Summary of Commission Decision
of 4 August 2008
declaring a concentration to be compatible with the common market and the EEA Agreement
(Case COMP/M.4874 — Itema/BarcoVision)

(notified under document C(2008) 4065 final)

(Only the English version is authentic)

(Text with EEA relevance)

(2009/C 225/06)

On 4 August 2008, the Commission adopted a Decision in a merger case under Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings, and in particular Article 8(1) of that Regulation. A non-confidential version of the full decision can be found in the authentic language of the case and in the working languages of the Commission on the website of the Directorate-General for Competition, at the following address:

http://ec.europa.eu/comm/competition/index_en.html

I. THE PARTIES

(1) Itema Holding S.p.A. (‘**Itema**’) is an Italian group controlling companies mainly active in the textile industry. The four main realms of activities of Itema are the manufacturing of machinery for (i) weaving, (ii) spinning, (iii) knitting, and (iv) electronics.

(2) The BarcoVision Division (‘**BarcoVision**’) of Barco NV (Belgium) is active in the markets of optical detection (sensors), inspection systems, and computerized production management, mainly for the textile industry.

II. THE OPERATION

(3) On 20 February 2008, the Commission received a notification of a proposed concentration by which Itema acquires over the whole of BarcoVision by way of purchase of shares.

III. ARTICLE 4(5) REFERRAL

(4) The notified concentration does not have a Community dimension. However, on 26 November 2007, 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, Italy, Latvia, Portugal, Slovenia and Spain, and requested the Commission to examine it. No Member State objected to the referral of the proposed transaction to the Commission. The proposed transaction is therefore deemed to have a Community dimension.

IV. THE RELEVANT PRODUCT MARKETS

(5) 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 (MES) used in the monitoring of textile production in mills.

1. Upstream markets (sensors sold by BarcoVision)

(6) BarcoVision manufactures sensors for winders and sensors for open-end (‘OE’) spinning machines, which essentially detect and cut out defects in the yarn. It also sells sensors for weaving machines that check the proper insertion of yarn on weaving machines.

(7) As submitted by the parties and confirmed by the market investigation, 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. Indeed, both categories of products perform different functions and thus rely on different technologies. Within sensors for weaving machines, no further delineation is necessary (e.g. based on the technology of the weaving machine).

(8) 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 based 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. The market investigation has not confirmed this view. Although both types of sensors rely on similar technologies, sensors for OE spinning machines are technologically less advanced products than sensors for winders.

(9) Consequently, the draft decision concludes that (i) the market for weaving sensors, (ii) the market for winder sensors and (iii) the market for OE spinning sensors are distinct markets.

2. **Downstream markets (textile machines sold by Itema)**

(10) Itema is active in the manufacturing and marketing of the following textile machines: OE spinning machines, winding machines, and weaving machines.

(11) The Commission had the opportunity to review cases involving winders and spinning machines (e.g. M.4432 Oerlikon/Saurer). While the precise market definition was left open, the Commission noted that the parties considered that winding machines, ring spinning machines, and OE spinning machines constituted three separate product markets.

(12) Given that Itema produces only OE spinning machines, the question whether OE spinning machines and ring spinning form part of the same product market can be left open. In the draft decision the transaction is assessed considering the narrower market for OE spinning machines.

(13) As regards weaving machines, the Commission identified in M.2698 Promatech/Sulzer several product markets within weaving machines based on the technology of the machine. For the purpose of the assessment of the present case, the product market definition can be left open as under any possible option the transaction does not raise competition concerns. In the decision the transaction is 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**

(14) MES for the textile industry are software solutions to monitor the knitting, weaving, tufting, and/or spinning machinery present in the mill. The exact product market definition can be left open for the present case.

V. **THE RELEVANT GEOGRAPHIC MARKETS**

(15) The notifying party submits that all the markets under scrutiny are worldwide. This view has been largely confirmed by the market investigation for the upstream markets (sensors for weaving machines, sensors for winders, sensors for OE spinning machines) and the market for MES. With regard to the downstream markets (textile machines), some respondents to the market investigation claimed that there was a specific European market. As regards OE spinning machines and weaving machines, the question is left open in the draft decision.

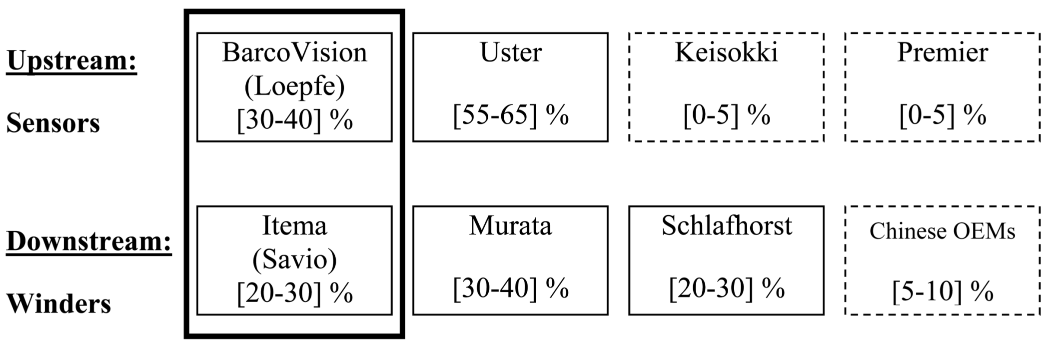
(16) With regard to winders, the in-depth investigation revealed that EEA textile mills tend to order more sophisticated, less labour intensive machines, which overall leads to higher average prices in this area. However, there is also a strong demand for these machines in other parts of world where some textile mills choose to focus on high quality textile (e.g. India). Taking into these differences in product mix, and as confirmed by most of the market participants, the EEA market does not present marked distinguishing features. The draft decision concludes that the market for winders is worldwide in scope.

VI. **ASSESSMENT**

(17) The investigation focussed on the risks of input foreclosure on the markets for winders and sensors for winders.

1. **Sensors for winders and winders**

(18) As it appears from the diagram below, both the upstream and downstream markets are highly concentrated:



(19) 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. BarcoVision sells its sensors under the brand name Loepfe, Itema its winders under the brand name Savio.

(20) Savio's main competitors have expressed strong concerns of input foreclosure. They expect that, following the merger, Loepfe 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 Loepfe, Uster could then increase prices charged to Murata and Schlafhorst, in line with paragraph 38 of the non-horizontal merger guidelines.

Ability to foreclose access to sensors

(21) Sensors for winders are clearly an indispensable input for winders. However, Loepfe's specific sensors are not technically required by some end-customers. For most applications, either Loepfe's or Uster's technologies can be used. 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.

(22) Today, only two companies, Loepfe and Uster, are capable of supplying large volumes of winder sensors of quality to winder manufacturers. This suggests that both companies enjoy a significant degree of market power. Nevertheless, there are some indications that potential competition is putting downwards pressure on both Loepfe's and Uster's prices.

(23) The draft decision examines the potential alternative supply sources upstream which could materialize in the short term. Although several such sources have been identified, it appears from the investigation that none of them are able to exercise full competitive pressure in the sensor market in the immediate future. However, the market investigation revealed that vertical integration from Murata and Schlafhorst could happen in 3 to 5 years.

(24) Savio's competitors have argued that it would be extremely difficult for them to continue to source sensors from Loepfe after the merger for they fear that Loepfe would pass on sensitive technical information about winders to Savio. The draft decision analyzes in detail these concerns and concludes the confidentiality concerns will become fully effective only with the development of the next generation of winders (i.e. in about 5 years from now). In-between, it could lead to a delay in the release of new features. Therefore, in line with the expectations of the main upstream competitor, 'passive' foreclosure, i.e. occurring without action from the merged entity, is very unlikely to happen in the next few years.

(25) Uster will have limited incentives to exploit its increased market power in a total foreclosure scenario. Uster repeatedly stressed that it does not expect to be in a position to increase its prices post-merger because (i) this would trigger vertical integration from Murata/Schlafhorst and/or expansion from smaller upstream competitors and (ii) it will be constrained by competition on the downstream markets (Uster expects that the merger will lead to a reduction in prices for Savio's winders coming with Loepfe's sensors).

(26) In conclusion, 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 indications that the merged entity is unlikely to have the ability to raise competitors' costs.

Incentives to foreclose and effects on downstream customers

(27) As set out in the non-horizontal guidelines, the incentive for a company to foreclose its competitors will depend on the profitability of such a strategy.

(28) 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] %). Second, the percentage margins are relatively small downstream and much higher upstream, which, all other things being equal, makes the gain of downstream winders less likely to compensate for upstream losses than if in a situation where downstream margins are high and upstream margins are small. Third, the critical price increase depends on the extent to which Itema's competitors would pass through 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. To continue competing with Itema, downstream competitors are therefore unlikely to pass the entirety of their cost increase, which further limits the downstream effects of an input foreclosure scenario.

(29) This interaction between these three elements, together with the other factors that affect the profitability of an input foreclosure, can be illustrated with a very simple model of downstream demand. Such a model indicates that Itema's 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. 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.

(30) There are strong indications suggesting 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.

(31) The draft decision also considers a strategy whereby Itema would stop supplying sensors only to one of its downstream competitor, either Murata or Schlafhorst. It can be shown that under reasonable assumptions, such a strategy is not profitable.

(32) The draft decision examines incentives and effects of a partial foreclosure strategy for the merged entity and concludes that it is unlikely to have anticompetitive effects.

(33) It is also considered whether possible reduction in fixed costs by the merged entity in a foreclosure scenario could make this strategy profitable. The draft decision concludes that the conclusion of lack of incentives is robust also in this respect.

(34) The draft decision explores the impact of the threat of vertical integration by downstream competitors (Murata, Schlafhorst) on Itema's incentives to foreclose and finds that this further reduces the profitability of a foreclosure strategy.

(35) In view of the significant additional profits the merged entity could make by not foreclosing downstream competitors, it can be concluded that Itema will have a strong financial incentive to solve the confidentiality issues so as to not lose upstream business.

(36) Consequently, 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.

Conclusion

(37) Considering that a foreclosure strategy would be unprofitable and with marginal effects on downstream customers, the draft decision concludes that risks of input foreclosure can be excluded in this case. Given that Itema's purchases of sensors represent a limited share of the total market, the transaction does not present risks of customer foreclosure.

2. **Other markets**

(38) With regard to sensors for OE spinning machines and OE spinning machines, in view of the limited market share of Itema in the downstream market (WW: [0-5] %; EEA: [0-5] %), the transaction does not raise anticompetitive concerns.

(39) With regard to sensors for weaving machines and weaving machines, the draft decision examines the vertical relationship created by the transaction under the different market definition options for the upstream markets and concludes that the proposed transaction will not significantly impede effective competition on these markets, essentially due to a lack of market power upstream.

(40) With regard to MES, there are no affected markets; the concerns raised in the course of the market investigation have been proved to be unfounded.

VII. CONCLUSION AND PROPOSAL

(41) The Commission concludes in the draft decision that the proposed concentration will not give rise to any competition concerns as a result of which effective competition would be significantly impeded in the Common Market or in a substantial part of it. Consequently, the draft suggests to declare the concentration compatible with the Common Market and the EEA Agreement, in accordance with Article 8(1) of the Merger Regulation and Article 57 of the EEA Agreement.

(42) The Commission invites the Advisory Committee, on the basis of Article 19(6) of the Merger Regulation, to deliver an opinion on the attached draft decision.