

*Case No IV/M.310 -
HARRISONS &
CROSFIELD / AKZO*

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

Article 6(1)(b) NON-OPPOSITION
Date: 29.04.1993

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PUBLIC VERSION

MERGER PROCEDURE -
Article 6(1)b decision

To the Notifying Parties

Dear Sirs,

Subject: Case No. IV/M.310 - Harrisons & Crosfield/AKZO
Notification of 24.03.1993 pursuant to Council Regulation (EEC) No. 4064/89

I THE NOTIFIED OPERATION

1. The Commission has received the notification of a series of agreements between Harrisons Chemicals (UK) Ltd. (Harcros) and Akzo Chemical International BV (AKZO) under which they propose to bring together the operations of their groups relating to the development, manufacture and sale of particular chemical products, including primarily PVC processing additives, in Europe and the United States. It may be observed that the transfer of the United States assets is subject to approval by the US regulatory authorities.

II THE PARTIES

2. Harcros is a wholly owned and controlled subsidiary of Harrisons & Crosfield plc. The latter is a publicly quoted company organised into four divisions namely, chemical and industrial, timber and building supplies, food and agriculture, and plantations. Harrisons & Crosfield plc has sales throughout the world but primarily in the UK and Asia.
3. AKZO is a wholly owned and controlled subsidiary of AKZO NV. The latter is a publicly quoted company divided into five divisions, i.e. salt, chemicals, fibres, coatings and healthcare products. AKZO NV has sales worldwide, but its operations are largely concentrated in the Netherlands, Germany and the United States.

III COMMUNITY DIMENSION

4. The worldwide turnover of the undertakings concerned exceeds 5,000 million ECU (Harrisons and Crosfield plc - 2 615 mECU, AKZO Group - 7 292 mECU). Both have a Community-wide turnover significantly exceeding 250 mECU. The undertakings concerned do not achieve more than two-thirds of their Community-wide turnover in one and the same Member State. Thus, the operation has a Community dimension.

IV CONCENTRATIVE JOINT VENTURE

Joint control

5. Under the 'Umbrella Joint Venture Agreement' the appropriate assets and personnel are to be transferred to four partnerships in the UK, Germany, the Netherlands and the US (the joint venture entities). The capital of the individual partnerships and four existing companies in France, Italy, Spain and Denmark (the joint venture companies), will each be individually held on a 50 : 50 basis by the Harcros and AKZO groups. These arrangements will be completed by manufacturing and operating agreements for the production of specific chemicals in a number of cases where it is not possible to fully transfer the necessary plant and personnel.
6. Although there is no interposition of a holding company between the various JV entities and companies on the one hand and the parent groups on the other hand, the whole can be considered as forming a single joint venture. In accordance with paragraph 41 of the Commission notice on concentrative and cooperative operations the establishment of a holding company is not necessary to establish the concentrative nature of an operation. The operations of the joint venture will be conducted under the name of 'Akros Chemicals'⁽¹⁾.
7. The JV will be controlled by a Governing Board composed of initially seven, and subsequently five, members. Harcros and AKZO will each appoint three members during the first three years and two members thereafter. The Managing Director of the JV will be a non-voting member. The chairman of the Governing Board will alternate between Harcros and AKZO, but will have no casting vote. Decisions will be adopted on the basis of a simple majority. All important policy matters of the JV will be submitted to the Governing Board for prior approval. These include, in particular, the annual business and budget plan and also capital expenditure exceeding approximately 70,000 ECU, the appointment of senior managers, wage and salary increases, the opening of branches and the creation of subsidiaries, the acquisition, disposal and licensing of technical know-how and intellectual property, any contract or arrangement between any JV entity and any member of either Party's Group, borrowings, banking arrangements and dividend policy, and investment policy.
8. Therefore the JV will be jointly controlled within the meaning of Article 3 of the Merger Regulation.

⁽¹⁾ Name to be finalised.

Autonomous economic entity

9. The JV will operate on an autonomous basis. To this purpose, the Parties are transferring to the JV all tangible and non-tangible assets, subject to the exceptions specified below, relating to the product groups concerned. On completion the JV will have worldwide sales of approximately 300 million ECU and 1,100 employees at 12 production sites in Europe and North America.
10. Within the Community, the Harcros group is transferring its entire location plus personnel at Manchester/Eccles and Burnley in the UK, at Greiz/Döhlau in Germany and at Roermond and Venlo in the Netherlands. Similarly, the AKZO group will transfer its entire location and personnel at Dahlem in Germany and at New Brunswick, New Jersey in the USA. The existing joint venture in France, between Harcros and AKZO for the production of tin stabilisers, Tinstab SA, will also be transferred to the joint venture.

AKZO will also transfer its plant for the production of PVC processing additives at Düren in Germany. Personnel will not be included at Düren, since the plant transferred forms part of a larger site, and the division of the site workforce would have a significant adverse impact on overall site efficiency. However, the JV will enjoy an operating agreement with AKZO at this site for an initial 10 year period. Moreover, according to Article 12.1.3 of the Umbrella JV Agreement, where plants are operated on behalf of the JV under an operating/manufacturing agreement, planning production scheduling and investment are treated in the same way as sites owned and operated by the JV entities and any change in production levels at such plants shall be effected only for good economic reasons relating to the JV.

The above assets represent more than 95% of the total plant and equipment for the product groups concerned by the JV.

11. The Harcros plant at Durham used for the production of driers and metal stearates will be the subject of a manufacturing agreement with the JV. It is not feasible to isolate and transfer that part of the Durham plant to the JV, since it forms part of a much larger multi-product plant and, in particular, because of safety and security reasons.
12. On establishment of the JV, there will initially be either an operating or manufacturing agreement governing three further plants, covering products which represent a very small part of the JV's existing sales. At Deventer, the existing AKZO plant producing plasticisers and fungicides will be transferred to the JV, but the plant will initially be operated by AKZO under an operating agreement on a temporary basis [...]⁽²⁾. At Hillhouse, AKZO currently has a manufacturing agreement with ICI for the production of bonding agents at an ICI plant. The existing manufacturing agreement will be transferred from AKZO to the JV, [...]⁽³⁾. Lastly, at Bergen-op-Zoom, the existing AKZO plant producing radiation cure

⁽²⁾ Deleted for publication.

⁽³⁾ Deleted for publication.

products will be transferred to the JV, but the plant will continue to be operated by AKZO under the operating agreement [...]⁽⁴⁾.

13. The vast majority of the necessary human and material resources are being transferred to the JV, and in those exceptional cases where full transfer is not feasible, appropriate operating/manufacturing agreements are being established. In addition, the Harcros and AKZO groups have agreed to transfer all material intellectual property, know-how, etc. required for the business of the JV. The JV will be independent of its parents for its commercial activity, making use of its own distribution and marketing arrangements.
14. In conclusion, the JV will perform on a lasting basis all the functions of an autonomous economic entity.

Absence of coordination of competitive behaviour

15. Given the transfer of all the necessary plant, personnel and intellectual property rights by both parents to the JV, completed by operating and manufacturing agreements where full transfer is not feasible, it is unlikely that they will seek to re-enter the product markets of the JV.
16. One of the less important products produced by the JV will be anionic surfactants. These represent about 7.5% of the JV's sales. Surfactants are products employed across the industrial sector as processing aids where their surface-active properties (foaming, wetting, emulsification, solubilisation, dispersion, etc.) are used to facilitate processing. They are divided into three product areas: anionics, cationics and amphoteric. They are not substitutable. Harcros is only active in anionics and is transferring this activity to the JV.
17. AKZO is retaining its surfactants business, which is mainly focused on cationics and amphoteric, but it also produces some anionics. However, in terms of sectoral application, AKZO sells anionics mainly for use in the manufacture of detergent and personal care products, whereas Harcros sells into other industrial markets. Therefore, in terms of end use, Harcros and AKZO are not direct competitors in anionics. There is no indication that the situation is likely to change in the foreseeable future.
18. Harcros is not transferring to the JV those metal octoates which are not used as paint driers. AKZO is transferring all its production of metal octoates, all of which are used as paint driers. As regards the metal octoates retained by Harcros, although technically these could be used in paint driers, they are in fact sold for other applications, such as catalysts in the manufacture of a wide range of petrochemicals.
19. As regards vertical relationships, paint driers corresponding to about [...]⁽⁵⁾ of the JV's

⁽⁴⁾ Deleted for publication.

⁽⁵⁾ A relatively minor percentage.

paint drier sales are currently sold to the AKZO group. The latter will only purchase if supply terms are competitive. [...] ⁽⁶⁾.

20. Consequently, the establishment of the JV will not give rise to the coordination of the competitive behaviour of independent undertakings within the meaning of Article 3(2) of the Regulation.
21. Therefore, the whole constituted by the various partnerships and companies is to be considered as a concentrative JV within the meaning of Article 3(2) of the Regulation.

V. COMPATIBILITY WITH THE COMMON MARKET

A. Relevant product market

22. In their notification, the parties have identified the following affected relevant product markets:

- (i) PVC processing additives (stabilisers)

These are chemical products which are added to PVC in order to stabilise it (that is, prevent it from deterioration during processing) and to give it particular properties, such as plasticity, rigidity, transparency and flexibility. The parties believe that there are four different markets in PVC processing additives:

- **Solid stabilisers** are used mainly where rigidity is required in, for example, window frames and piping.
- **Tin stabilisers** are used where transparency in the final product is desired.
- **Liquid stabilisers** are used in the manufacture of flexible PVC products such as sheeting, leathercloth and traffic cones. There are two main types of liquid stabilisers: calcium/zinc and barium/zinc.
- **Epoxy plasticisers/stabilisers** are used as synergistic co-stabilisers with liquid stabilisers in order to achieve an enhanced flexibility and stability. There are two main types of epoxy plasticiser/stabiliser: oil-based epoxies (using soya bean or linseed oil) and ester or fatty acid-based epoxies.

- (ii) Radiation cure products

23. These comprise certain oligomers and monomers used in the formulation of inks and coatings - largely used in the graphic arts and wood-finishing trades - which are "cured" by use of ultraviolet light or electron beams. This process is far faster than conventional drying methods and there is no (harmful) evaporation of solvents. The parties have divided these into four different markets.
 - **Multifunctional monomers** are a range of multifunctional acrylic monomers used as "reactive diluents" in inks and coatings for the graphic arts and coatings industry.

⁽⁶⁾ Deleted for publication.

- **Epoxy acrylates** are used to give a hard gloss finish.
- **Urethane acrylates** are generally used where the properties of the cured coating are more demanding - for example, where improved flexibility, adhesion, or scratch resistance is sought. Uses include solder-resist resins, vinyl floor wear layers and metal decorative inks. It is the highest-priced performance-related product of the main groups.
- **Amine acrylates** are used to catalyse or speed up the rate of cure in ultraviolet processes. They are incorporated into varnishes for papers and plastics but are also used as a building block in ultraviolet curing wood coatings.

(iii) Paint driers

24. In relation to paint driers, the product market is that for natural and synthetic octoates of barium, calcium, cerium, cobalt, manganese, lead, strontium, zinc and zirconium, used alone or in various combinations to promote the oxidative drying of solvent/alkyd resin-based paints.
25. There are a number of other products produced by the JV. These do not give rise to affected product markets since there is no product overlap. Possible vertical links are non-existent or of negligible importance.

B. Geographical reference market

26. For all three relevant product market groups (PVC additives, radiation cure products and paint driers) the relevant geographical market is Community-wide in view of the following factors:
 - a high level of intra-Community shipments
 - the presence of the major suppliers in several or more Member States, with significant market shares
 - relatively low transport costs
 - a hitherto relatively modest level of trade between the EC and the rest of the world as well as the existence of an EC external tariff (6.5% to 8.4% dependent upon the specific product concerned).
27. Based on the data provided by the parties as well as a survey by the Commission of the main producers and users, there appears to be a degree of price variation between Member States. However, this is due to factors such as differences in technical specifications dependent upon the specific application (e.g. different mixes of ingredients and variations in product quality) and differences in batch volumes sold.

C. Competition Assessment

PVC additives

28. The total market value amounts to some 330 mECU, of which about 50% consists of sales of solid stabilisers, whilst tin, liquid and epoxy products each account for approximately one-third of the remaining 50%.

29. Post-concentration, the 'Akros Chemicals' joint venture will not have more than approximately a one-quarter share in any product market, except in solid stabilisers, where its market share will still be less than one-third. 'Akros Chemicals' will have a somewhat higher share than its main competitors in the solid and epoxy stabiliser markets but there still remain powerful competitors (e.g. Bärlocher, Chemson, Reagens for solid stabilisers and Ciba-Geigy, Henkel and Atochem for epoxy stabilisers) each with up to one-fifth of the market themselves. As far as tin stabilisers are concerned, Ciba-Geigy will remain the leading supplier with a substantially higher market share.
30. There is in general a high degree of market concentration for all four categories of PVC additives. However, the stated view of the overwhelming majority of customers consulted in these markets is that there is, and will continue to be, a wholly adequate choice of suppliers, each following an independent pricing policy.
31. At the same time, there is a high likelihood that the existing market structure will be disrupted in the short term by a switch from heavy metal stabilisers (i.e. those containing toxic substances such as barium, cadmium and lead) to more environmentally acceptable alternatives (e.g. those containing calcium and zinc), particularly in the solid stabiliser sector, which accounts for about half of the total market for additives. This innovative process will open up new opportunities for both existing producers and possible new entrants.
32. Finally, there is some evidence that imports from outside the EC are increasing, particularly from North America and Brazil. This is especially true in the tin stabiliser sector where the degree of concentration in the EC market is highest.

Radiation cure products

33. The total market value amounts to some 75 mECU. Post-concentration the 'Akros Chemicals' joint venture will have less than a one-quarter share of each product market, in each of which there exist financially strong competitors with higher market shares (in particular UCB, which has shares upwards of [...]⁽⁷⁾ and is the market leader).
34. There is also a high degree of market concentration for all four categories of radiation cure products. However, demand is dominated by large companies, for example big inks manufacturers for graphic art applications. Moreover, the overall annual rate of growth for the radiation cure market is estimated at over 5% for the next few years, with estimates of 15% annual growth for urethane acrylates and 20-25% annual growth for amino acrylates. Again, both urethane and amino acrylates are considered to have high innovative potential (for flooring coating lacquer, for example).

⁽⁷⁾ A market share higher than that of 'Akros Chemicals'.

Paint driers

35. The total market value amounts to about 40 mECU. 'Akros Chemicals' will have less than one fifth of the total market, which is not highly concentrated, and in which there are financially strong competitors with significant market shares.

Conclusion on competition assessment

36. Therefore, whilst the proposed concentration has the result of further increasing the degree of concentration in the various product markets for PVC additives and radiation cure products, having regard to the number of alternative suppliers, the available evidence collected from surveys with product users, expected future changes in the market brought about by environmental pressures and the trend of increasing imports for certain products from producers outside the EC, it cannot be considered that the structure of supply will be sufficiently narrowed that effective competition would be significantly impeded in the common market or in a substantial part of it as a result of single or collective dominance.

VI ANCILLARY RESTRICTIONS

37. The parties have submitted that the following clauses are to be considered as ancillary restraints within the meaning of the Merger Regulation.
38. Under Clause 2.1 of the Manufacturing Agreements at Deventer and Durham, AKZO and Harcros respectively agree not to sell or supply any of the products concerned to any person other than the partnership, for so long as the Agreement remains in force. Since it is not feasible to transfer the plant concerned to the joint venture, these restrictions have the effect of placing the plant concerned fully under the control of the joint venture as regards supply of the products concerned to third parties. The restriction on the parent manufacturing expresses the reality of the lasting withdrawal of the parents from the markets assigned to the joint venture and can therefore be considered as directly related to the concentration and necessary for its implementation.
39. Under Clause 6.1 of the Umbrella JV Agreement, the Harcros and AKZO Groups are to contribute to the joint venture all material Intellectual Property used in the businesses of the joint venture. Clause 6.2 of the same Agreement provides that, on request, the JV will license the Harcros and AKZO Groups to make use of intellectual property owned by the JV in specified product areas. Where the original intellectual property is contributed by the parent, the licence shall be free of charge and in other cases a fee representing a market rate shall be paid. Clause 6.3 of the Agreement provides that each licence granted shall contain such provision as is reasonably necessary to protect the Intellectual Property and commercial interests of the licensor, including such provision for the duration, exclusivity (if any) and territorial grant of the licence and competition with the licensor and third parties in the use of the Intellectual Property.
40. In order to ensure the successful establishment of the JV, the parents are contributing the necessary intellectual property. At the same time, it is reasonable for the parents to wish to be able to benefit in the future from intellectual property transferred to and developed by the JV in specific business areas. Furthermore, to promote the transfer of intellectual property by one parent to the JV, it is also reasonable for certain restrictions to be placed upon the grant of intellectual property licences to the other parent by the JV. Therefore, the general principle of limitation on the award of a licence can, as set out in Clause 6.3, be considered to be directly related to the concentration and necessary for its

implementation to the extent that it facilitates the transfer of intellectual property from the parents to the JV. However, the specific restrictions contained in any specific future licence agreement are not covered by the present decision and must be examined separately.

40. Therefore all the above restrictions are covered by the present decision to the extent described above.

VII CONCLUSION

For the above reasons the Commission has decided not to oppose the notified concentration and to declare it compatible with the common market. This decision is adopted in application of Article 6(1)b of Council Regulation No. 4064/89.

For the Commission