

***Case No COMP/M.1993 -
RHODIA / RAISIO / JV***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 20/07/2000

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 20.07.2000
SG(2000)D/

In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EEC) No 4064/89 concerning non-disclosure of business secrets and other confidential information. The omissions are shown thus [...]. Where possible the information omitted has been replaced by ranges of figures or a general description.

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying parties

Dear Sirs,

Subject: Case No COMP/M. 1993 – Rhodia/Raisio/JV

Your notification of 20.06.2000 pursuant to Article 4 of Council Regulation No 4064/89

1. On 20.06.2000, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89 (“the Merger Regulation”) by which Rhodia SA (“Rhodia”) and Raisio Chemicals Oy (“Raisio”) establish a joint venture to combine their respective activities in the field of paper latex and non woven latex.
2. The Commission has concluded that the notified operation falls within the scope of the Merger Regulation as amended 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. **Rhodia SA (“Rhodia)** is an international group, incorporated in France and active in the field of specialty chemicals. Rhodia’s operations are grouped in five business divisions: Fine Organics (principally used in the pharmaceuticals, agrochemicals, food and fragrances industries), Consumer Specialities (used as manufacturing additives in a variety of industries and end-uses, including principally food, consumer products, agriculture, oil fields, the treatment of metals and pharmaceuticals), Industrial Specialities (used as manufacturing additives in a variety of industries and end-uses, including principally food, consumer products, agriculture, oil fields, the treatment of metals and pharmaceuticals), Polyamide, and Services and Specialities.
4. **Raisio Chemicals OY (“Raisio)** is a diversified industrial concern with international operations which develops, manufactures and markets foodstuffs, animal feeds and chemical products. The parent company, Raisio Group plc. is listed on the Helsinki stock exchange. The Group has production plants in 17 countries. Raisio’s Operations

are divided into four business divisions: the Margarine Division, the Grain Division, the Benecol Division (plant sterol) and the Chemicals Division.

II. THE OPERATION

5. The Notifying Parties have entered into a Joint Venture Agreement (the "JVA") in order to establish a joint venture (the "JV") and to set out the basis principle of its functioning. The JVA provides that the Notifying Parties will enter into a Shareholder's Agreement (the "SHA") to regulate their relations as Shareholder's of the JV. The JV will:
 - Produce and Sell Paper Latex ;
 - Produce and Sell Non Woven Latex in the Restricted Territory¹;
 - Sell Polyvinyl Alcohol (PVOH) for the paper industry;
 - Sell Carpet Latex as a non exclusive distributor on behalf of Rhodia.
6. The core business of the JV will be to produce and sell Paper Latex and Non Woven Latex. The sale of PVOH and Carpet Latex are supplementary activities of the JV.

III. CONCENTRATION

7. Technically, the JVA provides that each Notifying Party will acquire a 50% interest in the JV. In order to acquire a 50% share of the JV capital, each Notifying Party will contribute to the JV its Latex business save for a number of assets excluded from the contribution. More particularly, Raisio will transfer its Paper and Non Woven Latex to the JV except for the Raisio Intellectual Property Rights (IPR) and the Raisio Shared Assets and Services. Similarly, Rhodia will transfer its Paper Latex and PVOH business to the JV except for the Rhodia IPR, the Rhodia Shared Assets and Services and the Rhodia Outside Plants² and the assets used in such Outside Plants.
8. The Outside Plants are not contributed to the JV for the following two reasons. First, each Outside Plant manufactures different types of products some of which do not fall within the scope of activities of the JV (all Outside Plants within the EU produce both Paper Latex and Carpet Latex. The production of Carpet Latex is not a field of activity of the JV). Second, given the intention of the parties to establish a 50/50 joint venture, their respective contributions to the JV should be of a similar value. Since there are only two Raisio latex production facilities, the number of Rhodia plants that can be contributed to the JV must be limited to three (Rhodia Austria, Scanlatex and Norlatex) to the exclusion of the Outside Plants. The JV is nevertheless expected to acquire the Outside Plants in the medium term.
9. The JVA provides for the creation of subsidiaries of the JV to be established in the vicinity of Rhodia's Outside Plants. Each JV subsidiary will have continuous relations with the corresponding Rhodia's Affiliates owning Outside Plants.

¹ [Deleted for publication ; geographic scope of the joint venture].

² [Deleted for publication ; geographic scope of the Outside Plants].

Joint Control

10. Each Notifying Party will acquire a 50% interest in the JV and all the shares shall bear equal rights, including voting rights. Furthermore, each Notifying Party is entitled to three representatives in the Board of directors and all major decisions of the JV, whether taken by the general assembly of the parties or by the Board must be taken unanimously. Consequently, the Notifying Parties will have, together, joint control of the JV.

Full Function

11. The JV will outsource from its parents (and/or their affiliates) various types of support services ancillary to the JV production and sales of Latex products (consulting, financial and accounting services, access to certain test run facilities), and various raw materials for a start up period (corresponding to preexisting raw material agreements of the parents with third parties). For both types of services and raw materials, it is common practice in the Latex industry to have recourse to subcontracting. The JV will be able to decide which type of service it will obtain from its parents and whether the provision of a service determined on the basis of its instructions should be terminated. The JV and its subsidiaries are free to either procure these services from third parties or to carry out the said services internally.
12. The JV will have access to the Intellectual Property Rights (IPR) necessary to its production activity since its parents will grant it perpetual, irrevocable, free of charge and exclusive licenses to use their respective IPR for the JV field of activity. They consist mainly of trade secrets and patents which have not been able to be transferred because they are common between the interests contributed to the JV and those retained by the parents. Should the JV develop any new IPRs, such IPRs will be registered in the name of the JV.
13. In order to perform the production, sale and distribution of Latex products, the JV will have its own independent management (the Board and the Chief Executive Officer) dedicated to the direction of the JV and responsible for the operational decisions. In addition, both Rhodia and Raisio will contribute their entire Latex business (save for the abovedefined excluded assets) which ensures that the JV will have sufficient resources to conduct its activities. Finally, the JV will employ qualified and experienced employees. As from its creation, the JV will directly employ [...] persons transferred from Rhodia and [...] persons transferred from Raisio. The great majority of these employees will be active in the production process and the remaining employees will ensure the staffing of the sales and technical services departments and the R&D department.
14. On the basis of the above, the JV is fully equipped to conduct its activities (i.e., the production, sale and distribution of Paper Latex and on Woven Latex as well as the sale of PVOH and Carpet Latex) as an autonomous economic entity and therefore, can be regarded as a full function joint venture within the meaning of Article 3(2) of the Merger Regulation.
15. Finally, the JV is established to operate as a company for an unlimited period of time (Article 3.2.1 of the Shareholders Agreement) and will consequently be operating on a lasting basis.

16. In conclusion, in the light of the fact that the entity resulting from the notified transaction will be a joint venture performing on lasting basis all the functions of an autonomous economic entity, it is a concentration within the meaning of Article 3 (2) of the Merger Regulation.

IV. COMMUNITY DIMENSION

17. Rhodia and Raisio have a combined aggregate world-wide turnover of more than EUR 5 billion³ (Rhodia: EUR 5.526 billion and Raisio: EUR 763 million). Each of Rhodia and Raisio have a Community-wide turnover in excess of EUR 250 million (Rhodia: EUR [...] and Raisio: EUR [...] million). Raisio achieves more than two-thirds of its aggregate Community-wide turnover within [...], but Rhodia does not achieve more than two-thirds of its Community wide turnover in any one Member State. The notified operation therefore has a Community dimension.

V. COMPETITIVE ASSESMENT

Relevant product markets

18. The purpose of the JV is to manufacture and sell latices and the main economic sector involved in the concentration is the paper latex business. Latices are water based polymer dispersions used as binding components in the production of papers, carpets, textiles and paint. There are various types of latex : Styrene Acrylates (SA), Styrene Butadiene (SB), Pure Acrylic Polyvinyl Acetate (PVAc). All of these different latex dispersions can be used for the different applications : production of paper, carpet or non-woven textiles.
19. According to the parties there is no effective substitute for latices, which have several advantages compared with natural substances used for the same purpose in the past. In addition, the parties consider the various latices not to be identical nor interchangeable for either the supply or demand side.
20. The Commission has already previously considered the relevant product market for latices and its previous decisions indicated that the products should be defined according to the type of dispersion and also the application, but not further according to the grade quality.⁴
21. The market investigation has confirmed that the segmentation according to the type of dispersion and also the application is the one most commonly used within the latex industry. The market investigation has also shown that the different latices are only partially substitutable or interchangeable with one another. As regards the supply side, the production technologies used might be similar, but the raw materials and monomers usually vary according to the latex dispersion. Due to the qualities of the production

³ Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Notice on the calculation of turnover (OJ C66, 2.3.1998, p25). To the extent that figures include turnover for the period before 1.1.1999, they are calculated on the basis of average ECU exchange rates and translated into EUR on a one-for-one basis.

⁴ See Commission decisions for example in cases M.751 – Bayer/Hüls of 3.7.1996 and M.1097 – Wacker/Air Products of 4.8.1998

vessels, switches in production from one latex category to another would seem to be possible only under special conditions. As regards the demand side, the customers' sourcing policy is based on the need to obtain a certain quality level in the end product and the choice between latices is therefore driven by a balance of cost and quality and according to the particular machinery available. In order to change latices, customers would have to consider their equipment and the product they produce. Typically, the end product properties based on customer requirements determine the chemicals to be used.

22. The market investigation fully supports the view that the market should not be further divided into submarkets according to the grade qualities of the latices.
23. The relevant product markets for the assessment of the present case are therefore the production and distribution of SA, SB, pure acrylic and PVAc latices for their respective applications in the production of paper, carpet and non-woven textiles.

Relevant geographic markets

24. The latices concerned in the current transaction are water based polymers, the transport costs of which are high. Even though the end product price levels of latices are relevantly similar throughout the EEA, the parties consider that the definition should be made according to the supplier side point of view as the high transport costs are at suppliers risk.
25. The Commission has in several previous cases considered the market for latices to be either larger than national or EEA-wide.⁵ The conclusion has sometimes differed between SA and SB latex, even though their transport costs are similar.
26. The market investigation has confirmed that transport costs do have some significance. There is no meaningful variation in transport costs between the different product markets in latices. For suppliers, transport costs determine the profit margin and have some effect on the end price as well, but on the other hand the movement of these materials cross-border is said to be a relevantly well experienced standard procedure. In general, supplies of latices clearly exceed national borders because of the profile and scope of producers. For customers the maximum distance for procurement varies between 1000 – 2000 km, the average being considerably shorter; 250-500 km. According to the market investigation, latices are both sold and purchased on a European wide basis. There are no geographical barriers to sell or use latices within EEA. Therefore, within EEA the conditions of competition are sufficiently homogeneous.
27. Separately from the other types of latices examined, the market investigation has shown that Finland constitutes a separate geographic market in the EEA for the PVAc paper latex. The PVAc paper latex production is very small since it accounts for 3% of all paper latex in Europe. Almost all of the production and consumption (90 %) of this material occurs in Finland since Finnish paper mills have traditionally produced and developed “high-end” boards used in, for instance, packaging of foods, cosmetics and

⁵ See Commission decisions for example in cases M.751 – Bayer/Hüls of 3.7.1996, M.1049 – Akzo/PLV-EPL of 2.12.1997 and M.1097 – Wacker/Air Products of 4.8.1998

cigarettes. For example, many “rotogravure paper grades” are produced in Finland. Both competitors and customers agree with this geographic market definition.

28. The geographic market for the other types of latices is not as narrow as national, but the possibility for these markets to be larger than EEA is also excluded. There are arguments for an EEA-wide market in for example SA and SB paper latex markets, but as the concentration will not give raise to any serious concerns for competition whether the market is considered to be regional or EEA, the precise geographic market definition can be left open for the purpose of the present assessment.

Assessment

29. Following the above geographic and market definitions, the only possible overlap between the parties activities in paper latex arises in the market for SB paper latex in the Nordic region. If taking the narrower basis of analysis as being that of Sweden and Finland for the Nordic region (since neither of the parties has any production in Denmark and Norway), the market share of the parties is [20-30] %. There would still be at least 2 significant competitors and a strong newcomer on the market. Dow would have [45-55] % of the market, EPL [15-25] % and BASF [0-5] %. As regards Finland more specifically, the figure of BASF looks set to increase as BASF has stated its intention to react to the failure of its former JV with Raisio and to invest heavily in Finland.
30. The market for PVAc paper latex is not an affected market since the geographic market is national. In the Nordic region, Raisio has a [80-90] % market share and Rhodia is not present. Rhodia has has some production of PVAc paper latex in France and Germany.
31. It may be noted that the current consolidation of the paper industry has increased competition in the sale of latices as well. The market investigation confirms that customers have strong buying power, which is evidenced for example by the existing bidding process and the decrease in prices by 25-30 % during the last five years. According to the market investigation customers believe that the proposed JV would provide a healthy competitor on the market. The JV would increase the possibilities for the parties to compete with the big chemical companies. No negative concerns have been raised by either the competitors or customers during the investigation.
32. In the light of the above, it can be concluded that there is no risk that the creation of the JV would 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.

VI ANCILLARY RESTRICTIONS

33. The notifying party has submitted that the following clauses and agreements are directly related and necessary to the implementation of the concentration.
34. The clause 10.1 of the JVA provides that, as from the date of the Agreement until Closing, Rhodia and Raisio shall procure that the companies of their group conduct their respective business in respect of the Paper Latex Business in the ordinary and usual course and seek the consent of the other Shareholder, not to be unreasonably withheld or delayed, before making any decision in matters of material importance to its Paper Latex Business. To the extent that this clause can be regarded as a restriction of

competition, the Commission considers it is directly related and necessary to the implementation of the concentration.

35. The JVA also provides a non-solicitation clause (article 10.2.2) according to which, each Notifying Party undertakes on its own and on behalf of its affiliates for a period of [...] starting on the Closing Date not to solicit any person who at Closing Date will be an employee of the JV for the purpose of employing or otherwise engaging such person. The Commission considers this restriction as directly related and necessary to the implementation of the concentration.
36. The SHA provides a clause (article 9.3) according to which, the key account managers of the JV and the key account managers of Raisio dealing with clients in the paper industry will present a common front toward these clients in order to improve relationship with relevant customers. The Commission regards this restriction as ancillary provided that the duration is limited to a start-up period of [...].
37. The SHA provides a non-compete clause (article 9.6), according to which for as long as Rhodia and Raisio and/or their affiliates shall have 50% of the shares of the JV, and two years thereafter, they will not without the written consent of the JV and the other Shareholder engage itself or through its affiliates (i.e. directly or indirectly own, control, manage or operate or to participate in the ownership, control, management or operation of a business operation) in any competitive business to the JV. The Commission regards this restriction as ancillary provided that the duration is limited to the duration of the JV.
38. The Rhodia Supply Agreement provides that Rhodia's Affiliates owning an Outside Plant will make available to the geographically corresponding JV subsidiary a minimum quantity of Paper Latex. In addition, the JV subsidiary agrees to buy all its Paper Latex requirements exclusively from the Rhodia's Affiliate. The Commission regards this restriction as ancillary provided that the duration is limited to a start-up period of three years and to fixed minimum quantities.
39. The Raisio Coating Technology Centre (CTC) Agreement provides that Raisio agrees to provide the JV with access to CTC facilities for a minimum of [...] days per full calendar year. The JV agrees not to reduce the number of days it requests from Raisio by more than [...]% from one year to the the other. Considering the specific market conditions, the Commission regards this restriction as ancillary provided that the duration is limited to a start-up period of [...].
40. The Rhodia PVOH Supply Agreement provides that Rhodia PPMC undertakes to sell PVOH for the paper industry exclusively to the JV Subsidiary or any of its Affiliates in Belgium, France, the Netherlands, Slovakia, Slovenia and Sweden. It is also provided that the JV Subsidiary shall purchase PVOH for the paper industry in Belgium, France, the Netherlands, Slovakia, Slovenia and Sweden exclusively from Rhodia PPMC. If Rhodia PPMC is unable to supply the quantity of PVOH ordered by the JV Subsidiary, the JV Subsidiary shall be entitled to indemnification from Rhodia PPMC. The Commission regards this restriction as ancillary provided that the duration is limited to a start-up period of [...].
41. The Rhodia Services Agreement, Rhodia General Services Agreement, Raisio General Services Agreement, Rhodia Research Agreement and Raisio Research Agreement provide that Rhodia, Rhodia Affiliates which owns an Outside Plant and Raisio undertake to

offer a number of non-exclusive services to the JV or JV subsidiaries located in the vicinity of an Outside Plant. The agreements may be terminated when the JV is dissolved or when the relevant Outside Plant is sold. Furthermore, the JV or JV subsidiary may terminate the provision of any service at its discretion with a [...] prior notice. To the extent that these agreements can be regarded as restrictions of competition, the Commission considers they are directly related and necessary to the implementation of the concentration.

42. The Rhodia Carpet Distribution Agreement provides the JV agrees to act as a non exclusive distributor of Rhodia's Carpet Latex described at Annex A of the agreement. However the JV shall act as an exclusive distributor of Rhodia's Carpet Latex in the countries in which, Rhodia Austria sold Products in the year 1999 for as long as Rhodia Austria produces Carpet Latex. The Agreement shall be terminated in the event that the JV is dissolved. Furthermore, any Party may terminate this agreement at its discretion with a [...] prior notice. To the extent that this agreement can be regarded as restriction of competition, the Commission considers it is directly related and necessary to the implementation of the concentration provided that the duration is limited to a start-up period of [...] in Austria.
43. The Rhodia License Agreement and Raisio License Agreement provide that Rhodia and Raisio will grant the JV exclusive licenses to use their respective IPR Rights. The JV shall be entitled to use these IPR Rights in the field of use. These License Agreements will remain in force as long as the JV is not dissolved. The Commission considers this restriction as directly related and necessary to the implementation of the concentration.

VII. CONCLUSION

44. 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 EEA Agreement. This decision is adopted in application of Article 6(1)(b) of Council Regulation (EEC) No 4064/89.

For the Commission,