not lead to the creation or strengthening of a dominant position on the relevant market.
20. Recticel is active in the downstream market of mattresses, where it holds a rather important position on both the German and Austrian markets (approx. [...]%)<sup>3</sup> and [...]%)<sup>2</sup> respectively, according to the parties). Given the above characteristics of the polyether market, the proposed concentration does not appear to raise any competition concerns in relation to the vertical integration of Recticel. Neither in Germany nor in Austria would the proposed transaction lead to a significant reduction in supply sources of polyether PU foam for customers in the mattress industry.
21. As regards technical foams, this operation reinforces the significant degree of concentration already achieved in this market. The JV will have [...]%) of the EEA production (Recticel [...]%)<sup>9</sup>, Greiner [...]%)<sup>4</sup>), based on 1995 figures. The leading producer is British Vita ([...]%)<sup>7</sup>), other producers include Otto Bock ([...]%)<sup>8</sup>) and Reisgies ([...]%)<sup>5</sup>). In Germany the JV's market share will be of [...]%)<sup>0</sup> (in 1995: Recticel [...]%)<sup>6</sup>, Greiner [...]%)<sup>4</sup>). Major competitors are British Vita ([...]%)<sup>7</sup>), Otto Bock ([...]%)<sup>6</sup>), and Reisgies ([...]%)<sup>5</sup>). If Austria is added to Germany to form a sole market, the JV's share becomes [...]%)<sup>10</sup>.
22. Greiner is exclusively active in the commodity segment of technical foams, i.e. conventional ester. If the latter is taken as the relevant product market, the parties' share in Germany will be [...]%)<sup>8</sup> in Germany (Recticel [...]%)<sup>2</sup>, Greiner [...]%)<sup>5</sup>), and [...]%)<sup>6</sup> in Germany and Austria together. The rest of the market is covered by British Vita ([...]%)<sup>11</sup>), Otto Bock ([...]%)<sup>6</sup>), and Reisgies ([...]%)<sup>5</sup>).
23. Despite the important degree of concentration, the operation does not appear to be likely to create or strengthen a dominant position of the parties on the market. The actual characteristics of this market reflect largely those highlighted above for the

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<sup>7</sup> Business Secrets - > 70%

<sup>8</sup> Business Secrets - between 20 - 30%

<sup>9</sup> Business Secrets - between 20 - 25%

<sup>10</sup> Business Secrets - between 30 - 40%

<sup>11</sup> Business Secrets - between 35 - 45%

comfort foam market. Pressure on prices is exerted by decreasing demand coupled with overcapacity amongst the manufacturers.

24. As regards in particular conventional esters, potential and actual competition is allowed by low barriers to entry (initial investments are relatively low and production process is not demanding from a technical point of view). In general, although technology and manufacturing processes differs between the various types of PU foams (e.g. rigid, moulded, block), major companies which are already active in any of these products appear to be in a position to start production of other foams. Major players in the PU foam sector, include some financially powerful groups, like e.g. Shell and the US Carpenter. As a matter of fact, Carpenter has recently begun the production and sale of polyester foams in Germany. It is furthermore noted that usual requirements by the customers as to just-in-time delivery tend to favour a regular degree of switching between suppliers.
25. In the light of the above, and furthermore in view of the fact that Greiner's contribution in terms of market share to the JV in the technical foam market is of a relatively minor importance, a creation or strengthening of dominant position by the JV can be excluded. In addition, there would appear to be no risk of a creation of an oligopolistic dominant market position amongst the three major companies that are active in Germany. In particular given the above mentioned actual features of the market it appears that there is no risk of parallel behaviour between them.

#### **V. ANCILLARY RESTRICTIONS**

26. The parties have requested the following provisions contained in the Joint Venture Agreement to be assessed in conjunction with the concentration and declared restrictions ancillary to it:
  - i) Recticel and Greiner's undertaking not to compete with the JV on the block flexible PU foams markets in Germany, Austria and Eastern Europe.
  - ii) The limitation of the JV's scope of activities to areas where neither of the parent companies are active.
  - iii) The restriction on the JV sales of Bultex PU foam qualities for mattresses - which are produced by the JV under a licence granted by Recticel - according to which these qualities can be sold exclusively to Recticel's mattress producers. (Sales values estimated up to not more than DM [...]² p.a.).
27. The provisions under i) and ii), in so far as they express the lasting withdrawal of the parents from the market assigned to the JV have to be recognised as an integral part of the concentration<sup>13</sup>.
28. As regards licence agreements, the Commission generally considers that they can be accepted as necessary for the completion of a transaction to the extent that they correspond to the activities transferred to the joint venture. However, the restriction relating to the licence agreement, by which the JV is obliged to sell exclusively to

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<sup>12</sup> Business Secrets - value is not significant when compared to the JV's total turnover

<sup>13</sup> see chapter V, letter A, of the Commission notice on restrictions ancillary to concentrations

Recticel mattress producers goes beyond what can be accepted as necessary to the implementation of the concentration itself. Therefore the present decision does not cover the provision under iii) above, since it can not be considered ancillary to the concentration.

29. The Commission's decision can neither cover any restriction for which thenotifying parties have not asked for an assessment in conjunction with the concentration and therefore they have not justified they are related to the concentration and necessary to its implementation.

## **VI. CONCLUSION**

30. 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 the functioning of the EEA Agreement This decision is adopting in application of Article 6(1)(b) of Council Regulation.

For the Commission,