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Case No COMP/M.2269 - SASOL / CONDEA

Only the English text is available and authentic.

REGULATION (EEC) No 4064/89
MERGER PROCEDURE

Article 6(1)(b) NON-OPPOSITION
Date: 30/01/2001

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COMMISSION OF THE EUROPEAN COMMUNITIES

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Brussels, 30.01.2001

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying party

Dear Sir/Madam,

Subject: Case No COMP/M. 2269 – Sasol/ Condea
Notification of 21.12.2000 pursuant to Article 4 of Council Regulation No 4064/89

1. On 21 December 2000, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89, whereby Sasol [South Africa] acquires control of the chemical activities ("Condea") of RWE-DEA [Germany] by way of purchase of assets and shares.

2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of the Council Regulation (EEC) No 4064/89 and does not raise serious doubts as to its compatibility with the common market and the functioning of the EEA Agreement.

I. THE PARTIES

3. The main activities of the Sasol group are the production and marketing of liquid fuels, pipeline gas, waxes, chemicals and plastics and the marketing of coal. The principal activities of RWE-DEA are utilities, chemicals and energy production. Condea is the part of the group that has activities in production and marketing of commodity and speciality chemicals. The main part of Condea's sales is surfactant raw materials and surfactants.

II. THE OPERATION

4. Sasol will acquire the chemical activities of RWE-DEA. These activities comprise assets in Germany, a share in operating companies in Italy and the Netherlands, shares in sales subsidiaries in France, Spain and Belgium, and shares in several other non-European companies.

5. The strategic rationale for RWE-DEA for the divestiture is its wish to focus on its core business, i.e. utilities and energy. For Sasol the acquisition is a step in its effort to become a global player in the chemical sector. RWE-DEA will retain certain petrochemical activities that relate to its mineral oil business.

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III. CONCENTRATION

6. Sasol acquires control of the chemical activities ("Condea") of RWE-DEA by way of purchase of assets and shares within the meaning of Article 3(1)(b) of the Council Regulation.

IV. COMMUNITY DIMENSION

7. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion[1] in 1999 (Sasol: € 4 057 million, Condea: € […] million). Each of undertakings concerned has a Community-wide turnover in excess of EUR 250 million (Sasol: € […] million, Condea: € […] million), 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.

V. COMPATIBILITY WITH THE COMMON MARKET

A. Relevant product markets

8. The parties' chemical activities are largely complementary in terms of products. However, the parties' activities overlap horizontally in the following product areas solvents, as the parties produce MEK and IPA/Isopropylol, and n-paraffins, as the parties produce light and heavy n-paraffins.

i) Methyl Ethyl Ketone (MEK)

9. MEK is a solvent used in paint lacquers, printing inks and coating, cleaners and adhesives. The parties submit that MEK constitute a single market and this has largely been confirmed by the market investigation.

ii) Isopropanol (IPA) / isopropylol

Condea produces the solvent isopropanol (IPA), whereas Sasol produces a solvent isopropylol, which is a mixture of […] IPA and […] ethanol. These solvents are used in a range of applications such as paints, varnishes, glues, printing ink and windscreen-wash. In a previous decision, the Commission found that IPA cannot generally be substituted with other solvents and consequently constitutes a separate product market. According to the parties, IPA has an application in intermediate manufacture, whereas isopropylol, being a mixture, is not used for this application, but both IPA and isopropylol are used in a range of solvent applications. Therefore, the effect of the transaction has to be assessed on the basis of whether (IPA)/isopropylol constitute a single or two distinct product markets.

iii) N-paraffins

10. N-paraffins are generally derived from de-paraffination of kerosene and for this reason generally manufactured in plants located in, and integrated with, crude oil refineries in which

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1 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.

kerosene is produced. Condea n-paraffins are produced through paraffin cutting, extraction and then purification out of kerosene. Sasols n-paraffins are produced as a co product from wax production.

11. Light paraffins in the range of C_9-C_{13} are the key raw material of LAB for use in surfactant production. Heavy paraffins in the range of C_{14}-C_{17} are the major raw material for the production of a) SAS, b) chloroparaffins and c) lamp oils. The parties have submitted that the light and heavy n-paraffins should be regarded as separate product markets due to limited supply substitutability and because they are used for different applications. The market investigation largely supported this conclusion.
iv) Conclusions on product market

12. However, it is not necessary to decide upon the exact market definition on any of the relevant product markets mentioned above for the purpose of the current case. This is due to the fact that the concentration, even on the narrowest market definitions, 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 it.

B. Relevant geographic markets

13. The parties' chemical activities are also largely complementary in terms of geography. The parties have so far been active largely in different parts of the world; i.e. Sasol is centred in South Africa with a global spread for the remainder of its production, whereas Condea's sales are largely centred in Europe and the US.

14. Based on previous decisions[2], the relevant geographic market for each of the products mentioned above is at least as wide as the EEA and possibly world wide for some of them. There are no quotas and no non-tariff barriers on imports. The products are commodity products that are easily transported across the borders in Europe and tariffs and transport costs are not a barrier to imports into the EEA. Competitors and customers have largely confirmed that the relevant product market is at least the EEA and possibly world-wide.

15. However, it is not necessary to decide upon the exact geographic market definition because the concentration, even on the narrowest market definition, does not create or strengthen a dominant position.

C. Assessment

16. The parties submit that MEK is a world-wide market and their combined market shares would be [5-15]%. Based on a narrower geographic definition, the parties combined market share in the EEA is [15-25]% (Sasol: [<10]%; Condea: [10-20]%). However, in the EEA area there are several other competitors as Exxon-Mobil, Shell and Atofina with market shares in the range of 15-25%.

17. If the IPA and Isopropylol are separate product markets, there is no overlap. If these products are in the same product market, the parties' combined market share on a world-wide basis is [5-15]%. On an EEA-wide basis, the combined share of the parties would be [25-35]%. Sasol

[2] Case No. COMP/M. 612 – RWE-DEA /Enichem Augusta of 27 July 1995 and Case No. COMP/M.1174 - RWE-DEA/Hüls of 11 June 1998.

would add only [<10]% to Condea's market share of [25-35]%. In the EEA the combined entity would face competition from Shell and BP and imports. Shell has a market share in the same range as the parties.

18. In an overall market for n-paraffins the parties combined market share on a world wide basis amounts to [20-30]% (Sasol: [<10]%; Condea: [20-30]%) of the merchant sales. On an EEA wide basis the parties combined market share amounts to [30-40]% (Sasol: [<10]%; Condea: [25-35]%). For light n-paraffins the parties combined world-wide market share is [25-35]% and on an EEA-wide basis their combined market share is [20-30]% (Condea: [20-30]%, Sasol: [<10]%). For heavy n-paraffins the combined market share of the party's amounts to [15-25]% on a world-wide basis. For both heavy and light n-paraffins, there are strong competitors at world level including Exxon, (heavy n-paraffins 10%-20%; light n-paraffins 35%-45%), ISU (5%-15%; 5%-15%) and Shell (10%-20%; 5%-15%).

19. In the EEA area Condea has a market share of [35-45]% for heavy n-paraffins, however, there is no overlap, as Sasol has no sales in the EEA of these products. In addition it should be noted that there are a significant number of competitors, ex. Shell and Exxon with market shares in the range of 10-20 %.

VI. ANCILLARY RESTRAINTS

20. The notifying party has requested that some clauses of the agreements for the concentration be considered as ancillary to the notified transaction.

21. Section 14.5 of the Asset and Share transfer Agreements contains a non-compete clause providing that RWE group companies will not compete with Condea for a period of […] years from closing. The RWE group may, however, in certain circumstances compete with Condea. RWE may compete if the competing activity does not generate a turnover in excess of €50 million. In addition any competing activities of DEA Mineraloel, Condea Nanjing and Condea Huntsman are excluded. Finally the acquisition of non-controlling interests, or controlling interests where the competing business accounts for less than 25% of the acquired company's total turnover, are also excluded.

22. The Commission consider this non-compete clause as necessary and an integral part of the operation and of a duration that is acceptable in order to guarantee the transfer to the acquirer of the full value of the assets transferred.

23. In addition, there is a non-exclusive supply agreement of Raffinate II, whereby DEA will supply Sasol-Condea with […] ktonnes of raffinate II per year. It has a term of […] years, subject to continuation for […]-year periods unless terminated by either party[3]. N-butene is a principal raw material for the manufacture of MEK. Raffinate II contains a particularly high percentage of n-butenes, typically in the order of […]% by weight. Raffinate II has been supplied by DEA to the Meerbeck MEK plant since the early […]'s. The raffinate II produced by DEA at Wesseling has particular qualities not attributable to that produced by other manufacturers. Condea has spent significant resources in designing and configuring its Meerbeck plant in order to benefit from the particular qualities attributable to the raffinate II

[3] on giving […] year's notice

from the Wesseling refinery. Its sustained supply is according to the parties, indispensable for the efficient production of MEK by Sasol-Condea. The agreement formalises a long-standing internal feedstock arrangement.

24. The parties argue that if it were not for the guaranteed long-term supply of Wesseling's raffinate II, Sasol would incur very significant additional costs of purchasing "normal" raffinate II as well as additional costs in storage facilities and operating costs. This is due to the fact that there are no viable sources of supply available to Sasol-Condea than the supply from the Meerbeck plant of DEA. All major MEK producers are either vertically integrated or have guaranteed raffinate II supplies which take due account of the particularities of their plant design.

25. According to the parties no third parties which will be adversely affected by this agreement since there will be no foreclosure of supply. The only undertaking which might be concerned is the vendor, RWE-DEA, which has in any event been compensated for the arrangement through the price paid by Sasol for Condea (which takes due account of RWE-DEA's need to find alternative sources for its supply).

26. The parties have submitted that this supply agreement is directly related and indispensable to the transaction for its entire duration.

27. The Commission accepts that Sasol would incur very significant additional costs without the supply of raffinate II from the Wesseling refinery. In addition there is a close relationship between the current plants of the parties as Condea has designed its plant in order to benefit from the products supplies from DEA's Wesseling plant. Consequently, the Commission considers that in the present case there are exceptional circumstances justifying duration of more than five years for the raffinate II supply. Therefore, the Commission has come to the conclusion that this agreement may be considered as ancillary to the concentration for a period of […] years. This is in line with the period for which a supply contract has been considered ancillary in a similar situation[4].

VII. CONCLUSION

28. 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,
Mario Monti
Member of the Commission

[4] […]