

*Case No IV/M.376 -
SYNTHOMER / YULE
CATTO*

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

Article 6(1)(b) NON-OPPOSITION
Date: 22.10.1993

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Brussels, 22.10.1993

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)b DECISION

To the notifying parties

Dear Sirs,

Subject: Case No. IV/M.376 - Synthomer/Yule Catto
Notification of 09.09.1993 pursuant to Council Regulation (EEC) No. 4064/89

1. The above mentioned notification concerns the proposed acquisition by Yule Catto & Co. plc (Yule Catto) of 50% of the share capital of Synthomer Chemie GmbH (Synthomer) from Chemetall GmbH, part of Metalgesellschaft AG. The other 50% in Synthomer is owned by Reichhold Inc. (Reichhold).
2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of the application of Council Regulation No. 4064/89 and does not raise serious doubts as to its compatibility with the common market.

I. THE PARTIES

3. Yule Catto is a UK company active in the production, sale and trading of speciality chemicals, especially natural and synthetic latices. Its other activity is the production and sale of building products.
4. Reichhold is a US company active in the production, sale and trading of polymers and adhesives. Reichhold is part of the Japanese chemical group Dainippon Ink & Chemicals Inc. which is involved in the production, sale and trading of printing inks, thermosetting resins and organic pigments.
5. Synthomer is a German company, at present jointly owned and controlled by Chemetall and Reichhold, which already operates on the market, primarily in the production and sale of synthetic carboxylated latices, mostly in Germany.

II THE OPERATION

6. Yule Catto will acquire 50% of the shares in Synthomer, the other 50% being owned by Reichhold. These two companies already own and jointly control another company, Doverstrand Ltd. (Doverstrand), which is also active in the production and sale of carboxylated latices, mainly in the UK. The parties have agreed that Synthomer and Doverstrand will operate as a single economic unit, with common purchasing, development of integrated technologies and marketing of customers. A steering committee will be set up to this effect. The proposed operation, therefore, concerns the production and sale of carboxylated latices in Europe, especially the UK and Germany.

III CONCENTRATION

Joint control

7. The shares and voting rights in Synthomer will be divided equally between Yule Catto and Reichhold. Decision making takes place either by majority voting or unanimity for certain matters. As a result, Synthomer will be jointly controlled by Yule Catto and Reichhold.
8. Synthomer is already an undertaking performing all the tasks of an autonomous economic entity with its own assets, staff, management, etc. and engaged in the business of selling carboxylated latices.

Absence of coordination of competitive behaviour

9. Reichhold has no activities in carboxylated latices in Europe other than through Synthomer and Doverstrand. It does, however, produce carboxylated latices in the USA. In addition, Dainippon produces carboxylated latices in Japan. Imports from these countries into Europe, however, can be discounted in view of transport costs and for logistic reasons. In relation to the former, the parties estimate that the cost price of latices imported from the USA would be 15-25% higher than the market price for these products in Europe. Transportation costs from Japan would be significantly higher. In addition, the setting up of plant facilities by Reichhold/Dainippon in Europe is most unlikely, for a number of reasons, including the presence of the two joint ventures on this market, the high investment cost for a new plant, and the fact that it would take up to five years to start up a new plant. In addition, current overcapacities in Western Europe are around 20%. Synthomer and Doverstrand themselves have spare capacities. Furthermore, on the basis that the parents consider the geographical scope of Synthomer and Doverstrand's activities to be Western Europe as a whole, there is no prospect that the joint ventures would be prevented, in principle, from setting up new plants in any part of Europe.
10. Reichhold's polymers activities in Europe are in polyester, resins for coating and paints. It also has a sizeable adhesives business which is not, however, latex based. Furthermore, its activities in emulsions, which include acrylics for special applications, do not relate to the paper industry.
11. Yule Catto does not produce carboxylated latices in Europe, except through its joint venture Doverstrand. It does have a 36.75% indirect interest in a South African company producing carboxylated latices. Potential competition from this company, however, can be excluded for the same reasons as given for Reichhold and Dainippon above.
12. Yule Catto's Belgian company, Revertex SA, does sell latices compounds which are used in the carpet industry. The latices are purchased on the open market, and mixed with

fillers, additives and processing chemicals. The transport costs are higher for compounds relative to their price which, per tonne, is less than half the price of pure carboxylated latices. In general, therefore, the geographic scope of the market for compounds is more limited for compounds than for carboxylated latices. In addition, as stated below, most carpet producers in Belgium prefer to mix their own compounds. For these reasons, any overlap between Revertex on the one hand, and Doverstrand on the other in relation to these compounds can be excluded. In addition, Synthomer's own market share for compounds in Belgium is very small. In any event, Revertex is moving away from such compounds into higher value specialties, especially adhesives. These are not based on carboxylated latices.

13. In the light of the above factors there is no appreciable risk of coordination between the parents or between either of the parents and the joint venture.

IV COMMUNITY DIMENSION

14. The operation results in a change in the nature of control in Synthomer. In effect, it leads to the creation of a new joint venture between the two parents Yule Catto and Reichhold.
15. As such, the operation has a Community dimension. The aggregate worldwide turnover of the parties exceeds 5,000 million ECU. The aggregate Community-wide turnover of the parties exceeds 250 million ECU. They do not achieve more than two-thirds of their turnover in one and the same Member State.

V DOMINANCE

Relevant product market

Affected markets

16. Carboxylated latices are a form of synthetic rubber, which is produced in hot polymerisation from styrene and butadiene, both of which are derived from petrochemical raw materials. The product is characterised by internal gel content, so that it does not need vulcanisation in order to acquire elastic properties. The main uses for carboxylated latices are in the paper industry (for paper coating), the carpet industry (as laminates between primary and secondary carpet backing) and for special applications used in the textile industry.
17. From a demand perspective there is no overlap between carboxylated latices, on the one hand, and non-carboxylated latices or natural rubber on the other. Non-carboxylated latices are used where elastomeric properties are important, such as mattresses, foam and dipped goods, while the applications of natural liquid rubber include belts, surgical gloves, prophylactics and balloons. In addition, there is no supply substitutability between carboxylated latices and non-carboxylated latices or natural rubber because the production process for carboxylated latices is entirely different from the other two products.
18. In the paper industry there is technically a degree of substitutability possible between carboxylated latices and acrylic latex. However, there are certain differences in the properties of each (e.g. carboxylated latices are odourless). In addition, acrylic latex is much more expensive, as a result of which there is a trend away from its use.
19. It is possible that there are certain substitutes for some of the many speciality applications of carboxylated latices. However, to the extent that this is the case, this can be disregarded since the proposed operation does not create or strengthen a dominant position in the common market on the narrowest market.

20. Compounds based on carboxylated latices are a downstream product from that of the latices themselves. Compounds are mixtures of carboxylated latices, fillers (mainly very cheap calcium carbonate), additives and processing chemicals. Compounds are used as backing material in carpets. In principle, carpet producers may choose whether to purchase the individual raw materials separately and to produce the compounds themselves, or to purchase ready-made compound from a local compounder or from producers of carboxylated latices, who also produce compounds. For historic reasons, most of the Belgian and German carpet producers mix their own compounds, whereas the opposite is true in the Netherlands.
21. To this extent, compounds may be considered separately from carboxylated latices. However, this issue is not determinative since no dominant position is created even on the narrower market definition.

Relevant geographic market

22. In markets where large volumes and short delivery times characterise the business for carboxylated latices, suppliers have installed local facilities in order to avoid high transport costs of products which contain 50% water. Thus, in the paper industry producers have built facilities close to the markets in Germany, France, UK and in Scandinavia (especially Finland). In the carpet industry, customers in Belgium and the Netherlands have attracted latices producers to these markets.
23. Nevertheless, competitors who do not have local plant facilities may still seek to participate on these markets, at least to a limited extent, usually by stressing the service/technical support facilities that their companies provide. In the case of specialty applications, moreover, which involve a wide range of products with numerous small customers and where margins are generally higher, transport costs of up to 20% of the sales prices can be afforded and shipments within Europe (i.e. Western Europe) are possible.
24. Imports from outside Europe, by contrast, are negligible, due to high transport costs, and also the limited shelf life of the product.
25. It is not necessary to make a conclusion in this case whether the geographic market is national or European because even on the narrower market definition the proposed operation does not give rise to a dominant position.
26. The geographic market for compounds is in any event not bigger than any single Member State in view of the high transport costs involved; (according to the parties it is limited to approximately 100 km immediately surrounding a compound factory) and the conditions of competition in Member States are substantially different.

Assessment

27. In principle, since Yule Catto does not transfer any business assets to Synthomer there is no change in the market position of this joint venture on the market for carboxylated latices. As a result of the operation, however, both Synthomer and Doverstrand will be jointly controlled by the same two parents and will operate as a single economic unit on this market.

28. By aggregating their respective market shares, the parties estimate that Synthomer and Doverstrand will have around [...] ^{(1/12)(1)} of the Western European market for carboxylated latices expressed in terms of volume [...] ⁽²⁾ for Synthomer, [...] ⁽²⁾ for Doverstrand). The overall volume of the market is estimated by the parties to be around 489,000 tons.
29. The clear market leader in carboxylated latices is DOW Chemical, the sixth largest chemical manufacturer in the world, with a market share estimated by the parties to be about [...] ⁽³⁾. Other players on the market are Bayer, BASF and Rhône-Poulenc with between [...] ⁽⁴⁾ each. Overall, therefore, the market is represented by large chemical companies, capable of offering significant competition to Synthomer and Doverstrand.
30. At a national level, the current cross-penetration of Synthomer and Doverstrand into the other's principal territory is minimal. Doverstrand has an estimated market share of around [...] ⁽⁵⁾ in volume terms in the UK. DOW and Bayer are both active also in this market, DOW having a higher market share than Doverstrand, Bayer's position being smaller. Doverstrand is not active in Germany (although it has supplied Synthomer with carboxylated latices in the recent past). Synthomer has an estimated [...] ⁽⁶⁾ of the German market. The main competitors in this country are DOW, again the market leader, Huls and BASF.
31. With regard to customers of carboxylated latices produced by Synthomer and Doverstrand, Synthomer sells about [...] ⁽⁷⁾ of its production into the carpet industry, with the remaining [...] ⁽⁸⁾ divided [...] ⁽⁹⁾ between the paper industry and specialties. Doverstrand, by contrast, sells [...] ⁽¹⁰⁾ of its production into the paper industry, the carpet industry representing around [...] ⁽¹¹⁾, the remaining [...] ⁽¹²⁾ in specialties. The operation therefore will not lead to any significant strengthening of the two companies in any particular customer base, but is by contrast more complementary in nature.
32. In relation to compounds, Synthomer is active in the Netherlands, and also to a minor extent in Belgium and Germany, while Doverstrand is active only in the UK. As a result, the proposed operation will not lead to the creation or strengthening of a dominant position in any of these markets.
33. In the light of the above factors the Commission considers that the proposed operation will not lead to the creation or strengthening of a dominant position for Synthomer and Doverstrand in the common market.

ANCILLARY RESTRAINTS

34. The agreements provide that Chemetall shall not own, control or have any direct or indirect financial interest in any competing organisation for a period of five years from the date of transfer of the shares. This applies to the products concerned by the operation and in the countries in which the company currently sells these products. This agreement is directly related and necessary to the implementation of the concentration and is, therefore, ancillary within the meaning of the Regulation.

^(1/12) Deleted for publication, business secrets.

⁽¹⁾ Read "Less than 15%".

⁽³⁾ Read "Between 20% and 30%".

⁽⁴⁾ Read "Less than 15%".

⁽⁵⁾ Read "Less than 35%".

⁽⁶⁾ Read "Less than 25%".

Final assessment

35. Based on the above findings the Commission has come to the conclusion that the proposed concentration does not cause serious doubts as to its compatibility with the common market.
36. The proposed concentration will therefore not create or strengthen a dominant position as a result of which effective competition will be significantly impeded in the common market or in a substantial part of it.

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

For the Commission