

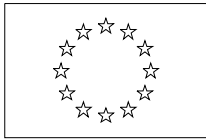
***Case No COMP/M.2854 -
RAG / DEGUSSA***

Only the English text is available and authentic.

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

Article 6(2) NON-OPPOSITION
Date: 18/11/2002

*Also available in the CELEX database
Document No 302M2854*



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 18/11/2002

SG (2002) D/232751

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(2) DECISION

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 Where possible the information omitted has been replaced by ranges of figures or a general description.

To the notifying parties

Dear Sir/Madam,

**Subject: Case No COMP/M.2854 – RAG/Degussa
Notification of 03.10.2002 pursuant to Article 4 of Council Regulation
No 4064/89¹**

1. On 03 October 2002, the Commission received a notification of a proposed concentration whereby German undertaking RAG AG acquires within the meaning of Article 3(1)(b) of the Council Regulation control of the whole of the undertaking Degussa AG 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 the Merger Regulation and does not raise serious doubts as to its compatibility with the Common Market and with the EEA Agreement.

I. THE PARTIES

3. **RAG** is an international mining and technology group of companies based in Essen, Germany. One of its subsidiaries, Rütgers AG, produces a range of chemicals and plastics. In particular, Rütgers' subsidiary [...]Bozzetto S.p.A. produces input products for concrete admixtures.
4. **Degussa**, headquartered in Düsseldorf, Germany, produces various specialty chemicals. Its six main divisions include Construction Chemicals, Health and Nutrition, Fine and Industrial Chemicals, Performance Chemicals, Coatings and Advanced Fillers and Specialty Polymers.

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).

II. THE OPERATION

5. RAG will acquire sole control over Degussa in a two-stage transaction. On 24 June 2002, RAG launched a public tender offer for Degussa. The offer lapsed on 9 August 2002. As a result of the public bid and an agreement between RAG and German utility E.ON, which requires E.ON to sell to RAG such number of shares required to equalise the shareholdings of RAG and E.ON in Degussa, both RAG and E.ON will hold equal stakes in Degussa during a transitional period which will end on 31 May 2004. Before 9 August 2002, E.ON owned 64.6% of Degussa stock, with the remainder held by financial investors.
6. By 31 May 2004, RAG will increase its Degussa stake to a majority holding of 50.1% with E.ON selling to RAG the Degussa shares required for this purpose. E.ON will subsequently not maintain its minority shareholding in Degussa but will gradually reduce its remaining stake by flotation on the stock market, as required for U.S. regulatory reasons following E.ON's acquisition of Powergen.²
7. The notified operation is conditioned, *inter alia*, on the regulatory approval of the E.ON/Ruhrgas transaction, which is currently pending in a German court.
8. [...] RAG owns a [...] stake in the Italian company **Brede s.r.l.** ("Brede") [...]. Brede is a manufacturer of naphthalene sulfonate (NSF).

III. CONCENTRATION

9. The transaction consists of two subsequent steps leading to the acquisition of sole control of Degussa by RAG on 31 May 2004.
10. During the first stage of the transaction, starting no later than 31 March 2003 and ending on 31 May 2004, both E.ON and RAG will hold equal stakes in Degussa. They will jointly manage Degussa as equal partners pursuant to a shareholders agreement. The Chairman of the Supervisory Board will be nominated by RAG. [...] It can therefore be concluded that RAG and E.ON will jointly control Degussa during this first stage.
11. On 31 May 2004 RAG will increase its stake in Degussa to 50,1 %. Pursuant to the legally binding "Future Purchase Agreement" ("Terminkaufvertrag") of 20 May 2002, RAG will acquire from E.ON the number of Degussa shares required to achieve that purpose. After 31 May 2004, E.ON will retain certain veto rights in Degussa as long as it holds a stake of at least 30 %. These veto rights relate, *inter alia*, [...] The transition to sole control of Degussa by RAG will therefore take place after no more than three years of joint control by RAG and E.ON.
12. The transaction can be considered as one single concentration consisting of the acquisition of sole control over Degussa by RAG, although effectuated in two consecutive steps, with a starting-up period of joint control. Point 38 of the Commission Notice on the concept of concentration under Council Regulation (EEC)

² E.ON has undertaken to divest its interest in Degussa within five years of acquiring Powergen plc, i.e. by 30 June 2007.

No 4064/89 on the control of concentrations between undertakings³ states that an operation will normally be considered to be an acquisition of sole control, where it leads to joint control for a starting-up period of up to three years, but according to legally binding agreements this joint control will be converted into sole control by one of the shareholders.

13. In the present case, the acquisition of sole control by RAG within no more than three years is a legal certainty. Moreover, the phase of joint control is scheduled as a transitional period since its economic rationale is to ensure the continuity of Degussa's ongoing restructuring program. Furthermore, RAG will nominate the Chairman of the Supervisory Board from the beginning. In view of these elements the Commission concluded to consider the transaction as one single concentration leading to the acquisition of sole control of Degussa by RAG.

IV. COMMUNITY DIMENSION

14. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion⁴ (RAG: EUR 15,289 million; Degussa: 10,843 million). Each of RAG and Degussa have a Community-wide turnover in excess of EUR 250 million (RAG: 12,416 million; Degussa: [...]), but Degussa does not achieve more than two-thirds of its aggregate Community-wide turnover within a single Member State. The notified operation therefore has a Community dimension.

V. THE RELEVANT MARKETS

A. Relevant Product Markets

(i) Horizontal Effects

15. As far as horizontally overlapping activities are concerned, the parties argue that the following relevant product markets apply:
 - input products for concrete admixtures,
 - resin-based injection materials and PU foam-based systems used for mining, tunnelling and underground construction, and
 - thermoplastics.

Input Products for Concrete Admixtures

16. The parties submit that there exists one single relevant product market comprising the following four inputs for concrete admixtures:
 - Naphthalene sulfonates (NSF),

³ OJ C 66, 2.3.1998, p.5.

⁴ 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.

- Lignosulfonates (LSF)
 - Melamine sulfonate (MSF), and
 - Polycarboxylate (PCE)
17. In the parties' view, all four inputs are substitutable from the customer's point of view and compete with each other on a comparable price-performance spectrum, although they have different characteristics and prices.
18. By contrast, respondents to the Commission's market investigation have stated that substitutability of one input for another is very limited for technical and, in some countries (such as France and Germany), regulatory reasons. While some customers stated that no significant substitution is possible at all, others considered that marginal "upward" substitution of a higher performing input for a lower performing input is possible. There would thus be a chain of (marginal) one-way substitutability from LSF (lowest performance) over NSF and MSF to PCE (highest performance). NSF and MSF are generally considered to have similar performance but substitution is limited by specific characteristics, such as the effect on the colour of the concrete. One-way substitutability would lead to the following four relevant product markets:
- (i) LSF, NSF, MSF and PCE
 - (ii) NSF, MSF and PCE
 - (iii) MSF and PCE
 - (iv) PCE
19. The market investigation showed that LSF does clearly not constrain competitive conditions in the remaining admixture segments (NSF, MSF, PCE) due to its cost/performance ratio as well as its lower performance. Currently, LSF accounts for about [70-90%] of all concrete admixture inputs, which include all the standard applications for concrete. NSF, MSF and PCE account for the remaining [10-30%] of concrete admixture inputs, where LSF is unsuitable because a better performance (mostly a higher level of water reduction) is required.
20. Even if there may be technical upward substitutability between the different admixture inputs, the market investigation has not generated conclusive evidence as to whether such substitution would be economically viable in response to a SSNIP (5-10% price increase). The substantial price differences between the different inputs could indicate that technical requirements rather than relative prices may be the dominant determinant of input mix:

Approximate relative prices 2001, index PCE=100 (source: parties/ market investigation)

LSF	[5-15]
NSF	[20-30]
MSF	[35-45]
PCE	100

21. However, whether each admixture input constitutes a separate relevant product market or whether the four product market listed in paragraph 18 above apply, can be left open,

because the notified operation leads to serious doubts as to its compatibility with the Common Market under either possible market definition.

22. The market investigation did not indicate any further sub-segment within NSF that would form a separate relevant product market. In particular, there appears to be supply-side substitutability between NSF produced for different applications, such as concrete admixtures and textiles. [...] The figures given for NSF capacity, production and merchant sales in the assessment section below therefore relate to NSF irrespective of end use.

Resin-based Injection Materials and PU Foam-based Systems

23. Resin based injection materials and PU foam-based systems are used in mining, tunnelling and underground construction, to stabilise rock and soil and to seal gaps against gas leaks and water outflows, and in the construction industry for concrete repair applications. Both RAG and Degussa are active in the manufacture and sale of resin-based injection materials and PU foam-based systems.
24. The parties argue that it is not necessary to further delineate the market according to application, i.e. construction and mining industry. On a narrower market definition there would only be an overlap concerning the construction industry, [...]
25. However, it is not necessary to further delineate the relevant product market because, under any possible market definition considered, effective competition would not be significantly impeded in the EEA or any substantial part of that area.

Thermoplastics - PBT

26. Both RAG and Degussa produce thermoplastic moulding compounds, which are used in electric, household and automotive applications. Degussa produces so-called Plexiglas⁵ and nylon-based thermoplastics. Plexiglas is a transparent material used in a wide range of applications, e.g. construction, skis and snowboards, bath tubs and shower cabins and medical products.
27. There is, however, only one thermoplastic, namely PBT⁶, where the activities of RAG and Degussa overlap. RAG sells PBT mainly for use in power switches, while Degussa sells PBT for use in telecommunications and automotive systems.
28. However, it is not necessary to further delineate the relevant product market because, in all alternative market definitions considered, effective competition would not be significantly impeded in the EEA or any substantial part of that area.

(ii) Vertical Effects

29. Although there are a number of vertical relations between the merging parties, the only significant effects are in two areas:

⁵ methylmetacrylate based (MMA or PMMA) thermoplastics

⁶ polybutylene terephthalate

Acetophenone

30. RAG is a manufacturer of acetophenone with an EEA-wide market share of [10-25%], while Degussa is a [...] customer of acetophenone accounting for [25-40%] of the EEA-wide demand. [...] Rütgers is currently supplying [...] their production to Degussa, their capacity [...] to meet [...] the demand of Degussa.
31. However, it is not necessary to decide whether a relevant product market for acetophenone exists because, in all alternative market definitions considered, effective competition would not be significantly impeded in the EEA or any substantial part of that area.

Isophorone and 3,5-xyleneol

32. Degussa is a manufacturer of isophorone with an EEA-wide market share of [65-80%], while RAG is a customer of isophorone accounting for [0-15%] of the EEA-wide demand. RAG uses isophorone exclusively for the production of 3,5-xyleneol.
33. However, it is not necessary to decide whether relevant product markets for isophorone and 3,5-xyleneol exists 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 Market

(i) Horizontal Markets

Input Products for Concrete Admixtures

34. According to RAG, the geographic market is determined essentially by transport costs. The parties submit that NSF and MSF can be supplied within a radius of at least [300-600] km, LSF over slightly smaller distances. PCE, according to that parties, can be shipped world-wide. Based on the observation that admixture input plants are spread over much of Europe, the parties argue that the overlapping catchment areas give rise to a chain of substitution as a result of which the market would be EEA-wide, even if the different inputs are considered as belonging to separate product markets.
35. The market investigation has confirmed that NSF and MSF can be economically shipped within a radius of about 500-800 km from a plant, while no such limit exists for PCE. Indeed, there are about [25-40%] imports of PCE from Japan into the EEA.
36. However, the market investigation indicates that prices for concrete admixture inputs are negotiated bilaterally between manufacturer and customer, which would seem to enable suppliers to perfectly price discriminate between customers based in different locations (and thus different competitive settings). The “overlapping circles” argument invoked by the parties does thus not apply.
37. Manufacturers’ ability to price discriminate would theoretically lead to a situation where every customer’s competitive situation would differ (and every customer location would thus form a separate geographic market). There are, however, a number of competitor plants in reasonable proximity to Degussa’s two plants (located in Linz, Austria and Treviso, northern Italy). These competitor plants would a priori seem to be good substitutes for any customers affected by the combination of RAG/ Degussa’s

capacities. The area affected by the concentration appears to be exposed to reasonably homogeneous conditions in terms of available suppliers within economic transport distance to form a relevant geographic market for the competitive analysis of the present transaction. This market would comprise Austria, Switzerland, northern Italy, southern Germany and parts of France.

38. However, it is not necessary to determine the exact scope of the geographic market in this case because the notified operation raises serious doubts as to its compatibility with the Common Market even on the basis of the EEA-wide market shares supplied by the parties.

Resin-based Injection Materials and PU Foam-based Systems and

39. The notifying parties submit that the relevant geographic market for resin-based injection materials and PU foam-based systems is at least EEA-wide. They base their assumption on the non-existence of any regulatory restrictions, the homogeneity of the products and their relatively low transport costs (less than [0-10%] of the final price). However, given the notifying parties' limited market shares, it is not necessary to delineate the precise geographic scope of the market for resin-based injection materials and PU foam-based systems because, in all alternative market definitions considered, effective competition would not be significantly impeded.

Thermoplastics - PBT

The notifying parties consider the market for thermoplastics/PBT as EEA-wide in scope. However, given the small overlap and given the different applications of Rütger's and Degussa's PBT products, it is not necessary to further delineate the relevant geographic market because, in all alternative market definitions considered, effective competition would not be significantly impeded in the EEA or any substantial part of that area.

(ii) Vertical Markets

Acetophenone

40. The geographic scope of the market for acetophenone seems to be EEA-wide. The four main European manufacturers⁷ account for around [75-95%] of the EEA-wide market, while imports account for less than [0-20%].
41. It is however not necessary to further delineate the relevant geographic market because, in all alternative geographic market definitions considered, effective competition would not be significantly impeded in the EEA or any substantial part of that area.

Isophorone and 3,5-xylenol

42. The geographic scope of the market for isophorone seems to be EEA-wide. There are [...] European manufacturers, [...] and [...], and imports account for less than [0-10%] of the EEA-wide market.

⁷ [...]

43. There are only two manufacturers world-wide, RAG and [...], which supply the world-wide demand from one factory each.
44. It is however 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 or any substantial part of that area.

VI. COMPETITIVE ASSESSMENT: THE OPERATION AS NOTIFIED

(i) Horizontal Effects

45. RAG's chemicals activities account for EUR 2.8 billion, or 18% of total group turnover. It is less than one-third the size of Degussa (EUR 10.8 billion). Concrete admixture inputs, the area where the most significant horizontal overlap occurs, represent [0-10%] of the combined group's turnover, according to the parties.

Input Products for Concrete Admixtures

46. Neither RAG nor Degussa produce LSF. The parties' market position in an overall market for LSF, NSF, MSF and PCE must therefore be weaker than in a market for NSF, MSF and PCE. The notified transaction leads to similar market positions both on a market for NSF/MSF/PCE and also on a narrower market for NSF, which is the only sub-segment where significant horizontal overlap occurs. (Rütgers has only marginal activities in MSF and PCE.)
47. On a combined market for NSF, MSF and PCE, the following EEA-wide market shares arise (own calculations based on parties' data):

NSF/ MSF/ PCE, market shares EEA

2001	Plant locations	NSF/MSF/PCE Production (EUR)	%	NSF/MSF/PCE Merchant Sales (EUR)	%
Degussa	I, A,D	[...]	[25%-40%]	[...]	[10%-25%]
Rütgers	D, I, E, PL, TR	[...]	[5%-20%]	[...]	[20%-35%]
[...]	[...]	[...]	[...]	[...]	[...]
Parties		[...]	[40%-55%]	[...]	[40%-55%]
Clariant	UK	[...]	[0%-15%]	[...]	[0%-15%]
Huntsman	E	[...]	[0%-15%]	[...]	[0%-15%]
CFPI	F	[...]	[0%-15%]	[...]	[0%-15%]
Protex	F	[...]	[0%-15%]	[...]	[0%-15%]
Rokita	PL	[...]	[0%-15%]	[...]	[0%-5%]
Dalton	I	[...]	[0%-15%]	[...]	[0%-15%]
Mapei	I	[...]	[0%-15%]	[...]	[0%-5%]
BASF	D	[...]	[5%-20%]	[...]	[0%-15%]
Bayer	D	[...]	[0%-15%]	[...]	[0%-5%]
Enaspol	CZ	[...]	[0%-15%]	[...]	[0%-5%]
Europizzi	I	[...]	[0%-15%]	[...]	[0%-5%]
Cromogenia	E	[...]	[0%-15%]	[...]	[0%-5%]
Great Lakes	I	[...]	[0%-15%]	[...]	[0%-5%]
Other NSF		[...]	[0%-15%]	[...]	[0%-15%]
Perstorp	S	[...]	[0%-15%]	[...]	[0%-15%]
Sika	CH, S, UK, E	[...]	[0%-15%]	[...]	[0%-5%]
Kocevje	SI	[...]	[0%-15%]	[...]	[0%-5%]
Chryso	F	[...]	[0%-15%]	[...]	[0%-5%]
Desmepol	NL	[...]	[0%-5%]	[...]	[0%-15%]
Atofina	F	[...]	[0%-5%]	[...]	[0%-5%]

Kao	J	[...]	[0%-5%]	[...]	[0%-5%]
Others		[...]	[0%-5%]	[...]	[0%-5%]
Total		[...]	100,00%	[...]	100,00%

48. The market shares shown by the tables are based on an EEA-market (see section on geographic market definition above). RAG/ Degussa [...] would post-merger control [40-60%] of EEA production and [40-60%] of merchant sales of NSF/ MSF/ PCE. The next largest competitors are approximately one tenth of the parties' size (with the exception of BASF, which controls [0-20%] of production but, due to its significant captive use, only has a merchant market share of [0-15%]). The EEA-market share understates the parties' market position in central/ southern Europe, where most of RAG/ Degussa's plant are located and where the competitiveness of major competitors, including Clariant and Huntsman is limited by transportation costs.
49. On a separate market for NSF, the following market shares arise:

NSF, market shares EEA (parties' data, same figures for volume and value)

2001	Capacity%	Production%	Merchant sales%
Degussa (D, A)*	[10-25]	[10-25]	[0-15]
Rütgers (D,I,E,PL,TK)	[15-30]	[20-35]	[30-45]
[...]	[...]	[...]	[...]
Combined	[35-50]	[45-60]	[45-60]
BASF(D)	[10-25]	[5-20]	0
Bayer (D)	[5-20]	[0-15]	0
Clariant/Hodgson (GB)	[0-15]	[0-15]	[5-20]
Huntsman (E)	[0-15]	[0-15]	[5-20]
CFPI (F)	[0-15]	[0-15]	[5-20]
Dalton (I)	[0-15]	[0-15]	[5-20]
Mapei (I)	[0-15]	[0-15]	[0-15]

* plant locations

- Even on an EEA basis, RAG/ Degussa would post-merger control more than [45-60%] of NSF merchant sales and [45-60%] of NSF production. Two major producers, BASF and Bayer, are not active on the merchant market. Clariant and Huntsman's production capacity is located at significant distance from the area where the parties activities overlap (D, I, A). Only Dalton and CFPI can be considered as direct competitors of RAG/ Degussa in terms of plant location, and their capacity and market shares are substantially smaller.
50. Several companies included in the table above, including BASF, Bayer and Clariant, produce NSF for captive use for applications other than concrete admixtures and it is not clear that a small (5-10%) price increase would lead them to divert production to the merchant market for concrete admixture inputs. In any case, even this would not substantially undermine the parties very strong market position.
51. Contrary to the parties' assertion that ample spare capacity exists in the industry, the market investigation indicates that customers and competitors estimate industry-wide capacity utilisation to range between 80% and 100%.
52. Although the technology required for NSF production appears to be widely available, market participants would not expect new suppliers to enter the NSF/ MSF/ PCE or the NSF market in response to a 5-10% price increase because of the sunk investment required for such entry.

53. Given RAG/ Degussa's [...]combined market share and the existence of significant barriers-to-entry, the notified operation, hence, raises serious doubts as to its compatibility with the Common Market with respect to the creation of a single-dominant position in a market for NSF/ MSF/ PCE and the creation or strengthening of a dominant position in a market for NSF.

Resin-based Injection Materials and PU Foam-based Systems and

54. In 2001, RAG and Degussa had a combined value market share of approximately [0-15%] in terms of merchant sales in the EEA ([0-15%] for Degussa and less than [0-15%] for RAG). In view of this low market share and the small overlap the proposed concentration will not lead to the creation or strengthening of a dominant position on the market for resin-based injection materials and PU foam-based systems on any geographic market considered.

Thermoplastics - PBT

55. According to the notification, RAG's and Degussa's combined merchant sales share of an EEA-wide market for thermoplastics/PBT is approximately [20-35%] in volume terms (metric tons). However, the operation leads only to a very small addition of market shares as RAG's present activities in PBT are marginal (below [0-5%] market share/ EUR [...] sales).⁸

In view of very small overlap and of the fact that RAG's and Degussa's PBT products focus on different applications and customers, the Commission concludes that the proposed transaction will not lead to the creation or strengthening of a dominant position on the market for thermoplastics/PBT.

(ii) Vertical Effects

Acetophenone

56. RAG is a manufacturer of acetophenone with an EEA-wide market share of [15-30%], while Degussa is a [...] customer of acetophenone accounting for [25-40%] of the EEA-wide demand. [...] Rütgers is currently supplying [...] their production to Degussa, their capacity is [...] to meet [...] the demand of Degussa.
57. According to the notifying parties, expansion of production capacity for acetophenone can be done with limited effort⁹.
58. Currently Ineos is the clear market leader in the market for acetophenone with a market share [higher than] RAG. Even if RAG would increase their capacity to supply [...] Degussa and Degussa would stop sourcing acetophenone [...], the market shares of RAG and [...] would still only be [...]. It is therefore concluded that the removal of Degussa as a customer for acetophenone will not lead to anti-competitive effects on the market for acetophenone.

⁸ In addition, the parties submit [...]

⁹ [...]

Isophorone and 3,5-xylenol

59. There are two manufacturers on the world-wide market for 3,5-xylenol, namely RAG and the US-American company Schenectady. Schenectady recently acquired an Indian manufacturer of isophorone and is therefore vertically integrated as well.
60. Therefore it can be concluded that Degussa's [...] position on the upstream market for Isophorone will not lead to foreclosure in the market for 3,5-xylenol.

VII. MODIFICATION TO THE ORIGINAL CONCENTRATION

61. In order to remove the competition concerns raised by the operation in relation to the tentative markets for NSF/MSF/PCE and NSF, RAG has submitted undertakings to the Commission that will remove the serious doubts raised by the original transaction regarding its compatibility with the common market.
62. RAG on 25 October 2002 submitted a package of undertakings to transfer to a viable competitor [...] RAG's concrete admixture input division, Bozzetto S.p.A., including production plants in Filago/ Italy, Duisburg/ Germany and Lantaron/ Spain, [...]. Following the result of the Commission's market test of these undertakings, RAG on 13 November 2002 submitted a number of limited modifications to the undertaking with a view to improving its effectiveness. In particular, the modified undertaking includes only option [...], clarifies that [...] shareholding in Brede is included in the divestiture package and provides for transitional supply agreements of the divested plants with naphthalene and other inputs. The text of the undertaking is annexed and forms an integral part of this decision.
63. The undertaking includes all of RAG's concrete admixture input production capacity and related assets in the EEA and will thus eliminate the overlap of RAG and Degussa's activities in this field. It enables a viable new competitor to be created in order to remedy the removal of Degussa as an independent supplier. The Commission, hence, concludes that the undertakings submitted by RAG are sufficient to remove the serious doubts raised by the original concentration in this field.
64. In order to ensure that RAG complies with these undertakings, the Commission attaches conditions and obligations to this decision. The undertakings set out in sections 1-11, 13, 17-19 and 26(ii) of the commitments annexed to the present decision constitute conditions, since only by fulfilling them the structural change on the relevant markets may be achieved. The other undertakings constitute obligations, since they concern the implementing steps necessary to achieve the structural change intended.

VIII. CONCLUSION

65. 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, subject to the condition of full compliance with sections 1-11, 13, 17-19 and 26(ii) of the commitments annexed to the present decision and to the obligation of full compliance with the other sections of the said commitments. This decision is adopted in application of Article 6.2 of Council Regulation (EEC) No 4064/89 and of Article 57 of the EEA Agreement.

For the Commission
Mario MONTI
Member of the Commission

By hand and by fax: 00 32 2 296 4301

Commission of the European Communities

Competition DG

Directorate B – Merger Task Force

rue Joseph II 70

Essen, 13.11.2002

B-1049 Brussels

RAG / DEGUSSA, Case No. COMP/M.2854

66. COMMITMENTS TO THE EUROPEAN COMMISSION

Pursuant to Article 6(2) of Council Regulation (EEC) No. 4064/89 as amended (the “*Merger Regulation*”), RAG Aktiengesellschaft (“RAG”) hereby provides the following Commitments (the “*Commitments*”) in order to enable the European Commission (the “*Commission*”) to declare the proposed acquisition by RAG of sole control over Degussa AG (“*Degussa*”) compatible with the common market and the EEA Agreement by its decision pursuant to Article 6(1)(b) of the Merger Regulation (the “*Decision*”).

The Commitments shall take effect upon the date of adoption of the Decision, but shall be null and void if the Closing, as defined hereafter, does not occur. Any term used in this text shall be interpreted in the light of the Commission Notice on remedies acceptable under Council Regulation (EEC) No 4064/89 and under Commission Regulation (EC) No 447/98.

Section A. Definitions

For the purpose of the Commitments, the following expressions shall have the following meaning:

Affiliated Undertakings: undertakings under the control of RAG, E.ON or Degussa, as the case may be, whereby the notion of control shall be interpreted pursuant to Article 3 of the Merger Regulation and in the light of the Commission Notice on the concept of concentration under Council Regulation (EEC) No 4064/89.

Closing: [...]

Closing of the Sale and Purchase Agreement: the transfer of the legal title of the Divested Business to the Purchaser.

Commission Standard Trustee Mandate: the Commission's recommended Trustee Mandate, issued on 12 July 2002.

Divested Business: All of RAG's current [...] interest (including all the rights attached to it) in Bozzetto S.p.A. ("**Bozzetto**"), [...] [and in Brede s.r.l.].

Divestiture Trustee: one or more than one natural or legal persons, independent from RAG, Degussa and E.ON, or any of their respective Affiliated Undertakings, who are approved by the Commission and appointed by RAG and who have received from RAG the irrevocable and exclusive mandate to sell the Divested Business to a Purchaser at no minimum price, pursuant to and in accordance with Section D of the Commitments.

Effective Date: the date of adoption of the Decision.

Extended Divestiture Period: the period from the date of expiry of the First Divestiture Period within which the Divestiture Trustee shall have an irrevocable and exclusive mandate from RAG to sell the Divested Business [...] pursuant to and in accordance with Section D of these Commitments.

First Divestiture Period: the period within which RAG may propose a Purchaser for the Divested Business, pursuant to and in accordance with Section D of these Commitments.

Hold Separate Manager: the person employed by the Divested Business to manage the day-to-day business under the supervision of the Monitoring Trustee.

Key Personnel: all personnel necessary to maintain the viability and competitiveness of the Divested Business.

Monitoring Trustee: one or more than one natural or legal person, independent from RAG, Degussa and E.ON, or any of their respective Affiliated Undertakings, who are approved by the Commission and appointed by RAG as of the Effective Date, and who have the duty to monitor RAG's compliance with the conditions and obligations attached to the Decision, pursuant to and in accordance with Section F of these Commitments.

Personnel: all personnel retained by the Divested Business, including seconded staff, shared personnel and additional personnel.

Purchaser: the entity approved by the Commission as acquirer of the Divested Business in accordance with the criteria set out in Section E of these Commitments.

RAG: RAG AG, incorporated under the laws of Germany with its registered office at Rellinghauser Strasse 1-11 45128 Essen, Germany and registered with the Commercial Register in Essen under number HRB No. 5398.

Sale and Purchase Agreement: a legally binding sale and purchase agreement for the selling of the Divested Business to the Purchaser.

Trustee(s): the Monitoring Trustee and the Divestiture Trustee.

Section B. The Divested Business

Commitment to divest

1. RAG commits to divest, or to procure the divestiture of, the Divested Business as a going concern to the Purchaser according to the procedure described in Section D.

Structure and definition of the Divested Business

2. The Divested Business consists of all of RAG's current (90%) interest (including all the rights attached to it) in Bozzetto S.p.A. ("**Bozzetto**"), [...] [and in Brede s.r.l.]. The present legal and functional structure of the Divested Business as operated to date is described in Schedule 1 to these Commitments. RAG commits that this Schedule identifies all the relevant functions of the Divested Business. The Divested Business, described in more detail in Schedule 1, includes:
 - (a) all tangible and intangible (including intellectual property rights) assets, which contribute to the current operation or may be necessary to ensure the viability and competitiveness of the Divested Business;
 - (b) all licences, permits and authorisations issued by any governmental organisation for the benefit of the Divested Business; and
 - (c) all contracts, agreements, leases, commitments and understandings of the Divested Business; all customer, credit and other records of the Divested Business (items referred to under (a)-(c) hereinafter collectively referred to as "Assets"); and
 - (d) the Personnel.
3. The Divested Business also includes the current contracts under which RAG or its Affiliated Undertakings, provide services or supplies to the Divested Business, or vice versa, including in particular but not limited to the supply of naphthalene to the Divested Business, in so far as such services or supplies are not severed pending divestiture according to paragraph 9 of these Commitments. Unless otherwise agreed with the Purchaser, the Divested Business shall be entitled to benefit from these contracts for a

transitional period of [...] after Closing of the Sale and Purchase Agreement, on terms and conditions equivalent to those at present afforded to or by the Divested Business.

Transfer of personnel

4. The transfer of Personnel shall be achieved in the following manner:
 - (a) The Hold Separate Manager shall, in co-operation with the Monitoring Trustee, establish objective criteria for drawing up the matrix of functions and specific skills required for the Divested Business;
 - (b) RAG shall, subject to customary confidentiality assurances, allow or procure to allow potential purchasers of the Divested Business reasonable access to the Hold Separate Manager to discuss the transfer of the Personnel. The Hold Separate Manager shall, subject to review by the Monitoring Trustee, decide on requests from potential purchasers for access to the Personnel of the Divested Business;
 - (c) RAG and/or the Hold Separate Manager shall provide to the Purchaser information relating to the Personnel to enable the Purchaser to make offers of employment;
 - (d) RAG shall take all reasonable steps, [...], to encourage all Key Personnel currently employed by the Divested Business to remain with the Divested Business. The incentive scheme shall be based on industry practice, be proposed by RAG and agreed with the Monitoring Trustee, after both have heard the Hold Separate Manager.

Section C. Related commitments

Preservation of Viability, Marketability and Competitiveness

5. RAG undertakes to preserve the full economic viability, marketability and competitiveness of the Divested Business from the Effective Date until Closing of the Sale and Purchase Agreement, in accordance with past commercial practice, and to reduce to the minimum any risk of loss of competitive potential of the Divested Business. In particular, until Closing of the Sale and Purchase Agreement, RAG undertakes not to carry out any act, upon its own authority, that might have a significant adverse impact on the economic value, the management or the competitiveness of the Divested Business or that might be likely to alter the nature and scope of activity, or the industrial or commercial strategy or the investment policy of the Divested Business. Sufficient resources shall be made available for the development of the Divested Business, on the basis and continuation of the existing business plans, until Closing of the Sale and Purchase Agreement.

Hold-separate obligations

6. RAG commits, from the date of Closing, to keep the Divested Business separate, or to procure that the Divested Business be kept separate, from the businesses it is retaining (including Degussa) and to ensure that Key Employees of the Divested Business – including the Hold Separate Manager – have no involvement in any business retained and vice versa. RAG shall also ensure that the Personnel do not report to any individual outside the Divested Business.
7. As of the date of the Closing, until the Closing of the Sale and Purchase Agreement, RAG shall assist the Monitoring Trustee in ensuring that the Divested Business is managed as a distinct and saleable entity separate from the businesses retained by RAG, pursuant to and in accordance with paragraph 6. RAG shall appoint a Hold Separate Manager who shall be responsible for the management of the Divested Business, under the supervision of the Monitoring Trustee. The Hold Separate Manager shall manage the Divested Business independently and in the best interest of the business with a view to ensuring its continued economic viability, marketability and competitiveness and its independence from the businesses retained by RAG.
8. To ensure that the Divested Business is held and managed as a separate entity, the Monitoring Trustee shall, as of the date of the Closing, exercise RAG's rights as shareholder in or owner of the Divested Business, with the aim of acting in the best interest of the Divested Business, determined on a stand-alone basis, as an independent financial investor, and with a view to fulfilling its obligation under its mandate. Furthermore, the Monitoring Trustee shall replace the members of the supervisory board or the non-executive directors of the board of directors, who have been appointed on behalf of RAG and shall, if necessary, appoint new members to these boards. RAG will resign as member of the boards or will cause such members of the boards to resign upon request of the Monitoring Trustee.
9. To ensure that the Divested Business is managed as a separate entity, as of the date of the Closing, the Divested Business' participation in central purchasing or marketing arrangements, the central information technology network and other central operational functions shall be severed to the extent possible, without compromising the full economic viability, marketability and competitiveness of the Divested Business. The Hold Separate Manager, after having heard RAG, shall propose appropriate measures, subject to the approval of the Monitoring Trustee.

Ring-fencing

10. As of the date of the Closing, RAG shall implement all necessary measures to ensure that RAG does not thereafter obtain any business secrets, know-how, commercial

information, or any other information of a confidential or proprietary nature relating to the Divested Business, with the exception of information which is reasonably necessary for the divestiture of the Divested Business or whose disclosure is required by law. The Hold Separate Manager, at the application of RAG and under supervision by the Monitoring Trustee, shall decide on matters relating to the exercise of this exception.

Non-solicitation clause

11. RAG undertakes not to solicit, and to procure that its Affiliated Undertakings do not solicit, the Key Personnel as listed in Schedule 1 for a period of [...] after the Closing of the Sale and Purchase Agreement.

Section D. The Divestiture Procedure

The First Divestiture Period

12. RAG undertakes to find a Purchaser for the Divested Business and to enter into a Sale and Purchase Agreement with such a Purchaser for the sale of the Divested Business [...] from the date of Closing.

The Extended Divestiture Period

13. Should RAG be unable to enter into a binding agreement for the sale of the Divested Business in the First Divestiture Period, the First Divestiture Period shall be extended by [...] from the date of the expiry of the First Divestiture Period. RAG undertakes to give the Divestiture Trustee an irrevocable and exclusive mandate to sell the Divested Business within the Extended Divestiture Period at no minimum price.

Closing of the Sale and Purchase Agreement

14. RAG shall be deemed to have complied with this undertaking if, within a period not exceeding [...] from the date of Closing, it has entered into a Sale and Purchase Agreement in accordance with paragraphs 17, 18, 19, provided that the Closing of the Sale and Purchase Agreement takes place no later than [...] after the conclusion of the Sale and Purchase Agreement. The closing may be deferred [...] time limit if the necessary regulatory authorisations cannot be obtained within this time period.

Reporting

15. RAG shall submit written reports in English or in German on potential purchasers of the Divested Business and developments in the negotiations with such potential purchasers to the Commission and the Monitoring Trustee no later than 10 calendar days after the end of every month following the date of Closing (or otherwise at the Commission's request).

16. RAG shall inform the Commission and the Monitoring Trustee on the preparation of the data room documentation, the information memorandum and about the due diligence procedure. Before sending the information memorandum prepared for the sale of the Divested Business out to potential purchasers, RAG shall submit a copy of the draft to the Commission and the Monitoring Trustee, so that the Commission can verify the information memorandum's consistency with the terms of the Commitments.

Section E. The Purchaser

17. The Purchaser shall be independent of and unconnected to RAG or E.ON. The Purchaser shall have the financial resources, proven expertise and incentive to maintain and develop the Divested Business as a viable and active competitive force in competition with RAG/Degussa and other competitors in the merchant market for NSF. In addition, the Purchaser must reasonably be expected to obtain all necessary approvals from the relevant competition and other regulatory authorities for the acquisition of the Divested Business. RAG must be able to demonstrate to the Commission that the Purchaser meets the requirements of these Commitments and that the Divested Business is being sold in a manner consistent with these Commitments. In order to maintain the structural effect of these Commitments, RAG shall not subsequently acquire direct or indirect influence over the whole or part of the Divested Business, unless the Commission has previously found that the structure of the market has changed to such an extent that the absence of influence over the Divested Business is no longer necessary to render the proposed concentration compatible with the common market.
18. When RAG has reached or is about to reach an agreement with the Purchaser referred to in paragraph 17, it shall submit a fully documented and reasoned proposal, including a copy of the sale and purchase agreement, to the Commission and the Monitoring Trustee. The proposal shall enable the Commission to verify that the requirements set out in paragraph 17 with regard to the Purchaser are fulfilled and that the Divested Business is being sold in a manner consistent with the conditions and obligations attached to the Decision.
19. The sale and purchase agreement shall be conditional on the Commission's approval. The verification that the Divested Business is being sold in a manner consistent with the conditions and obligations attached to the Decision shall include the Commission's approval of the Purchaser and of the sale and purchase agreement. The Commission will inform RAG as soon as practicable whether it approves the purchaser proposed by RAG and the terms of the sale and purchase agreement. The Commission is deemed to have approved the purchaser and the sale and purchase agreement if it has not communicated its decision to RAG within [...] of RAG having submitted its request for approval.

Section F. Trustee

I. Appointment Procedure

20. RAG shall appoint one or more Trustees, subject to the prior approval of the Commission as referred to in paragraph 22. The Trustee shall be independent of RAG and E.ON, or any of their respective Affiliated Undertakings, possess the necessary qualifications to carry out its mandate, for example as an investment bank or consultant or auditor, and shall neither be nor become exposed to a conflict of interest. The Trustee shall be remunerated by RAG in a way that does not impede the independent and effective fulfilment of its mandate. In particular, where the remuneration package of a Divestiture Trustee includes a success premium linked to the final sale value of the Divested Business, the fee shall also be linked to a timely divestiture.

Proposal by RAG

21. RAG shall propose a list of Trustees and the full terms of their mandates for the Commission's approval no later than [...] after the Effective Date in the case of the Monitoring Trustee and no later than [...] before the end of the First Divestiture Period in the case of the Divestiture Trustee. The proposal shall contain sufficient information for the Commission to verify that the Trustee fulfils the requirements set out in paragraph 20 and the outline of a work plan in which the Trustee describes how it intends to carry out the tasks assigned to it under the conditions and obligations attached to the Decision. RAG shall indicate to the Commission whether the proposed Trustees are to act as both Monitoring Trustee and Divestiture Trustee or whether different trustees are proposed for the two functions. The mandate submitted for approval shall be drawn up taking due account of the Commission Standard Trustee Mandate and shall include all provisions necessary to enable the Trustee to fulfil its duties under these Commitments.

Approval or rejection by the Commission

22. The Commission shall have the discretion to approve or reject the proposed Trustee(s) and to approve the proposed mandate subject to any modifications it deems necessary for the Trustee to fulfil its obligations. If only one name is approved, RAG shall appoint or cause to be appointed, the individual or institution concerned as Trustee, in accordance with the mandate approved by the Commission. If more than one name is approved, RAG shall be free to choose the Trustee to be appointed from among the names approved. The Trustee shall be appointed within one week of the Commission's approval, in accordance with the mandate approved by the Commission.

New proposal by RAG

23. If all the proposed Trustees are rejected, RAG shall submit the names of at least two more individuals or institutions within one week of being informed of the rejection, in accordance with the requirements set out in paragraph 21 for approval in accordance with paragraph 22.

Trustee nominated by the Commission

24. If all further proposed Trustees are rejected by the Commission, the Commission shall nominate a Trustee, whom RAG shall appoint, or cause to be appointed, in accordance with a Trustee mandate approved by the Commission.

II. Functions of the Trustee

25. The Trustee shall assume its specified duties in order to ensure compliance with the Commitments. The Commission may, on its own initiative or at the request of the Trustee or RAG, give any orders or instructions to the Trustee in order to ensure compliance with the conditions and obligations attached to the Decision.

Duties and obligations of the Monitoring Trustee

26. Following its appointment, the Monitoring Trustee shall:

- (i) propose in its first report to the Commission a detailed work plan describing how it intends to monitor compliance with the obligations and conditions attached to the Decision.
- (ii) immediately upon its appointment, oversee the on-going management of the Divested Business with a view to ensuring its continued economic viability, marketability and competitiveness and monitor compliance by RAG with the conditions and obligations attached to the Decision. To that end the Monitoring Trustee shall:
 - (a) monitor the preservation of the economic viability, marketability and competitiveness of the Divested Business, and, as of the date of the Closing, the keeping separate of the Divested Business from the business retained by RAG, in accordance with paragraphs 5 and 6 of the Commitments;
 - (b) as of the date of the Closing, supervise the management of the Divested Business as a distinct and saleable entity, in accordance with paragraphs 7 and 9 of the Commitments;
 - (c) in consultation with RAG, determine all necessary measures to ensure that RAG or its Affiliated Undertakings do not, after the date of Closing, obtain any business secrets, know-how, commercial information, or any other

information of a confidential or proprietary nature relating to the Divested Business and monitor that no such information is disclosed to RAG or its Affiliated Undertakings except in so far as is necessary to allow RAG to carry out the divestiture or as otherwise required by law, as set out in paragraphs 6 and 10 of these Commitments;

- (iii) assume the other functions, if any, assigned to the Monitoring Trustee under the conditions and obligations attached to the Decision;
- (iv) propose to RAG such measures as the Monitoring Trustee considers necessary to ensure RAG's compliance with the conditions and obligations attached to the Decision, in particular the maintenance of the full economic viability, marketability or competitiveness of the Divested Business, the holding separate of the Divested Business and the non-disclosure of competitively sensitive information;
- (v) review and assess potential purchasers as well as the progress of the divestiture process and verify that potential purchasers receive sufficient information;
- (vi) provide to the Commission, sending RAG a non-confidential copy at the same time, a written report within 15 calendar days after the end of every month. The report shall cover the operation and management of the Divested Business so that the Commission can assess whether the business is held in a manner consistent with the Commitments and the progress of the divestiture process as well as potential purchasers. In addition to these reports, the Monitoring Trustee shall promptly report in writing to the Commission, sending RAG a non-confidential copy at the same time, if it concludes on reasonable grounds that RAG is failing to comply with any of the conditions or obligations under these Commitments;
- (vii) once RAG has proposed to the Commission a Purchaser, within [...] after receipt of the proposal, assess the independence and suitability of the proposed purchaser and the viability of the Divested Business after the sale of the Divested Business to the purchaser and give its opinion to the Commission, sending RAG a non-confidential copy at the same time, as to whether the Divested Business is sold in a manner consistent with the conditions and obligations attached to the Decision.

Duties and obligations of the Divestiture Trustee

27. Within the Extended Divestiture Period, the Divestiture Trustee shall sell [...] the Divested Business to a Purchaser independent of RAG or E.ON, taking into account to the maximum extent possible RAG's interests, and provided that the Commission has approved both the Purchaser and the Sale and Purchase Agreement in accordance with procedures laid down in paragraphs 17, 18 and 19. The Divestiture Trustee shall include in the Sale and Purchase Agreement such terms and conditions as it considers appropriate for an expedient sale. In particular, the Divestiture Trustee may include in the Sale and Purchase Agreement such customary representations and warranties and indemnities as are reasonably required to effect the sale of the Divested Business.
28. Following the expiration of the First Divestiture Period (or otherwise at the Commission's request) the Divestiture Trustee shall provide the Commission with a comprehensive monthly report written in English or in German on the progress of the divestiture process. Such reports shall be submitted within 15 calendar days after the end of every month. The Monitoring Trustee and RAG shall be provided a simultaneous non-confidential copy of these reports.

III. Duties and obligations of RAG

29. RAG shall provide the Trustee with all such assistance and information, including copies of all relevant documents, as the Trustee may reasonably require to perform its tasks. The Trustee shall have full and complete access to any of RAG books, records, documents, personnel, facilities, sites and technical information necessary for fulfilling its duties under the Commitments. RAG shall make available to the Trustee one or more offices on its premises, shall be available for meetings in order to provide the Trustee with all information necessary for the performance of its tasks.
30. RAG shall provide the Monitoring Trustee with all managerial and administrative support that it may reasonably request on behalf of the management of the Divested Business. This shall include all administrative support functions relating to the Divested Business which are currently carried out at headquarters level. RAG shall provide the Monitoring Trustee, on request, with access to the information submitted to potential purchasers, in particular to the data room documentation and all other information granted to potential purchasers in the due diligence procedure. RAG shall inform the Monitoring Trustee on identifying possible purchasers, submit a list of potential purchasers and inform it of the development of the divestiture process. RAG shall inform the Trustee about meetings with potential purchasers and, if requested by the Trustee, grant the Trustee access to such meetings.

31. RAG shall grant comprehensive powers of attorney, duly executed, to the Divestiture Trustee for the sale of the Divested Business, the Closing of the Sale and Purchase Agreement and all actions and declarations which the Divestiture Trustee considers necessary or appropriate to achieve the sale of the Divested Business and the Closing of the Sale and Purchase Agreement, including the appointment of advisors to assist with the sale process. Upon request of the Divestiture Trustee, RAG shall cause the documents required for effecting the sale of the Divested Business and the Closing of the Sale and Purchase Agreement to be duly executed.
32. RAG shall indemnify the Trustee and its employees and agents (each an “*Indemnified Party*”) and hold each Indemnified Party harmless against, and shall agree that an Indemnified Party shall have no liability to RAG for, any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Trustee’s duties pursuant to the conditions and obligations attached to the Decision, including reasonable fees of counsel or other expenses incurred in connection with the preparation for, or defence of any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from an Indemnified Party’s wilful default, recklessness, gross negligence or bad faith.
33. At the expense of RAG, the Trustee may appoint advisors (in particular for corporate finance or legal advice), incurring reasonable fees and other expenses, subject to RAG approval (this approval not to be unreasonably withheld) if the Trustee considers the advisors necessary or appropriate for the performance of its duties. Should RAG refuse to approve the advisors proposed by the Trustee, the Commission may approve the appointment of such advisors instead. Only the Trustee shall be entitled to issue instructions to the advisors. Paragraph 32 shall apply mutatis mutandis. In the Extended Divestiture Period, the Divestiture Trustee may use advisors who served RAG during the First Divestiture Period if the Divestiture Trustee considers this in the best interest of an expedient Sale.

IV. Replacement, discharge and reappointment of the Trustee

34. The Commission may, after hearing the Trustee, order RAG to remove the Trustee if the Trustee has not acted in accordance with the Commitments or for any other good cause.
35. The Trustee may also be removed by RAG with the prior approval of the Commission and after the Commission has heard the Trustee if the Trustee has not acted in accordance with the Commitments or for any other good cause.
36. The Trustee may be required to continue in its function until a new Trustee is in place to whom the Trustee has effected a full transfer of all relevant information. The new

Trustee shall be appointed in accordance with the procedure referred to in paragraphs 20-24.

37. The Trustee shall cease to act as Trustee only after the Commission has discharged it from its duties, following a request from the Trustee or RAG after all the Commitments with which the Trustee has been entrusted have been implemented. However, the Commission may at any time require the reappointment of the Monitoring Trustee if it subsequently appears that the relevant remedies might not have been fully and properly implemented.

Section G The Review Clause

38. The Commission may, where appropriate, in response to a request from RAG showing good cause and accompanied by a report from the Monitoring Trustee:

Grant an extension of the Divestiture Period, or

- (i) Allow the sale of the Divested Business, at the request of the proposed Purchaser, without one or more Assets, or

Waive or modify, in exceptional circumstances, one or more of the conditions and obligations in these Commitments.

Where **RAG** seeks an extension of a time period, it shall submit a request to the Commission no later than one month before the expiry of that period, showing good cause. Only in exceptional circumstances shall **RAG** be entitled to request an extension within the last month of any period.

Very truly yours

RAG Aktiengesellschaft

Dr. Ludger Diestelmeier
Head of Legal Department

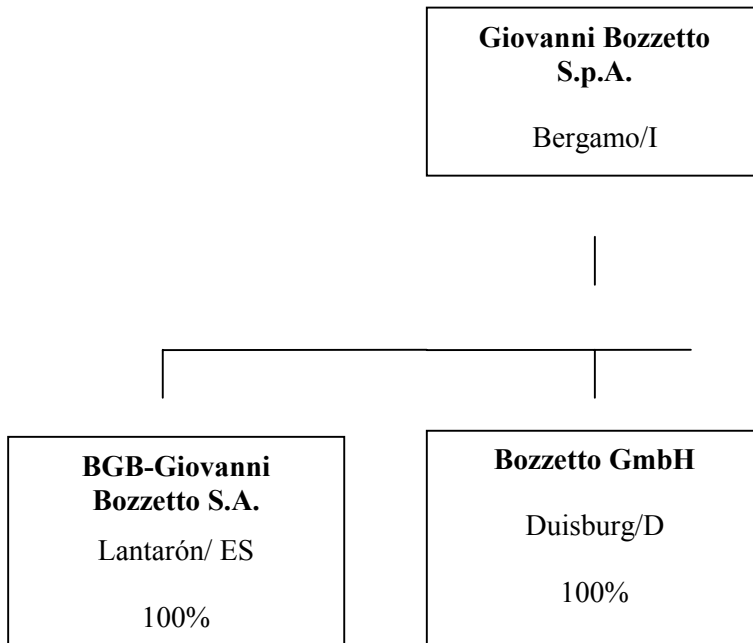
Dr. Norbert Schellen
Member of Legal Department
duly authorised for and on behalf of RAG

COMMITMENTS TO THE EUROPEAN COMMISSION

SCHEDULE 1

1. Legal Structure of Bozzetto

The following companies are considered to be divested:



Giovanni Bozzetto SPA: Headquarters of the Bozzetto Group. Besides administrative group functions, marketing/sales and R&D, the company produces inputs for concrete admixtures, textile chemicals and sequestering agents.

[...]

BGB-Giovanni Bozzetto S.A.: Production company mainly for inputs for concrete admixtures, but also small amounts of textile chemicals.

Bozzetto GmbH: Production company exclusively for NSF.

[...]

2. Descriptions of assets

Following paragraph 2 of these Commitments, the Divested Business will include, but is not limited to the following assets:

- a. three manufacturing facilities located in Filago (Italy), Duisburg (Germany) and Lantarón (Spain)
- b. Several Agencies are involved for sales in various countries. In addition, Bozzetto has its sales office for Europe in Filago.
- c. [...] interest in Brede, which has a plant located in Bergamo with [...] mt NSF manufacturing capacity.

3. List of current service and supply agreements

Currently, the following contracts between the Bozzetto Group companies and RÜTGERS Group companies are in place:

[...]