



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 13.02.1998

PUBLIC VERSION

MERGER PROCEDURE  
ARTICLE 6(1)(b) DECISION

To the notifying party

Dear Sirs,

**Subject: Case No IV/M.1078 - BP/HÜLS**

Notification of 12.01.1998 pursuant to Article 4 of Council Regulation N/ 4064/89

1. On 12.01.1998 the Commission received a notification of a proposed concentration pursuant to Article 4 of a Council Regulation (EEC) No. 4064/89 by which Deutsche BP Holding AG (BP) acquires within the meaning of Article 3(1)(b) of the Council Regulation control Styrenix Kunststoffe GmbH & Co. KG and Styrenix Kunststoffe Verwaltungsgesellschaft mbH by way of purchase of shares.
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' ACTIVITIES AND THE OPERATION**

3. Deutsche BP Holding AG (BP) is a subsidiary of The British Petroleum Company p.l.c. which has as main activities oil and gas exploration, refining, supply and transportation of oil and gas, manufacturing and marketing of petrochemicals and related products.
4. Styrenix Kunststoffe GmbH & Co. KG and Styrenix Kunststoffe Verwaltungsgesellschaft mbH are subsidiaries of Hüls AG which belongs to the VEBA group of companies. Its business is the manufacture and sale of styrene, polystyrene and expanded polystyrene. BP acquires all of the shareholdings in Styrenix Kunststoffe GmbH & Co. KG and Styrenix Kunststoffe Verwaltungsgesellschaft mbH from Hüls.

## **II. CONCENTRATION**

5. With the notified transaction BP will acquire control over Styrenix Kunststoffe GmbH & Co. KG and Styrenix Kunststoffe Verwaltungsgesellschaft mbH.

## **III. COMMUNITY DIMENSION**

6. BP and the companies acquired have a combined aggregate worldwide turnover in excess of 5,000 million ECU (BP group: 55.223 million ECU; Styrenix Kunststoffe GmbH & Co. KG and Styrenix Kunststoffe Verwaltungsgesellschaft mbH: [...] ). Each of them has a Community-wide turnover in excess of 250 million ECU, but they do not achieve more than two-thirds of their aggregate Community-wide turnover within one and the same Member State. The notified operation therefore has a Community dimension, but does not constitute a cooperation case under the EEA Agreement, pursuant to Article 57 of that Agreement.

## **IV. COMPATIBILITY WITH THE COMMON MARKET**

### **A. Relevant product and geographic markets**

7. BP and the acquired undertaking are both active in the production and sale of styrene and two products derived from styrene, polystyrene (PS) and expanded polystyrene (EPS). Styrene is an intermediate chemical product and has no end-use in itself. It is used as a base material for the production of PS and of EPS and as a co-monomer in the production of a number of plastics and synthetic rubbers. PS is used for a large number of applications such as packaging, consumer durables and EPS is used for construction insulation and packaging.

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[...] business secret deleted - in excess of 250 million ECU

8. The notifying parties state that the relevant product markets are styrene, polystyrene and expanded polystyrene. Styrene is a market in itself as there is no substitute for styrene in the manufacture of PS, EPS and other styrene derivatives. The question whether PS and EPS can be substituted by other materials which are used for packaging or insulation purposes can be left open. It is not necessary to further delineate the relevant product markets because in all alternative market definitions considered, effective competition would not be significantly impeded in the EEA or any substantial part of that area.

**B. Relevant geographic markets**

9. The notifying parties state that the relevant geographic markets are at least Community wide. It is not necessary to further delineate the relevant geographic markets because, in all alternative geographic market definitions considered effective competition would not be significantly impeded in the EEA area or any substantial part of that area.

**C. Effect of the concentration**

10. On the basis of none of the possible geographic and product market definitions does this concentration create or strengthen a dominant position. In none of the markets will BP become the market leader. As a result of the operation BP will become the fourth largest producer of Styrene and the fourth largest seller of styrene in Western Europe. Among its strong competitors are DOW, BASF, Atochem and ROW with equal or larger market shares. As concerns PS BP will become the third largest producer of PS in Western Europe. Among the competitors with stronger or approximately equal market shares are BASF, Atochem and Enichem. Regarding EPS BP will become the second largest producer with BASF and Shell having equal or larger market shares. Other strong competitors include Enichem and Huntsman. Consequently, the proposed concentration does not create or strengthen a dominant position as a result of which effective competition would be significantly impeded in the EEA or any substantial part of that area.

**IV. ANCILLARY RESTRICTIONS**

11. The parties have agreed on a non competition clause for a period of five years under which the seller is obliged not to participate in any business located in the EU or other countries geographically forming part of Europe which manufactures, produces or sells Styrene, PS or EPS. As this clause serves to guarantee the transfer to the acquirer of the full value of the assets transferred it is directly related and necessary to the implementation of the concentration. However, as the parties have given no sufficient reasons for a period of five years the Commission is of the opinion that a period of three years is sufficient to protect the interests of the acquirer. The non competition obligation can therefore be considered as an ancillary restriction for a period of three years.

V. **CONCLUSION**

12. 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,