

***Case No COMP/M.3435 -  
LYONDELL /  
MILLENNIUM***

Only the English text is available and authentic.

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

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Article 6(1)(b) NON-OPPOSITION  
Date: 10/06/2004

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 10/06/2004  
SG-Greffe(2004) D/202321

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 Where possible the information omitted has been replaced by ranges of figures or a general description.

PUBLIC VERSION

MERGER PROCEDURE  
ARTICLE 6(1)(b) DECISION

**To the notifying party**

Dear Sir/Madam,

**Subject: Case No COMP/M.3435 - LYONDELL / MILLENNIUM  
Notification of 05.05.2004 pursuant to Article 4 of Council Regulation  
No 4064/89<sup>1</sup>**

1. On 05.05.2004, the Commission received a notification of a proposed concentration by which Lyondell Chemical Company ("Lyondell", USA) acquires within the meaning of Article 3(1)(b) of the Council Regulation ("Merger Regulation") sole control of Millennium Chemicals Inc. ("Millennium", USA) by way of exchange of shares. As a result of the transaction, Lyondell will also acquire sole control of Equistar Chemical Company Inc ("Equistar", USA), a company currently jointly controlled by Lyondell and Millennium.
2. After examining the notification, the Commission has concluded that the notified operation falls within the scope of the Merger Regulation and that it does not raise serious doubts as to its compatibility with the common market.

**I. THE PARTIES**

3. Lyondell is a global chemical company, mainly active in basic chemicals and their derivatives which are used as intermediate and performance chemicals in the chemical supply chain.
4. Millennium is an international chemical company producing a wide range of commodity chemicals, including titanium dioxide, acetyls and a number of specialty chemicals.

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<sup>1</sup> 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).

5. Equistar, a jointly controlled partnership between Lyondell (70,5 % ownership) and Millenium ( 29,5 % ownership), manufactures and markets petrochemicals such as olefins, oxygenated products, aromatics and a number of specialty chemicals. Equistar is only active in the USA.

## **II. THE OPERATION AND THE CONCENTRATION**

6. The operation consists of the acquisition by Lyondell of Millenium by way of exchange of shares. After the transaction, Millenium will become a wholly owned subsidiary of Lyondell, which will also have sole control of Equistar. Therefore, the operation constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

## **III. COMMUNITY DIMENSION**

7. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion<sup>2</sup>. Each of Lyondell and Millenium has a Community-wide turnover in excess of EUR 250 million, but they do not achieve more than two-thirds of their aggregate Community-wide turnover within one and the same Member State. The notified operation therefore has a Community dimension.

## **IV. COMPETITIVE ASSESSMENT**

8. The transaction will result in a global chemical company with a more diverse product range integrating the parties' existing petrochemicals joint venture Equistar. Due to the parties' distinct product ranges, the transaction does not lead to horizontal overlaps in the EEA.
9. Only vertically affected markets are created by the transaction as Acetic Acid ("AA") is sold by Millenium and purchased by Lyondell for the production of Propylene Glycol Methyl Ether Acetate (PMA).

### **Relevant product markets**

10. AA is an intermediate chemical produced by Millenium in the EEA and used in the production of various other chemicals such as vinyl acetate monomer, purified terephthalic acid, acetic anhydride, acetate esters or monochloroacetic acid. AA is also purchased by Lyondell for the production of PMA, which is a Glycol Ether used as a solvent in coatings.
11. AA is used to esterify Propylene Glycol Methyl Ether (PM) into PMA. Due to the limited degree of demand substitutability, the parties state that for the purposes of this transaction, it is appropriate to consider AA as a distinct market.
12. For the purpose of this decision, the question whether AA constitutes a separate relevant product market or whether it belongs to a wider market can be left open since

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<sup>2</sup> 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.

under the narrower market definition (considering AA as a distinct market) the transaction does not give rise to competition concerns.

13. PMA is a product downstream from PM. The parties submit that the acidification process is relatively simple and state that all PM producers sell PMA as part of their product range. Hence, the parties consider that that the relevant market could be defined as PM including PMA. However, since the market investigation has not conclusively confirmed the parties' submission and given that the transaction is unlikely to lead to competition concerns even when the most narrow market definition is considered (PMA as a distinct market), the final definition of the relevant product market can be left open.

### **Relevant geographic markets**

14. With regard to AA, the parties argue that the market is at least EEA-wide in scope, and possibly world-wide. Neither transport costs nor import duties present material barriers to entry (i.e. Millenium meets global demand for AA with centralised production in the USA).
15. The parties also argue that the market for PMA is at least EEA-wide in scope. Such is in line with the Commission's analysis of Glycol Ethers<sup>3</sup>, a market upstream of PMA.
16. The market investigation has confirmed that both the AA and the PMA market are at least EEA-wide in scope.

### **Assessment**

17. Lyondell's market share for PMA in the EEA is around [25-35]% whilst its market position for PGE (upstream of PMA) is approximately [20-30]%. Lyondell currently purchases its AA requirements from [...]. Other AA producers are [...]. Millenium's share of AA sales at EEA level is estimated to be around [0-5]%. Therefore, the new entity would not likely be in a position to foreclose competing PGE/PMA producers from access to AA. In addition, despite its relatively high market shares for PGE/PMA, Lyondell only accounts for [0-5]% of AA consumption in the EEA. Even if, post-merger, Lyondell were to purchase AA exclusively from Millenium, this would have a negligible effect on the AA market and would not prevent other producers from marketing their output.
18. In the US, Millenium sells a number of intermediate petrochemicals to Equistar for the production of polymers products. As Equistar is not present in Europe, these vertical relationships have no effect in Europe. Also, both Lyondell and Millenium buy intermediate chemicals such as propylene and methanol from Equistar for their production in Europe. Apart from the fact that these vertical relations do not lead to affected markets, it is to be noted that Lyondell and Millenium already jointly control Equistar. Therefore, the transaction will not materially alter the current competitive environment.
19. In the light of the above, it can be concluded that the operation does not give rise to serious doubts as to the creation or strengthening of a dominant position as the result of

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<sup>3</sup> Case No IV/M.591 - Dow/Buna, decision of 04.07.1995.

which competition would be significantly impeded in the common market or in a substantial part of it.

## **V. CONCLUSION**

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

For the Commission  
*Signed*

Mario MONTI  
Member of the Commission