EN

Case No COMP/M.4874 – ITEMA / BARCOVISION

Only the EN text is authentic.

REGULATION (EC) No 139/2004
MERGER PROCEDURE

Article 8 (1)
Date: 04/08/2008

COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 4/VIII/2008
SG-Greffe (2008) D/205009
C(2008)

PUBLIC VERSION

COMMISSION DECISION

Of 04/VIII/2008

declaring a concentration to be compatible with the common market and the EEA Agreement

(Case No COMP/M.4874 – Itema/ BarcoVision)

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(Text with EEA relevance)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to the Agreement on the European Economic Area, and in particular Article 57 thereof,

Having regard to Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings[1], and in particular Article 8(1) thereof,

Having regard to the Commission's Decision of 14 April 2008 to initiate proceedings in this case,

After consulting the Advisory Committee on Concentrations[2],

Having regard to the final report of the Hearing Officer in this case[3],

WHEREAS:

(1) On 20 February 2008, the Commission received a notification pursuant to Article 4 of Regulation (EC) No 139/2004 ("the Merger Regulation") of a proposed concentration by which Itema Holding S.p.A. ("**Itema**"), Italy, acquires control within the meaning of Article 3 of the Merger Regulation of the whole of BarcoVision Division

1 OJ L 24, 29.1.2004, p. 1

2 OJ C ...,...200. , p....

3 OJ C ...,...200. , p....

("**BarcoVision**") of Barco NV (Belgium) by way of purchase of shares. Itema and BarcoVision are together referred to as "the parties".

(2) By decision dated 14 April 2008, it was found that the notified concentration raised serious doubts as to its compatibility with the common market and the functioning of the EEA Agreement. Accordingly, proceedings were initiated in this case pursuant to Article 6(1)(c) of the Merger Regulation.

I. THE PARTIES

(3) Itema is a holding incorporated under the laws of Italy and controls companies active mainly in the textile industry. The four main realms of activities of Itema are the manufacturing of machinery for weaving, spinning, knitting, and electronics.

(4) BarcoVision is active in the markets of optical detection (sensors), inspection systems, and computerized production management, mainly for the textile industry.

II. THE OPERATION

(5) On 19 July 2007, Barco NV entered into a Share Purchase Agreement with Itema pursuant to which Itema was to acquire BarcoVision through the purchase of BarcoVision's entire share capital. Itema would thereby gain sole control over BarcoVision. The transaction, therefore, constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

III. COMMUNITY DIMENSION

(6) The notified concentration does not have a Community dimension within the meaning of Article 1 of the Merger Regulation. However, on 26 November 2007, Itema ("the notifying party") informed the Commission in a reasoned submission pursuant to Article 4(5) of the Merger Regulation that the concentration was capable of being reviewed under the national competition laws of at least three Member States, namely Germany, Greece, Spain, Italy, Latvia, Portugal and Slovenia, and requested the Commission to examine it. None of the Member States competent to examine the concentration indicated its disagreement with the request for referral within the period laid down by the Merger Regulation.

(7) Therefore the concentration is deemed to have a Community dimension pursuant to Article 4(5) of the Merger Regulation.

IV. RELEVANT MARKETS

(8) The proposed concentration does not give rise to any horizontal overlaps. However, the two parties are active in vertically affected markets: essentially, Itema produces machinery for the textile industry, while BarcoVision markets sensors integrated in this machinery. In addition, BarcoVision sells software systems (Manufacturing Execution Systems - "MES") used in the monitoring of textile production in mills.

a) Overview of the markets: production chain in textile mills for natural vegetable fibres

(9) BarcoVision's products are mainly used for the production of textile based on natural vegetable fibres[4]. There are three basic stages for this type of textile production: first, the **spinning preparation** consists in cleaning and mixing fibres so as to obtain a homogenous quality of fibre in the shape of large ropes of parallel fibres.

(10) Second, the **spinning** of these ropes leads to the creation of yarn. Separate fibres are twisted together to bind them into a stronger, and thinner, longer yarn. The two main technologies for yarn formation are ring spinning – the traditional process – and open-end ("**OE**") spinning. There are some other technologies such as air-jet spinning or and friction spinning, but ring spinning and OE spinning are the only technologies considered as standard and appearing in industry statistics[5]. The ring spinning process requires two types of machines: ring spinning machines, which twist the yarns and store them temporarily onto spinning bobbins, and winding machines (also known as winders), whose function is to transfer the yarns from these spinning bobbins to larger packages. In the OE spinning process this latter step is unnecessary as the open-end spinning machines store directly the yarns in packages.

(11) Third, yarn is processed into the final fabric mainly by **weaving** or **knitting**. For the production of woven fabrics, the two main types of machines are shuttle and shuttle-less machines. The shuttle-less machine category can be sub-divided into projectile, rapier, air-jet, and water-jet looms. Other less common technologies exist.

(12) Itema is active in manufacturing and marketing machines used in the second stage and third stage of textile production, namely spinning machines (both for open-end spinning and ring spinning), winding machines, and weaving machines.

(13) BarcoVision manufactures sensors for winders and sensors for OE spinning machines, which essentially detect and cut out defects in the yarn (sensors are therefore also often referred to as "yarn clearers"). It also sells sensors for weaving machines that check the proper insertion of yarn on weaving machines.

b) Relevant product markets

1. Upstream markets (sensors sold by BarcoVision)

Distinction between (i) weaving sensors and (ii) OE spinning and winder sensors

(14) In the absence of any Commission precedent for this type of products, the parties consider that a first distinction should be made between sensors for winders and for OE spinning machines on one hand, and sensors for weavers on the other hand. While the lack of demand-side substitutability is clear, there would also be a lack of supply-side substitutability between these two categories of sensors. Indeed, these two categories of sensors perform different functions: whereas OE spinning sensors and

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4 Including converted synthetic/artificial fibres which behave as natural vegetable fibres. BarcoVision's products are also used for the processing of some protein-based fibres (including converted synthetic/artificial fibres which behave as protein-based fibres).

5 Collected by the International Textile Manufacturers Federation ("ITMF").

winder sensors monitor the quality of the yarn and trigger specific operations when defects are detected, weaving sensors mainly monitor the weft insertion on the weaving machine and stop it if the yarn breaks or arrives too late in the weaving cycle. In other words, weaving sensors check the presence of the yarn without monitoring its quality. By contrast, quality control is a core functionality for OE spinning and winder sensors. The market investigation confirmed that both categories of products rely on different technologies[6]. There is therefore no supply-side substitutability between the two categories, as further evidenced by the fact that BarcoVision is the only company active in the two segments. The Commission therefore concludes that (i) weaving sensors and (ii) open-end spinning and winder sensors belong to separate markets.

Weaving sensors

(15) Within sensors for weaving machines, the parties submit that no further distinction should be drawn based on the technology of the loom (shuttle/shuttle-less or any other classification), all sensors for weaving machines meeting similar requirements regardless of the type of loom for which they are sold. This claim has been largely confirmed by the market investigation[7]. In particular, most respondents consider that the suppliers of weaving sensors have all similar expertise in weaving sensors for the different types of looms. Consequently, all weaving sensors form part of a single, distinct product market.

Distinction between (i) sensors for winders and (ii) sensors for OE spinning machines

(16) With regard to sensors for winders and sensors for OE spinning machines, the notifying party argues that they are part of the same product market. While the parties do not dispute the specificity of each sensor to the intended use and thus the lack of demand-side substitutability, their argument rests on supply-side substitutability considerations: the core detection technology would be the same for both types of sensors, and suppliers would be present in both segments.

(17) The market investigation has not confirmed this view[8]. While it was confirmed that there might be some analogy between the two types of sensors, respondents explained that developing sensors for winders comparable to those sold by BarcoVision would require substantial investment and several years of development. The reason for this is that "*the spinning speed and the winding speed are of such difference that an adaptation of an OE sensor for winding would need significant investment."*[9]

(18) In fact, this difference is acknowledged by Itema: *"[winder sensor and OE spinning machine sensors] apply the same underlying defect detection technology, these sensors use a different data processing platform as the speed at which the yarn moves on the OE spinning machine is about 350m/minute, but yarn speed can reach*

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6 Questionnaire to BarcoVision's competitors – first phase, question 5.

7 Questionnaire to BarcoVision's competitors – first phase, question 8.

8 Questionnaire to BarcoVision's competitors – first phase, questions 6 and 7.

9 Response to question 7 in the questionnaire sent to competitors of BarcoVision – first phase.

2,500m/minute on automatic winders."[10] In other terms, sensors for OE spinning machines are technologically less advanced products than sensors for winders.

(19) In addition to the higher yarn speed, sensors for winders have to process a higher number of defects, due to the difference in spinning process and quality requirements. Indeed, as a proxy, on 100 000 m of yarn only two "cuts" – the operation performed by the machine when a defect has been identified – are necessary in a typical OE spinning process compared to 50 up to 100 for the ring spinning process.[11]

(20) Consequently, it can be concluded that that (i) the market for winder sensors and (ii) the market for OE spinning sensors are distinct markets. The market investigation has confirmed that no further sub-segmentation of these two markets is necessary.

Conclusion

(21) Accordingly, the three following product markets can be defined in relation to BarcoVision's sales of sensors for textile machinery:
- sensors for weaving machines;
- sensors for OE spinning;
- sensors for winders.

2. Downstream markets (textile machines sold by Itema)

Winders and spinning machines

(22) As regards the downstream markets, the Commission has had the opportunity to review cases involving winders and spinning machines[12]. While the precise market definition was left open, the Commission noted in its decision in Case M.4432 Oerlikon/Saurer that the parties considered that winding machines, ring spinning machines, and OE spinning machines constituted three separate product markets.

(23) In the present case, the notifying party essentially agrees with this view, although they note some degree of supply-side substitutability between ring spinning machines and OE spinning machines. However, given that Itema only sells OE spinning machines and that these sales are limited, the question whether OE spinning machines and ring spinning machines are part of the same market does not play any significant role in this case and can be left open. In this decision the transaction will therefore be assessed considering the narrower market for OE spinning machines.

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10 Form CO, p.37

11 Questionnaire to OE spinning sensor manufacturers – second phase, question 2.

12 See, for example, Commission Decision of 6 December 2002 in Case No IV/M.2763 - Toray / Murata / Teijin (OJ C 25, 1.2.2003, p. 2); , Commission Decision of 22 November 2006 in Case No IV/M.4432 - Oerlikon / Saurer (OJ C 138, 22.6.2007, p. 4).

Weaving machines

(24) As regards weaving machines (also called looms), in its decision in Promatech/Sulzer[13] the Commission considered that shuttle-less and shuttle weavers were part of distinct markets and that rapier machines and other weaving machines were part of distinct product markets. The Commission envisaged a further distinction within rapier looms between positive rapier looms on one hand and negative rapier looms on the other hand but the exact product market definition was left open. However, the Commission did not analyse whether other types of looms (for example, projectile, air-jet looms) were distinct product markets.

(25) In this case, the notifying party proposes to leave open the question whether the three types of weavers manufactured by Itema—rapier, projectile, and air-jet looms—are part of distinct markets. The market investigation suggests that there is at least some degree of demand-side substitutability[14] for certain applications as well as of supply-side substitutability[15] between the three products. However, some respondents identified niche applications (for example carpet backing) where there would be no alternative to projectile loom technology. In any event, for the purpose of the assessment of this case, the product market definition can be left open as under any possible definition the transaction does not raise competition concerns. In this Decision the transaction will be assessed on the basis of the following possible product market definitions:

- separate markets for (i) negative rapier looms and (ii) positive rapier looms; single market including all rapier looms;
- separate markets for (i) projectile looms and (ii) air-jet looms; single market for projectile and air-jet looms.

3. Software

(26) MES for the textile industry are software solutions to monitor the knitting, weaving, tufting, and/or spinning machinery present in the mill. The notifying party argues that all MES solutions (regardless of the specific industrial application) constitute a single market. However, the question whether MES solutions specifically for the textile industry represent a distinct market does not play a significant role for the assessment of this case and can be left open.

c) Relevant geographic markets

(27) The notifying party submits that the markets are worldwide and that the Commission should in any event consider them as at least EEA-wide.

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13 Commission Decision 2004/251/EC in Case COMP/M.2698 — Promatech/Sulzer (OJ L 79, 17.3.2004, p. 27).

14 Questionnaire to BarcoVision's competitors – first phase, question 11.

15 Questionnaire to BarcoVision's competitors – first phase, question 12.

1. Upstream markets (sensors sold by BarcoVision)

(28) As regards sensors for weaving machines, the main manufacturers (BarcoVision, Nuova Roj Electrotex Srl ("Roj"), Eltex of Sweden AB ("Eltex")) are based in Europe from where they sell their products all over the world to weaving machines manufacturers. Conversely, no particular obstacles were mentioned as regards the possibility for companies located outside the EEA (for example, China, India) to sell sensors to machine manufacturers[16]. Besides, market participants indicated that prices of weaving sensors do not differ between various areas of the world[17]. Overall, market participants supported the parties' view that the market for weaving sensors is worldwide in scope[18].

(29) As regards sensors for OE spinning machines, the main manufacturers (BarcoVision, Uster Technologies AG ("Uster")) sell their products at the global level to OE spinning machines manufacturers. Market participants confirmed that prices are similar across geographic areas[19]. Both OE spinning sensors manufacturers and OE spinning machines manufacturers (that is to say, customers) overall agreed with the parties' proposed geographic market definition[20].

(30) As regards sensors for winders, the leading manufacturers (BarcoVision, Uster), located in Europe, supply winder manufacturers based in Europe (Itema, Oerlikon Schlafhorst GmbH ("Schlafhorst"), Japan (Murata Manufacturing Co., Ltd ("Murata")) and China. They do not price discriminate between geographic areas[21]. The market investigation confirmed that the market for winder sensors is worldwide in scope.

(31) Consequently, the three upstream markets in which BarcoVision is active (sensors for weaving machines, sensors for OE spinning machines, sensors for winders) are worldwide in scope.

2. Downstream markets (textile machines sold by Itema)

(32) As regards downstream markets, the Commission acknowledged in Oerlikon/Saurer that markets for winders and OE spinning machines were at least EEA-wide in scope. Even if some respondents to the market investigation claimed that there was a specific EEA market for winders and/or OE spinning machines[22], the fact that, whereas most

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16 Questionnaire to Itema's competitors – first phase, question 19; Questionnaire to BarcoVision's competitors – first phase, question 15.

17 Questionnaire to BarcoVision's competitors – first phase, question 16.

18 Questionnaire to Itema's competitors – first phase, question 20; Questionnaire to BarcoVision's competitors – first phase, question 17.

19 Questionnaire to BarcoVision's competitors – first phase, questions 10, 12 to 14.

20 Questionnaire to Itema's competitors – first phase, questions 15 and 17; Questionnaire to BarcoVision's competitors – first phase, question 13 and 14.

21 Transaction data from the main winder sensor manufacturers.

22 Questionnaire to Itema's customers – first phase, questions 13 and 15.

of those textile machines are manufactured in the EEA, the share of winder sales and OE spinning machines in this area are respectively less than 2% and approximately 10% of the worldwide demand, suggests that these markets are worldwide in scope. In any event, as regards OE spinning sensors, the question whether the market is worldwide or EEA-wide can be left open in this case.

(33) With regard to winders, the second phase investigation[23] revealed that EEA textile mills tend to order more sophisticated, less labour intensive machines, which overall leads to higher average prices in this area. However, there is also a strong demand for these machines in other parts of world where some textile mills choose to focus on high quality textile (for example India). Taking into account these differences in product mix, and as confirmed by most of the market participants[24], the EEA market does not present marked distinguishing features.

(34) The Commission therefore concludes that the market for winders is worldwide in scope, and that the market for OE spinning machines is at least EEA-wide in scope.

(35) As for weavers, the Commission considered in Promatech/Sulzer that rapier looms were limited to the European Economic Area in scope. The market investigation did not provide compelling evidence that would lead the Commission to take a different view in the present case and the markets for weavers are considered as EEA-wide.

3. Software

(36) The parties submit that the market for MES for textile manufacturing is worldwide in scope, a few software vendors supplying textile mills all around the world. This view has been confirmed by the market investigation[25].

V. COMPETITIVE ASSESSMENT

(37) Chart 1 encapsulates the vertical links created by the proposed concentration with BarcoVision's and Itema's respective market shares in upstream and downstream markets:[26]

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23 Transaction data from the main winder manufacturers.

24 Questionnaire to Itema's competitors – first phase, question 15.

25 Questionnaire to competitors – MES for textile manufacturing – second phase, question 10.

26 2007 market shares for winders and winder sensors were computed by the Commission on the basis of the market investigation. Other market shares (OE spinning machines and weavers) stem from the form CO.

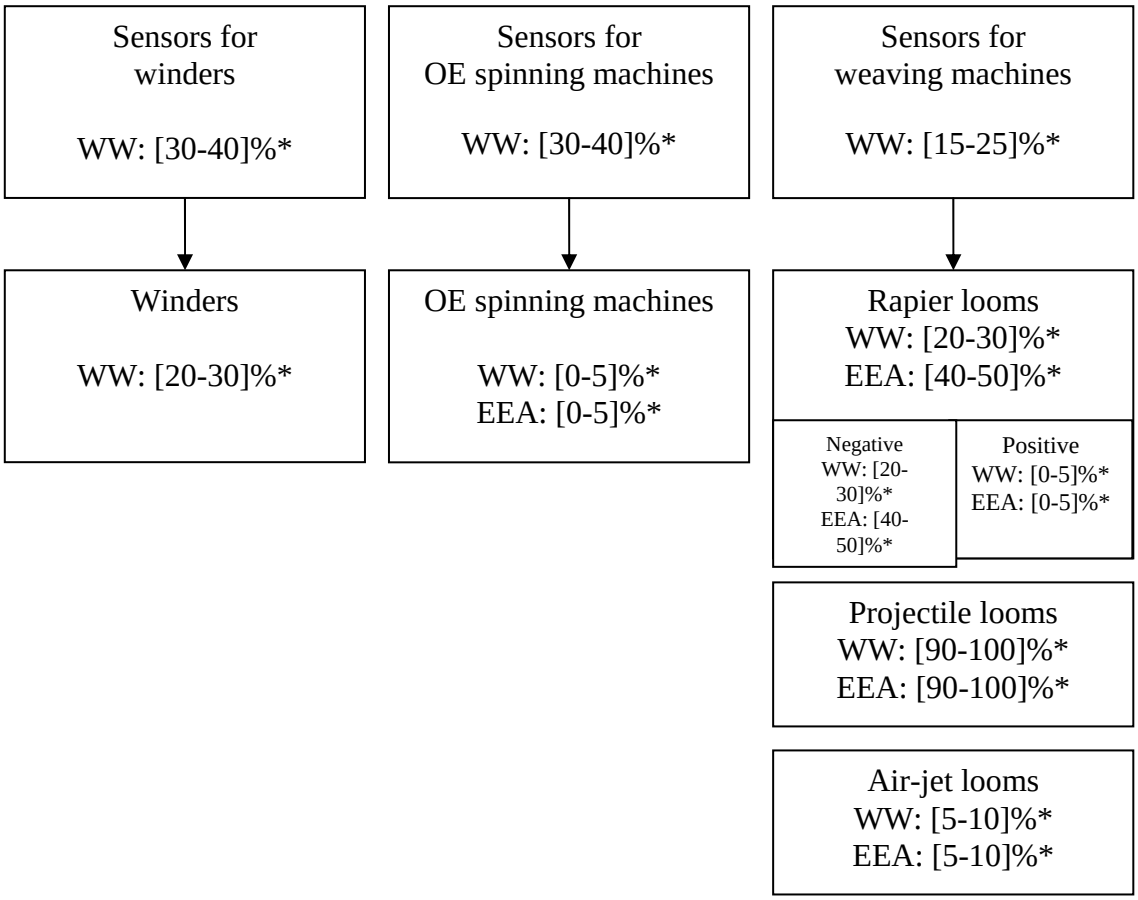

Chart 1: vertical relationships created by the transaction

a) Sensors for winders and winders

1. Market structure

(38) BarcoVision sells its sensors under the brand name **Loepfe**, Itema sells its winders under the brand name **Savio**[27].

(39) As is shown by the Chart 2[28], both the upstream and downstream markets are highly concentrated:

* Parts of this text have been edited to ensure that confidential information is not disclosed; those parts are enclosed in square brackets and marked with an asterisk.

27 Consequently, in this Decision, Savio refers to Itema, while Loepfe refers to BarcoVision.

28 Market shares in volume, based on the data gathered in phase 2. Market shares of Chinese OEMs estimated based on sensors sales.

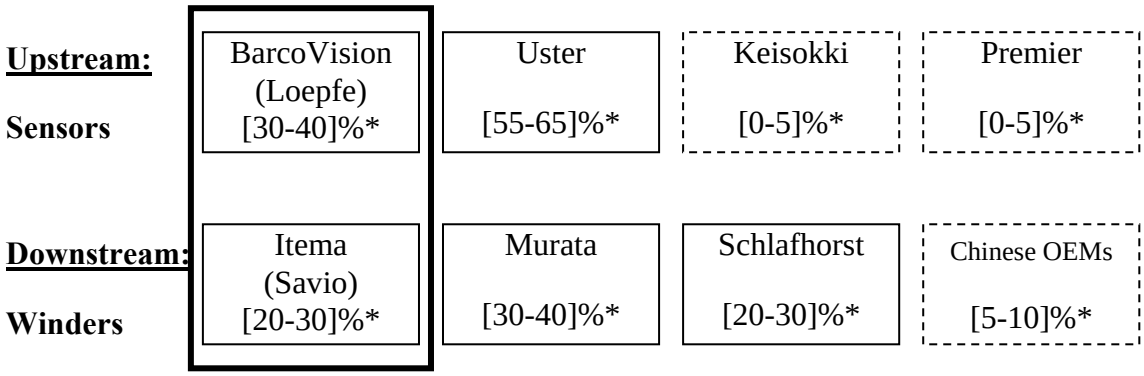

Chart 2: markets for winders and winder sensors

(40) A key peculiarity of this market is that end-customers (textile mills) choose both the upstream and the downstream products: currently all the winder manufacturers offer the choice between the main brands of sensors. Total sales of winders amounted to EUR [600-700]* million in 2007 (thereof EUR [10-20]* million in the EEA).

(41) In addition to the three main winder manufacturers - Itema, Murata (Japan), and Schlafhorst (Germany) - there is an additional market player from China, Qingdao Hongda China, which, according to the notifying party, has 5-10% of the market. According to the notifying party[29], *"[this company's] machine quality is considered lower than the quality of the winders currently offered by non-Chinese manufacturers. However, its winding machine is considered a valid and inexpensive alternative for Chinese textile companies. Their technology was acquired from Savio (now Itema) in the early 90s."* The market investigation confirmed that this company, as well as some other Chinese producers, currently address the low-quality, low-price segment of essentially Chinese textile mills and do not compete directly with the three established winder manufacturers[30]. Most market participants do not expect these Chinese Original Equipment Manufacturers ("OEMs") to become credible competitors of the parties in the short or medium term. Currently, they work under license from the mainstream players or are selling low-quality copies of older generations of machines. The question whether these Chinese producers exert a competitive constraint on the three main producers can be left open for the assessment of this case. Excluding them from the downstream market, market shares would not differ significantly and are as follows: Itema ([20-30]%*), Murata ([35-45]%*) and Schlafhorst ([30-40]%*).

(42) Both BarcoVision and Uster market three different products which present various degrees of sophistication. For example, as regards BarcoVision, its basic sensor (YM 800/Zenit) just detects and removes thick and thin irregularities from the yarn to improve quality. A more sophisticated product (YM 900/Zenit F) is in addition able to detect and remove coloured foreign fibre, while the most expensive product of BarcoVision's range (YM 900 FF/Zenit FP) can also detect white and transparent

29 Form CO, p.66

30 Agreed minutes with the main winder and winder sensor producers.

polypropylene (synthetic fibres)[31]. 100% of new machines are equipped with sensors able to perform the basic task of detecting defects, whereas [40-50]%* of new machines are equipped with sensors that can in addition detect foreign fibres. Propylene detection is a feature present on less than [0-10]%* of the machines.[32] Uster markets a range of products similar in performance and prices (Quantum, Quantum QD, Quantum QD FF). Keisokki Kogyo Co. Ltd ("Keisokki") owns the basic clearing technology (Trichord Basic) and proposes foreign fibre detection as an option (Trichord Microeye). Premier Inc., an Indian company which recently entered the upstream market, offers the full range of sensors (iQon A, iQon AX, iQon AXP)[33].

(43) It should be noted that two technologies exist for the detection of defects: one based on optical means, another which measures variations in yarn mass as detection method. Both technologies have their strengths and weaknesses (for example, an optical system is sensitive to ambient dust, while the capacitance (namely, mass) system is sensitive to fluctuations in ambient humidity[34]).

2. Concerns of input foreclosure

(44) Itema's main competitors have expressed strong concerns of input foreclosure. They explained the fear that their access to sensors, a crucial component of winders, will be significantly limited as a result of the proposed concentration and that this upstream limitation will translate into higher prices and less choice for end-customers. In otherwords, Itema's main competitors believe that there is a significant risk that the proposed concentration will result in their being foreclosed with a direct effect on end-customers.

(45) More precisely, they expect that, following the merger, BarcoVision would stop supplying them with sensors. As a result, Murata and Schlafhorst could only rely on Uster for their sensor supplies. Absent the competitive constraint currently exerted by BarcoVision, Uster could then increase prices charged to Murata and Schlafhorst, in line with paragraph 38 of the Guidelines on the assessment of non-horizontal mergers under the Council Regulation on the control of concentrations between undertakings of 28 November 2007 ("the non-horizontal merger guidelines").

(46) Unless otherwise stated, the sections (i) and (ii) below therefore discuss the ability and incentives for the merged entity to adopt a strategy whereby the merged entity would totally stop supplying Murata and Schlafhorst with BarcoVision's sensors, as well as the effects on downstream customers of such a strategy.

i. Ability to foreclose access to sensors

(47) As explained in the non-horizontal merger guidelines[35], the ability to foreclose competitors depends on the importance of the input at stake in the final product, the

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31 Page 34 of the form CO and response to question 5 in the parties' submission dated 26 February 2008

32 Response to question 5 in the parties' submission dated 17 February 2008

33 Questionnaire to manufacturers of winder sensors – second phase.

34 Response to question 4 in the parties' submission dated 17 February 2008

35 See paragraphs 34-36 of the non-horizontal merger guidelines.

existing market power in the upstream market, and the lack of alternatives or counter-strategies both at present and in the foreseeable future.

An indispensable input

(48) The importance of winder sensors for winder manufacturing is undisputed. Not only are winders systematically acquired with sensors but the latter are at the heart of the quality controls operated in textile mills and therefore of the quality of textile sold to end customers. Any issues relating to the quality of sensors could therefore have widespread consequences and it is therefore key that an appropriate access to winder sensors be maintained. Conversely, a disruption of this access for some winder manufacturers would prevent them from competing effectively.

The ability of BarcoVision to foreclose downstream competitors is limited to the price dimension – BarcoVision's optical sensors are not an indispensable input for downstream competitors.

(49) Although there is some degree of differentiation between BarcoVision's and Uster's products, Uster's sensors can in most instances perform the same functions as BarcoVision's sensors. Indeed, Uster owns both technologies (optical and mass detection) and offers the two types of sensors, at the customer's request. By contrast, BarcoVision's sensors are solely based on optical technology. Besides, according to the main upstream suppliers[36], and as confirmed by end-customers[37], both technologies achieve comparable performances and can be used for the same applications, with the exception of some niche markets. Although some end-customers argue that BarcoVision's optical technology performs better than Uster's, there appears to be overall a high degree of homogeneity between Uster's and BarcoVision's products. This means that in a foreclosure scenario, only very few end-customers would have to strictly follow one or the other sensor supplier for technical reasons.

(50) It is widely acknowledged that around 50% of the textile mills have no preferences for a sensor brand and only focus on prices (for example in China). The other 50% of the market have stronger views on their sensor supplier (for example in India, Pakistan, Bangladesh, EEA) but would still be sensitive to prices.

(51) This high degree of homogeneity between the two products is evidenced by the very close prices of Uster's and BarcoVision's sensors for winder manufacturers[38], and the fact that, so far, end-customers can choose one or the other sensor brand for the same total winder price.

The market power of BarcoVision and Uster

(52) Today, only two companies, BarcoVision and Uster, are capable of supplying large volumes of winder sensors of quality to winder manufacturers. Indeed, as explained in recital (59), Keisokki focuses on the replacement market, upgrading older generations

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[36] Reply to Questionnaire to manufacturers of winder sensors – second phase, questions 5 and 15; Reply to Questionnaire to BarcoVision of 24 April 2008, Question 5.

[37] Replies to Questionnaire to customers of winders – second phase of 6 May 2008, question 14.

[38] As appears from the transaction data for 2007.

of sensors mounted on existing winders. Premier only recently entered the market and has so far made only a few commercial sales.

(53) In this context, and given the fact that BarcoVision ([30-40]%*) and Uster ([55-65]%*) supply virtually all the winder sensors sold in the world to be mounted on new machines, this suggests that both companies (BarcoVision and Uster) enjoy a significant degree of market power. This is further evidenced by the high gross margins – […]* - achieved by both companies.

(54) As already explained, BarcoVision and Uster have priced their products at a very similar level over time. This has so far allowed winder manufacturers to sell winders at prices which are independent of the sensors' origin (that is, BarcoVision and Uster). While some end-customers mentioned that they have strong preferences for one type of sensors (for example BarcoVision's sensors), which suggests that they would be ready to pay a higher price for a winder supplied with this type of sensor, the market investigation[39] revealed that BarcoVision would nevertheless lose sales if it were to price its sensors at a very uncompetitive price as those prices would be passed-on by winder manufacturers to end-customers, many of which would then switch to the other type of sensors (namely Uster)[40]. It can therefore be concluded that the market power of BarcoVision, while significant given the existence of only one alternative, is nevertheless constrained by Uster's pricing policy. Conversely, the same applies for Uster.

(55) The fact that sensor prices have fallen in recent years does not mean that BarcoVision and Uster do not have market power. […]*

(56) Nevertheless, in the view of some market participants, the pricing policy of both BarcoVision and Uster are directly constrained by the potential entry or expansion of smaller competitors upstream (Keisokki/Premier) and the possibility for Schlafhorst and Murata to vertically integrate[41], by producing sensors in-house[42]. In particular this would explain why both companies passed on the fall in costs in their sensor prices.

(57) Thus, BarcoVision and Uster each has a significant degree of market power. It is also concluded that BarcoVision's reaction is today the most direct constraint preventing Uster from raising sensor prices, although there are some indications that potential competition is exerting downwards pressure on both BarcoVision's and Uster's prices.

Alternatives in the foreseeable future

(58) In a neighbouring market, OE spinning machines, Schlafhorst is vertically integrated and has developed its own OE spinning sensors. OE spinning sensors and winder sensors perform the same basic functions but winder sensors are much more advanced

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39 Questionnaire to textile mills – second phase.

40 Response to question 5 in the parties' submission dated 26 February 2008.

41 [...]*

42 In this Decision, unless otherwise specified, "vertical integration by Schlafhorst and Murata" should be understood as "vertical integration by Schlafhorst and Murata through the in-house development and production of sensors".

technically because of the higher speed of the yarn and the need to process more defects. Respondents in the in-depth investigation indicated that the threat of a vertical integration by Schlafhorst appears credible, in particular in light of the vertical integration of Schlafhorst in OE spinning.[43] To a lesser extent, in the view of the main upstream market participants, Murata would also have some expertise in the field of electronics and has the ability to conduct such a research and development (R+D) project. However, the market investigation revealed that it would take 3 to 5 years in current market conditions for both winder manufacturers to catch up with Uster/BarcoVision[44].

(59) With regard to other potential/smaller upstream suppliers, the market investigation confirmed that Keisokki is not primarily active in the sale of sensors to winder manufacturers. Keisokki focuses instead on the replacement market, selling sensors directly to textile mills to upgrade the sensors of second-hand winders where sensor prices are much higher compared to sales to winder manufacturers. It has been in the market for more than 20 years and has not been able to build a solid reputation for its sensors which could have enabled it to establish itself as a credible supplier of sensors for winder manufacturers. Keisokki owns the basic technology for winder sensors, although its products lack the most advanced features of BarcoVision/Uster sensors. According to most market players, it lacks the size to carry out the necessary R+D to match BarcoVision/Uster and does not appear as a credible competitor of BarcoVision/Uster in the next few years.

(60) Premier is an Indian company which recently entered the market for winder sensors. Premier has already made trial sales of its sensors. It has been developing its sensors for ten years and considers that its sensors are technologically equivalent to those of Uster and BarcoVision or even better as regards the detection of polypropylene (white/transparent plastic fibers). For this feature Premier uses a new infrared-based technology. It started cooperation with the three main winder manufacturers and expects its sensors to be available on the three types of machines next year. Several machines are already running with Premier's sensors in textile mills owned by the Premier group. However, expectations about Premier's position on the market in the next few years are mixed: some market players consider that Premier could establish itself as an alternative supplier of sensors in a relatively short time, due to its financial resources and advanced technology (especially compared with Keisokki); others are more sceptical, pointing towards reliability problems with Premier's sensors that have still not reached serial production. According to Premier, their main challenge for wider market penetration is the strong quality reputation of BarcoVision's and Uster's products. Nevertheless, although there are some doubts as regards the likelihood that Premier could establish itself as a strong competitor of Uster/BarcoVision in the next few years, Premier owns the basic technology for winder sensors and has even developed a new technology for polypropylene detection.

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[43] Uster: "A similar argument would also prevent Uster from increasing prices towards Murata and Schlafhorst because that would increase the incentive for them to support entry into the sensor market or develop sensors in-house." (agreed minutes conference call with Uster, second phase)

[44] Questionnaire to OE spinning sensor manufacturers – second phase.

(61) With regard to Rieter, a company which is active in open-end spinning sensors but lacks know-how in the winding segment, market participants estimate that entry into winder sensors would take a much longer time[45].

(62) Overall, although some potential alternative supply sources upstream have been identified and could materialise in 3 to 5 years, the investigation has shown that none of the actual or potential competitors mentioned is able to exercise full competitive pressure in the sensor market in the immediate future.

Murata and Schlafhorst are unlikely to stop purchasing sensors from BarcoVision following the merger for fear of disclosing confidential information in the mid-term

(63) Itema's competitors have argued that it would be extremely difficult for them to continue to source sensors from BarcoVision after the proposed merger for they fear that BarcoVision would pass on sensitive technical information about winders -that they would have to share with BarcoVision for the interfacing with the sensors- to Itema, thus informing their downstream competitor of essential features and innovations of their products.

(64) The investigation confirmed that for the development of new generations of winders, winder manufacturers have to exchange technical information of a confidential nature with their sensor suppliers. Most market players expect that, following the merger, Murata/Schlafhorst would start the cooperation with BarcoVision later, once the new features of their winder have been announced and developed only with Uster/Premier. This could cause a delay of up to 1.5 to 2 years for the integration of the BarcoVision sensors on the newest generations of Schlafhorst/Murata winders. Schlafhorst introduced its latest generation of winders in 2007, and Murata 5 years ago. The product cycle being around 10 years, the next generation of Murata's machines could come 5 years from now.

(65) In between the new generations, some cooperation is required between the winder manufacturers and their sensor suppliers in the case of upgrades of current generations. Given the more limited scope of the technical improvements, the confidentiality of the information exchanged is less critical and the delay to adjust the sensor to these changes is shorter. Therefore, it appears that confidentiality concerns will become fully effective only with the development of the next generation of winders (that is to say, in about 5 years). In-between, such concerns could lead to a delay in the release of new features. Overall, the market investigation revealed that this issue of exchange of confidential information would mostly affect Schlafhorst. For example, in the last two years, Murata and BarcoVision did not participate in any common technical cooperation project.

(66) In line with the expectations of the main upstream competitor[46], "passive" foreclosure, namely foreclosure occurring without action from the merged entity, is very unlikely to happen in the next few years. Besides, assuming that Murata and Schlafhorst indeed

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45 Agreed minutes from interviews with the main market participants.

46 Uster: "Uster does not expect a disruption of deliveries from BarcoVision to Murata and Schlafhorst in the foreseeable future as the existing sensor generation does not need any further development and therefore the exchange of information between sensor and winder manufacturers." (agreed minutes conference call with Uster second phase).

have serious concerns in relation to technical cooperation with BarcoVision, the merged entity will have a strong financial incentive to solve it.

Uster will have limited incentives to exploit its increased market power in a total foreclosure scenario

(67) Arguably, the existence of another upstream supplier can in some cases be sufficient to rule out the ability to foreclose of a vertically integrating company. However, paragraph 38 of the non-horizontal merger guidelines provides that: "*When competition in the input market is oligopolistic, a decision of the merged entity to restrict access to its inputs reduces the competitive pressure exercised on remaining input suppliers, which may allow them to raise the input price they charge to non-integrated downstream competitors. In essence, input foreclosure by the merged entity may expose its downstream rivals to non-vertically integrated suppliers with increased market power. This increase in third-party market power will be greater the lower the degree of product differentiation between the merged entity and other upstream suppliers and the higher the degree of upstream concentration. However, the attempt to raise the input price may fail when independent input suppliers, faced with a reduction in the demand for their products (from the downstream division of the merged entity or from independent downstream firms), respond by pricing more aggressively*."

(68) In the present case, Uster repeatedly stressed that it does not expect to be in a position to increase its prices after the merger[47]. In addition Uster, together with other market participants, submitted that the merger is likely to lead in a reduction in prices for Itema's winders coming with BarcoVision's sensors. Uster believes that this could constrain its ability to increase prices upstream as, if Murata and Schlafhorst cannot match the prices of a Itema/BarcoVision combination, they would look for alternative supply sources (in-house development/sponsoring of Premier and/or Keisokki). Uster would therefore be constrained by the price pressure potentially exerted by Itema downstream[48], as well as the possibility for BarcoVision to re-enter the market in a short time and at a low cost.

(69) It should be noted that vertical integration from Murata/Schlafhorst would have direct adverse effects on Uster's position. Indeed, should the downstream market move towards a new equilibrium where the three main winder manufacturers are sourcing their sensors in-house, Uster would have to cease its profitable winder sensor business. Although it could be argued that Uster's market power could increase following the merger, the prospect of further downstream vertical integration and therefore of the loss of a sizeable, if not total, sensor sales for Uster, will limit its incentive to exploit it by raising prices.

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47 Uster: "A similar argument would also prevent Uster from increasing prices towards Murata and Schlafhorst because that would increase the incentive for them to support entry into the sensor market or develop sensors in-house." (agreed minutes conference call with Uster second phase).

48 Uster: "The merged entity might offer low prices forcing other winder manufacturers to reduce winder prices. This in turn might force to the other winder manufacturers to reduce prices. Uster has to then match the price demands of the OEMs which would seriously affect the profitability. If Uster is unable to match the demand of the winder manufacturers this may lead to them losing market share against ITEMA and exploring alternatives including developing their own clearers." (questionnaire to winder sensors manufacturers second phase).

Conclusion

(70) The merged entity will have a significant degree of market power upstream, and no alternative sources of sensors supplies in the short term are available, which speaks in favour of the ability to foreclose. On the other hand, there are reasonable indications that the merged entity is unlikely to have the ability to raise downstream competitors' costs. Indeed, even without the competitive constraint currently exerted by BarcoVision, Uster's prices will still be disciplined *inter alia* by the reaction of downstream demand as well as by the threat of vertical integration from Murata/Schlafhorst. In view of the order of magnitude of the price increase required from Uster to lead to sizeable effects on winder prices[49] – [25-50]%* –, it can be concluded that the ability of the merged entity to raise downstream competitors' costs is unlikely, and even disputed by Uster.

ii. Incentives to foreclose and effects on downstream customers

(71) This section examines jointly the incentives for the merged entity to foreclose as well as potential effects on winder prices.

(72) As set out in the non-horizontal merger guidelines, the incentive for a company to foreclose its competitors will depend on the profitability of such a strategy. Indeed, foreclosure will be carried out only if extra profits in the downstream market can be expected to be greater or equal to the loss of profits in the upstream market. Such a trade-off depends on a number of factors such as margins in the upstream and downstream markets, the pass-on to end-customers of price increases and possible efficiencies, the elasticity of the end-demand, and the size of the existing customer base of the merging undertakings. In this case, particular importance should also be attached to the confidentiality concerns on the side of current BarcoVision's customers.

(73) Several qualitative elements indicate in this case that the critical price increase by Uster that would make a total input foreclosure profitable for Itema is likely to be large. First, sensor prices represent a small share of the total price of a winder (approximately [10-20]%*). This implies that unless upstream price increases are important, there will be little effect on the price of the downstream competitors and the additional profits that the merged entity can capture downstream are likely to be relatively limited.

(74) Second, the percentage margins are relatively small downstream and much higher upstream, which, all other things being equal, makes any extra revenues in the downstream winders market less likely to compensate for upstream losses than in a situation where downstream margins are high and upstream margins are small. In particular, the in-depth investigation indicated that Itema's margins are [...]* and BarcoVision's margins are [...]*.[50]

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[49] [25-50]%* sensor price increase for a 5% increase in winder prices, assuming a 100% pass-on.

[50] Per unit margins in euros are higher downstream than upstream since, sensors represent approximately [10-20]%* of the sales price of a winder. An examination of downstream margins also reveals that […]*.

(75) Third, the critical price increase depends on the extent to which Itema's competitors would pass on changes in their costs into their final price. In considering this factor, it is necessary to take into account that an increase in sensor costs for Murata and/or Schlafhorst is not an industry-wide cost change since Itema would not in any case be faced with a cost increase. In fact, there are strong indications that Itema would decrease its prices to reflect its lower marginal costs. Indeed, most market participants have mentioned during the market investigation that the merger is likely to lead to a decrease in prices for Itema winders equipped with BarcoVision sensors.[51] To continue competing with Itema, downstream competitors are therefore unlikely to pass on the entirety of their cost increase, which further limits the downstream effects of an input foreclosure scenario.

(76) This interaction between these three elements, together with the other factors that affect the profitability of an input foreclosure, such as elasticities,[52] can be illustrated with a very simple model of downstream demand.[53] Such a model also provides some estimates for the downstream effects of a specific price increase by Uster. In particular, the model indicates that Itema's competitors would pass significantly less than 100% of costs increases. Under the assumption that Uster increases prices by [25-50]%* as a result of a total input foreclosure by the merged entity, foreclosure would not be profitable for Itema and the impact on downstream customers would be very limited.[54] In fact, this simple model indicates that for a total foreclosure strategy to be profitable, a price increase by Uster of more than [120-180]%* would be required.

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[51] Main market participants: "this will put strong pressure on machine manufacturers with regard to price."; "The merged entity might offer low prices forcing other winder manufacturers to reduce winder prices. This in turn might force to the other winder manufacturers to reduce prices."; "The drawback in price relations would be not only created by price increase but rather by price reduction in ITEMA winders with own clearers"; "It is likely that Itema will try to push sales of BarcoVision on Itema machines, especially in China, where Itema/BarcoVision is already the most popular combination.".

[52] The Commission performed an econometric estimation of the downstream demand on the basis of the transaction-level data provided by Schlafhorst, Murata and Itema but found that the econometric results were inconclusive. In particular, although the data gathered during the investigation provides detailed and accurate information on the sales of the different companies, precise and robust elasticity estimates could not be obtained due in particular to the lack of appropriate instruments. Since own-price and cross-price elasticities could not be estimated econometrically, an approximation of own-price elasticities based on the Lerner index was used for own price elasticities. A wide range of alternative switching parameters were considered to derive cross-price elasticities on the basis of the own-price elasticity parameters. For the purpose of the incentives calculation, it has been assumed that in reaction to a price increase from one of the winder manufacturers, all customers switch to another winder manufacturer, i.e. they do not reconsider their decision of purchasing a winder. Although this is consistent with statements from textile mills (Replies to Questionnaire to customers of winders – second phase, question 7), this is a conservative assumption – should some textile mills decide not to buy winder in reaction to a price increase of one winder manufacturer, this would lower the profitability of a foreclosure strategy, less customers switching to Itema winders in reaction to a price increase of their preferred supplier.

[53] The model assumes that downstream suppliers face a linear demand for their product depending on their own price and their competitor’s prices.

[54] Under this base scenario, this simple model predicts that Itema's profits are approximately [...]* higher if it does not foreclose. The conclusion that foreclosure would not be profitable for the merged entity is robust to a wide range of alternative parameters, in particular regarding alternative switching parameters. In addition, note that the above calculations take into account an elimination of double mark-ups for the merged entity seeking to optimise profits. As the parties did not claim such elimination (or any other efficiency), the incentives have also been assessed ignoring this effect, with the same result: disregarding the reduction in

(77) There are strong indications that suggest that Uster is unlikely to increase prices by such an extent. In particular, Uster itself does not expect to be in a position to raise prices post-merger. On the contrary, it expects that it would have to decrease prices to allow Murata and Schlafhorst to compete with lower prices by Itema.[55]

Selective foreclosure of Murata or Schlafhorst

(78) The market investigation revealed that winders are not homogenous products. Schlafhorst's winders come at higher prices (+[20–30]%*), Murata's and Itema's winders appearing to be closer substitutes with comparable prices. In general, Schlafhorst's winders are perceived as being of higher quality, although some customers submitted that the three manufacturers are getting closer and closer. This suggests that in a foreclosure scenario Itema would gain more Murata customers than Schlafhorst customers. Nevertheless, there appears to be a high level of price competition downstream, especially in China.

(79) It could therefore be envisaged that, instead of foreclosing both downstream competitors, the merged entity could stop selling sensors to one or the other. In particular, in view of the higher closeness of Murata's and Itema's products, a theory of harm based on selective foreclosure of Murata should be analysed. Selective foreclosure of Schlafhorst would likely be less profitable as it does not appear to be as close a competitor in terms of pricing.

(80) However, even when selective foreclosure of Murata is considered, the increase in downstream sales would most likely not outweigh the associated upstream opportunity losses for the merged entity. In addition, a selective foreclosure strategy of Murata would have very little effect on downstream customers.[56]

(81) Finally , under such a scenario, Itema would need to commit not to sell sensors to Murata, whereas at the same time it would still be active on the sensor market dealing with Schlafhorst, in particular with a sales force and BarcoVision's R&D still cooperating with another winder manufacturer. Itema could therefore re-enter fully the sensor market at a negligible cost and in a very short time, which may ultimately affect Uster's prices to Murata.

Partial foreclosure

(82) Partial foreclosure is unlikely to have any significant anticompetitive effect. Indeed, given that sensor costs represent on average only [10-20]%* of the final winder price, it seems doubtful that a partial foreclosure strategy could have any significant effects on downstream customers. Indeed, even under the extreme assumption that

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BarcoVision's sensors costs for Itema, Itema would make even more additional profits by ***not*** foreclosing downstream competitors.

[55] See Footnote 48.

[56] Assuming that Uster increases its prices by [25-50]%*, the simple model indicates that by not foreclosing, the merged entity makes substantial additional profits compared with a total foreclosure strategy. In some instances and with extreme assumptions on switching patterns (this requires for example that, in reaction to a price increase of Murata, more than 90% of customers leaving Murata are going to Itema), selective foreclosure of Murata can be slightly more profitable than not foreclosing. In these instances where selective foreclosure could occur however, effects on downstream customers (if any) are negligible.

downstream competitors would pass on 100% of their increase in sensor costs, sensor prices would have to increase by [25-50]%* to translate into a 5% increase in winder prices. Taking into account a more realistic[57] assumption regarding the extent to which Murata and Schlafhorst would pass on an hypothetical increase in the price of sensors, the downstream effect of such a price increase would be even more limited, and would unlikely outweigh the benefits resulting form the elimination of Itema's double margins.

(83) In any case, price reaction of such magnitude on the upstream market is unlikely under the assumption that both BarcoVision and Uster remain active in the same market. Furthermore, the arguments about why such a price increase is unlikely under total foreclosure remain valid under the scenario of partial foreclosure. It is therefore extremely unlikely that end-customers would be harmed as a result of a partial input foreclosure by the merged entity.

Even taking into account possible fixed costs reductions, foreclosure is not profitable

(84) A total foreclosure strategy would most likely not be profitable for the merged entity. However, so far in this Decision, profits have been defined as sales minus variable costs. To take a conservative approach, it should also be considered that by withdrawing from the upstream market, Itema could make some savings on BarcoVision's fixed costs. For example, in the hypothesis of a total foreclosure scenario, Itema would stop entirely R&D cooperation with Schlafhorst and Murata to integrate BarcoVision's sensors on the two companies' winders. However, R&D cooperation with Murata and Schlafhorst costs BarcoVision only around [...]* per year,[58] which would therefore not affect the conclusion reached above regarding Itema's lack of incentive to foreclose.

(85) It could be also argued that, in a total foreclosure scenario, BarcoVision would spend less on its sales and marketing budget ([...]* per year). However, this amount appears limited and, in view of the likely magnitude of the lost profits for the merged entity if it were to engage in total foreclosure,[59] the conclusion on the absence of incentive is robust also in this respect.

Taking into account the possibility of vertical integration for Schlafhorst/Murata, a foreclosure strategy by Itema would be even less profitable.

(86) Although, due to the necessary time span (3 to 5 years), potential vertical integration by Schlafhorst and/or Murata is not capable in the near future of directly constraining the merged entity's ability to foreclose, it would have a mid-term impact on the profitability of foreclosure and the related incentives. Should Uster increase prices as a result of an input foreclosure strategy by the merged entity, Schlafhorst and Murata would have a strong incentive to integrate. This is evidenced by the substantial additional profits they could make by vertically integrating: the required investment

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57 See discussion on pass-on rates in recital (75).

58 Reply to the Questionnaire to BarcoVision of 3.06.2008, question 1 – this amounts to [...]*of total R&D costs.

59 Since, as explained above, Uster would be unlikely to significantly increase prices if Itema were to engage in foreclosure.

(EUR 15 million) would be recouped very rapidly. It is therefore likely that such a project would become a priority for these companies. Such an outcome would not be desirable for Itema which would lose substantial profits each year compared with the situation in which its competitors are not vertically integrated and not foreclosed[60].

A strong incentive for the merged entity to solve the confidentiality issues

(87) As explained, the merged entity would make substantial additional profits by remaining active on the upstream market. This implies that Itema would have a strong incentive to solve the confidentiality issues so as to not lose upstream business.

(88) Furthermore, it should also be stressed that it is unlikely that downstream competitors would decide to stop offering BarcoVision's sensors on their winders because of confidentiality concerns, at least in the short to medium term, as confirmed by expectations from the main upstream competitor.[61] Indeed, such an issue is unlikely to materialise before the next generations of winders is introduced, that is to say in 5 years for Murata, for which this issue is less critical, and in 8 to 10 years for Schlafhorst, leaving sufficient time for the downstream competitors to find alternative supply sources if necessary.

Conclusion

(89) It results from the above that the merged entity will not have an incentive to engage into a foreclosure strategy, which, in any event, would have negligible effects on winder prices.

iii. Conclusion on input foreclosure

(90) Considering that a foreclosure strategy would be unprofitable[62] and with marginal effects on downstream customers, it is concluded that risks of input foreclosure can be excluded in this case.

3. Customer foreclosure

(91) Uster's sales of winder sensors to Itema represent only [10-20]%* of its total sales and less than 10% of the total winder sensors market. Should Itema stop buying sensors from Uster, this would have limited effects on the upstream markets, making a customer foreclosure strategy clearly unprofitable.

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60 Looking at the net present value of profits for the merged entity in these two scenarios (foreclosure before vertical integration of downstream competitors vs. no foreclosure), it appears under the assumptions of the the model described in recital (76) that if vertical integration of Schlafhorst and Murata happens before 17 years following the merger as a response to foreclosure, the merged entity would make higher profits by not foreclosing competitors. Assuming that vertical integration will happen 5 years after the merger should Itema attempt to foreclose, an increase in prices by Uster of at least [500-800]%* would be required for Itema to have an incentive to foreclose, which is highly unlikely.

61 See Footnote 46.

62 In addition to the analysis set out above, it should be noted that no reference to such a foreclosure strategy could be found in the internal documents from the parties requested by the Commission.

4. Conclusion

(92) Consequently, the proposed transaction will not significantly impede effective competition on the market for winder sensors and winders.

b) Sensors for OE spinning machines and OE spinning machines

(93) On the upstream market for OE spinning sensors, BarcoVision is the second player (market share: [30-40]%*), behind Uster ([45-55]%*). Itema has only marginal sales on the downstream market for OE spinning machines (WW: [0-5]%*; EEA: [0-5]%*), especially compared with the two main manufacturers Rieter and Schlafhorst (together WW: [90-100]%*; EEA: [90-100]%*). It should also be underlined that Schlafhorst has developed its own OE spinning sensors and is to a large extent sourcing its sensors in-house.

(94) In view of the very limited presence of Itema on the downstream market, any concerns of customer foreclosure can be excluded, the merged entity lacking market power downstream: should Itema withdraw from the downstream market, it would have virtually no effects on the prices of sensors for its competitors. For the same reason, the merged entity will not have an incentive to engage in input foreclosure, given that it makes the bulk of its pre-merger profits on the upstream market. In any event, it is very unlikely that it could have the ability to foreclose access to inputs in view of the presence of a strong competitor upstream (Uster – [45-55]%*) and the in-house source of sensors supplies for Schlafhorst.

(95) Thus, the proposed transaction will not significantly impede effective competition on the market for OE spinning sensors and OE spinning sensors.

c) Sensors for weaving machines and weaving machines

(96) On the upstream market for sensors for weaving machines, BarcoVision is the third player (market share: [20-30]%*) behind Eltex ([45-55]%*) and Roj ([20-30]%*). Under certain product and geographic market definitions on the downstream market, leading to a market share for Itema above 25%, this market is affected:
- market for projectile looms (market share of Itema WW: [90-100]%*; EEA: [90-100]%*);
- single market for projectile and air-jet looms (Europe: [25-35]%*);
- single market for all rapier looms (Europe: [40-50]%*);
- market for negative rapier looms (Europe: [40-50]%*[63]).

(97) In view of the presence of two strong competitors upstream, any concerns of input foreclosure can be dismissed, the merged entity lacking market power upstream. Besides, some competitors on the downstream markets are vertically integrated and source to some extent their sensors in-house. For air-jet looms, this is the case for Toyota (worldwide market share: [40-50]%*), Tsudakoma ([20-30]%*) and Picanol ([10-20]%*). For rapier looms, Picanol is vertically integrated (market share in

[63] Reply by Itema to the questions received from the European Commission on 26 February 2008 on Form CO

Europe: [20-30]%*). For projectile looms, Itema is the only producer and thus no competitor can be foreclosed. It can therefore be concluded that the merged entity will not have the ability to foreclose access to inputs to downstream competitors.

(98) As regards risks of customer foreclosure, given that Itema's purchases of weaving sensors represent overall less than [5-15]%* of the total market, the merged entity will not have the ability to foreclose access of competing upstream manufacturers to a significant share of the downstream market. In addition, Itema does not sell enough weaving machines to absorb alone BarcoVision's output of sensors. Even assuming an increase in the prices of sensors, the fact that a number of downstream competitors are vertically integrated is likely to render such a strategy unprofitable.

(99) Accordingly, the proposed transaction will not significantly impede effective competition on the market for weaving sensors and weaving machines.

d) Software

(100) If there were a market for MES for textile manufacturing, BarcoVision would be the leading supplier ([25-35]%*), followed by Porini ([15-25]%*), Incas (<[5-15]%*) and Omega Center (<[5-15]%*).

(101) MES are sold directly to textile mills[64] and textile machinery manufacturers are not involved at any level of the supply chain of these products. Consequently, this market is not affected by the transaction.

(102) However, in the course of the market investigation, some vague concerns have been raised in relation to potential risks that the merged entity could leverage its position on the textile machines markets so as to increase its sales of MES or conversely to limit the range of machines with which its MES are compatible so as to increase its sales of textile machines. This seems extremely unlikely. Indeed textile mills own a variety of textile machines from different suppliers and the MES has to be compatible with all of them[65]. Currently, all MES can accommodate any possible brand of textile machines and most market participants do not expect any change in this respect following the merger. Should the merged entity limit the compatibility of its MES as to favour its own machines, this would have the direct and immediate effect to restrict its potential market in view of the diversity in brands of the installed base of textile machines (even within one textile mill[66]).

(103) The proposed transaction will therefore not significantly impede effective competition on the market for MES.

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64 Questionnaire to competitors – MES for textile manufacturing – second phase, question 12.

65 Questionnaire to competitors – MES for textile manufacturing – second phase, question 13 and 14.

66 For example, interviews conducted with textile mills in the course of the in-depth investigation revealed that some textile mills own several winders from different producers.

VI. CONCLUSION

(104) For the reasons set out above, it is concluded that the notified operation would not significantly impede effective competition in the common market or in a substantial part of it. The concentration should therefore be declared compatible with the common market and with the EEA Agreement, in accordance with Article 8(1) of the Merger Regulation and Article 57 of the EEA Agreement,

HAS ADOPTED THIS DECISION:

Article 1

The notified operation whereby Itema Holding S.p.A. acquires sole control of the BarcoVision division of Barco NV within the meaning of Article 3(1)(b) of Regulation (EC) No 139/2004 is declared compatible with the common market and with the EEA Agreement.

Article 2

This Decision is addressed to:

ITEMA HOLDING S.p.A.
Via Case Sparse 4
24020 Colzate, Bergamo
Italy

Done at Brussels,

For the Commission

(signed)

Neelie KROES
Member of the Commission

EUROPEAN COMMISSION
Competition DG

Policy and Strategy
Antitrust and Mergers – Policy and Scrutiny

OPINION

of the ADVISORY COMMITTEE on MERGERS

given at its meeting of 17 July 2008

regarding a draft decision relating to

Case COMP/ M.4874 ITEMA/BARCOVISION

Rapporteur : AUSTRIA

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1. The Advisory Committee agrees with the Commission that the notified operation constitutes a concentration within the meaning of Article 3(1)(b) of the EC Merger Regulation and that it can be deemed to have a community dimension pursuant to Article 4(5) of that Regulation.

2. The Advisory Committee agrees with the Commission that this is essentially a vertical merger comprising the following relevant product markets:

   - Winder sensors - Upstream market
   - Winders - Downstream market

   - Open-end spinning sensors - Upstream market
   - Open-end spinning machines – Downstream market – the question whether open-end spinning machines and ring spinning machines form part of the same market can be left open in the present case

   - Weaving sensors - Upstream market
   - Weaving machines (rapier looms, projectile looms and air-jet looms) – Downstream market – the question whether these markets should be further sub-segmented (negative/positive rapier looms, projectile/air-jet looms) can be left open in the present case

   - MES for the textile industry – the exact product market definition for these products can be left open in the present case.

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E-mail: COMP-MEETINGS@ec.europa.eu

3. The Advisory Committee agrees with the Commission that:

   - the market for winder sensors is worldwide in scope
   - the market for open-end spinning sensors is worldwide in scope
   - the market for weaving sensors is worldwide in scope

   - the market for winders is worldwide in scope
   - the market for open-end spinning machines is at least EEA-wide in scope
   - the market for weaving machines is at least EEA-wide in scope

   - the market for MES for the textile industry is worldwide in scope

4. The Advisory Committee agrees with the Commission's conclusion that the merged entity would have no incentive to stop supplying, either partially or totally, one or all of its competitors on the market for winders with winder sensors.

5. The Advisory Committee agrees with the Commission's conclusion that the proposed concentration is not likely to result in any anti-competitive impact to the detriment of consumers on the market for winders and winder sensors.

6. The Advisory Committee agrees with the Commission's conclusion that the proposed concentration is not likely to result in any anti-competitive impact to the detriment of consumers on the market for open-end spinning machines and open-end spinning sensors.

7. The Advisory Committee agrees with the Commission's conclusion that the proposed concentration is not likely to result in any anti-competitive impact to the detriment of consumers on the market for weaving machines and weaving sensors.

8. The Advisory Committee agrees with the Commission's conclusion that the proposed concentration is not likely to result in any anti-competitive impact on the market for MES.

9. The Advisory Committee agrees with the Commission's conclusion that the proposed concentration will not result in a significant impediment of effective competition in the common market or a substantial part of it.

10. The Advisory Committee agrees with the Commission that the notified concentration should therefore be declared compatible with the common market pursuant to Article 8(1) of the EC Merger Regulation.

11. The Advisory Committee recommends the publication of its Opinion in the Official Journal of the European Union.

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BELGIË/BELGIQUE	BULGARIA	ČESKÁ REPUBLIKA	DANMARK	DEUTSCHLAND
				Ms Margareta HERBERT

EESTI	ÉIRE-IRELAND	ELLADA	ESPAÑA	FRANCE
				M. Jérôme VIDAL

ITALIA	KYPROS/KIBRIS	LATVIJA	LIETUVA	LUXEMBOURG

MAGYARORSZÁG	MALTA	NEDERLAND	ÖSTERREICH	POLSKA
			Mr. Nikolaus FINK	

PORTUGAL	ROMANIA	SLOVENIJA	SLOVENSKO	SUOMI-FINLAND
Ms Fernanda MATOS				Ms Hannele VÄISÄNEN

SVERIGE	UNITED KINGDOM
	Mr David du Parc BRAHAM

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EUROPEAN COMMISSION

The Hearing Officer

Final Report[67] of the Hearing Officer in case COMP/M.4874 - Itema / BarcoVision

On 20 February 2008, Itema Holding S.p.A., Italy, submitted a notification to the Commission of its intended acquisition of control within the meaning of Article 3 of Council Regulation (EC) No 139/2004 over the whole of BarcoVision Division of Barco NV (Belgium) by way of purchase of shares.

Upon examination, the Commission concluded that the notified operation raised serious doubts as to its compatibility with the common market. On 14 April 2008, the Commission opened an in-depth investigation into this proposed concentration.

Upon request, access to key documents was provided to the notifying party on 16 April 2008, in accordance with paragraph 45 of DG Competition's Best Practices on the conduct of EC merger control proceedings.

The Commission stopped the clock in the in-depth investigation on 3 June 2008, effective as from 26 May 2008, after the target company failed to respond adequately to an information request. The clock was re-started on 9 June 2008.

On the basis of the additional evidence gathered during the in-depth phase of the investigation, the Commission services concluded that the proposed transaction would not significantly impede effective competition in the common market, and is therefore compatible with the common market and the EEA Agreement. Accordingly, no statement of objections was sent to the notifying party.

No queries or submissions have been made to me by the merging parties or any third party. The case does not call for any particular comments as regards the right to be heard.

Brussels, 22 July 2008

(signed)

Karen WILLIAMS

[67] Pursuant to Articles 15 and 16 of Commission Decision (2001/462/EC, ECSC) of 23 May 2001 on the terms of reference of Hearing Officers in certain competition proceedings – OJ L162, 19.06.2001, p.21.