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Case No COMP/M.1742 - SUN CHEMICAL / TOTALFINA / COATES

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REGULATION (EEC) No 4064/89
MERGER PROCEDURE

Article 6(1)(b) NON-OPPOSITION
Date: 22/12/1999

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 22.12.1999 – SG (99)D/10762

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

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 Where possible the information omitted has been replaced by ranges of figures or a general description.

To the notifying party

Dear Sir,

Subject: Case No COMP/M. 1742 - Sun Chemical/Coates Brothers
Notification of 19.11.1999 pursuant to Article 4 of Council Regulation No 4064/89

1. On 19 November 1999, the Commission received a notification of a proposed merger pursuant to Article 4 of the Council Regulation (EEC) No 4064/89 whereby Sun Chemical Group B.V. ("Sun") intends to acquire sole control of the whole of the Coates inks businesses ("Coates") by means of a stock purchase.

2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of the Merger Regulation and does not raise serious doubts as to its compatibility with the common market and with the EEA agreement.

I. THE PARTIES

3. Sun is a wholly owned subsidiary of Dainippon Ink and Chemicals Inc. ("DIC") of Japan. DIC has global interests in graphic arts, including printing ink manufacture, printing supplies, printing machinery, chemicals and imaging products; polymers and related products and speciality plastics and compounds.

4. The Coates businesses, which are engaged in the production and distribution of inks are: Coates Brothers Incorporated, a corporation organised under the laws of the State of Delaware, USA; Coates Brothers plc (UK); Coates Screen Inks GmbH (D); Polichem S.A. (San Marino); Sinclair S.A. (Colombia); Total Inchiostri SpA (It); and their related subsidiaries and minority subsidiaries (collectively "Coates").

Rue de la Loi 200, B-1049 Bruxelles/Wetstraat 200, B-1049 Brussel - Belgium
Telephone: exchange 299.11.11
Telex: COMEU B 21877. Telegraphic address: COMEUR Brussels.

II. THE OPERATION

5. The operation involves the acquisition of sole control over Coates by Sun by way of a purchase of stock from TotalFina S.A. and related companies, the current owners of the Coates shares.

III. CONCENTRATION

6. The transaction, by which Sun intends to acquire sole control of the whole of Coates is a concentration within the meaning of article 3(1) (b) of the Merger Regulation.

IV. COMMUNITY DIMENSION

7. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion[1] (DIC - EUR 6,987 million; Coates – [deleted business secret]). Each of DIC and Coates have a Community-wide turnover in excess of EUR 250 million (DIC - EUR [deleted business secret]; Coates - [deleted business secret]), 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.

V. RELEVANT MARKETS

A <u>Relevant Product Markets</u>

8. The parties overlap in the manufacture and distribution of printing inks. There are a wide variety of printing inks and the parties argue that the relevant product market definition is a market for printing inks as a whole. The results of the market investigation did not support a single relevant product market but gave no clear view of the way the participants viewed the market. This reflects the complexity of the patterns of demand and supply of printing inks.

9. On the demand-side, inks can be divided into publication and packaging inks. On the supply-side, the inks' physical characteristics can support a distinction between paste and liquid inks. The bulk of inks used in publication are paste inks, the remainder being publication gravure; similarly most but not all packaging inks are liquids, some sheetfed paste ink is used for printing packaging.

Publication / Paste inks

10. The parties argue that virtually every type of publication can be produced using a variety of printing methods and therefore a variety of inks. The market investigation indicated that the situation is somewhat more complex, and that it may be more appropriate to define the relevant markets below the aggregated level of publication / paste inks.

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1 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.

11. There are three sub-categories of publication / paste[2] inks: heatset; coldset and sheetfed inks. Heatset is used for medium to long runs on medium quality glossy substrates (magazines, advertising insets and catalogues, along with books and business forms). Coldset is also used for medium to long runs, primarily for printing newspapers, although books, magazines and business forms can also use this ink and process. Sheetfed is suitable for shorter print-runs.

12. One liquid ink, publication gravure, can also be used for similar purposes to heatset inks, namely for printing long runs on high quality paper (magazines, advertising insets and catalogues). The parties have argued that technological developments have reduced the fixed costs of the gravure printing process, therefore lowering the length of the print-runs for which gravure can be used and increasing the scope for substitution between publication gravure and heatset printing processes.

Packaging / Liquid inks

13. Packaging inks consist essentially of two categories of liquid inks, i.e. gravure and flexographic. Gravure inks are solvent-based, flexographic inks may be either water-based or solvent-based. Gravure inks are typically used for high quality film and flexible packaging and flexographic inks are used for a wide variety of flexible packaging printing.

14. Packaging printing customers were quite divided in their responses to the Commission with regard to whether gravure and flexographic inks constitute the same or separate product markets. However, at the same time a substantial number of these respondents indicated that there is significant scope for substitution between the packaging printing processes that use different types of liquid ink. Consequently, the Commission considers that a single product market for both categories of liquid packaging ink cannot be excluded.

15. One paste ink, sheetfed, can also be used for packaging, most often for printing on container board and paper. The market investigation indicated that there is less scope for substitution between printing with liquid packaging inks and printing with sheetfed inks.

Product market conclusion

16. As the operation does not raise serious competition concerns whichever of the alternative markets described above are considered, it is not necessary to define more precisely the relevant product markets in this case.

B Relevant Geographic Market

17. The parties are of the opinion that the relevant geographic market for all printing inks is at least EEA-wide. They argue: that transport costs are less than 3 per cent of average sales value; that it is not necessary to produce ink in a particular member state to be able to supply that member state; that customers are increasingly contracting for the supply of ink on a pan-European basis, leading to price convergence; and that the

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[2] Paste inks are all used in lithographic (offset) printing purposes. Since all commercial printing process are offset, these terms are synonymous.

significant levels of trade between member states indicates that there are no specific obstacles to intra-EEA trade.

18. Data for cross-border trade at an aggregate printing ink level show that approximately 25 per cent of EU production is traded between member states, and that the volume of ink traded between member states increased by 40 per cent between 1996 and 1998. In eight member states, including France and the UK, total imports accounted for more than 20 per cent of consumption and exports for more than 20 per cent of production. Imports from outside the EU represented less than 3 per cent of ink sales in the EEA and 60 per cent of these were from Switzerland into France and Germany. A global dimension to the market can therefore be ruled out.

19. Transport costs are low and the market investigation has provided evidence that it is not necessary to manufacture inks in a particular member state to be able to sell in that member state. Customers value local sales and services, in particular when technical problems arise which need to be solved quickly. However, the provision of such services on a national basis does not indicate that the geographic markets should be defined as national unless there are barriers to entry in one member state, e.g. skill shortages, that do not exist in others such that the conditions of competition are significantly different. No evidence has been gathered that would support such an argument in favour of national markets.

20. The increasing level of final customers' globalisation in both the publication and packaging industries has introduced a growing demand for consistency in printed products across Europe. Printing companies are having to increase their geographic coverage, and to be able to print almost identical products at different locations. For a significant number of customers there are therefore no differences in the types of inks that they purchase across Europe. This geographical convergence was reflected in the results of the market investigation which showed that there has been growth in the proportion of ink purchases that are arranged on a pan-European basis.

21. For these reasons the geographic market is the EEA.

V. COMPETITIVE ASSESSMENT

22. On the basis of the market definitions outlined above, the merger would result in EEA-wide market shares (in value terms) as follows.

% of value	Sun Chemical	Coates	Combined	Market size million EUR
Paste inks	20-30	10-20	35-45	1495
Liquid inks	15-25	5-10	25-35	1545
Publication inks	25-35	5-15	35-45	1453
Packaging inks	15-25	5-15	25-35	1587

23. The parties will face competition from established and well-resourced companies with significant market shares. Competitors' market shares (by value) are summarised below. All of these competitors are active in at least ten different member states.

Company	**Paste**	**Liquid**	**Publication**	**Packaging**
BASF	5-15%	5-15%	5-15%	5-15%
Flint	<10%	<10%	<10%	<10%
Huber	5-15%	<10%	5-15%	<10%
SICPA	<10%	<10%	<10%	<10%
Schmidt	<10%	<10%	<10%	<10%
Siegwerk	<10%	5-15%	5-15%	<10%
Others	15-25%	25-35%	10-20%	30-40%

24. The manufacturing equipment differs between that needed to produce paste inks, and that needed to produce liquid inks. Responses from competitors have confirmed that the machinery used to produce all paste inks is very similar and could be used to produce all different types of paste ink. The equipment needed to manufacture liquid inks needs to be rust-proofed if it to produce water-based inks, and needs to be protected against the risk of fire and explosion if producing solvent-based inks. The majority of competitors indicated that the costs of these protective measures do not prevent all liquid inks being produced on the same equipment. Therefore even if the relevant product markets were defined more narrowly than paste and liquid inks, manufacturers would be able to switch production between the different types of paste and liquid inks.

25. In addition, virtually every ink manufacturer has a significant amount of excess capacity for both paste and liquid inks. The notifying party has calculated that spare manufacturing capacity represents about 40 per cent of total capacity. Information provided by competitors indicates that this could be an over-estimate of the extent of spare capacity. Nevertheless, four major competitors estimated that their total spare capacity is between 25 per cent and 40 per cent and that they could increase their production in the very short term without incurring significant costs.

26. The capital costs for new equipment are relatively low, and the production of ink is not technologically demanding. Therefore neither of these factors create any barriers to entry or expansion.

27. There are no intellectual property rights which a new entrant would need in order to enter successfully. The notifying party has also argued that particular ink formulations can easily be imitated and therefore there is little or no brand loyalty for particular manufacturer's inks.

28. The costs of establishing a local presence do not appear significant. Transport costs are low, therefore there is no need to produce locally to be able to sell locally. In order to expand, ink manufacturers need to get their inks qualified by customers to prove that their inks are compatible with the customers' demand. Customers' responses to the market investigation did indicate that there are some costs that they would face in order to undertake quality assurance tests on a new manufacturer's ink. However, once a

manufacturer has proved the quality and effectiveness of their ink, the costs of switching between manufacturers do not appear significant.

29. The majority of customers have more than one supplier for a given ink. Furthermore other ink manufacturers, who do not currently supply particular customers, have frequently qualified their inks with those customers. That is their inks have been tested by those customers and found satisfactory. This enables customers to exert competitive pressures on their incumbent suppliers on both price and quality dimensions since they can either switch their purchases immediately between their existing suppliers, or they can switch at very short notice to purchase from their other qualified suppliers. Multi-sourcing also enables customers to guarantee security of supply should there be a problem with a particular manufacturer's ink.

30. The combination of low barriers to entry, multi-sourcing by consumers and the existence of significant spare capacity in the industry all combine to provide a significant constraint on the merged entity's ability to exert any market power.

VI. CONCLUSION

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

For the Commission,
Signed : Mario MONTI
Member of the Commission