

*Case No IV/M.1391 -
INTERNATIONAL
PAPER / UNION
CAMP*

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

Article 6(1)(b) NON-OPPOSITION
Date: 05/02/1999

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 5.02.1999

In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EEC) No 4064/89 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 Where possible the information omitted has been replaced by ranges of figures or a general description.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 Sirs,

Subject: Case No IV/M. 1391 – INTERNATIONAL PAPER / UNION CAMP

Notification of 4.1.1999 pursuant to Article 4 of Council Regulation No 4064/89

1. On 4.1.1999, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89¹ by which International Paper Company ('International Paper') notified its intention to the Commission to acquire sole control over Union Camp Corporation ('Union Camp').
2. After examining 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 EEA Agreement.

I. THE PARTIES AND THE OPERATION

3. International Paper is a global paper and forest products company that produces paper, pulp, tissues, paperboard, packaging and wood products. It also manufactures specialty chemicals, panels and laminated products.
4. Union Camp is a global paper and forest company. The principal business segments of the company are the manufacture and sale of paper and paperboard, packaging products, wood products and chemicals.
5. The operation consists of International Paper acquiring sole control over Union Camp. The concentration will be carried out as a stock-for-stock exchange and Union Camp

¹ OJ L 395, 30.12.1989 p. 1; corrigendum OJ L 257 of 21.9.1990, p. 13; Regulation as last amended by Regulation (EC) No 1310/97 (OJ L 180, 9. 7. 1997, p. 1, corrigendum OJ L 40, 13.2.1998, p. 17).

will be merged into International Paper as a wholly owned subsidiary of International Paper.

II. COMMUNITY DIMENSION

6. International Paper and Union Camp have a combined aggregate world-wide turnover in excess of EUR 5,000 million² (International Paper: EUR 17,721 million, Union Camp: EUR 3,948 million). Each of them has a Community-wide turnover in excess of EUR 250 million (International Paper: EUR [...] million, Union Camp: EUR [...] 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.

III. COMPATIBILITY WITH THE COMMON MARKET

1. Introduction

7. International Paper supplies in Europe pulp, corrugated board and packaging, fine paper and chemicals. Union Camp's European activities comprise pulp, corrugated case materials, board and packaging, fine paper, chemicals, folding carton, flexible packaging and kraft paper and board.
8. The parties' overlapping activities in pulp, corrugated case material, corrugated board, corrugated cases and fine papers do not constitute affected markets even when considered at the narrowest product and geographic market definitions. Both parties have modest sales of pulp in the EEA. Based on the information provided by the parties, the combined market share of the parties in 1997 was only [5-10%]. In corrugated case materials, the parties consume the majority of their production internally to produce corrugated board and cases. Union Camp has *de minimis* open market sales, representing less than [$< 5\%$] of the total EEA-wide market. Accordingly, most corrugated board is consumed by the parties internally, with open market sales representing less than [$< 5\%$] of the total sales in the EEA. In corrugated cases, the parties have overlapping activities in Italy and Spain, resulting in a combined market share of below 15% in each of these countries. In fine papers, the parties' EEA-wide joint market share is well below 15%, with a *de minimis* increment.
9. Given the above market shares, the overlaps in pulp, corrugated case material, corrugated board, corrugated cases and fine papers are unlikely to lead to any significant competitive effects. Consequently, the assessment will not be pursued further.
10. The parties have more substantial overlapping activities in the chemicals sector. In the EEA, both parties are active in refining crude tall oil ('CTO') into intermediate chemicals, which include fatty acids and rosin acids ('CTO rosins'). The parties have overlapping activities also in specialty chemicals made from CTO rosins. These comprise ink resins, tackifier resins for adhesives and resins for road marking. As

² Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Notice on the calculation of turnover (OJ C66, 2.3.1998, p25). To the extent that figures include turnover for the period before 1.1.1999, they are calculated on the basis of average ECU exchange rates and translated into EUR on a one-for-one basis.

regards fatty acids, ink resins and CTO rosins, the parties argue that the transaction will not create affected markets. These will be discussed in more detail in the following.

a) Fatty acids

11. Fatty acids are used as intermediates to produce a variety of special chemicals, such as alkyds, polyamides, coatings and fuel additives. The parties submit their combined market share in the narrowest market - comprising only so called C18 fatty acids - as about [5-10%] of the total EEA-wide sales. Consequently, the assessment of fatty acids will not be pursued further.

b) Ink resins

12. With regard to ink resins, the parties submit their combined EEA-wide market shares as [10-15%] in the overall market for ink resins and as [10-15%] in the narrower market comprising gravure and offset ink resins. The parties therefore argue that ink resins do not constitute an affected market.
13. All competitors contacted by the Commission have, however, indicated that the parties' combined market share in ink resins is in the region of 19-25%, depending on the market definition. Furthermore, at the Commission's request, the parties have estimated their combined market share in rosin-based ink resins as [15-20%]. Therefore, the Commission considers ink resins to be an affected market and, accordingly, discusses ink resins below.

c) CTO rosins

14. International Paper and Union Camp are the main producers of CTO rosins in the EEA. There are two other smaller producers of CTO rosins in Europe, DRT of France and Krems in Austria, but these companies' third party sales are negligible and the companies use most of their production captively. There are also some imports of CTO rosins from Russia.
15. The parties claim that CTO rosins are largely used captively by the parties as they process their rosin acid output into various specialty chemicals. The parties claim further that CTO rosins and gum rosins, which are produced tapping living trees, are in the same product market, and submit their combined market shares as below 15% of the total merchant rosin sales in the EEA. The Commission's investigation has confirmed that CTO rosins and gum rosins constitute one relevant product market (see below).
16. In 1998, International Paper sold about [10-20%] of its production of CTO rosins to third parties and Union Camp [30-40%]. The combined sales of the parties were [...] tonnes, representing some [20-30%] of their total production of [...] tonnes of CTO rosins. At the same time, [...] tonnes of gum rosins were imported into the EEA mainly from China but also from Argentina, Brazil, Indonesia and Mexico. This would correspond to some [> 80%] of the total merchant sales of [...] tonnes of rosins in the EEA. Gum rosin is produced to a minor extent also in Portugal.
17. Based on the above figures, the parties' combined sales to third parties were in the region of [< 15%] of the total merchant sales of rosins in the EEA in 1998. Despite

these modest sales, some third parties have voiced concern over the fact that, after the operation, the parties would be effectively the only supplier of CTO rosins in the EEA and, hence, would be able to exercise market power over their customers. The results of the Commission's investigation, however, confirm the existence of competitive market conditions in the overall rosins market in the EEA. The Commission concludes further that the parties' combined sales of rosins in the EEA is such as not to create an affected market.

d) Vertical integration

18. Third parties have raised concern over the parties' vertical integration in the production of rosins and the production of resins for ink, adhesive and road marking applications. The vertical aspects of the operation will be discussed below.

2. Relevant product markets

19. The parties submit two affected markets in the field of specialty chemicals: adhesive tackifier resins and road marking resins. As discussed above, the Commission considers also ink resins to constitute an affected market.

a) Adhesive tackifier resins

20. Both parties manufacture tackifier resins used to produce adhesives. Tackifier resins enable producers to alter for instance the flexibility and heat resistance of the adhesive. The parties argue that there is a high degree of demand-side substitutability between tackified and non-tackified adhesives, which consist of a number of polymers. Furthermore, the parties argue that rosin-based tackifier resins are interchangeable with other tackifier resins, such as C5 and C9 hydrocarbon resins. Therefore, the parties argue that tackifier resins should be viewed as one single product market, comprising all tackifier resins and polymers used to produce adhesives.
21. The question which is relevant for the analysis of this case is whether CTO rosins and gum rosins can be regarded as substitutes in the production of adhesive tackifier resins. The results of the Commission's investigation indicate that CTO rosins and gum rosins can be used as substitutes in the majority of formulations to produce adhesive tackifier resins. Most competitors, who produce a spectrum of adhesive tackifier resins, indicated that they could switch their whole production to either of the rosins. The Commission notes that there may be some applications at both ends of the spectrum where CTO rosins are not directly substitutable with gum rosins and vice versa. However, the findings of the Commission's investigation clearly indicate that these applications form a negligible part of the overall adhesive tackifier resins production. In addition, third parties have indicated that it is possible to reformulate even this part of production to use either CTO or gum rosins.
22. In view of the above, it is concluded that CTO based resins and gum based resins form part of the same relevant product market in adhesive tackifier resins. However, as to the question whether the relevant product market should comprise also other chemicals used to produce adhesive tackifier resins, the issue can be left open, because even on the narrowest market definition considered, effective competition would not be significantly impeded in the EEA or any substantial part of that area.

b) Road marking resins

23. Road marking resins are supplied to formulators of road marking compounds. The parties argue that different resins used for these compounds, including rosin-based resins, C5 hydrocarbon resins and C9 hydrocarbon resins, are substitutable. The parties argue therefore that the relevant product market should include all resins used for formulation of road-marking compounds.
24. Third parties have generally indicated that CTO rosins and gum rosins can be used as substitutes to produce road-marking resins. In addition, the findings of the investigation show that C5 hydrocarbon resins are widely used in the industry to produce road-marking resins. As for C9 hydrocarbon resins, some third parties have indicated that these are used only to a minor extent in the production of road marking compounds and that the substitutability of these particular types of resins is more limited.
25. In view of the above, it is concluded that CTO based resins, gum based resins and C5 hydrocarbon resins form part of the same relevant product market in the production of road marking compounds. It is not, however, necessary to decide whether C9 hydrocarbon resins form part of the relevant product market in this case because, even on the narrowest market definition considered, effective competition would not be significantly impeded in the EEA or any substantial part of it.

c) Ink resins

26. Ink resins form the basis for the so called ink vehicle or varnish, which carries the ink pigment and forms the film that adheres to the printed surface. The parties have classified ink resins in two categories: flexo inks and gravure/offset inks. The parties argue that there is little substitutability between these two categories and argue that ink resins used to produce flexo inks are distinguishable from resins used to produce gravure and offset inks. Flexo ink resins are produced from polyamides, alkyds, acrylics and gilsonites, whereas gravure and offset inks are produced from rosins, C5 and C9 hydrocarbons and hybrids of these chemicals. The parties argue that there is a high degree of both demand-side and supply-side substitutability among gravure/offset inks and therefore submit gravure/offset inks as the relevant product market.
27. The findings of the Commission's investigation show that, in general, both CTO rosins and gum rosins can be used interchangeably in the production of ink resins. Third parties have indicated to the Commission that if facing a small but permanent price increase they could switch the production of ink resins either to CTO or gum rosins. Some third parties have indicated that some ink resins require specifically the use of either CTO or gum rosins, but this part of the total production of ink resins is negligible. Third parties have also indicated to the Commission that it would be possible to reformulate these formulas. With regard to C5 and C9 hydrocarbon based ink resins, some third parties have suggested that the substitutability of these ink resins would be more limited.
28. In view of the above, it is concluded that CTO based resins and gum based resins constitute one relevant product market for ink resins. It is not, however, necessary to define exactly the scope of the relevant product market in this case because, even on the narrowest market definition considered, effective competition would not be significantly impeded in the EEA or any substantial part of that area.

Conclusion

29. The investigation shows that there is a spectrum of substitutability between CTO rosins and gum rosins for the same end applications for adhesive tackifier resins and ink resins. As for road marking resins, the substitutability can further be expanded to cover also C5 hydrocarbon resins. The Commission notes that there may be some applications at both ends of this spectrum where the use of either CTO rosins or gum rosins is required to produce better performing end applications. However, the Commission considers these resin applications to form a negligible part of all applications so as to justify the definition of two separate product markets. Therefore, in view of the above and for the purposes of this decision, it is concluded that CTO rosins and gum rosins form part of the same relevant product market for adhesive tackifier resins, road marking resins and ink resins.

3. Relevant geographic markets

30. The parties claim that the relevant geographic markets for adhesive tackifier resins, road marking resins and ink resins are at least EEA-wide.
31. Both competitors and customers have confirmed that competition in adhesive tackifier resins, road marking resins and ink resins takes place on an EEA-wide basis. International Paper manufactures resins in Sweden, Finland and France. Union Camp has a production facility in the UK. Both parties sell their products throughout Europe, either via local subsidiaries or via sales agents. Transport costs for intra-EEA shipments are in the region of 5% of the total sales price, and price levels are comparable throughout the EEA. This has been confirmed by third parties, who source resins on an EEA-wide basis. As no evidence was received to suggest that any narrower geographic markets might exist, the Commission concludes that the relevant markets are at least EEA-wide.

IV. ASSESSMENT

a) Adhesive tackifier resins

32. Assuming a market limited to rosin-based tackifier resins for adhesive applications, the parties have estimated their combined market share as [30-40%] (International Paper [20-30%], Union Camp [10-20%]). The parties would, however, remain behind Hercules, who has approximately [30-40%] of the relevant market. DRT has about [10-20%] share of the market and there is also a number of smaller suppliers on the market. In the event that rosin based tackifier resins and polymers used to produce adhesives were to be viewed as one single product market, the parties' joint market share would be around [15-25%] (International Paper [10-20%], Union Camp [$<$ 10%]). Exxon would be the clear market leader with [25-35%] of the market and Hercules would have [20-30%]. The Commission has verified the parties' estimates with confidential figures obtained from third parties.
33. On the basis of the above market shares, the Commission draws the conclusion that competition will not be significantly affected at the EEA-wide level.

b) Road marking resins

34. The parties have provided market share data comprising rosin based resins, C5 and C9 hydrocarbon resins. As discussed above, the Commission considers the relevant product market to include in any event rosin based resins and C5 hydrocarbon resins. However, third parties have indicated that C9 hydrocarbon resins are used to produce resins for road marking applications only to a minor extent. Therefore, the Commission believes that the market data provided by the parties largely reflects the market situation and the assessment of the case is not materially affected even if C9 hydrocarbon resins are included in the market share calculations.
35. According to the information provided by the parties, their combined market share would be in the region of [10-20%] (International Paper [10-20%], Union Camp [< 10%]). Exxon would be the clear market leader with some [55-65%] of the market. Kolon Chemicals would have [5-15%] of the market and Hercules [< 10%]. Some third parties have estimated the parties' combined market share as 25-30%, but given the strong position of Exxon in this market, the parties' market position would not be significantly strengthened even if these market share figures were to be considered.
36. In view of the above market positions, it is concluded that no competition concerns are likely to arise in the EEA in the road marking resins market.

c) Ink resins

37. On the market comprising both CTO rosin and gum rosin based resins, the parties have submitted their combined market share as [10-20%], with an increment of [< 5%]. Lawter would be the market leader with [20-30%], while Vianova would have around [10-20%] of the market. There are also a number of other producers of ink resins with smaller market shares, such as Akzo Nobel (< 10%), Resisa (< 10%), DRT (< 10%) and Nares (< 10%).
38. If the relevant product market were to be considered to comprise both CTO and gum rosins, C5 and C9 hydrocarbons and hybrids of these, then the parties' market share would be according to their own estimate [...] below 15%, with an increment of [< 5%]. Lawter would have [10-20%] and Vianova [10-20%]. Third parties have generally indicated that the parties' combined market share would be 20-25% in the narrowest market and between 19-25%, if the widest market definition were to be considered. However, even if assuming these higher market shares, most third parties have estimated Lawter to be the market leader or at least to have the same market share as the parties (22-29%). Accordingly, third parties have estimated Vianova's market share to be in the region of [10-15%].
39. Therefore, in view of the above market shares and given in particular the *de minimis* increment to the parties' market share, the Commission concludes that the parties' market position would not give rise to competition concerns in the ink resins market in the EEA.

d) Vertical integration

40. Third parties have voiced concerns over the fact that, after the operation, the parties would be effectively the only supplier of CTO rosins in the EEA and at the same time vertically integrated into downstream production of adhesive tackifier resins, road

marking resins and ink resins. Third parties have suggested that this vertical link would give the parties an advantage over other resin manufacturers.

41. The Commission takes note of the fact that, after the operation, the parties exercise *de facto* control over the EEA supplies of CTO rosins. The Commission notes further that this allows the parties to control their raw material cost to a large extent, which may give them a competitive advantage over their competitors, who are more dependent on imported gum rosin and, hence, maybe more exposed to price changes. However, for the reasons set out below, the Commission does not consider the vertical link comprising the production of both CTO rosins and various types of resins on the downstream market to lead either to the creation or strengthening of a dominant position.
42. First, the Commission takes note of the fact that the markets for adhesive tackifier resins, road marking resins and ink resins are currently competitive. As discussed above, the parties are not dominant nor are they even the market leader in any of the affected markets.
43. Second, the Commission enquiry found that the price of Chinese gum rosin is volatile and subject to considerable quarterly variations. By way of an example, the price of gum rosin plunged from USD 1030 in the second quarter of 1997 to USD 720 in the first quarter of 1998. CTO rosin price is linked to the Chinese gum rosin price and follows this up and down closely. The parties could therefore obtain a competitive advantage on the cost of raw material only when the price of Chinese gum rosin rises considerably. This advantage would be lost when the gum rosin price falls. None of the third parties have suggested that the price of gum rosin would increase relative to CTO rosin production cost in the foreseeable future. Therefore, any cost advantage would be volatile and short-term, and it is unlikely that the parties could transfer this cost advantage to their resin prices in the long run. The possible advantage of more stable CTO rosin prices is not such as to lead to a dominant position on any affected market for resins. It is also to be noted that the parties themselves buy gum rosin on the open market despite of having excess CTO rosin production: in 1998, the consumption of gum rosins represented some [10-20%] of the parties' total rosin consumption
44. The Commission further takes note of the fact that the parties' competitors use overwhelmingly more gum rosin than CTO rosin in their resins production. The fact that the parties' rosin sales to third parties represent merely [< 15%] of the total merchant sales of rosins shows that third parties are not dependent on the supply of CTO rosins. Moreover, a large part of CTO rosins bought on the open market are in fact used for the manufacture of products not affected by the notified transaction, such as sizes for use in the paper industry. Furthermore, given that most customers could switch to using gum rosins, if the parties attempted to raise CTO rosin prices, the Commission considers that the parties would not be able to exercise market power over their CTO rosins customers.

Conclusion

45. In view of the above, the Commission draws the conclusion that the proposed concentration does not create or strengthen a dominant position as a result of which effective competition would be significantly impeded in the EEA or any

substantial part of that area in the markets for adhesive tackifier resins, road marking resins or ink resins.

46. The Commission concludes further that the existence of the vertical link between the supply of CTO rosins in the EEA and the integration in the production of adhesive tackifier resins, road marking resins and ink resins does not modify the conclusion reached above.

V. CONCLUSION

47. For the above reasons the Commission decides 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