

***Case No COMP/M.2611 -
SCHRODER VENTURES
/ GOLDMAN SACHS /
COGNIS***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 22/10/2001

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 22.10.2001
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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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

Subject : Case No. COMP/M.2611 - SCHRODER VENTURES / GOLDMAN SACHS / COGNIS
Notification of 19.09.2001 pursuant to Article 4 of Council Regulation No 4064/89

1. On 19/09/2001, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89 by which the U.K. Company Schroder Ventures European Fund Managers II LP ("SVEF II"), [...] and the US-based Goldman Sachs Group Inc. ("GSGI"), [...] acquire within the meaning of Article 3(1)(b) of the Council Regulation joint control of Cognis B.V. of the Netherlands ("Cognis"), a company belonging to the Henkel Group ("Henkel"), by way of purchase of shares and assets.
2. The Commission has concluded that the notified operation falls within the scope of the Merger Regulation as amended and does not raise serious doubts as to its compatibility with the common market and with the functioning of the EEA Agreement.

I THE PARTIES

3. SVEF II provides management, advisory and consultancy services to buy-out and venture capital funds. GSGI is a global investment banking and stock-brokerage firm, mainly active in three business-lines: investment banking, securities trading, asset management services.
4. Cognis is a manufacturer of specialty chemicals. Prior to this transaction Cognis represented the speciality chemical business of Henkel, with activities both inside and outside the EEA. Its main divisions consist of: a) Oleo Chemicals; b) Care chemicals; c) Organic specialities. This latter division includes in particular leather chemicals.

II CONCENTRATION

5. The concentration is an investment transaction, carried out by two financial institutions, Schroder Ventures and GSGI, through affiliated investment funds. The purchasers will acquire from Henkel certain shares and assets of companies that currently form the Cognis group of companies, a speciality chemical business active world-wide.
6. GSGI is participating to the operation through [...]. SVEF II (controlled by Schroder Ventures) is also participating to the acquisition through investment funds that it advise and ultimately controls. The purchasers will carry out the acquisition of Cognis through a special purpose corporate vehicle controlled by SVEF II and GSGI, named Luxco. [...] neither will have the right to act without the other with regard to Luxco¹. The acquisition vehicle will hold the Cognis companies via various other holding companies, mainly established in connection with the geographic location of the acquired assets. The control and management of the acquisition vehicle will be split evenly between the SVEF II and GSGI. Therefore, the purchasers, SVEF II and GSGI, will have joint control over Luxco, and, through it, over Cognis.
7. The notified transaction constitutes therefore a concentration within the meaning of article 3(1)(b) of the Merger Regulation.

III COMMUNITY DIMENSION

8. The parties to the agreement have a combined aggregate world-wide turnover of more than EUR 5 billion². Schroder Venture has a world-wide turnover of [...]%, GSGI has a world-wide turnover of [...] and Cognis has a world-wide turnover of [...]. The parties have a Community-wide turnover in excess of EUR 250 million in 2000 (Schroder Ventures [...], GSGI [...], Cognis [...] and [...]). Therefore, the notified operation has a Community dimension under Article 1(2) of the Merger Regulation.

IV THE RELEVANT MARKET

9. The only area of overlap between the parties is that of leather chemicals, where, apart from Cognis, a company controlled by SVEF II is also active.

PRODUCT MARKETS

10. The sector involved in this transaction is speciality chemicals, in particular leather chemicals. The processing of leather requires three main steps: i) beam-house processes including tanning; ii) wet-end processes, including dyeing; iii) finishing. Various chemical products are used in each of these steps. These products are primarily beam-house chemicals (for example, soaking agents, sulphide, surfactants, liming agents, de-liming agents, acids, salts, chrome, etc.) wet-end chemicals (for example, synthetics,

¹ [...]

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.

inorganic chemicals, resins, polyacrylates, fat liquors, dyes, etc.) and finishing chemicals (for example, caseines, polyacrylates, pigments, waxes, lacquers, finishing agents), but they need to be compatible across the three phases of the whole process. Customers (mainly tanneries) usually prefer to buy all their chemicals in a “package”.

11. The main customers of leather chemicals are tanneries. The leather industry is dominated by small and medium sized firms and the main leather manufacturing regions in the EEA are Italy and Spain. The main end-use markets for leather are in turn, the shoe, garment and furniture industries (accounting for about 90% of leather consumption), the rest being automotive, aeroplane upholstery and bag makers.
12. For the purpose of the present case, the question whether the three stages of the leather processing (i.e. the group of chemical products used in each of the phases) represent separate product markets or whether the overall leather processing system forms one single product market can be left open since competition concerns do not arise in any alternative market definition.

GEOGRAPHIC MARKETS

13. The parties state that the geographic scope of the market is at least EEA-wide if not world-wide. In particular they state that the technology for leather processing is the same world-wide and that similar products are sold world-wide. Furthermore, within the EEA, transportation costs are, allegedly, not significant, no material or legislative entry barriers exist, and prices for leather chemicals are stated to be similar throughout Europe.
14. Nevertheless, within Europe, the amount of these products sold in various countries is very different, with Italy being by far the most important, accounting for around 50% of overall European sales of leather chemicals (estimated at around EUR 913 million). Furthermore, indications exist that the markets may be national in scope, *inter alia* due to the fact that leather chemicals customers (tanneries) tend to purchase locally. However, for the purposes of the present case it is not necessary to define the relevant geographic market since no competition concern arises in any alternative geographic definition.

V COMPETITIVE ASSESSMENT

15. As anticipated above, the only area of overlap between the parties is that of leather chemicals, where the target company Cognis, and a German company, TFL Holding GmbH (“TFL”) controlled by SVEF II ([...]), are active.

Effects at EEA-wide level

16. Under a EEA-wide market definition, post-transaction the combined market shares of Cognis and TFL would not horizontally exceed [10-20]%, both taking into account all leather chemicals altogether ([10-20]%, of which [0-10]% TFL, [0-10]% Cognis and roughly [less than 5]% Novaria³) and also considering separately each of the three

³ Novaria, a subsidiary of Novorchem group, is owned by another fund within the Schroder Group, different from SVEF II. Novaria is active in the finishing business only in Italy, Greece and Portugal. Its market share is claimed by the parties to represent less than [5]% at EEA level for all leather chemicals. [...]

leather processing phases referred to above: respectively, [10-20]% in beam-house (of which [0-10]% TFL and [0-10]% Cognis), [10-20]% in wet-end (of which [5-15]% TFL and [0-10]% Cognis), [5-15]% in finishing (of which [0-10]% TFL, [less than 5]% Cognis and roughly [0-10]% Novaria).

17. Moreover, competitors of Cognis and FL would be important multinational companies, such as BASF, Bayer/Rohm&Haas, Clariant, Stahl Intl, Boehme with significant market shares both in all leather chemicals and in each of the three processes, as well as some smaller players. For instance at EEA level, the competitors' market position in all leather chemicals would be the following: BASF [5-15]%, Bayer/R&H [5-15]%, Clariant [5-15]%, Stahl Intl [0-10]%, Boehme [0-10]%. The parties' competitors have also significant market shares at EEA level in each of the three product segments as shown in the table below. Therefore, with respect to a EEA-wide market, there would not exist an affected market, in all alternative product market definitions.

EEA LEVEL – MARKET SHARES (YEAR 2000)				
	All Leather chemicals	Beam-house	Wet-End	Finishing
TFL+Cognis	[10-20]%	[10-20]%	[10-20]%	[5-15]%
BASF AG	[5-15]%	[10-20]%	[0-10]%	[5-15]%
Bayer/R&H	[5-15]%	[10-20]%	[0-10]%	[10-20]%
Clariant AG	[5-15]%	[0-10]%	[5-15]%	[10-20]%
Stahl Intl.	[0-10]%	[less than 5]%	[0-10]%	[15-25]%
Boehme	[0-10]%	//	[0-10]%	//
Biokimica Prodotti	//	[5-15]%	//	//

Source: estimates from the parties

Effects at Member States level

18. At Member States level, significant overlaps that may lead to identify potentially affected markets would occur in: A) Italy for beam-house chemicals (combined market share [10-20]%, of which [0-10]% Cognis and [5-15]% TFL); B) Italy for wet-end chemicals (combined market share [10-20]%, of which [0-10]% Cognis, and [5-15]% TFL); C) Italy for finishing chemicals (combined market share of [10-20]%, of which [less than 5]% Cognis, [5-15]% TFL and also [0-10]% of Novaria); D) France for wet-end chemicals (combined market share [10-20]%, of which [0-10]% Cognis and [10-20]% TFL).
19. However, even if the product markets were to be national, other strong competitors exist both in Italy and in France in each of the product segments considered above.
20. In particular, the competitors' estimated market positions would be the following: A) Italy, beam-house chemicals: BASF [10-20]% market share, Bayer [10-20]%, Biokimica Prodotti [5-15]%, B) Italy, wet-end chemicals: Clariant [0-10]%, Bayer [0-10]%, BASF [0-10]%; C) Italy, finishing chemicals: Stahl [10-20]%, Clariant [10-20]%, BASF [5-15]%, Bayer [5-15]%; D) France, wet-end chemicals: Clariant [5-15]%, Boehme [5-

15]%, BASF [0-10]%. The table below resumes the competitive situation in the aforementioned country-level markets:

COUNTRY LEVEL AFFECTED MARKETS – MARKET SHARES (YEAR 2000)					
	ITALY	ITALY	ITALY	ITALY	FRANCE
	All Chemicals	Leather	Beam-house	Wet-End	Finishing
TFL+Cognis	[10-20]% (+ roughly [less than 5]% of Novaria)	[10-20]%	[10-20]%	[10-20]%	[10-20]%
BASF AG	[5-15]%	[10-20]%	[0-10]%	[5-15]%	[0-10]%
Bayer/R&H	[5-15]%	[10-20]%	[0-10]%	[5-15]%	[0-10]%
Clariant AG	[5-15]%	[0-10]%	[0-10]%	[10-20]%	[5-15]%
Stahl Intl.	[0-10]%	[less than 5]%	[0-10]%	[10-20]%	[0-10]%
Boehme	N.A.	//	[0-10]%	//	[5-15]%
Biokimica Prodotti	N.A.	[5-15]%	//	//	//

Source: estimates from the parties

21. Therefore, the concentration will not give rise to the creation or strengthening of a dominant position as a result of which effective competition would be significantly impeded in the common market or in a substantial part thereof.

VI CONCLUSION

22. 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 pursuant to Article 6(1)(b) of Council Regulation (EEC) No. 4064/89 and Article 57 of the EEA Agreement.

**For the Commission,
Mario MONTI
Member of the Commission**