

***Case No IV/M.1432 -
AGFA-GEVAERT /
STERLING***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 15/04/1999

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 15.04.1999

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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 parties

Dear Sirs,

Subject: Case No IV/M.1432 – AGFA-GEVAERT/STERLING

Notification of 10.03.1999 pursuant to Article 4 of Council Regulation N° 4064/89.

1. On 10 March 1999 Agfa-Gevaert N.V.. (“Agfa-Gevaert”) notified an operation pursuant to Article 4 of Council Regulation (EEC) No 4064/89 as last amended by Council Regulation (EC) No 1310/97, (‘the ECMR’), by which Agfa-Gevaert would acquire sole control of certain assets of the SDI Holding Corp and its subsidiaries (collectively referred to hereafter as “Sterling”).

I THE PARTIES

2. Agfa-Gevaert N.V. is the parent company of the Agfa-Gevaert group, an international group active in several fields involving the supply and/or manufacture of photographic and electronic imaging systems, particularly for consumer photography, the graphics sector and the medical diagnosis sector. Agfa-Gevaert N.V. is controlled by Bayer AG, (“Bayer”) the ultimate parent company of the group.
3. SDI Holding Corp is the privately-owned holding company at the top of the Sterling group. Approximately 86% of the common stock of SDI Holding Corp is held by management and employees of the Sterling group and other private investors. The remaining 14% is held by Polaroid Corporation. The Sterling group is a manufacturer and seller of a broad range of diagnostic imaging products and related services.

II THE OPERATION AND THE CONCENTRATION

4. By the notified operation Agfa Acquisition Corp., a wholly-owned subsidiary company within the Agfa-Gevaert group, will purchase all the capital stock of SDI Holding

Corp. Agfa Acquisition Corp will then be merged into SDI Holding Corp, leaving SDI Holding Corp as the surviving corporation. The subsidiaries of SDI Holding Corp will become wholly owned subsidiaries of Agfa Corporation.

5. Two subsidiaries of Sterling will not be included in the transaction. The first is Sterling Dry Imaging Systems, Inc, (“SDIS”) which produces one type of dry imaging system (see below) and supplies Sterling with film for such systems. Agfa-Gevaert will acquire all of SDIS’s existing customer contracts for SDIS product lines. The second subsidiary not to be transferred is the Direct Radiography Corp., (“DRC”) which manufactures digital radiography products (see below). Agfa-Gevaert will acquire all DRC existing contracts which are not transferable to DRC.
6. As the operation results in the acquisition by Agfa-Gevaert group of sole control of Sterling’s medical imaging business world-wide, it gives rise to a concentration in the meaning of the ECMR.

III COMMUNITY DIMENSION

7. The world-wide turnover of Bayer in 1998 was in excess of EUR 27 billion and its Community-wide turnover was in excess of EUR [...]. The world-wide turnover of Sterling in 1998 was in excess of EUR 466 million and its Community-wide turnover was in the order of EUR [...]. Neither company earned more than two thirds of their Community-wide turnover in one and the same EC member state, nor more than two-thirds of their EFTA turnover in one and the same EFTA state. However, the case falls to be treated under the ECMR, because the combined aggregate turnover of all the undertakings concerned exceeds EUR 100 million in the UK, Germany and Italy; each of the undertakings concerned earns more than EUR 25 million in all three states; and the aggregate Community-wide turnover of each of the two undertakings is more than EUR 100 million. The notification does not fall to be treated as an EFTA co-operation case.

IV COMPATIBILITY WITH THE COMMON MARKET

A. Introduction

8. The notified concentration concerns products for the capture, communication, display and archiving of medical images which are used for diagnostic purposes. ‘Medical imaging’, for the purpose of assessing the present notification, can be regarded as the capture of data for the production of images of internal organs of the human body, by essentially non-invasive means, for the purpose of clinical diagnosis and review.
9. The businesses concerned by the notified operation are conventional medical imaging systems; computerised/direct radiography and other “digital” image capturing equipment; hard copy imaging, which covers both wet and dry imagers as well as hard copy film; picture archiving and communication systems (“PACS”)- sometimes also referred to as ‘filmless’ or ‘film free’ imaging systems.

B. Product markets

Conventional-X ray film

10. The shadow image generated by conventional X-radiography needs to be “processed”, that is, developed, fixed and dried, to produce a permanent visible image in hard copy form. Hospitals therefore need supplies of conventional X-ray film. Most X-ray film used in hospitals is of general purpose application. There are some types of film which are used for specialised purposes, eg for mammography, but these do not constitute a separate product market because, as noted in the Kodak/Imation¹ case, in supply terms the differences in specification from general purpose film are not significant. It is relatively easy for a manufacturer to change to manufacturing film for these specific applications, and most manufacturers produce the full range in any event. Accordingly the narrowest product market category which was considered to exist was one for all X-ray film as used for conventional medical imaging.

Conventional X-ray handling and processing equipment

11. For in-house processing of exposed X-ray films, two pieces of equipment - a film handling machine and a film processing machine - are usually employed. For ease of handling, films are usually loaded in standard-size cassettes which can be quickly mounted and dismounted from the X-ray equipment. The cassettes can be unloaded and reloaded with fresh film manually, but the job is more usually done in a piece of equipment known as a mechanical film handling device, after which the removed exposed film is fed to an adjacent processor for developing, fixing and drying.
12. Over time, a series of standard sizes have evolved for the films and cassettes used in radiography, as well as for the associated film handling and processing equipment. As a result, most suppliers, whether of film or equipment, have to supply products in a format compatible with one another, which can handle films and cassettes supplied by firms other than the manufacturer of the original equipment.
13. In the notification the parties submit that processors and handling systems should form one market as they are sometimes integrated in one piece of equipment performing both functions.. However, in Kodak/Imation, the Commission assessed processors and handling systems as constituting separate markets, on the basis that they were manufactured and sold as two different pieces of equipment. Also, in functional terms, they were not readily substitutable for each other, even if the two pieces of equipment were often bought and used together. Accordingly the same approach has been taken in this case.

Hard copy printing equipment (‘digital imagers’)

14. In the Kodak/Imation case the types of printers used to make diagnostic-quality prints of digitally generated medical images (referred to in that case as “digital imagers”) were treated as forming one product market, whether they were based on conventional “wet” processing technology, or on any of the new “dry” technologies. Evidence from market investigations suggested that consumers seeking to buy laser digital imagers

¹ See case M.1298 – Kodak/Imation.

regarded wet and dry imagers as economically substitutable for one another, therefore they were treated as one, not two, markets.

Hard copy film (“wet laser” film)

15. “Wet” imagers are based on a conventional silver halide film technology, whereby a film is exposed to laser light and then processed using traditional wet chemical methods. Although the user of a wet laser imager may choose to use digital imager film supplied by the imager manufacturer, he has the option of turning to other suppliers. There is thus an open market for wet laser film.
16. It should be added that dry lasers, by contrast, print out images onto proprietary types of hard copy film which dispense with the need for traditional silver halide film or traditional processing methods. The manufacturers of each type of dry laser imager supply hard copy film designed to work with their particular machine. A decision to buy one of these types of printer commits the purchaser to obtaining supplies of the special types of film required from the manufacturer of the original equipment. As a consequence, there is no open market and the assessment for digital film is limited to a market for wet digital film.

Wet processing chemicals

17. The film processing operation requires the application of chemicals to the exposed film for the purposes of developing, fixing and drying the image. Hospitals who process film therefore have to buy regular supplies of wet chemicals for use in their processors. Those hospitals which use wet laser imagers will have to buy essentially the same sorts of chemical for use in any wet laser imagers which they use. Since the processing chemicals concerned are essentially the same whether used in the processing of conventional X-ray film or in wet laser imagers, they are treated as part of the same market.

“PACS” (Picture archiving and communication systems)

18. Developments in computer technology have also introduced the possibility of a ‘film-less’ image management system, which relies on electronic archiving of digital images, and electronic retrieval of such images to computerised clinical workstations where they can be viewed on high resolution monitors. In principle, equipping a medical imaging unit with such technology dispenses with the need to create and store hard copy records in the form of either conventional or ‘digital’ film. The use of digital technology would also permit the interconnection of workstations and data generating equipment in local and wide area networks, thus allowing for the viewing of images at remote locations. In practice, a hospital equipped with PACS, where the main bulk of medical images are viewed on screen and stored in electronic form, is unlikely to dispense entirely with the capability to produce hard copy images, but its usage of such a facility should substantially reduce.
19. With the exception of the imagers and software, and possibly subject to the need for higher resolution monitors than might normally be found in the office environment (which are specialised but not specific to the medical sector), the hardware required for a PACS system differs little in substance from that used in any other type of non-medical networked computer application. The equipment can thus be supplied by any supplier of computer equipment and not just by firms currently active in the medical

imaging sector. The parties provided examples of contracts for the installation of PACS which had been won by companies who were not traditionally active in the medical imaging sector.

20. The results of market investigations suggested that, because a move to PACS involves substantial investment decisions and a complete change in working methods and systems, PACS is not seen as an economic substitute for more conventional imaging technologies, and thus is considered as forming a separate, but neighbouring product market. However, if a market for electronic medical imaging systems were to be defined, the parties' combined shares on it would be low and not sufficient to give rise to competition concerns. Furthermore, as the components of PACS systems are the components of any standard computer networked system and not specific to the medical imaging sector, the parties' shares' of any more narrowly defined markets would be weaker still. In the light of the above, the question has not been pursued further.

'Digital' or non-conventional image capturing technologies

21. One other possible segment relates to the various 'digital' image capturing technologies. These include all the means of generating digital images by non-conventional means (ie other than by conventional X-ray technology). These include computed radiography ("CR")/digital radiography ("DR"), computed tomography ("CT") nuclear magnetic resonance (NMR), and Ultrasound.
22. If each technology were considered as a separate product market no overlaps would arise, either because the parties are not active in the relevant area (CT, NMR and Ultrasound) or because only one of them is active and not the other (CR and DR). As no overlaps arise, the question has therefore not been considered further.

C Relevant geographic markets

23. The parties argued that relevant geographic markets were at least EEA-wide. In the Kodak Imation case it was noted that markets might well be moving from national to European, although it was difficult to judge how far this process had gone. Among the arguments in favour of an EEA-wide market it was noted that the major manufacturers are global companies competing on a world-wide basis; that the regulatory context is now fully harmonised, thanks to the entry into force of the medical devices directive; that customers (mostly public hospitals) procure these goods largely through public tenders; and that the products concerned have high value and are easily transportable. Despite this there remained some indications militating in favour of national markets. First, there are variations in price and market shares of competitors across the different countries of Europe. Second, as in other medical sectors, the presence of public reimbursement systems in a large number of EU countries has in the past tended to "partition off" the markets at national level. For example, most EU countries directly or indirectly constrain prices by fixing budgets for the hospitals. The parties themselves confirmed that they still serviced European customers from distribution arrangements which were essentially structured along national lines. However, a number of respondents to market investigations confirmed that they had received cross-border offers in response to tenders, and would be ready to buy abroad. In the light of this uncertainty an assessment of the picture was accordingly made at both national and

EEA level. However, the question of whether markets were national or EEA-wide could be left open, as competitions concerns did not arise on either definition.

D Competitive assessment

Conventional X-ray film

European level

Single dominance

24. If the market for conventional film is taken at European level, the combined group, would have in the order of [between 30 and 50%] (...) whether at European or EEA-wide level. The nearest competitor would be Kodak, with some [between 35 and 45%], Fuji with [between 10 and 20%], and Konica with [between 1 and 10%]. The presence of a strong competitor such as Kodak, with a market share of a very similar size, would exclude the possibility of the combined entity alone being able to exercise single dominance.

Collective dominance

25. Given the market structure, the question of possible creation of joint dominance also needs to be assessed. In this respect, the market displays some of the characteristics normally considered necessary to allow joint dominance to exist such as: a) it is highly concentrated since there will be two competitors accounting for approximately 80% of the European market; (b) the two leading players have very symmetrical market shares; (c) the product in question is essentially homogeneous; (d) the technology is mature; (e) there is market stagnation in terms of growing rate; and (f) there is significant excess capacity.
26. Despite the presence of these characteristics, one of the crucial factors necessary for an oligopoly to function is absent in this case, namely price transparency. This is due to two specific features of the market in question: the existing of tendering procedures; and the presence of package deals within the tendering procedures.
27. As to the former point, the large majority of sales of conventional film take place through tenders, either public or private. Indeed, according to the parties, direct sales represent a very small percentage of the total sales in the EEA (something in the range of 14%). In addition, tenders are renewed on average every two or three years and are significant in value. The relatively low frequency of re-tendering, as well as the consequences to suppliers of losing a contract and/or failing to win a tender, further reduce the risks of collusion among the players on the market.
28. It was also noted that a large proportion of tenders in the medical imaging business involves bundling deals, in which film is only part of a wider package. In this context, competition among the bidders is focused on the price of the total package rather than that of one item. According to the information provided by the parties, almost all public tenders launched under the terms of EC public procurement directives in the medical imaging business in 1998 related to packages of goods, including conventional and digital pieces of equipment as well as film and chemicals. More specifically, according to the information provided by the parties, out of the totality of invitations to tenders

published in the OJ of European Communities since 1995 (93 publications), just two tenders involve exclusively x-ray film.

29. In terms then of potential competition, there is an additional factor militating against the risk of tacit collusion in the conventional sector, namely the competitive pressure exerted at the margins by more advanced available technologies. If in the conventional sector prices were to be raised to supra-competitive levels, such a trend would push purchasers to bring forward the timing of their conversion to digital technology. And whilst the simultaneous strong presence of the parties in the digital sector might be a source of concern, any possibility of collective dominance in such a sector can be excluded given the characteristics of such a segment (the digital sector is a highly technological market growing at a very high rate, where products are extremely complex and there is no transparency in terms of price). Second, an additional competitive pressure comes from the possibility of users to move more quickly to the installation of ‘film-less’ technology such as PACS, where the parties do not have a significant market share and where there is a wider choice of suppliers.

National level

Single dominance

30. If the markets are taken at national level, the table below shows the market shares of the parties and their competitors. In percentage terms the position on individual national markets varies somewhat from country to country, but the overall picture in terms of the ranking of players and shares remains roughly the same as the picture at European level.

%age shares of sales of conventional X-ray film by volume, in declining order of combined market share

	Agfa- Gevaert+Sterling	Agfa-Gevaert	Sterling	Kodak	Fuji	Konica
BELUX	[55-75]	[35-45]	[20-30]	[20-30]	[1-10]	[1-10]
Spain	[40-60]	[40-50]	[1-10]	[20-30]	[1-10]	[5-15]
Austria	[40-60]	[30-40]	[10-20]	[20-30]	[10-20]	[1-10]
Netherlands	[30-50]	[30-40]	[1-10]	[40-50]	[1-10]	[1-10]
Portugal	[40-60]	[40-50]	[1-10]	[40-50]	[1-10]	[1-10]
Greece	[40-60]	[40-50]	[1-10]	[30-40]	[10-20]	[1-10]
Sweden	[30-50]	[20-30]	[10-20]	[30-40]	[20-30]	0
UK	[30-50]	[10-20]	[20-30]	[40-50]	[10-20]	[1-10]
France	[30-50]	[20-30]	[10-20]	[40-50]	[10-20]	[1-10]
Germany	[30-50]	[20-30]	[10-20]	[30-40]	[10-20]	[1-10]
Italy	[30-50]	[20-30]	[10-20]	[50-60]	[1-10]	[1-10]
Finland	[30-50]	[30-40]	[1-10]	[30-40]	[25-35]	[1-10]
Ireland	[20-40]	[20-30]	[1-10]	[30-40]	[20-30]	[5-15]
Denmark	[20-40]	[10-20]	[10-20]	[40-50]	[10-20]	[1-10]

31. It will be seen that in a number of countries the combined entity is faced with Kodak as a market leader (France, Finland, Italy, Ireland, and UK). In all other cases with the exception of BELUX and Spain, Kodak’s market share is very close. With such a

strong close competitor there is little possibility of the combined entity being able to exercise single dominance.

32. There are several countries where the combined entity would be market leader (BELUX, Spain, Austria, Netherlands, Portugal, Greece and Sweden). However, the imbalances are substantial only in the first three, BELUX, Spain And Austria, where the combined entity would have about 20% or more lead in terms of market share over Kodak.
33. On the question of whether this would give the combined entity the possibility to exercise single dominance, the figures have to be viewed in the light of the characteristics of this sector. As noted above, the other players, despite their market shares, are in a position to pose an effective competitive threat to the merging entity. In particular, although Kodak has a smaller share in these countries in relative terms, it is a strong player in Europe as a whole, and would be very quickly able to challenge any imposition of supra-competitive prices by the combined entity. Moreover, the widespread use of tendering procedures in both the public as well as in the private hospital sectors would makes it risky for the combined entity to attempt to set supra-competitive prices in response to such tender offers. Also, in more general terms, the customers' budgetary constraints impose their own competitive pressures on suppliers. Finally, a further competitive pressure is provided by the fact that any sustained attempt to introduce supra-competitive pricing would probably induce customers to bring forward the timing of any proposed introduction of more advanced technology designed to do away with the use of conventional X-ray film technology, such as, for example, dry digital or PACS.
34. In the light of these factors the risk of the concentration leading to single dominance is not considered sufficiently high as to give rise to serious doubts about the compatibility of the operation with the common market.

Collective dominance

35. In a few of the countries listed above, market shares of the two leading players are considered sufficiently close for the question of joint dominance to be considered. However, the factors relevant to an examination of this issue at the European level would also be relevant in any given national market, and the question has not therefore been considered further.

Conventional X-ray film handling, and conventional X-ray film processing equipment

36. The parties' market shares on a market defined at EEA-wide level are as follows:

1998 market shares (%) for conventional X-ray film handling and processing equipment, based on units of equipment sold (source of data: parties' evidence)

	Combined	Agfa-Gevaert	Sterling	Kodak	Fuji	Konica
Film handling systems	[40-60]	[35-45]	[5-15]	[30-40]	[1-10]	[1-10]
Film processors	[20-40]	[20-30]	[1-10]	[25-35]	[1-10]	[1-10]
Together	[20-40]	[20-30]	[1-10]	[25-35]	[1-10]	[1-10]

37. The markets show many of the characteristics of the conventional X-ray film sector with significant declines in sales, as shown in the table below

	1996	1997	1998
Processors	4655	4020	3885
Film handling	755	530	610
Together	5410	4550	4495

38. Published estimates of equipment sales broken down at national level are not available. The parties have however provided estimates of their position and that of competitors. The combined shares, as well as those of the principal competitors, are estimated as follows.

Percentage market shares 1998, based on volume, of film handling equipment for conventional X-ray film

	Combined	Agfa-Gevaert	Sterling	Kodak	Fuji	Konica
Spain	[50-70]	[50-60]	[1-10]	[20-30]	0	[1-10]
Netherlands	[45-65]	[30-40]	[15-25]	[30-40]	[1-10]	[1-10]
BELUX	[50-70]	[20-30]	[30-40]	[20-30]	[1-10]	[1-10]
UK	[40-60]	[30-40]	[10-20]	[35-45]	[1-10]	[1-10]
France	[45-65]	[45-55]	[1-10]	[30-40]	[1-10]	[1-10]
Germany	[35-55]	[30-40]	[5-15]	[25-35]	[5-15]	[5-15]
Italy	[35-55]	[35-45]	[1-10]	[30-40]	[1-10]	[1-10]
Austria	[35-55]	[15-25]	[20-30]	[30-40]	[1-10]	[1-10]
Denmark	[30-50]	[15-25]	[15-25]	[40-50]	0	[5-15]

X-ray film processors 1998 market share based on units sold

	Combined	Agfa-Gevaert	Sterling	Kodak	Fuji	Konica
Spain	[35-55]	[35-45]	[1-10]	[15-25]	[1-10]	[1-10]
Netherlands	[30-50]	[25-35]	[5-15]	[20-30]	[1-10]	[1-10]
BELUX	[30-50]	[25-35]	[5-15]	[10-20]	[5-15]	[1-10]
Austria	[25-45]	[20-30]	[5-15]	[20-30]	[5-15]	[1-10]
Denmark	[20-40]	[15-25]	[5-15]	[30-40]	[1-10]	0
Germany	[15-35]	[15-25]	[1-10]	[20-30]	[5-15]	[1-10]
France	[15-35]	[15-25]	[1-10]	[20-30]	[1-10]	[1-10]
Italy	[15-35]	[15-25]	[1-10]	[30-40]	[1-10]	[1-10]
UK	[10-30]	[10-20]	[1-10]	[35-45]	[5-15]	[1-10]

39. It should be noted that all of Sterling's conventional equipment sold into the EEA is in fact sourced from Agfa-Gevaert. The competitive impact of the loss of this player on the market is therefore more limited than it might appear.

40. Because the conditions of competition are very similar, the same considerations as were listed in respect of both joint and single dominance for conventional X-ray film are considered to be applicable also to these sectors. As to the possibility of joint dominance, it is worth noting that such a risk is even more unlikely given the complexity of the products in question. Accordingly, the concentration was not considered to give rise to competition concerns.

Wet chemistry

41. If markets are taken at European (EEA) level the combined entity would have a [between 30 and 50%] market share based on 1998 figures by volume; Agfa-Gevaert having a [between 25 and 35%] share based on 1998 figures by volume, Sterling an [between 5 and 15%] share, or [between 30 and 50%] combined. Kodak would have [between 35 and 45%], Fuji would have [between 10 and 20%], Konica [between 1 and 10%].
42. If markets are taken as national, combined shares by volume, and the shares of competitors, would be as follows

	Combined	Agfa-Gevaert	Sterling	Kodak	Fuji	Konica
Spain	[60-80]	[60-70]	[1-10]	[15-25]	[1-10]	[1-10]
BELUX	[50-70]	[35-45]	[15-25]	[15-25]	[1-10]	[1-10]
Greece	[50-70]	[50-60]	[1-10]	[20-30]	[10-20]	0
Portugal	[40-60]	[40-50]	[1-10]	[30-40]	[1-10]	[1-10]
Netherlands	[35-55]	[35-45]	[1-10]	[35-45]	[1-10]	[1-10]
Sweden	[30-50]	[20-30]	[10-20]	[25-35]	[20-30]	0
Germany	[20-40]	[20-30]	[1-10]	[25-35]	[10-20]	[1-10]
UK	[25-45]	[15-25]	[10-20]	[35-45]	[10-20]	0
Italy	[20-40]	[15-25]	[5-15]	[50-60]	[1-10]	[1-10]
France	[20-40]	[15-25]	[5-15]	[45-55]	[10-20]	[1-10]
Ireland	[20-40]	[20-30]	[1-10]	[30-40]	[20-30]	[1-10]
Finland	[20-40]	[20-30]	[1-10]	[45-55]	[15-25]	[1-10]
Denmark	[10-30]	[5-15]	[5-15]	[35-45]	[15-25]	0

43. A fairly similar picture emerges as with conventional film, with the combined entity having a relatively strong market lead in Spain, BELUX, Greece and Portugal. However, the increments are not substantial in any of these countries with the exception of BELUX, where there is a [between 15 and 25%] increment. In UK, Italy, France, Ireland, Finland and Denmark, the operation would leave the combined entity in second place behind Kodak.
44. The future of the wet chemistry sector is closely tied to the future of the conventional X-ray sector generally. While it is true to say that ‘wet laser’ imagers will continue to create a demand for wet processing technologies, it seems wet laser systems will tend to be displaced by ‘dry’ alternatives. Thus a transition for conventional X-ray to digital imaging, which is likely in the future to be increasingly a transition from conventional to dry, is unlikely to prevent the decline of this sector.

45. The high share in BELUX has to be considered against the fact that the other players, and in particular Kodak, still provide an adequate measure of competition. Moreover, in addition to the presence of the factors generally found in medical imaging markets in this sector, including the ability of competitors to react to any price increases, any attempt to impose supra-competitive pricing in BELUX could almost certainly be defeated with relative ease by hospital agencies procuring from across the border in one of the neighbouring countries.
46. In view of the above, no competition concerns were considered to arise.

Hard copy printers (all digital imagers)

European level

Collective dominance

47. Both Agfa-Gevaert and Sterling supply hard-copy printers. In 1998, approximately 10,750 units were sold worldwide and [between 2000 and 3000] in the EEA. Of the printers sold in the EEA, Agfa-Gevaert supplied [between 20 and 30%] and Sterling [between 5 and 15%]. [between 30 and 40%] of sales were by Kodak, [between 5 and 15%] by Fuji and [between 1 and 10%] by Konica. Another effective competitor was Codonics, with [between 5 and 15%], essentially active in the low segment of the market for dry printers.
48. In particular, Sterling manufactures and sells both wet and dry printers, but also labels and sells under its own brand printers made by Agfa-Gevaert. As regards the Sterling printers supplied into the EEA, approximately one third are based on the Helios technology, which will not be transferred to Agfa-Gevaert as part of this deal (although Agfa-Gevaert will inherit the benefit of maintenance agreements in respect existing printers). Sterling sells printers manufactured by Tektronix, based on the solid inkjet technology, [...]. Sterling has certain rights over the particular design of Tektronix printers sold for medical imaging purposes, and these printers have been considered to form part of Sterling's market share.
49. After the operation Kodak and Agfa-Gevaert would each have approximately a one-third share of the market, with a substantial proportion of the remaining third split between Fuji and Konica.
50. The respective positions of the competitors change if dry and wet technologies are looked at separately. In wet, Agfa-Gevaert are market leader with [between 30 and 40%], joining with Sterling who have [between 1 and 10%]. Fuji have [between 25 and 35%], Kodak have [between 15 and 25%], and Sterling [between 1 and 10%]. In dry, Kodak are now the market leader, with [between 40 and 50%]. Agfa-Gevaert's [between 15 and 25%] will be joined with Sterling's [between 10 and 20%], making [between 25 and 45%] combined, leaving Codonics with [between 15 and 25%] and Fuji with [between 1 and 10%]. Thus the two leaders would be Kodak and the combined entity with [between 40 and 50%] and [between 25 and 45%] respectively.

The position at European level is summarised in the following table.

	Agfa G + Sterling	Agfa-G	Sterling	Kodak	Fuji	Codonics
Wet only	[30-50]	[30-40]	[1-10]	[15-25]	[25-35]	
Dry only	[25-45]	[15-25]	[10-20]	[40-50]	[1-10]	[15-25]
Wet&dry	[25-45]	[20-30]	[5-15]	[30-40]	[5-15]	[5-15]

51. On the hypothesis that the markets are European wide, the issue of joint dominance needs to be considered, given that both the combined entity and Kodak/Imation would now enjoy very similar market shares. However, key factors whose presence might normally be considered necessary in order to support a finding of joint dominance are absent. Although the two main players have similar market shares, this sector is neither technologically mature, nor characterised by stagnation or decline - indeed, it is characterised by rapid growth and technological development. As a result serious doubts about the possibility of joint dominance are not considered to arise.

National level hard copy printers (wet and dry combined)

	Combined	Agfa- Gevaert	Sterling	Kodak	Codonics	Fuji	Konica
Belux	[35-55]	[25-35]	[10-20]	[30-40]	[10-20]	[5-15]	0
Spain	[35-55]	[35-45]	[1-10]	[30-40]	[10-20]	[1-10]	[1-10]
Portugal	[35-55]	[35-45]	[1-10]	[30-40]	[5-15]	[1-10]	[1-10]
Finland	[30-50]	[15-25]	[15-25]	[30-40]	0	[10-20]	[1-10]
Germany	[30-50]	[25-35]	[5-15]	[30-40]	[5-15]	[5-15]	[1-10]
UK	[25-45]	[1-10]	[25-35]	[35-45]	[10-20]	[1-10]	[1-10]
Italy	[30-50]	[20-30]	[10-20]	[35-45]	[10-20]	[1-10]	[1-10]
Ireland	[30-50]	[30-40]	[1-10]	[35-45]	[1-10]	[10-20]	0
Denmark	[25-45]	[15-25]	[10-20]	[40-50]	[10-20]	[1-10]	0
Greece	[25-45]	[25-35]	[1-10]	[25-35]	[10-20]	[10-20]	0
Austria	[20-40]	[15-25]	[5-15]	[35-45]	[10-20]	[1-10]	[1-10]
France	[25-45]	[25-35]	[1-10]	[30-40]	[10-20]	[15-25]	[1-10]
Netherlands	[20-40]	[20-30]	[1-10]	[35-45]	[10-20]	[5-15]	[1-10]
Sweden	[10-30]	[10-20]	[1-10]	[25-35]	[20-30]	[10-20]	0

52. In all the countries concerned, the combined entity is faced with a strong competitor, namely Kodak, with a market share of at least 30%, as well as other players on the market.. In addition, the hard copy printer sector is a fast developing one.

EEA sales volume hard copy imagers

	1996	1997	1998
Wet	1295	979	972
Dry	[400-800]	[1000-1400]	[1800-2200]
Wet & dry	[1500-2500]	[2000-3000]	[2000-3000]

53. The figures in the table above show that the overall growth in this sector is increasingly accounted for by dry rather than wet imagers. The dry segment has been in existence for no more than a few years. As yet there is no industry-standard dry technology, and existing market shares are likely to be heavily influenced by the development of new competing products or by new technological innovations. In these circumstances it is unlikely that the combined entity would be able to sustain a dominant position.

Wet digital film

European level

Collective dominance

54. In volume terms, Agfa-Gevaert's share of an EEA-wide market has remained reasonably steady over the past 3 years at about [between 25 and 35%] (average), while Sterling's share has remained at about [between 5 and 15%]. Kodak's share is in 1998 at around the [between 35 and 45%] mark, whilst Fuji's market share is at [between 10 and 20%], and Konica has [between 1 and 10%]. Also in this sector the symmetry of market shares between the merging entity and Kodak raises the issue of joint dominance. However, because the conditions of competition are very similar, the same considerations as were listed in respect of conventional X-ray film are considered to be applicable also to this sector.

National level

Single dominance

55. At national level, combined market shares would arise as follows

	Combined	Agfa-Gevaert	Sterling	Kodak	Fuji	Konica
Spain	[70-90]	[70-80]	[1-10]	[10-20]	[1-10]	[1-10]
Greece	[55-75]	[55-65]	[1-10]	[20-30]	[10-20]	0
BELUX	[50-70]	[40-50]	[10-20]	[20-30]	[1-10]	[1-10]
Germany	[40-60]	[30-40]	[10-20]	[30-40]	[5-15]	[1-10]
Portugal	[40-60]	[40-50]	[1-10]	[30-40]	[1-10]	[1-10]
Netherlands	[35-55]	[30-40]	[5-15]	[40-50]	[1-10]	[1-10]
Austria	[35-55]	[25-35]	[10-20]	[30-40]	[5-15]	[1-10]
Sweden	[30-50]	[30-40]	[1-10]	[35-45]	[10-20]	0
UK	[30-50]	[10-20]	[20-30]	[45-55]	[1-10]	[1-10]
France	[20-40]	[20-30]	[1-10]	[40-50]	[15-25]	[1-10]
Italy	[20-40]	[20-30]	[1-10]	[50-60]	[5-15]	[1-10]
Finland	[20-40]	[20-30]	[1-10]	[40-50]	[20-30]	[1-10]
Denmark	[10-30]	[10-20]	[1-10]	[60-70]	[1-10]	0
Ireland	[15-35]	[15-25]	[1-10]	[45-55]	[10-20]	[5-15]

Note: figures may not sum due to rounding.

56. In Spain, Greece, and to a lesser extent also Portugal, the combined entity would have a very strong position, but it inherits a strong position from Agfa. In BELUX and

Germany there would be a more substantial overlap but Kodak still has a strong market position.

57. In assessing market shares here, it was noted that, even though the market was theoretically open, there was a likelihood that the suppliers of wet laser machines would in all probability supply the bulk of the film for them, even if in practice a purchaser might have the option of turning to an alternative supplier. The market conditions therefore cannot be considered in isolation from either the conventional film segment, or indeed the digital imager sector generally. For the moment, sales of hard copy film are growing, from about 16 million square metres in 1996 in the EEA to just under 20 million square metres in 1998. But as dry imagers become an increasingly important segment of imagers sector the need for conventional hard copy film is likely to decline.
58. In any event, the factors which have been cited in the discussion of product markets in the conventional sector apply equally to the sale of hard-copy film. In particular, the systematic presence of large international competitors constituting an effective competitive threat, together with the existence of tendering procedures leading to absence of price transparency, makes it unlikely that the merged entity would be in a position to exercise single dominance.

V ANCILLARY RESTRAINTS

59. The parties have agreed, at the time of the SDIS/DRC spin-off, that Agfa-Gevaert will enter into a supply agreement with DRC on the basis of which products and equipment relating to the DR business, as it relates to certain existing customer contracts, will be supplied to Agfa-Gevaert by DCR for a commercially reasonable price ([...]).
60. The parties claim that a supply obligation for an indefinite period of time is justified because the contracts entered into by SDI require the supply of branded products only available from DRC.
61. In line with the Commission's past practice, a supply agreement can be considered as constituting an ancillary restraint in so far as it is, in principle, arranged for a limited duration. In order to make such an assessment, the economic life cycle of the products concerned should be duly taken into account. Since the life cycle of the products in question is estimated to be about five years, the supply contract is covered by this decision for this period of time.

VI CONCLUSION

62. In view of the above 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 No 4064/89, and Article 57 of the EEA Agreement.

For the Commission,