The needles case: how to find within a complex scheme of bilateral agreements, a tripartite market sharing agreement

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Introduction

The conduct in question, subject of the Commission decision adopted on 26 October 2004, consisted of a series of formally bilateral agreements that amounted to a tripartite agreement which had the object and the effect of sharing or contributing to share the geographic market for needles and the product market for needles and other haberdashery products. Such practices are by their very nature the worst kinds of violations of Article 81 of the Treaty to the extent that they concerned a product and geographic market sharing between different markets and not simply an allocation of quotas within one market and that the product market sharing agreements intervened at different market levels, i.e. manufacturing and distribution (both at the wholesale and retail levels).

Three undertakings and their respective subsidiaries, namely William Prym GmbH & Co. KG and Prym Consumer GmbH & Co. KG, Coats Holdings Ltd and J&P Coats Ltd, Entaco Ltd and Entaco Group Ltd entered into a series of written, formally bilateral, agreements between 10 September 1994 and 31 December 1999, amounting in practice to a tripartite agreement under which these undertakings shared or contributed to sharing product markets (by segmenting the European market for hard haberdashery products) and geographic markets (by segmenting the European market for needles). These concerted practices and agreements constitute an infringement of Article 81(1) of the EC Treaty and had the object and the effect:

For William Prym GmbH & Co. KG and Prym Consumer GmbH & Co. KG and Entaco Ltd and Entaco Group Ltd:
— of sharing the European hard haberdashery market by limiting the business activity of Entaco Ltd to the hand sewing and special needles business, a fact which amounts to product market sharing between the hand sewing and special needles market and the wider markets for needles as well as other hard haberdashery markets.
— of segmenting the European market for needles by restricting Entaco Ltd to the United Kingdom, the Republic of Ireland and (partially) Italy and by preventing that undertaking from entering the Continental European markets for needles (with the exception of so-called label accounts), thereby effectively reserving those markets for William Prym GmbH & Co. KG and its subsidiaries, a fact which amounts to geographic market sharing in the needles market.

For Coats Holdings Ltd and J & P Coats Ltd:
— notably, of protecting the undertakings’ own needle brand (Milward) at the retail level from competition on behalf of Entaco Ltd by way of i) an exclusive supply and purchasing agreement with Entaco Ltd covering the United Kingdom and (partially) Italy, ii) and by way of imposing on Entaco Ltd an obligation to respect the geographic market sharing agreement that undertaking had entered into with William Prym GmbH & Co. KG and its subsidiaries.

The Decision is based upon the existence of inter-conditional clauses contained in the above-mentioned series of written bilateral agreements and upon certain contemporaneous documents. These clauses were renewed over time.

In this context it should be highlighted that a leniency application submitted on behalf of Entaco Ltd confirmed all of the Commission’s findings in these proceedings. Prym in its reply to the Statement of Objections confessed its participation to the infringements.

The parties

— Coats Holdings Ltd (hereafter Coats) is a global leading thread producer, the second worldwide producer of zips, the main distributor of haberdashery products around the world and notably in Europe. Coats has a turnover of 1.7 billion Euros worldwide.
— William Prym GmbH & Co. KG (hereafter Prym) is a leader at the manufacturing level of hard haberdashery products. It is the third zip producer worldwide. It owns the well-known “Éclair” brand. Coats was a main shareholder of Prym until 1994.
For both companies most consumers wear one or more of their products on a daily basis.

— Entaco Ltd (hereafter Entaco) was incorporated in April 1991 following a management buy-out by former employees of Needle Industries Ltd. Needle Industries Ltd was a wholly-owned subsidiary of Coats Viyella plc (later known as Coats plc, currently called Coats Holdings Ltd) until February 1991. It is a small company, mainly active in the needle business.

Relevant markets

The Commission has identified three relevant product markets i) the European market for hand sewing and craft needles (including notably special needles), in which the product and geographic market sharing took place (market value around €30m), ii) the European market of ‘other sewing and knitting products including pins, knitting pins/knitting needles’ (market value around €30m), and iii) the European market for other hard haberdashery products including zips and other fasteners (€1.5 billion), in both of which the product market sharing only took place (from 10 September 1994 to 13 March 1997). The market for hand sewing and craft needles must be distinguished from the market for industrial machine needles which were not manufactured by the undertakings during the infringement period.

Mechanism of the infringements

1. Coats was protected against Entaco and Prym competition at the retail level (for its Milward brand) since:

— Entaco could not compete with Coats by virtue of the agreements it had signed with both Coats and Prym respectively for the UK and Continental Europe at the retail level.

Under clause 2.2 of the Supply and Purchase agreement, Entaco is restricted from supplying Coats customers in the UK: ‘Entaco shall not supply products to a customer of a UK Purchaser other than those customers to whom the Supplier supplies Products prior to the date hereof at existing business levels’.

Under clause 2.2 of the Distribution agreement between Prym and Entaco, Entaco is restricted from selling to customers of Coats and Prym in Continental Europe: ‘Entaco will not sell products to any person in the territory [Europe excluding the United Kingdom and the Republic of Ireland] other than the label accounts and/or the Distributor [Prym Consumer] and/or the Coats group.’

Therefore Entaco was not an independent force in the market since it could effectively only sell to Coats or Prym.

— Prym needed the support of Coats to stop Entaco entering the Continental European market. It must also be remembered that to enforce the market sharing agreements, all Coats (as the overwhelming buyer in UK) had to do was to buy from Entaco rather than Prym. This kept Prym limited to low activity in the UK while it disciplined Entaco to remain outside Continental Europe, because if it did not then Coats would stop considering Entaco as an exclusive supplier, a fact which is contained in clause 2.2 of the Supply and Purchase agreement between Entaco and Coats:

‘[...] (b) fulfill its obligations of cognate nature pursuant to an Agreement between the Supplier and Prym dated [10 September 1994]/[1 April 1997].’

In addition, Coats as the main distributor in Europe was in a position by using its orders of products to ’play off’ Entaco and Prym against each other, which represented another mode to discipline Prym.

2. Entaco wanted to be the exclusive supplier of Coats in the UK as a security for its production; otherwise it would not have entered into the product market sharing agreement, limiting its business development. Indeed Entaco agreed to a very substantial limitation of its activity:

In the Heads of Agreement: ‘Entaco agrees to restrict its manufacturing and distribution activities in the haberdashery sector to needles only, and not to widen its activities to include pins, safety pins, four-piece fasteners, knitting pins, or any other haberdashery product without the prior agreement of Prym’ (in addition to clause 2.3 of the Purchasing agreement between Prym and Entaco).

In the Distribution agreement under clause 2.2 as quoted above which amounts to a geographic market sharing agreement.

Entaco did not receive a similar guarantee from Prym. It needed as a consequence the security of an outlet for its production in the UK from Coats, which is what it received.

Entaco, being a management buy-out of Coats’ former needle business, was facing competition
from two major companies, Prym and Coats which were linked by shareholding interests and a 'special partnership'. For Entaco, entering in this tripartite agreement was the best possible deal since it gained a secure outlet by just offering 'a face of independence to the market' in exchange.

3. Prym, without the approval of Coats, would not have entered a market sharing agreement to the potential detriment of its main shareholder and its main partner (Coats) in the European haberdashery market.

**Rationale of the infringing practices**

The main line of defence adopted by Coats was that it was not making sense that as a distributor in the needle sector, it would organise a cartel between its suppliers. However Coats is not only a distributor since it owns a brand at the retail level, namely ‘Milward’ competing with the other manufacturers Prym and Entaco. Compelling evidences found during the investigations demonstrate the involvement of Coats in order to protect its Milward brand from competition. Coats notably obliged Entaco to enter with Prym in the product and geographic market sharing agreements through a signed agreement. It seems quite irrational that a mere customer would knowingly enable its two main suppliers to enter into a product market sharing agreement to its detriment. A statement by Coats serves as a striking explanation for the undertaking’s actions: ‘in return, Entaco should not approach Coats’ retail or wholesale customer and especially not to offer better prices’.

Another explanation is given by looking at the long-standing relationship between Coats and Prym which resulted in comprehensive agreements concerning the distribution of haberdashery products throughout the European Union between Coats and Prym and their various subsidiaries. Indeed from 1975 onwards Coats and Prym agreed to cooperate in the area of sales and distribution in a large number of countries world-wide by acting as joint trading companies or exclusive distributors of each other’s products, according to their respective market strength in each Member State.

**Conclusion**

The infringements were considered as ‘very serious’ as they had the object of partitioning national markets and sharing product markets, thereby restricting competition and affecting trade between Member States. The infringements lasted 5 years and three months.

As Entaco was the only undertaking to inform the Commission of the existence of the market sharing agreements and to bring decisive evidence without which the market sharing agreements might not have been disclosed, and in the light of its continuous co-operation, the Commission made it benefit from full immunity of fines.

Coats and Prym were condemned to a fine of €30m each, jointly and severally liable with their respective subsidiaries.