

*Case No IV/M.583 -
Inchcape plc /
Gestetner Holdings
PLC*

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

Article 6(1)(b) NON-OPPOSITION
Date: 01/06/1995

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 01.06.1995

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying parties

Dear Sirs,

Subject: Case No. IV/M.583 - Inchcape plc/Gestetner Holdings PLC
Notification of 24 April 1995 pursuant to Article 4 of Council Regulation No 4064/89

1. On 24 April 1995, Inchcape plc (Inchcape) and Gestetner Holdings PLC (Gestetner) notified to the Commission their intention to create a joint venture which will acquire and operate the parties' respective office automation equipment sales and service businesses in the Asia/Pacific region.
2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of Council Regulation No 4064/89 and does not raise serious doubts as to its compatibility with the common market and with the functioning of the EEA Agreement.

I. THE PARTIES

3. Inchcape, an international services and marketing group, is organised into three business streams -- motors, marketing and services. Its office automation business is one of several operations within its marketing business stream.
4. The principal activity of the Gestetner group of companies is the worldwide sale and distribution of office automation products and photographic products, together with the provision of support services and supplies associated with these products.

II. THE OPERATION

5. Inchcape and Gestetner propose to create a joint venture company, Inchcape NRG Limited (INRG), to acquire and operate their respective office automation equipment sales and after-sales servicing operations in the Asia/Pacific region (defined in the joint venture agreement as the "JV Territory"). The joint venture's "core products" are photocopiers and facsimiles; and other office equipment products to be offered include laser printers, stencil duplicators, dictation machines, and mail handling machines.
6. The joint venture, to be headquartered in Hong Kong, is to have three components: a joint venture company, INRG, and two partnerships (in Australia and New Zealand). The various office automation activities of Inchcape and Gestetner group companies in the JV Territory will be transferred, by way of asset sale or share purchase, to a JV group company or merged into one of the two partnerships.

III. CONCENTRATIVE NATURE OF THE JOINT VENTURE

7. Joint Control: In each of these three vehicles, Inchcape and Gestetner will have a 50:50 beneficial interest and local management companies will likewise be owned 50:50 by the parties. The joint venture agreement expressly requires unanimous shareholder approval for major strategic decisions concerning the operation of the joint venture, such as adoption of the annual operating budget and business plans; issuance of any distribution or dividend to INRG's shareholders; appointment of specified senior executives; and capital expenditures in excess of certain amounts. The joint venture's board will be comprised of six directors, and will at all times include an equal number of Inchcape and Gestetner nominees. The board will be chaired initially by a Gestetner nominee, and the right to appoint a new chairman will rotate annually between the parties.
8. The local partnership agreements in Australia and New Zealand will mirror the terms of the joint venture agreement to the extent permitted by law. Overall, the joint venture's management structure is designed to ensure so far as possible that the local businesses, including the partnerships, function as a single economic entity with a common commercial strategy. The three components of the joint venture will share a common budget. As a consequence of these elements, it can be concluded that the joint venture will be jointly controlled by Inchcape and Gestetner.
9. Full-function autonomy: Substantially all of the parties' office automation businesses in the JV Territory, as well as all personnel and the necessary intellectual property rights (to be licensed to the joint venture for its duration), will be acquired by the joint venture. Thus, the joint venture will perform on a lasting basis all the functions of an autonomous economic entity.
10. Absence of scope for coordination of competitive behaviour Inchcape's only office automation businesses are conducted in the JV Territory and it will transfer all these businesses to the joint venture, with two minor exceptions: (1) a retail operation in Singapore that sells personal computers and personal telecoms products (such as mobile phones and personal pagers); and (2) a refurbishment business in Malaysia that reconditions mainly photocopiers, but also some faxes, for resale or rental. These operations have been excluded from the joint venture because their businesses differ fundamentally in character from the activities to be conducted by the joint venture. In view of Inchcape's withdrawal from the office automation business in the only geographic

area in which it has been active, after 40 years of presence there, it is highly unlikely that it will seek to re-enter this business on its own in the Community, and thus, it cannot be regarded as a likely potential entrant into the market. Consequently, although Gestetner will continue its office automation operations in other geographic areas outside the JV Territory, the creation of the joint venture does not give rise to the coordination of competitive behaviour between Gestetner and Inchcape.

11. The notified operation therefore constitutes a concentration within the meaning of Article 3(1)b of the Regulation.

IV. COMMUNITY / EEA DIMENSION

12. The undertakings concerned have a combined aggregate worldwide turnover in excess of 5,000 million ECU (Inchcape, for the 12 months ending 31 December 1993: 7,496 million ECU; and Gestetner, for the 14 months ending 31 December 1994: 1,502 million ECU). Each party has a Community-wide turnover in excess of 250 million ECU [...⁽¹⁾]. The notified operation therefore has a Community dimension, but does not constitute a cooperation case under the EEA Agreement.

V. COMPATIBILITY WITH THE COMMON MARKET

Relevant product and geographic markets

13. The various businesses to be transferred to the joint venture are essentially sales and services businesses offering customers a variety of office automation products, as well as the support services and consumable supplies utilised with these products. A number of product markets will be involved, in particular the markets for the core products, i.e., photocopiers and facsimiles.
14. The joint venture's activities will be carried on through a series of local operations in various countries in the Asia/Pacific region. For reasons of economic efficiency, the appointment of a representative to distribute a particular brand of equipment is usually made on a country-by-country or regional basis. The range of products sold by the joint venture in any given territory will depend upon the terms of the particular contract its local subsidiary has with a manufacturer or supplier.
15. As a matter of contract, the joint venture will conduct its activities only in its JV Territory. Consequently, the relevant geographic market for each of the principal products to be sold by the joint venture companies (and for the dependent after-market) need not be defined for the purposes of this notification. In any event, the notifying parties are of the view that the geographic market is unlikely to be anything other than national or, possibly, regional.

Competitive assessment

16. The joint venture will have no presence in the Community, nor in the EEA territory. Therefore, the creation of this joint venture will not give rise to an addition of market shares anywhere in the Community, nor does it eliminate potential competition. It is

⁽¹⁾ Deleted for publication

highly unlikely that Inchcape would have expanded its office automation operations from the Far East into Europe, in light of both its internal corporate organisation, as well as the costs it would have to incur in setting up the necessary distribution network. With respect to the company's internal organisation, Inchcape's office automation business operates within the marketing business stream, but all such marketing operations serve only countries in Asia, the Near and Far East, and Latin America and none are set up to serve the European markets. Furthermore, the company would be required to invest in an extensive sales and service network in a business totally unrelated to its primary European businesses, which include the distribution of motor vehicles on behalf of automotive manufacturers and the provision of insurance and shipping services. Indeed, since the joint venture will only operate in the Far East and the Pacific, the regional nature of the geographic markets involved in this matter eliminates any impact on competition in the European Union. Consequently, the concentration does not create or strengthen a dominant position. For the reasons discussed above, the proposed concentration does not raise serious doubts as to its compatibility with the common market.

VI. ANCILLARY RESTRAINTS

17. The notifying parties have requested that certain provisions in their joint venture agreement [specifically, Clauses 5.1, 5.2, 14, 18.2(a), 18.2(b), 18.3, 31.3, 47(b) and 47(c)], as well as one provision in their respective use of name agreements [specifically, Clause 4.2.1, respectively, in each such agreement], be considered as restrictions that are ancillary to the concentration.
18. These specified provisions submitted by the parties for consideration relate to the operations of the joint venture in its JV Territory, that is, the Asia/Pacific region. Without prejudice as to whether such clauses may have an appreciable impact on competition within the common market, they can be considered as ancillary to the concentration.

VII. CONCLUSION

19. Based upon the above considerations, the Commission has come to the conclusion that the proposed concentration does not create or strengthen a dominant position as a result of which effective competition would be significantly impeded in the common market or in a substantial part of it.

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

For the Commission,