



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 15-01-1998

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying parties

Dear Sirs,

Subject: Case No IV/M.1042 - Eastman Kodak / Sun Chemical

Notification of 1.12.1997 pursuant to Article 4 of Council Regulation N/ 4064/89.

1. On 1.12.1997 Eastman Kodak Company ("Kodak") and Sun Chemical Group B.V. ("Sun") notified an operation by which a new joint venture company, "Kodak Polychrome Graphics", will be created, owned equally by the two parties. The concentration will merge the activities of the parents in the graphic arts films, offset printing plates, chemicals, equipment and services markets.
2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of Council Regulation N° 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

3. Kodak is an international group active in several fields involving the manufacture and supply of imaging products and services, including graphic arts products, to various markets.
4. Sun Chemical Group BV ("Sun") is a wholly owned subsidiary of Dainippon Ink and Chemicals Inc ("Dainippon") and is active in the production of printing inks, offset printing plates and graphics arts film. Its graphic arts activities are carried out by its Polychrome Division.

II THE OPERATION

5. The merged group Kodak Polychrome Graphics (“KPG”) will consist of two legal entities, one operating on the US market and one for the rest of the world (including the EEA). Sun and Kodak’s Japanese assets that are used for selling on the Asian market only, will be transferred to KPG at a later stage and are not part of the present decision.

Joint control

6. Kodak and Sun will each own 50% of the shares in KPG and will be able to nominate 3 each of the 6 directors on the Board. The Board of Directors will have overall management responsibility without restriction for all major policy and strategic decisions. Any deadlock will ultimately be resolved by arbitration.

Full function joint venture

7. The joint venture will have sufficient financial and other resources including staff and assets: both Sun and Kodak will contribute all their graphic arts assets to the joint venture. All selling and marketing, including a large proportion of production is to be carried out by KPG.
8. However, Kodak’s graphic arts production and R&D facilities for film and proofing cannot be physically transferred as they are used in Kodak’s other lines of business (i.e. R&D and films for camera) which are not the subject of the concentration.
9. Therefore, Kodak and KPG will enter into exclusive supply contracts for a proportion of the products to be sold by KPG (See below in the section dealing with ancillary restraints). According to these contracts, for an initial period of [...] ¹ years Kodak will act as exclusive supplier of the joint venture for films and proofing products. Products procured from Kodak will represent [...] ² of the total sales of KPG and these purchases are expected to diminish in the next few years in accordance with the downward evolution of the markets of films as compared with the increase in the offset plates markets.
10. KPG will run for a minimum of 10 years, with the automatic option to renew for periods of 5 years.

Coordination

11. Neither Kodak nor Sun will sell graphic arts film, offset printing plates or other graphic arts products or services except through the joint venture. Only the joint venture and Kodak, and not Sun, will be involved in the sale of digital proofing equipment.
12. The operation will therefore lead to the creation of a joint venture, performing on a lasting basis, all the functions of an independent economic entity.

¹ Deleted business secret

² Deleted business secret: less than 45%

III COMMUNITY DIMENSION

13. The combined aggregate world-wide turnover of the undertakings concerned exceeds ECU 5 000 million (Kodak 12 573 MECU; Dainippon 6 246 MECU). The aggregate Community-wide turnover of each exceeds ECU 250 million (Kodak 2 900 MECU; Dainippon [...]³ MECU). They do not achieve more than two thirds of their turnover in one and the same Member State. The operation has therefore a Community dimension, but does not constitute a cooperation case under the EEA Agreement.

IV RELEVANT MARKETS

A. Relevant product markets

14. Graphic arts film and offset printing plates are used in the different stages of the printing process. Customers in this sector include newspaper printers, commercial printers and printers of packaging.
15. Graphic arts products are used to convert text and artwork into images on film in preparation for their transfer onto an offset printing plate. Offset printing technology is used when larger numbers of printed copies are needed and provides a clearer printed product than, for example, ink jet printing.
16. According to the parties, the following affected product markets may be distinguished: graphic arts film, offset printing plates, equipment, papers, chemicals and services.

Graphic arts film and offset printing plates

17. The parties submit that within the graphic arts film and offset printing plates sectors there are only two different product markets, namely graphic arts plus offset printing plates. They claim that film and plates can be produced using similar manufacturing processes and that the different films and plates are merely the product of combinations of different techniques used.
18. However, from the Commission's enquiry it appears that five affected relevant product markets within the graphic arts film sector and three affected relevant product markets within the offset printing plates sector may be distinguished. This distinction is made on the basis of technical characteristics of the base material, the production technique (e.g. conventional or digital) being used and the different applications of the various types of film and plate.

³ Deleted business secret

19. From the customer's point of view, the products nevertheless have specific qualities and are 'system-bound', i.e. expensive product specific equipment is needed to process a particular type of film or plate. Moreover, the parties themselves state that the choice of one type of film or plate depends also on the end-user equipment being used. The cost of a new imagesetter, which can process a different kind of film, is between 30 000 ECU and 250 000 ECU, and the cost of a plate processor is between 13 000 ECU and 63 000 ECU (with a minimum of 315 000 ECU for a CtP processor).
20. A large proportion of the competitors and customers who replied to the Commission's inquiry agreed that the products which are described below are not substitutable and belong to separate product markets.
21. Consequently, the Commission considers that as regards graphic arts film and offset printing plates, in the present case, the following 8 affected product markets could be defined as an alternative to the market definition proposed by the parties:

Graphic Arts Film:

- Camera Film
- Contact Film
- Blue Laser Recorder Film
- Red Laser Recorder Film
- Infra-Red Laser Recorder Film

Offset Printing Plates:

- Positive Plates
- Negative Plates
- Plates for Computer to Plate (CtP) technology

22. However, for the purpose of the present case it is not necessary to define the product markets any further, because on all alternative market definitions, the operation would 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.

Paper, equipment, chemicals and services

23. The parties consider that the markets for phototypesetting paper, processing equipment, chemicals and services are ancillary to the films and plates markets.
24. Phototypesetting paper is a light-sensitive paper, mostly supplied in rolls for use in so-called phototypesetters, the predecessor of the present imagesetters. These machines expose text only onto paper, whereas imagesetters can reproduce text as well as images onto graphic arts film. Phototypesetting paper is used mostly in the newspaper industry to create a page layout for text. It is a rapidly declining product which is being taken over by imagesetting (graphic arts) films. It is conceivable, since there are different types of phototypesetting paper which are used with specific equipment, that a further subdivision of the product market is appropriate than that proposed by the parties.

25. Given the link between certain types of equipment and the products used with them (films and plates), it is conceivable that a further subdivision into markets for equipment used for the particular types of film and plate (e.g. image-setters for red laser film), is appropriate.
26. Chemicals consist mainly of developers and fixers. Similarly as with equipment, chemicals are often purchased from the same supplier who delivers the consumables (films and plates). Due to the specific applications of chemicals for use with particular films and plates (e.g. the use of a specific kind of developer chemical with a particular type of film), it may also be conceivable that a narrower definition of the market is appropriate.
27. As regards servicing, this concerns, in particular, after-sales (maintenance) service on the equipment. It is often carried out by the suppliers of the equipment, however, independent service bureaux exist as well. Hence, it may be appropriate to define a separate product market for servicing. Moreover, it is conceivable that within this market different equipment and equipment brands for which services are offered can be distinguished.
28. However, for the purpose of the present case it is not necessary to define the markets for papers, equipment, chemicals and services, any further, because on all alternative market definitions, the operation would 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.

B. Relevant geographic market

29. According to the parties the relevant geographic markets are at least EEA-wide for graphic arts film and at least EEA-wide for offset printing plates. They claim that most of Kodak and Sun's films are imported from outside the EEA and that other graphic arts film producers exist who do the same.
30. There are a limited number of production sites throughout the EEA, dealers in various Member States buy directly from those sites and hence important trade flow between Member States exists. There are no legislative or technical barriers to imports. Furthermore, price tendencies in the various Member States, measured over the last three years, have to a large extent shown a similar trend throughout the EEA.
31. However, as regards the possible definition of wider geographic markets, customers in general do not consider suppliers, who do not sell from within the EEA, to represent realistic alternative sources. The main reasons given are: the proximity to the customer and the necessity to respond rapidly to customer demand. Furthermore, an analysis of market prices in different world regions over the period 1992-1996 has shown, firstly, that significant price differences exist between, for example, the EEA and the U.S. (e.g. there is a difference of 19,2% in 1996 for red laser film prices), and secondly, that as far as price trends are concerned, in the EEA there has been a constant and regular decrease in prices, whereas in for example the U.S., prices in 1996 were higher than in 1992.
32. For these reasons, the Commission considers that the affected markets for graphic arts film and offset printing plates are EEA-wide.

V ASSESSMENT

A. Markets for graphic arts film

33. It can be seen from the table below, that within the EEA, Kodak and Sun would combine respective market shares of between 24% and 33% for the different type of film.

EEA 1996	Kodak	Sun (Polychrome)	Kodak/Sun	Agfa	DuPont	Fuji	Others
Camera	<21%	<12%	<33%	<26%	<15%	<7%	<20%
Contact	<16%	<8%	<24%	<28%	<15%	< 8%	<25%
Blue Laser	<18%	<9%	<27%	<20%	<21%	<11%	<21%
Red Laser	<20%	<7%	<27%	<34%	<10%	<9%	<20%
Infra-Red Laser	<22%	<10%	<32%	<28%	<8%	<11%	<21%

34. On each of the affected film markets, significant powerful competitors exist, such as Agfa (between <20% and <34%) and DuPont (between <8% and <21%), who all possess significant financial resources and distribution networks spread throughout the EEA. Other world-wide companies such as Fuji, Horsell-Anitec (International Paper), Konica or Imation (3M) are also active in the EEA.

B. Markets for offset printing plates

35. In this sector, the addition of market shares would give KPG a combined market share of <30% for CtP plates and <24% for each of the positive and negative plates markets.

Plates 1996	Kodak	Sun (Polychrome)	Kodak/Sun	Agfa	DuPont	Horsell	Others
Positive	<1%	<23%	<24%	<19%	<12%	<17%	<28%
Negative	<4%	<20%	<24%	<27%	<26%	<7%	<16%
CtP	<2%	<28%	<30%	<23%	<51%	0%	0%

36. The addition of market shares leads to an insignificant increment for the proposed new entity (Kodak held between <1% and <4% market share). Moreover, there are powerful world-wide competitors present in the plates sector too: Agfa (between <19% and <27%) and DuPont (between <12% and <51%) are present for example. In the category of “others” for positive and negative plates, there can be found Lastra (between <5% and <13%) and Fuji (between <10% and 12%), which are also present throughout the EEA.

Markets for paper, equipment, papers, chemicals and services

37. The parties do not provide precise figures for market shares or size on these markets given that no public market research data exists. On the market for papers, the combined turnover of KPG amounted in 1996 to around [...]⁴ MECU. However, this business is rapidly declining by around 30% each year due to the introduction of new technology in the mid-eighties which eliminated the need for paper. The parties estimate that their market share is, at most 35%, the main competitors being Agfa (34%) and Fuji (7%). In equipment, chemicals and servicing markets, the joint-venture would be affected by a greater number of competitors than on the other affected markets. The combined turnover of the joint-venture amounted in 1996 to, [...]⁵ MECU for equipment, [...]⁶ MECU for chemicals and [...]⁷ MECU for services. They estimate however, that in the chemicals market their sales levels represent roughly 10% of the value of film sales. However, it is not useful to derive market share from sales volume in this market since chemicals are supplied in various concentrations. On each of the equipment, chemicals and services markets, there are a considerable number of manufacturers and dealers throughout the EEA. In particular, equipment manufacturers are world-wide companies such as Man Roland, Heidelberg and Rockwell.

Conclusion

38. In the light of the presence of powerful world-wide competitors such as Agfa and DuPont, on each of the affected markets, it is concluded that the proposed concentration will not lead to the creation or strengthening of a dominant position.

VI ANCILLARY RESTRAINTS

39. The parties have presented the following clauses of their agreements as ancillary restraints:
40. The Supply Agreements between Kodak and KPG are exclusive supply agreements. Kodak may only sell the graphic arts products on the market via KPG. Moreover, the agreements contain non-compete clauses and exclusive purchasing obligations. These are limited to the duration of the Agreements, which is [...]⁸ years with

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automatic renewal for further periods of [...] ⁹ years unless either party provides written termination to the other.

41. The parties have also concluded a Research and Development Agreement (pursuant to the Supply Agreements) for Kodak to provide graphic arts R&D exclusively to KPG. This is similarly limited to the duration of the Agreement as described above.
42. The Commission considers that the exclusive supply agreements for a minimum period of [...] ¹⁰ years with the automatic option to renew for further periods of [...] ¹¹ years, are restrictions that exceed that which the implementation of the joint-venture reasonably requires. As regards Kodak, given the impossibility to transfer its film production to the joint-venture, it will want to guarantee an output at previous levels for its existing production facilities. As regards the joint-venture, it wants to ensure that supplies of film remain stable. Thus there are grounds for recognising, for a transitional period, the conclusion of the above purchase and supply agreement. However, it is considered that a transitional period of [...] ¹² years, in view of a possible transfer or setting up of production facilities, would suffice to make the necessary adjustments so that the relation of dependency can be replaced with one of autonomy in the market. This conclusion can also be made as regards R&D, considered inseverable from Kodak's current activities, which could be carried out by KPG after a transitional period of equal duration. Therefore the restrictions in the supply and R&D agreements are only covered under this decision for a period of [...] ¹³ years from its adoption.
43. The non-compete clauses, which express the reality of the withdrawal of the parents from the market assigned to the joint venture, can be considered as an integral part of the concentration.

VII CONCLUSION

44. For the foregoing 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 adopted in application of Article 6(1)(b) of Council Regulation (EEC) No 4064/89.

For the Commission,

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