

***Case No COMP/M.2299 -
BP CHEMICALS /
SOLVAY/HDPE JV***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 29/10/2001

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 29/10/2001
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PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying parties

Dear Sir/Madam,

Subject: Case No COMP/M.2299 – BP / SOLVAY / HDPE JV

Notification of 27.09.2001 pursuant to Article 4 of Council Regulation No 4064/89¹

1. On 27.09.2001, the Commission received a notification of a proposed operation pursuant to Article 4 of Council Regulation (EEC) No 4064/89² by which the undertakings BP p.l.c. and Solvay S.A. acquire joint control by way of purchase of shares in a newly created company constituting a joint venture (the HDPE joint venture).
2. The notified transaction forms part of a series of transactions between BP p.l.c. (“BP”) and Solvay S.A. (“Solvay”) involving three separate operations. This decision concerns the acquisition of joint control by BP and Solvay of the two companies’ High Density Polyethylene (“HDPE”) businesses. Decision No. COMP/M.2297-BP/Solvay(PP) concerns BP’s acquisition of Solvay’s Polypropylene (“PP”) business. The third transaction is Solvay’s acquisition of BP’s engineering polymers business, however, this third transaction does not have a Community dimension.
3. After examining the current notification, the Commission has concluded that the notified operation falls within the scope of Council Regulation (EEC) No.4064/89 (the Merger

¹ OJ L 395, 30.12.1989 p. 1; corrigendum OJ L 257 of 21.9.1990, p. 13; Regulation as last amended by Regulation (EC) No 1310/97 (OJ L 180, 9. 7. 1997, p. 1, corrigendum OJ L 40, 13.2.1998, p. 17).

² OJ L 395, 30.12.1989 p. 1; corrigendum OJ L 257 of 21.9.1990, p. 13; Regulation as last amended by Regulation (EC) No 1310/97 (OJ L 180, 9. 7. 1997, p. 1, corrigendum OJ L 40, 13.2.1998, p. 17).

Regulation) and that it does not raise any serious doubts as to its compatibility with the common market and with the EEA agreement.

I. THE PARTIES

4. BP is headquartered in the UK and is a multinational oil exploration, petroleum and petrochemical group.
5. Solvay, headquartered in Belgium, is the parent company of an international group of companies active in four sectors: chemicals, plastics, processing of plastic products and pharmaceuticals.

II. THE OPERATION

6. The current operation will lead to the creation of a new company, the HDPE joint venture. This joint venture will combine Solvay's HDPE resin production, technology, research and marketing businesses in Europe and the USA and BP's HDPE resin production and marketing businesses in Europe as well as BP's ownership interests in HDPE slurry technology.

III. CONCENTRATION

7. The joint venture will have all the resources in order to conduct on a lasting basis its business activities, i.e. access to and control over production, research and marketing facilities, personnel and HDPE process technology.
8. The joint venture will procure a significant proportion of its ethylene (and perhaps other feedstocks) from its parents. Roughly [...] of the joint venture's total ethylene requirements in Europe will be supplied by its parents in the first [...] years of the joint venture's existence. However, the joint venture will not be dependent upon its parents with regard to essential inputs to an extent that jeopardizes its ability to function on an autonomous basis. This is due to several factors. All other HDPE producers in Europe are also vertically integrated upwards and the supply of ethylene from the parents to the joint venture follows this integrated nature of the competitors of the joint venture. Moreover, the proposed duration of the ethylene supply agreements between BP and the joint venture reflect general industry practice. Finally, the joint venture will add significant value to the raw material, ethylene, as the joint venture will produce different grades of HDPE resins (for some HDPE resin grades the value addition will be as high as 59%).
9. The joint venture will be subject to certain call/put options³, however, according to previous decisions the existence of an option does not challenge the lasting nature of the joint venture⁴.
10. Consequently, it can be concluded that the joint venture will perform on a lasting basis all the functions of an autonomous economic entity within the meaning of Article 3(2) of the Merger Regulation.

³ In the event of exercise at the earliest possible time of one of these options, the joint venture would not be brought to an end until [...] after its formation.

⁴ See for example the case DG IV/M.722 – Teneo/Merril Lynch/Bankers Trust.

IV. COMMUNITY DIMENSION

11. The undertakings concerned have a combined aggregate world-wide turnover of more than € 5 billion⁵ (BP: € 160 240 million; Solvay: € 8 863 million). Each of the undertakings concerned has a Community-wide turnover in excess of € 250 million (BP: € [...]; Solvay: € [...]), 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. COMPETITIVE ASSESSMENT

A. Relevant markets

HDPE resins

12. HDPE resins are a form of polyethylene (PE), a thermoplastic derived from ethylene through a process of polymerisation. Within PE resins, three main families with varying characteristic properties can be identified – Low Density PE (“LDPE”), Linear Low density PE (“LLDPE”) and HDPE. The Commission has in previous decisions concluded that HDPE constituted a separate relevant market from LLDPE and LDPE⁶. This distinction is based on the production methods, performance characteristics and differences in end uses. HDPE, which has good resistance to chemicals and is more impervious to gases, is used primarily for making rigid products, bottles, drums, automotive fuel tanks and large diameter pipes while LDPE and LLDPE are used primarily for making film for the packaging industries. The parties do not contest this finding.
13. The Commission has also found in previous decisions⁷ that the geographic market for the sale of HDPE resins is Western Europe (EEA + Switzerland). The parties do not contest this finding either even though they have pointed out that the customs duties have fallen from 12.5% in 1994 to the current level of 8.3% which in view of the parties have led to higher imports of HDPE resins into Western Europe. The parties have submitted that imports have increased from 8 % in 1994 to 11.9% in 1999.

Linear alpha olefins (LAOs)

14. LAOs is a generic term for a range of polyolefinic products with even carbon numbers from C4 to C30. LAOs are used in a range of applications from detergents and cleaning products to oilfield applications. LAOs are also used as co-monomers for the production of HDPE in order to adjust the polymer density and its resistance to stress cracking in the finished plastic article (e.g. to make it lighter and stronger). BP will supply only one LAO (C6) to the joint venture as a co-monomer in the production of HDPE⁸. For the

⁵ 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.

⁶ Case No. IV/M.550 –Union Carbide/Enichem, Case No. IV/M.708 – Exxon/DSM, Case No IV/M.1163 – Borealis/IPIC/OMV/PCD, Case No. COMP/M. 1671 – Dow /UCC.

⁷ See previous footnote.

⁸ In case No COMP: M. 1293 – BP/Amoco, the Commission treated LAOs as a separate market.

purpose of this assessment it is necessary to consider either whether all LAOs constitute a relevant product market or alternatively C6 constitutes a separate product market. The Commission has also examined the geographic scope of the market(s) for LAOs/C6 and concluded that they were at least the EEA and probably the world⁹.

15. However, for the purposes of this assessment, it is not necessary to further delineate any of the above mentioned relevant product and the geographic markets. In all alternative market definitions considered, the proposed operation will not result in the creation or strengthening of a dominant position.

B Related markets

16. There are also a number of other markets related to the horizontally affected HDPE market which are technically not affected markets. These include the upstream markets of the sale of ethylene and licensing of PE technology and the downstream markets of the production of PE compounds and the production and sale of pipes and fuel tanks. These related product markets do not create any competition concerns, whereas the ethylene market may lead to a vertically affected market depending on the geographic scope of the market.

Sale of Ethylene

17. Ethylene is the main component needed for the production of PE resins. The supply of ethylene has previously been considered by the Commission to be a separate relevant market, although no specific pronouncement has been made in relation to its geographic dimension.
18. On the basis of narrow product markets, a vertically affected market might arise in relation to the ARG catchment area. This area is from a geographic point of view limited to the pipeline network from Antwerp (Belgium) to Ludwigshaven (Germany). This is the catchment area that can be reached by that particular pipeline. It should be noted that on 27 July 2001 BP/EON notified a transaction¹⁰ to the Commission by which BP and E.ON will acquire joint control of Veba Oel AG, which is currently under control of E.ON. In addition, on 10 July 2001 Shell and RWE notified a transaction by which they will acquire joint control over a joint venture¹¹ consisting of Shell's and RWE's downstream oil and chemicals businesses. Both transactions are likely to affect the same markets, in particular the market for sale of ethylene in the ARG area.

PE Compounds

19. Both BP and Solvay will retain certain businesses in the downstream sector of polyolefin compounds (incorporating HDPE resins). The production of compounds involves an additional extrusion step carried out after the initial resin production stage has been finalised. The purpose of this is to alter the physical and/or mechanical properties of the resin.

⁹ In Case No COMP/M. 1293 - BP/Amoco

¹⁰ COMP/M. 2533 - BP/E.ON /Veba Oel joint venture

¹¹ COMP/M.2389 – Shell/Dea

20. The parties argue that all polyolefin (“PO”) compounds (i.e. polyethylene and polypropylene) should be considered as belonging to a single market. According to the parties the equipment needed to produce a compound with one type of compound can easily be washed and set up to enable it to be used to produce compounds based on a different type of resin. However, the Commission has previously examined product markets that are narrower than all PO compounds¹², it is therefore necessary to consider the possibility that narrower product markets exist, such as one for the production of PE compounds.

C Assessment

HDPE resins

21. The transaction gives rise to a horizontally affected market for HDPE resins. In 2000, BP and Solvay accounted for a combined total of [10-20]% (BP [5-10]%; Solvay [5-10]%) of the Western European market for HDPE resins. The parties faced competition in this market from a number of significant players: Basell ([10-20]%), Borealis ([10-20]%), Atofina ([10-20]%), DSM ([0-10]%), Polimeri ([0-10]%), Repsol ([0-10]%) and Dow ([0-10]%). As these market shares show, the horizontal overlaps do not give rise to competition concerns.

Linear alpha olefins (LAOs)

22. The operation also gives rise to a vertical affected market as a result of BP’s position in the merchant market for linear alpha olefins (LAOs). BP supplies [30-40]% of all LAOs in Western Europe¹³, with Shell supplying [30-40]% and Chevron and Spolana each supplying [0-10]%. For C6 alone, BP supplies [30-40]%, Shell [30-40]%, Sesol [20-30]% and Spolana [0-10]%. In general competitors and customers have confirmed these market shares in Western Europe for all LAOs and for C6.

23. It has to be noted that Solvay at present [...] purchases [0-10]% of the total merchant market for C6 in Western Europe for its production of HDPE at the facilities that will be contributed to the joint venture.

24. In addition, third parties have stressed that C6 only accounts for a very small proportion of the raw materials and less than 5% of the total costs of producing HDPE.

25. As a result the vertical relationship does not create any foreclosure effect as Solvay’s facilities [...] represent [0-10] % of the total merchant market for C6 in Western Europe.

Sale of Ethylene

26. BP is currently a net purchaser of ethylene in Western Europe. Even assuming that the BP/E.ON/Veba Oel and the Shell/Dea transactions were to be taken into account, Veba would according to information provided by the parties account, in 2000, for [...] % and Shell/DEA for [...] % of the merchant market for production and sale of ethylene in the ARG area.

¹² See for example, M.1751 – BASF/Shell – Project Nicole in which the Commission distinguished between commodity and specialised polypropylene compounds.

¹³ These figures relate to the production of C2 – C18. BP is barely involved in the remaining segments and was therefore unable to provide accurate data relating to all LAOs.

27. Therefore, in view of the parties no foreclosure effects would arise on the most narrow geographic approach (i.e. the ARG catchment area taken separately). Moreover the consumption of ethylene at the HDPE joint venture's only plant in the ARG region (Lillo) represents [0-10]% of the ethylene consumed in the ARG area and around [0-10]% of the total merchant sales of ethylene in that area.
28. Furthermore, Solvay is not active in the supply of ethylene to the merchant market. Its current contractual agreements for the purchase of ethylene effectively commit Solvay to acting as a pass-through supplier to the HDPE joint venture's Lillo plant until [...]. Solvay will continue to act as the interface between the Lillo HDPE production facility and each of the relevant ethylene suppliers until at least [...]. Under the terms of the contractual arrangements, the maximum amounts that BP will be able to supply the Lillo facility will be as follows: [...].
29. Consequently, the joint venture cannot have any significant effect on the supply of ethylene in ARG area at least for the next [...] years. The vertical relationship and BP's position on the upstream ethylene market in the ARG area and the joint venture's production of HDPE in Western Europe do not give rise to any foreclosure effect as regards other HDPE competitors. Consequently, this vertical relationship does not give rise to serious doubts as to the compatibility of the current operation with the common market regardless of whether the BP/E.ON/Veba Oel the Shell/Dea transactions are taken into account.

PE Compounds

30. There are no vertically affected markets as regard to polyolefin compounds or PE compounds. However, as the two parent companies retain activities in these markets which are downstream of the market where the joint venture will be active an Article 2(4) issue could arise. However, the parties combined market shares of a Western European polyolefins compounds market is [5-15]% (BP [5-10]%, Solvay [0-5]%). On the basis of a narrower PE compounds market, the parties combined share is [5-15]% (BP [5-10]%, Solvay [0-5]%) and therefore no question of co-ordination could arise due to the parents activities in compounds that would significantly impede competition in the Western Europe.

VI. CONCLUSION

31. For the above reasons, the Commission decides 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
(Signed)
Mario MONTI
Member of the Commission