EN

Case No COMP/M.3564 - CVC / ANI PRINTING INKS

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REGULATION (EC) No 139/2004
MERGER PROCEDURE

Article 6(1)(b) NON-OPPOSITION
Date: 28/10/2004

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 28/10/2004

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In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EC) No 139/2004 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 Where possible the information omitted has been replaced by ranges of figures or a general description.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 Sir/Madam,

Subject: Case No COMP/M.3564 – CVC/ANI Printing Inks
Notification of 01/10/2004 pursuant to Article 4 of Council Regulation No 139/2004[1]

1. On 01.10.2004, the Commission received a notification of a proposed concentration pursuant to Article 4 and following a referral pursuant to Article 4(5) of Council Regulation (EC) No 139/2004 by which [a fund advised by CVC Capital Partners] ("CVC") acquires within the meaning of Article 3(1)(b) of the Council Regulation control of the whole of the undertaking ANI Printing Inks B.V. ("ANI", the Netherlands). This transaction was preceded by another transaction, also notified on 01.10.2004, whereby CVC acquires within the meaning of Article 3(1)(b) control of the whole of the undertaking BASF Drucksysteme GmbH and certain additional BASF AG assets in the field of pigments (together "BASF Inks", Germany). For the purposes of assessing the ANI transaction, it is assumed that CVC has already completed the BASF transaction which was approved by the Commission on 28/10/2004[2].

2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of Council Regulation No 139/2004 and does not raise serious doubts as to its compatibility with the common market and the EEA Agreement.

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1 OJ L 24, 29.1.2004 p. 1.

2 Case No. COMP/M.3563 - CVC/BASF Printing Inks

I. THE PARTIES AND THE OPERATION

3. CVC Capital Partners is a European private equity company […]. Post acquisition of BASF Inks, CVC produces printing inks for publication and packaging applications, pigments for printing inks and printing plates. ANI produces printing inks for both publication and packaging applications.

4. The operation will confer sole control of ANI on CVC. At a later stage, CVC will combine the printing inks businesses of BASF and ANI.

5. The Commission has considered whether these two transactions might be treated as a single concentration. Since in any event the BASF transaction has Community dimension, and since no Member State has raised any objection to the Commission's competence to treat the current transaction under Article 4(5) of the Merger Regulation, the Commission has jurisdiction under either alternative. The competitive assessment of the ANI transaction on the basis that CVC has already acquired BASF's ink business ensures that the competitive assessment remains the same as that which would have been done had the two transactions been treated as a single concentration. Therefore, it is not necessary in the present case to take a final position on whether these two transactions constitute one or two concentrations.

II. COMMUNITY DIMENSION

6. On 6 September 2004, the parties to the proposed operation informed the Commission that the concentration, capable of being reviewed under the national competition laws of more than three Member States, should be examined by the Commission pursuant to Article 4(5)[3]. The Commission transmitted this submission to all Member States on the same day. None of the Member States competent to examine the concentration expressed their disagreement to the request of referral. The case is therefore deemed to have a Community dimension.

III. RELEVANT MARKETS

The relevant product market

7. This case concerns the production and marketing of printing inks and accessories for the publication and packaging industry. 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.

[3] If considered in isolation, as a separate concentration, this operation would not have Community dimension within the meaning of Article 1 of the new Merger Regulation, in view of, inter alia, ANI's Community-wide turnover of € […] million, with sales under € 25 million in […] Member States. According to the parties, the operation is reviewable under the national merger control laws of eight EU countries and one EFTA country, namely Austria, Czech Republic, Germany, Hungary, Ireland, Italy, Slovakia, Sweden and Norway (this Form RS is being submitted in "extended" form to cover the EFTA states which are party to the EEA Agreement).

8. In a previous case[4], the Commission has examined these markets and considered that, on the demand-side, inks can be divided into publication and packaging inks. On the supply-side, a distinction between paste and liquid inks can be made on the basis of the inks' physical characteristics. The bulk of inks used in publication are paste inks and most packaging inks are liquids, with some sheet-fed paste ink being used for printing packaging. The market investigation has further confirmed the distinction between paste and liquid inks as there is limited substitutability from the demand side. The market investigation has also indicated a certain degree of supply-side substitutability as ink suppliers can switch production from one category of inks to another within a relatively short period of time; for example, suppliers use the same machinery to produce coldest, heatset, and sheetfed inks, and switching only requires the equipment to be cleaned and slightly adapted.

9. The category of publication / paste inks can be further segmented into (i) heatset; (ii) coldset and (iii) sheetfed inks. Heatset and coldset are used for medium to long runs with the latter being primarily used for printing newspapers. Sheetfed is suitable for shorter print-runs. Publication gravure, a liquid ink, can also be used for heatset inks applications on high quality paper (magazines, advertising insets and catalogues).

10. Packaging / liquid inks, can be segmented into gravure and flexographic although it appears that there is considerable scope for substitution between the packaging printing processes that use different types of liquid ink. Sheetfed, a paste ink, can also be used for packaging, most often for printing on container board and paper.

11. Therefore, whilst the results of the market investigation do not support a single relevant product market comprising all inks, it is not clear what further segmentation could be retained. In any case, for the purpose of this decision the precise definition of the product market can be left open, since in no alternative product market will the proposed operation significantly impede effective competition in the common market or a substantial part of it in particular as a result of the creation or strengthening of a dominant position.

The relevant geographic market

12. On the basis of the low level of transport costs, comparable price levels, the multinational presence of all major competitors and the absence of local presence as a prerequisite to compete in this market, the parties consider this market to be EEA-wide. In the Sun Chemical case (see above) the Commission has followed this approach.

13. The market investigation has confirmed the geographic scope to be EEA-wide, indicating that customers see no differences in the types of inks that they purchase across Europe. Whilst customers value local sales and services, it is not necessary for an ink supplier to manufacture inks in a particular member state to be able to sell in that member state. Customers are also increasingly contracting for the supply of ink on a pan-European basis, which leads to price convergence. On the basis of de minimis imports from outside the EEA, a world-wide market, however, appears unlikely, although there are indications of extra-EEA potential competition (for example, the

4 Case No COMP/M.1742 – Sun Chemical / TotalFina / Coates of 22 December 1999.

Indian company Micro Inks has announced plans to enter the EEA market for publication inks).

14. The relevant geographic scope for this assessment is therefore the EEA.

IV. COMPETITIVE ASSESSMENT

15. On an EEA scale, the parties' year 2003 combined share for all printing inks does not exceed 15% by value (CVC/BASF [5% - 15%] and ANI [0% - 10%]). This compares to Sun Chemical's market share of [30% - 40%]. Other competitors that are active throughout the EEA include Flint-Schmidt ([5% - 15%]), Siegwerk ([5% - 15%]), SICPA ([5% - 15%]) and Huber ([5% - 15%]). Around 70 other competitors, mostly players with local strengths, account for the remaining [10% - 20%] of the market.

16. Segmenting the overall ink market according to application does not lead to a combined CVC/BASF + ANI having market shares in excess of 25%. The new entity would have [20% - 30%] for publication inks (CVC/BASF [10% - 20%] and ANI [5% - 15%], both companies having increased their market shares by a few percentage points over the last two or three years), and [10% - 20%]% for packaging inks (CVC/BASF [5% - 15%] and ANI [5% - 15%]). When segmented on the basis of supply characteristics, the market shares are in line with those for applications. The merged entity would have [20% - 30%] for paste inks (CVC/BASF [10% - 20%] and ANI [5% - 15%]) and [10% - 20%] for liquid inks (CVC/BASF [5% - 15%] and ANI [5% - 15%]). The market shares of Sun Chemical, Flint-Schmidt and Huber for these segments are in line with their share of the overall ink market, showing no particular weaknesses on any of the different segments. SICPA and Siegwerk focus on liquid inks / packaging but also have a presence for paste inks used for publications.

17. Whilst further sub-segmentation has not been supported by the market investigation in view of a significant degree of supply-side substitutability (v sup), it is to be noted that only for sub-segments within publication / paste inks would the new entity reach market shares above 25%. Specifically for Coldset inks, the combined entity would have a [20% - 30%] market share (CVC/BASF [5% - 15%] and ANI [5% - 15%]). For sheet – fed ink, used in both publication and packaging applications, the parties would have a combined market share of around [20% - 30%] (CVC/BASF [10% - 20%] and ANI [0% - 10%]). The new entity will however continue to face strong competitors in these sub-segments such as Sun Chemical ([20% - 30%] for Coldset and [20% - 30%] for Sheetfed) and Huber ([10% - 20%] for Coldset and [10% - 20%] for Sheetfed).

18. The investigation has indicated that the ink industry has a significant amount of excess capacity for both paste and liquid inks which would allow competitors to increase their production in the very short term without incurring significant costs. In addition, barriers to entry or expansion are considered low, both in terms of capital cost and technology. Brand awareness and loyalty for a particular manufacturer's inks is limited. The market investigation has also pointed to the complementarity of BASF and ANI, both in terms of product offering and geographic focus (ANI has a greater presence than BASF in Scaninavia, whilst BASF has a greater presence than ANI in the UK and Spain, for example), generally suggesting that the merger could create a stronger competitor to Sun Chemical, a prospect explicitly mentioned by a number of respondents to the Commision's questionnaires.

19. Finally, it should also be considered that the parties' customers, both in publication and in packaging, enjoy a certain degree of buyer power, with a few large customers accounting for a substantial part of demand and the majority of that demand being purchased through European tenders.

20. Considering the position of the parties in these markets and the strength and number of competitors present therein, it can be concluded that the notified operation will not significantly impede competition, in particular by the creation or strengthening of a dominant position.

Vertical relationships

21. The concentration does not lead to vertically affected markets upstream of printing ink. CVC/BASF, but not ANI, produces pigments that are used in printing inks. Considering the pigment market to be EEA-wide, CVC/BASF would have a market share below [5% - 15%]. CVC/BASF also produces printing plates, which can be considered as a market related to printing ink. However, the market investigation indicated that there is no common customer base for both products, thereby limiting the scope for concerns of a conglomerate nature.

22. Printing inks are upstream of CVC's investments in packaging activities, represented by the companies Polimoon and Kappa. Polimoon does not normally purchase printing inks. Whilst Kappa has a share in excess of 25% of sales of corrugated and solid board cases in the Benelux, foreclosure is not likely to arise as Kappa's ink purchases seen in the context of ink supplies in the EEA, are marginal (less than [0% - 5%] of overall EEA ink sales in 2003), and because ink accounts for less than [0% - 5%] of its production costs.

V. CONCLUSION

23. It can therefore be concluded that the concentration will not significantly impede effective competition in the common market or in a significant part of it, in particular as a result of the creation or strengthening of a dominant position.

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 the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of Council Regulation (EC) No 139/2004.

For the Commission, signed
Mario MONTI
Member of the Commission