

Completed acquisition by Minova UK Limited of the resin capsules business of Exchem plc

The OFT's decision on reference under section 22(1) given on 30 January 2006. Full text of decision published 21 February 2006.

Please note that square brackets indicate figures or text which have been deleted or replaced with a range at the request of the parties for reasons of commercial confidentiality.

PARTIES

1. **Minova UK Limited** (Minova) is part of a global specialty chemicals group whose products and services are targeted principally at the mining and civil engineering sectors.
2. **Exchem plc** (Exchem) is a multinational organisation active in industrial explosives, organic chemical intermediates and specialty resin systems for use in mining and construction applications. Its UK turnover in 2004 was £38 million.

TRANSACTION

3. On 3 October 2005 Minova acquired Exchem's resin capsule business. The acquisition includes the transfer of goodwill (in the form of Exchem's supply of resin capsules to a major customer), some stocks of resin capsules and the grant of intellectual property rights to enable Minova to manufacture resin capsules to Exchem's specifications and trade-mark the relevant products under the Exchem brand. The OFT believes this to constitute an 'enterprise' for the purposes of the Enterprise Act 2002 (the Act). The statutory deadline is 2 February 2006.

JURISDICTION

4. As a result of this transaction, Minova and Exchem's resin capsule business have ceased to be distinct. The parties overlap in the supply of resin capsules and their

combined shares of the UK supply of this product amounts to 100 per cent. Consequently the share of supply test in section 23 of the Act is met.

5. The OFT therefore believes that it is or may be the case that a relevant merger situation has been created.

RELEVANT MARKET

Product market

6. Resin capsules are used primarily as anchoring for the steel bolts which attach reinforcements to rock and concrete surfaces in excavations such as tunnels and underground mine roadways.
7. The parties propose that there are other products available which can be used for the same purpose, including:
 - friction bolts
 - mechanical anchors
 - cement and resin grout
 - pumped resin
 - traditional supports¹.
8. However, in reply to a specific question put by the OFT, no third party respondent in the UK offered any support to a proposition that any alternative method of mine roadway support was readily substitutable for resin capsules and steel bolts. Without prejudice to the possibility of the product frame of reference being wider, therefore, the analysis in this decision is based on the impact of the merger on competition for the supply of resin capsules.

Geographic market

9. The parties submit that the geographic scope for the supply of resin capsules is international. They state that resin capsules are easily transportable and have a shelf life of between six and nine months. Whilst Exchem has been manufacturing and selling resin capsules in the UK, Minova continues to import the product into

¹ Steel frames and girders on wooden props

the UK from its plant in Poland. Minova's German subsidiary² not only supplies customers in Germany, but also sells into Switzerland, Italy, Republic of Ireland, Spain and Portugal. A French competitor, ARS Industries³, sells resin capsules into Germany, Switzerland and Norway.

10. The parties have also given examples of inter-continental trade in resin capsules:

- Exchem has in the past sold to customers in South East Asia
- following the introduction of the roofbolting systems in the UK in the early 1990s, UK Coal procured resin capsules from suppliers in Australia
- Minova has supplied customers in India and Siberia from its manufacturing plant in Poland
- Stratabolt, a South African producer, supplied customers in New Zealand in early 2000
- Chinese suppliers sell into Russia.

11. Some customers in the UK have indicated to the OFT that they are able to import from European suppliers. A few of these submitted that they would even consider importing from the US or Australia, depending on price. However, given that the principal supplier in Australia is a Minova subsidiary⁴ and that no US suppliers are currently selling resin capsules into Europe, the competition analysis in this paper is based on a cautious proposition that the geographic frame of reference is European – without prejudice to the possibility of it being wider.

12. On a similarly cautious basis, given that combined shares of supply in the UK amount to 100 per cent, this analysis is focused on the competitive impact of the merger in the UK and specifically on customers in the UK.

HORIZONTAL ISSUES

Market shares

13. The shares of the supply attributable to the principal manufacturers of resin capsules are shown in the table below.

² Minova CarboTech GmbH

³ A subsidiary of Railtech International and part of the Delachaux metals group.

⁴ Minova Australia Pty Ltd

Table one: 2004 resin capsule shares of supply

	UK (%)	Rest of Europe (%)	Total Europe (%)	Worldwide (%)
Exchem	[70-80]	[0-5]	[10-20]	[0-5]
Minova	[10-20]	[80-90]	[70-80]	[50-60]
Combined	100.0	[80-90]	[80-90]	[50-60]
ARS	0.0	[10-20]	[10-20]	[0-5]
Dupont	0.0	0.0	0.0	[20-30]
Others	0.0	0.0	0.0	[20-30]
Total value	[£1m-£2m]	[£5m-10m]	[£5m-10m]	[-]

Source: Minova estimates.

Note: Figures in square brackets have been ranged or redacted at the parties' request for reasons of commercial confidentiality.

14. As can be seen from table 1, the only suppliers of resin capsules to UK customers in 2004 were Exchem and Minova. Consequently, if the geographic scope of the market were no wider than the UK, the transaction would be merger to monopoly on this basis.
15. The table also indicates that there are currently only three suppliers of resin capsules to customers in Europe, and that the merger has brought the largest two together. Worldwide, the only other significant player has been Dupont (now Fasloc Inc) based in the US.

Impact of the merger on customers in the UK

16. The customer base in the UK consists, on the one hand, of the two largest buyers: UK Coal⁵ and Cleveland Potash⁶, each of whom procures regular consignments of resin capsules by the truckload. On the other hand, a range of other buyers (typically those providing civil engineering services) make ad hoc purchases of much smaller volumes, varying between one box of a dozen or so units to a pallet-sized consignment of such boxes.
17. Having successfully won a succession of tenders over a number of years, Exchem was evidently UK Coal's preferred supplier. As a result of this acquisition, Exchem's contract to supply UK Coal (which was due to expire on 31 December 2005) was transferred to Minova and has been extended. However, UK Coal has told the OFT that it plans to put its contract out to tender later this year and that

⁵ UK Coal is the largest coal mining company in Great Britain. It operates 7 deep mines located in Central and Northern England. It also has 5 active surface mine sites and a large land bank of prospective sites.

⁶ Operating the UK's only potash mine, Cleveland Potash is a producer (approximately 1 million tonnes pa) of potash for agricultural fertilizers and industrial applications.

it will be inviting suppliers – from within and from outside Europe – to tender for the contract in competition with Minova.

18. Previously, Minova's sales of resin capsules into the UK were exclusively as a result of a single supply contract with Cleveland Potash, by which Minova shipped an average of one truckload of product per month directly from Poland to the potash mine site in Boulby, North Yorkshire.
19. Prior to the acquisition, Exchem was the only company supplying resin capsules to all⁷ other UK customers who, with the notable exception of UK Coal, had only ad hoc and considerably smaller volume requirements for this product. This was so because, of the two suppliers, Exchem was the only one to have both a manufacturing plant and a distribution centre in the UK. In the absence of any storage facilities in the UK, Minova submitted that it was not economically viable for it to ship such small volumes directly from its manufacturing base in Poland.
20. Moreover, Minova submitted that setting up a distribution base in the UK was only commercially feasible on the basis of securing a large supply contract of the size that only UK Coal could award. Additionally, Minova told the OFT that the throughput of the UK Coal contract was needed before it could supply smaller customers.
21. UK Coal and Cleveland Potash, the largest UK customers, both regularly procure resin capsules in sufficient quantity as to make them commercially attractive customers either to potential suppliers in Europe or, they said, to suppliers as far afield as North America and Australia. Neither of these experienced and long-standing customers expressed any concerns for competition as a result of this merger and both were confident of their ability to switch to alternative sources of supply.
22. For the smaller UK customers there was no competition from Minova before this acquisition, due to its lack of distribution network in the UK.

Barriers to entry and expansion

23. In their initial submission the parties argued that there is potential for new entry into the UK. They submitted that a new manufacturing line could be established at a cost of around £200k and would take approximately three months to install. It would also be possible to acquire second hand production lines.

⁷ There was one isolated instance of supply by Minova of resin capsules to British Gypsum in 2004. In this one case, the quantity was such as to make it viable for Minova to supply this customer in the course of its regular shipment of resin capsules to Cleveland Potash.

24. Due account is taken, however, of a subsequent assertion that it would not have been commercially viable for Minova to distribute resin capsules in the UK absent a supply contract with the largest customer, UK Coal.

Buyer Power

25. UK Coal agreed with the parties' submission that it enjoys substantial negotiating strength. It is in a position to benchmark prices against those of international suppliers and is able to prevent Minova from increasing prices of resin capsules above competitive levels.
26. Similarly, Cleveland Potash believes it has buyer power due to the high volumes of resin it purchases and given that it can negotiate joint purchases with its sister company in Spain.
27. The parties acknowledged that the benefits of UK Coal and Cleveland Potash's buyer power do not extend to their smaller customers. However, the parties maintained that smaller customers had not been discriminated against in terms of price and would not be discriminated against in the future. Minova's price list – which is that previously used by Exchem – is a published document which sets standard prices for all customers purchasing lower volumes of resin capsules. Any difference in the prices paid by UK Coal and Cleveland Potash is attributable to volume discounts, justified by reason of the cost savings that relate to larger sales. The parties stated that if smaller customers were to purchase in such quantities, similar discounts would be made available to them.

VERTICAL ISSUES

28. No vertical issues arise from this acquisition.

THIRD PARTY VIEWS

29. One customer raised a concern – possibly unaware that Minova has been granted IP rights to manufacture resin capsules to Exchem's specifications – that Minova's product might not match Exchem's installation performance. A competing manufacturer of resin capsules was concerned that Minova will become a very powerful and aggressive competitor. No other third party raised concerns.

ASSESSMENT

30. The parties overlap in the supply of resin capsules, an anchoring medium for the steel bolts which attach supports to rock and concrete in excavated mines and tunnels.
31. The product market may be wide enough to include all the other types of bolts and fixing which can be used for the same purpose.
32. On the basis of the examples given of international and inter-continental trade in resin capsules, the geographic market has the potential to be as wide as international.
33. However, there is no need to conclude on the scope of either the product or the geographic market since, on the basis of a cautiously narrow focus on the impact of the merger on customers in the UK – where combined shares of supply would amount to 100 per cent – the acquisition does not raise competition concerns.
34. Larger customers have indicated to the OFT that are able to source resin capsules internationally and therefore have sufficient supply alternatives post merger. These customers have stated that they enjoy substantial buyer power and are able to secure volume discounts on list prices.
35. Prior to the acquisition, Minova's only supply contract in the UK was with Cleveland Potash, the second largest customer in the UK, which it supplied from Poland. Having been unable to secure the supply contract to the largest customer, UK Coal, and in the absence of its own distribution network in the UK, it was not commercially feasible for Minova to have acted as a competitive constraint on Exchem in relation to all the remaining sales to all other UK customers.
36. Post-merger, Exchem's contract for the supply of resin capsules to UK Coal has now been transferred to Minova. This has given Minova the throughput of supply it requires in order to meet the ad hoc requirements of smaller customers in the UK.
37. One customer raised a concern that Minova's product might not match Exchem's installation performance. However, as a result of the acquisition, Minova has been granted intellectual property rights to manufacture resin capsules to Exchem's specifications. A competing manufacturer was concerned that Minova would become a very powerful and aggressive competitor. All other customers indicated that they were confident of their ability to switch to alternative sources of supply. The acquisition does not give rise to any vertical issues.

38. Consequently, the OFT does not believe that it is or may be the case that the merger has resulted or may be expected to result in a substantial lessening of competition within a market or markets in the United Kingdom.

DECISION

39. This merger will therefore **not be referred** to the Competition Commission under section 22(1) of the Act.