

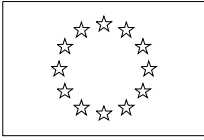
***Case No COMP/M.2763 -
TORAY / MURATA /
TEIJIN***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 06/12/2002

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 06/12/2002

SG (2002) D/233044-233045-233046

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

Subject: Case No COMP/M.2763 - Toray / Murata / Teijin

Notification of 5.11.2002 pursuant to Article 4 of Council Regulation No 4064/89¹

1. On 5 November 2002 the Commission received a notification of a concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89 by which the Japanese undertakings Toray Engineering Co. Ltd., Murata Machinery Ltd., and Teijin Seiki Co. Ltd. acquire within the meaning of Article 3(1)(b) of the Council Regulation joint control of TMT Machinery Inc. (Japan) by way of purchase of shares in this newly created company constituting a joint venture.
2. After examination of 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 functioning of the EEA Agreement.

I. THE PARTIES

3. Toray Engineering Co. Ltd. ("Toray") is active in the field of engineering, manufacturing of electronics and textile machines. It is 99.99% owned by Toray Industries Inc., the ultimate parent undertaking of a group of companies active in a wide range of businesses including: fibres and textiles, plastics and resins, films, chemicals, ceramics, engineering and machinery, construction, pharmaceutical and

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).

medical products, electronics, consulting and other solution business, consumer products and hotels.

4. Murata Machinery Ltd. (“Murata”) is the ultimate parent company of a group of companies active in the production and sale of: textile machinery, machine tools, material handling equipment, office equipment, as well as construction, real estate and businesses ancillary to the above.
5. Teijin Seiki Co. Ltd. (“Teijin”) is active in textile and industrial machinery, aircraft and oil hydraulic equipment and in precision equipment. Teijin Seiki is a subsidiary of Teijin Limited, the ultimate parent company of a group of companies active in: fibres and textiles, films and plastics, pharmaceuticals and home health care, machinery and engineering, as well as innovative materials and information technology.
6. TMT Machinery Inc. (“JV”) will be active in the development, manufacture, marketing, and sales of synthetic fibre machinery, in particular machinery for the production and preparation of synthetic fibre yarn.

II. THE OPERATION

7. On 22 January 2002, Toray, Murata and Teijin signed a joint venture agreement with the aim of integrating their respective synthetic fibre machinery business in the JV. The JV, which was incorporated on 1 April 2002, is a Japanese Stock Company (*Kabushiki Kaisha*) to which the parent companies contribute their operations in this sector. Toray and Teijin each own 33 % of the shares in the JV and Murata 34 %. [...] the JV is established on a lasting basis.
8. The parent companies have started to transfer their respective R&D, and marketing and sales activities to the JV. The JV currently has no manufacturing operations but the parent companies have agreed that they will transfer their respective manufacturing functions to the JV on 1 April 2003.

III. CONCENTRATION

9. The parties submit that the JV is not yet “full function”, but indicate that the JV will acquire full functionality at the date on which the production will be transferred, i.e. on 1 April 2003. The agreement of 22 January 2002 would therefore provide for a delayed timetable with regard to the full-functionality nature of the JV.
10. After its assessment of the submitted facts the Commission concludes that the original joint venture agreement, which constitutes the relevant triggering event for the purposes of this notification, establishes a full function joint venture performing on a lasting basis all the functions of an autonomous economic entity according to Article 3 paragraph 2 of Council Regulation (EEC) No 4064/89. The JV has already been transferred the marketing, sales and R&D activities of its parent companies, together with the relevant resources to carry out these activities. Even if it were to be accepted that the full-function nature of the JV depends on the transferring of the manufacturing activities of the parents, this transfer has been already agreed upon by the parties, and derives directly from the joint venture agreement.

11. The notifying parties also submitted that there are serious doubts as to whether the parent companies will be able to exercise joint control in the JV and that therefore the transaction may not give rise to a concentration within the meaning of Council Regulation (EEC) No 4064/89.
12. The parties argue that none of the parent companies has a veto power at the level of the *Board of Directors*, where decisions regarding the annual business plan and budget and important investment are to be taken. The Board of Directors is composed by six directors (each parent company appoints 2) and a part time Representative Director / Chairman (appointed by Murata). Decisions at the Board are taken by majority voting.
13. The Commission notes, however, that unanimity is nevertheless required for the adoption of decisions at the level of the *Shareholders Meeting* and, in particular, at the *Meeting of Representatives of Shareholders*, which is composed by one representative of each parent and has large powers regarding the determination of the strategic behaviour of the JV², thus limiting in practice the scope of the powers of the Board. Furthermore, as the Commission Notice on the concept of concentration³ in its point 34 stipulates, in cases of establishment of a new JV with a limited number of parent companies, each providing a vital contribution to the JV, there's a strong likelihood that the JV will be operated with the parent's agreement on the most important strategic decisions, even if there is no express provision for any veto rights. In the case at stake, the three parent companies have indeed contributed (or will do so in the future) the assets and operations (R&D, sales and marketing and manufacturing, including transfer or secondment of personnel and manufacturing facilities, and lease of land and buildings) that will constitute the business of the JV. The Commission concludes in particular from the above elements that Toray, Murata and Teijin exert joint control over the joint venture.

IV. COMMUNITY DIMENSION

14. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion⁴. Each of Toray and Teijin have a Community-wide turnover in excess of EUR 250 million ([...] and [...] mio EUR respectively in 2001), 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.

² Most importantly: decisions on mid- and long-term business policies, important capital investments, basic marketing and personnel policy, development of new models and questions regarding the production factories, appointment and functions of Directors and regulation of the Board. The parent companies have committed to ensure that decisions taken by the Representatives of Shareholders are implemented by the Directors appointed by each of the parents.

³ OJ C 66, 2.3.1998.

⁴ 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.

V. COMPETITIVE ASSESSMENT

Relevant Product Markets

15. The JV will be active exclusively in the supply of machinery for the production and preparation of synthetic filament yarn, in particular spinning, winding and texturing machines.
16. Such machinery can be made up of several components depending on the customer's individual specifications. The notifying parties propose to distinguish the markets for (1) spinning machines (including take-up winders) and (2) texturing machines, according to the processes that these types of machines handle. Winders are machinery separate from spinning machines and can be sold separately, but they would generally be integrated with the spinning system. The parties refer to a possible subdivision of the market for spinning (plus take-up winding) equipment and the market for texturing equipment according to types of fibres produced (nylon, polyester and polypropylene) and/or according to fibre applications (industrial or textile), as most of these different types of machinery are not completely substitutable from a demand side perspective. However, the notifying parties point out that there exists substitutability of products on the supply side due to 1) the same basic architecture of the machines, 2) ease of switching by manufacturers from one machine type to another, and 3) ease of suppliers to expand production of one or the other machines.
17. The Commission's market investigation has generally confirmed all of the above elements for larger producers, in particular as concerns the broad segmentation of the market. Although not all spinning or texturing machines are suitable, from a demand side perspective, for the production of different types of fibres and for industrial and textile applications, the basic architecture of each type of machine does not appear to differ substantially.
18. In any event, and for the purposes of this decision, the precise product market definition can be left open as there are no significant competition concerns in any of the possible market delineations.

Relevant geographic markets

19. The parties submit that both the markets for the sale of "spinning and take-up winding" and for "texturing" machinery are European (EEA) wide and may be world wide. The main reasons put forward are the absence of legal or logistical barriers between countries in Europe. In addition, from a demand-side perspective there would be no relevant country-specific customer requirements and, from a supply-side perspective, transportation costs are low relative to the price of the machines. All machines of the parties and of the JV are and will be manufactured in Asia. Sales staff in Europe typically serves several countries. The parties point out that the relevant markets are most probably not worldwide as imports into Europe have to bear the special CE-marking and meet the requirements of the Machinery Directive⁵.

⁵ EU-Directive 98/37/EC of 22 June 1998 on the approximation of the laws of the Member States relating to machinery; OJ L 207/1, 23.7.1998.

20. The Commission's market investigation has confirmed that the relevant geographic markets for synthetic fibre machinery are at least European-wide, and has generally pointed towards a worldwide scope for these markets. However, for the purposes of this decision the precise geographic market definition can be left open, as there are no significant competition concerns in any of the possible market delineations.

Assessment: the European or worldwide markets for synthetic filament yarn machinery

21. The Parties have provided sales data (value) for spinning machines (including take-up winders) and texturing machines including sales of spare parts and after-sales service both for Europe and for the world. For the financial year 2001, the following market shares are provided based on estimates of total market sizes:

2001 in %	Toray		Murata		Teijin		Total = JV	
	EU	World	EU	World	EU	World	EU	World
Spinning	[5-10]	[10-15]	[0-5]	[5-10]	[0-5]	[5-10]	[5-10]	[20-30]
Draw Texturing	[1-5]	[0-5]	[0-5]	[20-30]	[0-5]	[0-5]	[5-10]	[20-30]

22. For the year 2001 the parties estimate the overall market size of the European market for draw texturing machines at [...] MEUR and [...] MEUR for spinning equipment. The worldwide market is estimated at [...] MEUR and [...] MEUR respectively. The combined market share of the parties would be for spinning machinery [5-10%] at the European level and [20-30%] worldwide and for draw texturing machines [5-10%] in the EU and [20-30%] worldwide. The main competitor in this sector is the German company Barmag AG, with estimated market shares in the EU of [40-50%] for draw texturing and [65-75%] for spinning, and of [35-45%] worldwide for both types of synthetic fibre machinery (2001 figures).
23. On the basis of the described market structure and the general competitive characteristics of the market as confirmed by the market investigation, such as the possibility of new market entry and the presence of numerous smaller competitors, the transaction does not give rise to significant competition concerns as regards horizontal or any other competitive effects.

VI. CONCLUSION

24. 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
 Mario MONTI
 Member of the Commission