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*Case No IV/M.113 -
COURTAULDS / SNIA*

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

Article 6(1)(b) NON-OPPOSITION
Date: 19.12.1991

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MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

PUBLIC VERSION

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1. Notifying party
2. Notifying party

Dear Sirs,

Subject: Case No. IV/M113 - Courtaulds/SNIA
Notification of 19.11.1991 pursuant to Art. 4 of
Council Regulation No. 4064/89

THE AGREEMENT

1. The Commission has received a notification of a proposed concentration by which the undertakings Courtaulds plc ("Courtaulds") and SNIA Fibre S.p.A. ("SNIA") create a joint venture in the acetate filament yarn sector by way of the transfer of their existing activities to a newly created company (Novaceta Limited).

THE PARTIES

2. SNIA is a publicly quoted company, its majority shareholder being SNIA BPD S.p.A. (77.68%). SNIA BPD S.p.A. shareholders, with in excess of 2% of the voting rights, are Sicind S.p.A. (45.48%) and Mediobanca (11.35%). Sicind S.p.A. has the power to appoint more than half of the members of the board of directors of SNIA BPD S.p.A. Sicind S.p.A. is a wholly owned subsidiary of Fiat S.p.A. SNIA's principal activities include the manufacture and sale of fibres in the form of filament and staple.

3. Courtaulds is a publicly quoted company. Its two largest shareholders are insurance companies: Provident Mutual (5.6%) and Prudential Corporation (3.9%). No other holding exceeds 3%. Courtaulds' principal activities include the manufacture and sale of coatings, packaging, chemicals, fibres and film.

COMMUNITY DIMENSION

4. The Fiat group (whose turnover must be taken into account when calculating SNIA's turnover under Article 5(4) of the Merger Regulation) on its own has a worldwide turnover well in excess of 5,000 million ECU.

5. Courtaulds' and SNIA's Community-wide turnover each exceeds 250 million ECU. The parties do not achieve more than two-thirds of their turnover in one and the same Member State. Thus, the operation has a Community dimension.

CONCENTRATION

6. Courtaulds and SNIA will transfer to a newly created company "Novaceta Limited", in which each will hold a 50% participation, all their existing acetate filament yarn interests, namely:

- their existing joint venture (also called "Novaceta") which produces filament yarn in Magenta in Italy and was formed in 1953;
- Courtaulds' own acetate yarn operations in the UK ("CFY");
- SNIA's own acetate yarn operations in Vercelli in Italy ("ITV").

The respective turnover of these three enterprises is as follows:

| 1990, Mio. ECU | EC | Worldwide |
|----------------|-----|-----------|
| Novaceta | 65 | 95 |
| CFY | 66 | 85 |
| ITV | 35 | 35 |
| TOTAL | 166 | 215 |

Novaceta Limited will be jointly controlled by Courtaulds and SNIA (each appointing equal numbers of directors to Novaceta Limited's board). Courtaulds has previously sold or closed its other activities in the continuous filament yarn sector, and retains no interests in this sector other than a minority interest (12% of the shares and the appointment of one director) in INACSA S.A., a Spanish manufacturer of acetate yarn which has 9% of the Western European market (see below under "Assessment"). Furthermore, Courtaulds is in the process of terminating even this interest in INACSA. SNIA will retain a non-controlling interest in Nuova Rayon S.p.A, which manufactures viscose filament yarns with a market share in Western Europe of 0.4%; SNIA will also retain its own polyamide production operation with a market share in Western Europe of 4.1%. Given that viscose and polyamide yarns, despite a certain degree of product substitutability, are not part of the same product market as acetate yarns (see below under "relevant product market"), there is no room for co-ordination of market behaviour between SNIA and Novaceta Limited.

7. Courtaulds and the joint venture will enter into a supply agreement (the "Flake Agreement"). Courtaulds will supply around [...] (*) of the joint venture's requirement; [...] (*).

The total amount of flake produced worldwide is about 836,000 tonnes, of which the great majority, some 698,000 tonnes, is used by the flake producers for their in-house activity and only 138,000 tonnes are sold as a commodity to external customers.

Since the JV's total flake requirements are expected to be about [...] (*) tonnes per annum, since unlike the other principal suppliers of acetate yarns in the world, the joint venture will not be vertically integrated back into flake and since in purchasing flake on the open market the joint venture will be in competition with other non-vertically integrated yarn, plastic and cigarette tow producers, the parties consider it necessary to assure [...] (*) a source of supply for the joint venture. This is the context in which the agreement was conceived, and because of its non-exclusive nature [...] (*), this agreement is not expected to limit the autonomy of the joint venture.

8. In addition, the following agreements are foreseen:

- Four lease agreements in respect of the three UK sites (owned by Courtaulds) and the Italian site (currently owned by ITV and to be transferred to SNIA).
- An agreement providing for certain services (including safety, fire, security, environment, electricity, steam, gas, water and effluent treatment) to be made available on arm's length terms by Courtaulds to the joint venture at two of its sites in the UK (Spondon and Little Heath) which will be shared with Courtaulds' retained operations in other sectors (cigarette tow, films, tool handles, etc.).
- An Administrative Services Agreement whereunder SNIA will provide certain administrative support services (tax, legal, etc) to the joint venture in Italy on arm's length terms for five years (terminable on 12 months' notice).
- A Know-How and Technical Services Agreement for a period of five years (terminable on 12 months' notice). The know-how covered by this agreement relates to technical assistance of the type which a supplier would generally provide a customer to help it to run machines using the products supplied.

None of these agreements jeopardise the joint venture's capacity to perform on a lasting basis all the functions of an autonomous economic entity since by their very nature they do not enable the parent to exercise any significant influence on the joint venture. Regarding the lease agreements, it has to be stressed that they concern only the premises; the joint venture will

(*) deleted for publication

acquire ownership of all business assets (including plant, machinery, equipment, stock, intellectual property and the right to use assets held under leasing arrangements with third parties).

In view of these facts, the joint venture will perform on a lasting basis all the functions of an autonomous economic entity and the proposed operation is to be considered as a concentrative joint venture within the meaning of Article 3(2) of the Merger Regulation.

APPRAISAL

The relevant product market

9. The product to be manufactured and supplied by the joint venture is acetate yarn. This is one of the man-made continuous filament yarns. Continuous filament yarns are a category of fibre material among the wide range used by the textile industry. They consist of continuous threads which can be extremely fine and can be as long as is required. Man-made yarns are to be distinguished from natural fibres such as cotton and silk. Man-made yarns are themselves sub-divided into so-called "cellulosic" yarns (cupro, viscose and acetate) which are extracted from wood-pulp, and "synthetic" yarns (polyester and polyamide) which are oil-based products. Man-made filament yarns are used mainly in the following sectors: knitting, carpets, and woven products (apparel, furnishings, industrial fabrics and linings). Over the last ten years the total worldwide production of man-made continuous filament yarns has increased by about 35%; over this period the production of synthetic yarns has increased by about 50% whilst that of "cellulosic" yarns has declined by about 18%.

10. The current annual West European consumption of acetate filament yarn amounts to about 45,000 tonnes, which represents only about 3.7% of total West European continuous filament yarn consumption (all categories) and can be broken down approximately as follows:

| End use | % total acetate yarn production |
|------------------------------------|---------------------------------|
| <u>Knitting and other products</u> | 24 |
| <u>Carpets</u> | 0 |
| <u>Woven products</u> | |
| Linings | 55 |
| Apparel | 16 |
| Furnishings | 5 |
| | — |
| | 76 |
| Total | 100 |

11. From this it is clear that the linings end-use is by far the most important as far as consumption of acetate filament yarn is concerned. Moreover, this is the only end-use in which acetate yarn has a significant share:

| | |
|---------------|----------------------------|
| Filament yarn | % share of linings end-use |
| Cupro | N.A. ⁽¹⁾ |
| Acetate | 30.6 |
| Polyester | 28.9 |
| Viscose | 28.1 |
| Polyamide | 12.4 |
| Total | 100 |

For other end-uses, the share of acetate yarn is below 5%.

12. For the woven products end-use category market values are as follows (West Europe 1989):

| Woven Product Type | (a) Total market Value (MEcu) | (b) Acetate yarn % market share | Acetate yarn market value (MEcu) (a)x(b) |
|--------------------|----------------------------------|------------------------------------|--|
| Linings | 490 | 30.6% | 150 |
| Apparel | 720 | 5% | 36 |
| Furnishings | 370 | 2.8% | 10 |

In view of this demand structure for acetate filament yarn, the present assessment pays particular attention to the linings sector.

13. The various man-made continuous filament yarns are demand-substitutable to a degree, but their different market positions are relatively well established, with acetate's main distinctiveness being its mid-range price and its aesthetic qualities:-

a) Difference in price

If the acetate yarn price is made equal to 100, the cupro price would be around 200, viscose at least 135, polyester 65 and polyamide 90. These differences are reflected in the price of finished linings fabric, where acetate costs at least 20% more than polyester, but around 33% less than viscose.

b) Differences in Physical characteristics

cupro is a cellulosic product of very high quality with regard to absorption, resistance and aesthetic characteristics

⁽¹⁾ Very small percentage.

viscose is a cellulosic product with good moisture absorption and abrasion resistance, which has good strength and produces solid colours in dyed form

acetate is also a cellulosic product which is gentler to the touch than viscose, with good moisture absorption but poorer abrasion resistance than viscose

polyamide and polyester are synthetic products with poor moisture absorption.

To some extent these differences in physical characteristics are due to the fact that "cellulosic" fibres are extracted from wood pulp, whereas "synthetics" are oil-based products.

c) Market practice

Acetate yarn is generally perceived by the fabric manufacturers who purchase it as a distinct product both because of traditional ingrained buying habits and because of acetate's intrinsic technical characteristics within the fabric manufacturing process.

14. In view of different price, performance and aesthetic characteristics, and because of market practice, acetate yarn may be considered as constituting a distinct and separate relevant product market. Nevertheless, despite the fact that it is appropriate to identify a distinct product market, there is still a certain degree of substitutability with the other cellulosic and synthetic filament yarns, especially in the main end - use of acetate (woven linings where acetate, viscose and polyester each account for around 30% - see above); this is to be taken into account when assessing the competitive situation (see below).

The relevant geographic market

15. Within the Community and more generally within Western Europe (including EFTA countries) there are no legal or technical barriers to trade in acetate filament yarn, and transport costs are below 5%. In the parties' view, as well as in that of some competitors⁽²⁾, the market for acetate yarn is a worldwide one. However, in fact there exists an EC import tariff of about 10%; imports into Western Europe of acetate yarn currently represent around 16%⁽³⁾ of Western European consumption and furthermore producers' differing market shares in different parts of the world indicate separate geographical markets, of which the Western European market is one.

16. Nevertheless, the acetate yarn market includes elements of international trade of some significant elements. Indeed, in 1989 almost one quarter of the total acetate production of the three companies which will form the proposed joint venture was exported to extra-EEC countries (especially to North Africa, and to Central and Eastern Europe, but also to several other areas of the world). Furthermore, there has been a very significant trend for imports of acetate yarn into Western Europe to increase over recent years (as indeed for imports of other man-made filament yarns (see below)). Thus, significant potential import penetration from outside the Community, whilst not indicating a geographical reference market wider than Western Europe, is to be taken into account when

(2) For example, Hoechst Celanese, AKZO, INACSA and Montefibre.

(3) This figure includes 4% of acetate yarn imports which, though of lower than average quality, is nevertheless usable.

considering possible dominance resulting in significant impediment to effective competition.

Assessment

17. After the establishment of the proposed joint venture, the Western European and worldwide acetate yarn market shares of the most important competitors would be:

| <u>Western Europe</u> ⁽¹⁾ % | | <u>Worldwide</u> | % |
|--|----------|------------------|-------|
| Courtaulds | 32 | | |
| SNIA Group | 10 | | |
| Novaceta | 23 | | |
| | <hr/> | | |
| <u>JV</u> | 65 | | 14 |
| <u>Hoechst Celanese</u> | | | |
| W. European production | 14 | | |
| Imports | <u>6</u> | | |
| | 20 | | 42 |
| <u>Inacsa</u> | 9 | | 2 |
| <u>Eastman Kodak</u> | 5 | | 6 |
| <u>Mitsubishi</u> | - | | 6 |
| <u>Others</u> | 1 | | 30 |
| | <hr/> | | <hr/> |
| | 100 | | 100 |

18. In spite of the fact that the joint venture will hold a high West European market share, which could in other circumstances suggest dominance, the operation will not be able to create a dominant position as a result of which effective competition would be significantly impeded in the relevant markets. The strength of actual competitors and the potential impact of imports and product substitutability leads the Commission to the conclusion that this operation will not result in an appreciable freedom of action uncontrolled by market forces:

A. Actual competition

a) Effect on the parties

19. An important element to be taken into account in the assessment of the competitive significance of this concentration is the fact that there already exists a joint venture ("Novaceta") which comprises around 45% of the worldwide activities (in terms of turnover) of the parties in the acetate yarn market. This 50/50 joint venture was established by the parties in 1953. This means that the proposed concentration has only a limited effect on the relative competitive advantage of the parties in this market.

b) Strength of actual competitors

20. By far the strongest competitor of the proposed joint venture is Hoechst Celanese which is the largest supplier of acetate yarn worldwide, with 42% of the worldwide market (as against 14% for the

(1) Including EC and EFTA countries.

new Joint Venture) and total capacity of some 93,000 tonnes, of which around 6,000 tonnes are located in the EC and the rest in the US, Canada and Mexico. With both American and European production facilities, Hoechst Celanese is ideally placed to undertake a global strategy for its acetate yarn business. Its current strategy is to keep its EC production capacity fully utilised to service the West European market, whilst sourcing the balance of its West European sales (currently about 30%, or six percentage points out of a 20 percent market share - see above) from its American operations, in which it enjoys considerable production cost advantages (see below under "imports"). Indeed, in America, Hoechst Celanese has the particular advantage of being vertically integrated back to flake, and indeed right back to acetic anhydride which, after wood pulp, is the principal raw material for flake. Thus, if the proposed joint venture were to impose significant price increases or other unfavourable sales conditions, Hoechst Celanese could quickly provide significant amounts of acetate yarn, particularly by increasing its imports into the EC from its American operations.

21. In the context of this concentration, Courtaulds is disposing of its minority interest in INACSA, the third ranking competitor on the market, [...]^(*). This will ensure the existence of three independent producers in the West European market.

B. Potential competition

a) Potential competition from imports

22. Although at present imports into Western Europe of acetate yarn represent only about 16% of Western European consumption (see above) the trend in recent years has been for imports to increase very significantly. This is true for both yarns and woven fabrics:

| Imports - increase 1985-90 | All products | Acetate products |
|-------------------------------|--------------|------------------|
| Continuous filament yarn | + 100% | + 33% |
| Fabrics | + 90% | + 63% |

Furthermore, a comparison of the ratio between extra-EEC exports and extra-EEC imports of man-made fibres (all products) over the same period gives the following results:

1985: 1.41 (exports greater than imports)

1988: 1.0 (that is, imports equalled exports)

1990: 0.69 (imports greater than exports).

23. The increasing trend in imports of acetate yarn is taking place despite the existence of additional costs, amounting in total to around 15%, inherent in the importation procedure (that is, an EC tariff of 9-10% and transport costs of about 5%). These tariff and transport costs are largely offset by the fact that extra-EC prices of acetate filament yarn are up to 20% cheaper than EC-

(*) deleted for publication

sourced yarn. These prices are the result of inherently lower production costs in extra-EC locations, due in turn to:

- lower energy costs: for example a comparison of 1990 electricity costs for industrial users reveals the following statistics (in ECU per kilowatt):-

| | | |
|--------|---|-------|
| Italy | : | 0.077 |
| UK | : | 0.055 |
| US | : | 0.037 |
| Canada | : | 0.028 |

- lower labour costs: for example, 1990 costs per operator hour were:-

| | | <u>ECU</u> |
|-------------------------|---|------------|
| Italy | : | 12.6 |
| US | : | 7.6 |
| S. Korea ⁽⁴⁾ | : | 2.4 |

- economies of scale, which the proposed joint venture could not easily achieve given its physical dispersion over several different sites in the UK and Italy.

The approximate equivalence of additional import costs and lower extra-EC production costs is strongly indicated by recent surveys which shows that current average prices of Community-sourced acetate yarn are similar to those of landed prices from the US and Far East.

Furthermore, it should be noted that there are no quota restrictions on the importation of acetate yarn from the major extra-EEC producing countries (United States, South Korea, Japan) within the context of the 1974 Multi-Fibre Agreement. Again, within the context of the current 'Uruguay Round' of GATT negotiations, any changes in the current tariff of 9-10% could only be downwards.

24. It therefore appears that despite its high share of the West European acetate yarn market, the proposed joint venture would be subject to strong potential competition from imports from non-European producers. Several clients of the proposed joint venture have confirmed their preparedness to switch to imported acetate yarn if appropriate.

25. Furthermore, an increase in filament yarn price by the joint venture would tend to pull in imports not only of acetate yarn but also of acetate fabrics (especially since acetate yarn constitutes about 50% of the total manufacturing cost of acetate fabric); this would in turn depress demand from the joint venture's main clients for the yarn produced by the joint venture itself. This means that any attempt by the Joint Venture to increase prices or otherwise influence detrimentally market conditions would incur the risk that its own clients, such as linings producers, would be put out of business by imports of ready-made fabric; thus any such attempt would not constitute rational economic behaviour.

⁽⁴⁾ South Korea is a very substantial producer of cellulosic fabrics.

b) Potential competition from other products

26. Although the acetate yarn market is a distinct one, it nevertheless remains true that acetate yarn supplies only about 30% of the principal end-use, that is linings, with viscose and polyester also supplying around 30% each, the remaining 10% of requirements being met by polyamide. In the event that the joint venture were to impose significant price increases for acetate yarn, it could be expected that purchasers would at least to some extent switch to the other yarns, despite their different performance and aesthetic characteristics. Some competitors consider that their viscose and polyester yarns compete with acetate in the linings end-use. Amongst these is AKZO which is the market leader on the closest filament yarn market, that is viscose with 62% of the West European Market.

There exist throughout the world financially strong producers of these other filament yarns, such as Hoechst Celanese, AKZO, Eastman Kodak, Mitsubishi, Dupont, ICI, and Rhône-Poulenc. Most of these companies each individually cover all, or the greater part of, the whole man-made filament yarn product range. In fact acetate filament yarn capacity represents only about 4% of total worldwide filament yarn capacity.

c) Possible new market entrants

27. The fundamental technical know-how for the manufacture of acetate yarn is well known and available, not only to those companies involved in yarn manufacture but also to those involved in other downstream acetate businesses (such as tow, film and plastics).

28. Worldwide, there are several producers of acetate flake (such as Daicel and Rhône-Poulenc) with significant operations in downstream acetate activities who could enter the West European continuous filament yarn market (and the linings sub-market) through the manufacture of acetate yarns.

29. Furthermore, the current development of micro-fibres will enable synthetic yarns even more closely to match the performance of acetate in certain key performance characteristics where acetate has historically enjoyed an advantage. This will significantly increase the competitive pressures on acetate yarn producers.

ANCILLARY AGREEMENTS

30. In connection with the concentration, the parties will enter into the above-mentioned ancillary agreements with the joint venture (a supply agreement (the "Flake Agreement"), the lease agreements, the service and know-how agreements). Furthermore, there is a non-competition clause in the Shareholders Agreement whereunder each of SNIA and Courtaulds undertakes not to compete with the joint venture in the manufacture or supply of acetate yarns for so long as it remains a shareholder in the joint venture and for two years after it sells its shareholding.

31. The flake supply agreement, which does not stipulate exclusive purchase or supply obligations, has to be considered as a restriction ancillary to the present concentration since its primary aim is that of ensuring the continuity of supply to the joint venture of products necessary to the activities taken over. Furthermore, the agreement will provide a certain continuity of outlets of flake for the parent (Courtaulds), a continuity which has hitherto been assured by Courtaulds' supplying its subsidiary

CFY. However, even though demand for flake outstrips supply, the parties have not put forward specific arguments justifying the objective need for an agreement of [...] (*) duration. It is therefore considered that the period necessary for the replacement of the dependent relationship by autonomy in the market should be limited to [...] (**).

32. Concerning the non-competition clause, it has to be considered as a restriction ancillary to the concentration since it expresses the commitment of the parties to the Joint Venture, and ensures that the Joint Venture acquires the parties' goodwill in this field. It aims at expressing the reality of the lasting withdrawal of the parents from the market assigned to the joint venture.

33. The three service agreements have to be considered as restrictions ancillary to the concentration since they aim to ensure to the joint venture some services which are either physically linked to the location of some of the Joint Venture's sites, or are essential for start-up activities and in their absence the present concentration could be implemented only under more uncertain conditions or at a substantially higher price.

34. Therefore, the above mentioned agreements including the supply agreement limited to a [...] (**) duration, are qualified as ancillary restrictions, and are covered by the decision on this concentration.

35. The four lease agreements concerning the premises are among the elements constituting the concentration; therefore the question as to whether they have to be qualified as ancillary restrictions does not arise.

CONCLUSION

36. It appears from the above factors that, even though the joint venture would have a high share of the Western European acetate filament yarn market, it will be subject to the threat of significant potential competitive pressure, particularly from imports, but also from product substitution and new market entrants. Thus the joint venture would not be in a position to impose significant price rises or other sales conditions unfavourable to the consumer.

37. Based upon the above findings the Commission has come to the conclusion that the proposed concentration does not raise serious doubts as to its compatibility with the common market.

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For the above reasons the Commission has decided not to oppose the notified concentration and to declare it compatible with the common market. This decision is adopted in application of Article 6(1)(b) of Council Regulation No. 4064/89.

For the Commission,

**TEXTE RECONSTITUÉ ÉLECTRONIQUEMENT / ELECTRONICALLY RE-CREATED
TEXT / ELEKTRONISCH NACHGEBILDETER TEXT**

(*) deleted for publication

(**) a period which does not exceed five years