

***Case No COMP/M.3454 -
KKR / DYNAMIT
NOBEL***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 07/07/2004

*Also available in the CELEX database
Document No 32004M3454*



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 07-VII-2004

SG-Greffe(2004) D/202668

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

Dear Sir/Madam,

**Subject: Case No COMP/M.3454 – KKR/Dynamit Nobel
Notification of 4 June 2004 pursuant to Article 4 of Council Regulation
No 4064/89¹**

1. On 04.06.2004 the Commission received a notification of a proposed concentration by which the undertaking Knight Lux 1 S.a.r.L (Luxembourg), controlled by Rockwood Specialties Group Inc. (USA) which in turn belongs to Kohlberg Kravis Roberts & Co. L.P. (“KKR”, USA), acquires within the meaning of Article 3(1)(b) of the Council Regulation (“Merger Regulation”) control of the whole of the undertaking Dynamit Nobel AG (“DN”, Germany) by way of purchase of shares.
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. KKR makes private equity investments in managements buyouts for itself and its investors. The companies in which investments are made are run separately and independently of each other.
4. DN is a supplier and service provider in the areas of specialty chemicals and material engineering.

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 AND THE CONCENTRATION

5. The operation consist of the acquisition by KKR of 100% of the issued share capital of DN. Prior to the transaction, DN will sell its ammunition and plastic businesses, which do not form part of the transaction.
6. The operation therefore constitutes a concentration within the meaning of article 3 (1)(b) of the Merger Regulation.

III. COMMUNITY DIMENSION

7. The combined aggregate worldwide turnover of KKR and DN in 2003 was above 5.000 MEUR (KKR: [...] MEUR and DN: [...] MEUR) and the aggregate Community wide turnover of each was above 250 MEUR (KKR: [...] MEUR and DN: [...] MEUR). Neither of the two undertakings 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

Introduction

8. The parties are active in four groups of chemicals: i) commodity chemicals, ii) fine chemicals, iii) specialty chemicals and iv) advanced ceramics. As stated below, the only affected markets are: lithium carbonate, formaldehyde and anticorrosion metal surface treatment products.

Commodity chemicals

9. There are only two products (lithium carbonate and formaldehyde) which constitute affected markets due to vertical relationships between the parties, and which are described in more detail below.

Fine Chemicals

10. DN is active in the production of active ingredients and intermediates for the pharmaceutical industry, agrochemicals and other fine chemicals for different industries and applications such as flavours and fragrances, dyestuffs, cosmetics or photo chemistry. KKR neither produces nor purchases any of these products.

Specialty chemicals

11. This term is used to describe products grouped together according to their intended use, even though these products may have significantly different physical and/or chemical characteristics. The parties are active in the production of different specialty chemicals which could be grouped into five distinct sub-segments: surface treatment products, water chemistry, specialty compounds, pigments and catalysts.
12. Regarding water chemistry products, specialty compounds and catalysts, the operation does not give rise to either horizontal overlaps or vertical relationships.
13. With regard to the remaining sub-segments, the operation only gives rise to vertical relationships under the narrowest market definition with respect to:

- titanium dioxide, a pigment produced by DN and which does not give rise to competition problems since the parties market shares are below [0-10]%;
- direct metallization, a surface treatment product produced by KKR, which does not constitute an affected market (KKR has a market share of less than [5-15]% on both EEA and world-wide basis and DN's only involvement is through minimal purchases, approximately [<5]%, of KKR's production through an Indian JV); and
- anticorrosion metal surface treatment products produced by DN, which constitutes the only affected market within the specialty chemicals group.

Advanced ceramics

14. Both DN and KKR are active in the production of advanced ceramics. However, the operation does not give to horizontal overlaps since their products have different characteristics and are intended for different industries and applications, constituting distinct relevant product markets. Regarding vertical relationships, KKR bought some products from DN (cutting tools and other advanced ceramics), however these purchases were very small and under any reasonable market definition the market shares of the parties are less than 25% so that there would be no affected markets.

Relevant product markets

Commodity chemicals

15. Commodity chemicals are simple chemicals produced in high volumes and usually sold at low price with very little differentiation. The only relationship between the parties being with respect to lithium carbonate, and formaldehyde.
16. Lithium carbonate is used in various industries and applications, including as a flux agent for enamels production, grease for automotive and industrial applications and a heat transfer agent in the rubber industry. It is not possible to further sub-divide lithium carbonate in narrower product markets since it is already one of the most basic lithium compounds and it is used as the starting point for the production of more complex lithium products. The question whether lithium carbonate constitutes a separate relevant product market or whether it belongs to a wider market of lithium based products can be left open since under the narrower definition (lithium carbonate) the final assessment does not change.
17. Formaldehyde is a basic chemical used in a wide range of applications in various industries. In a previous decision², the Commission concluded that it constitutes a separate relevant product market and the same approach can be taken for the purpose of this decision.

Specialty chemicals (Surface treatment products)

² Case COMP/M.2396 - INDUSTRI KAPITAL / PERSTORP (II), of 11.05.2001.

18. Anticorrosion metal surface treatment products (ACMSTP). These products are used in chemical processes such as cleaning, phosphating and passivation before pre-treatment. The parties submit that in order to give metal surfaces adequate anticorrosion treatments, there are a number of steps that need to be undertaken, such as cleaning, pre-treatment and after-rinses, which all together comprise a single, connected and coherent process which takes a raw metal surface to its corrosion resistance condition. DN and its competitors provide the knowledge and materials to carry out this process as a package and compete with each other for the global anti-corrosion solutions. Furthermore, save in very unusual circumstances, customers always have the same supplier for all the materials needed in the different steps of the process. Competition takes place at the level of the anti-corrosion treatment process, and not at the individual steps that make up that process.
19. In general the manufacturing process and composition of these materials are sufficiently similar such that the full range of products can be manufactured in the same facilities. As KKR does not purchase single products, but also the whole package of ACMSTP, for the purpose of this decision it can be considered that ACMSTP constitutes the relevant product market, leaving open the question whether it belongs to a wider market of surface treatment.

Relevant geographic markets

Commodity chemicals

20. Lithium carbonate is produced by purifying natural brines occurring in a limited number of locations across the world. Normally producers place their facilities where they have access to the lithium-bearing natural brines, from where it is distributed around the world. DN's facilities are located in Chile (to have access to the most significant natural lithium brines in the world, the Salar de Atacama) and in Nevada (USA), from where it supplies all its customers around the world. All sales of lithium carbonate within the EEA are made through imports. The final definition of the relevant geographic market can be left open as the operation does not give rise to competition concerns under either a world-wide or a EEA-wide geographic market.
21. Formaldehyde: the parties submit that usually it is supplied in the form of aqueous solutions of up to 50% by weight and therefore it is not economic to transport it over long distances. In a previous decision³, the Commission concluded that the relevant geographic market for formaldehyde is regional, comprising neighbouring countries.

Specialty chemicals

22. Surface treatment products: anticorrosion metal surface treatment products (ACMSTP). The parties state that the geographic market could be world-wide or EEA-wide. There are globalised customers (in particular in the automotive and aerospace industries) which co-ordinate their purchases at world-wide level, typically demanding a single price. For the purpose of this decision, the final geographic market definition can be left open since the operation does not give rise to competition concerns under either of the definitions.

³ Case COMP/M.2396 - INDUSTRI KAPITAL / PERSTORP (II), of 11.05.2001.

Assessment

Commodity chemicals

23. Lithium carbonate is only produced by DN which has a market share at EEA level of [40-50]%. KKR purchases a small quantity of it which amounts to [<5]% of the EEA demand. KKR uses lithium carbonate for the production of other downstream chemicals, in none of which it has a market share of 25% or more. Even if, post-merger, KKR were to purchase lithium carbonate exclusively from DN, this would have a negligible effect on the market and would not prevent other producers from marketing their output.
24. Formaldehyde: this product is produced only by KKR, and the only country where it has a market share above 25% is in the Netherlands, where it has a market share of [25-35]%. Under the regional geographic market definition approach, i.e. the Benelux, KKR has a market share of [10-20]%. DN does not produce formaldehyde, but purchases it from various distributors in Germany, Italy, France and the UK. Its purchases amount to [...] EUR, less than [<5]% of the consumption in the Netherlands. Even under the narrowest geographic market scenario (the Netherlands) any risk of foreclosure effects can be excluded.

Specialty chemicals

25. Surface treatment products: anticorrosion metal surface treatment products (ACMSTP): DN produces ACMSTP and has a market share of [20-30]% at world-wide level and of [35-45]% at EEA level. KKR purchases these products from DN, but this vertical relationship does not create competition concerns since KKR's needs represent less than [<5]% of the EEA-wide sales of these products. Even if, post-merger, KKR were to purchase ACMSTP exclusively from DN, this would have a negligible effect on the market and would not prevent other producers from marketing their production. Therefore, any foreclosure effect can be disregarded.
26. 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 which competition would be significantly impeded in the common market or in a substantial part of it.

V. CONCLUSION

27. 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