

***Case No COMP/M.7207 - CLAYTON DUBILIER &  
RICE / ASHLAND WATER TECHNOLOGIES***

Only the English text is available and authentic.

**REGULATION (EC) No 139/2004  
MERGER PROCEDURE**

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Article 6(1)(b) NON-OPPOSITION

Date: 06/06/2014

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## EUROPEAN COMMISSION

In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EC) No 139/2004 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 Where possible the information omitted has been replaced by ranges of figures or a general description.

Brussels, 6.6.2014  
C(2014) 3876 final

PUBLIC VERSION

MERGER PROCEDURE

### **To the notifying party:**

Dear Sir/Madam,

**Subject: Case M.7207 - CLAYTON DUBILIER & RICE / ASHLAND WATER TECHNOLOGIES**  
**Commission decision pursuant to Article 6(1)(b) of Council Regulation No 139/2004<sup>1</sup>**

- (1) On 2 May 2014 the European Commission received notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which Clayton, Dubilier & Rice Fund IX, L.P. ('CD&R Fund IX', US) acquires within the meaning of Article 3(1)(b) of the Merger Regulation sole control over entities and assets that comprise Ashland Water Technologies ('AWT', US) [...]. CD&R Fund IX is referred to as the "Notifying Party". CD&R Fund IX and AWT are collectively referred to as "the Parties".

### **1. THE PARTIES**

- (2) CD&R Fund IX is a private equity fund formed to make investments in companies active in a variety of economic sectors. It is ultimately and solely controlled by Clayton, Dubilier & Rice Group ("CD&R"), a private equity investment group based in the U.S. which originates, structures and frequently acts as lead equity

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<sup>1</sup> OJ L 24, 29.1.2004, p. 1 ('the Merger Regulation'). With effect from 1 December 2009, the Treaty on the Functioning of the European Union ('TFEU') has introduced certain changes, such as the replacement of 'Community' by 'Union' and 'common market' by 'internal market'. The terminology of the TFEU will be used throughout this decision.

investor in management buyouts, strategic minority equity investments and other strategic investments.

- (3) AWT is currently one of four commercial units of Ashland Inc., US. It is based in the US and has operations worldwide. AWT is a supplier of specialty chemicals and provides services to the pulp, paper, mining, food and beverage, power generation, refining, chemical processing, general manufacturing and municipal industries. Within its two lines of business (that is, Pulp and Paper, and Industrial Water), AWT also supplies performance-based feed and control systems, proprietary monitoring devices and remote system surveillance. In addition, AWT offers consulting services in relation to utility products, chemicals and plant assets, as well as advice on minimising energy, water and other operational costs.

## **2. THE OPERATION AND THE CONCENTRATION**

- (4) The transaction consists in the acquisition of indirect sole control over AWT [...], by CD&R Fund IX, through [...], an entity established especially for the purposes of this transaction. Therefore the transaction constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

## **3. EU DIMENSION**

- (5) The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million<sup>2</sup> [CD&R : EUR [...] million; AWT: EUR [...] million]. Each of them has an EU-wide turnover in excess of EUR 250 million [CD&R: EUR [...] million; AWT: EUR [...] million] and they do not achieve more than two-thirds of their aggregate EU-wide turnover within one and the same Member State. The notified operation therefore has an EU dimension.

## **4. COMPETITIVE ASSESSMENT**

- (6) The notified transaction does not result in any horizontal overlaps. However, it gives rise to vertical overlaps, between the activities of AWT and two of CD&R's portfolio companies, respectively Univar (US) and SPIE (France)<sup>3</sup>, i.e. between the distribution of chemicals (upstream markets) and the supply of process chemicals (downstream markets) and between the supply of water treatment products (upstream market) and facility management (downstream market).

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<sup>2</sup> Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Consolidated Jurisdictional Notice (OJ C95, 16.04.2008, p1).

<sup>3</sup> None of the other CD&R controlled companies are active in the EU on a market which is vertically related to the markets on which AWT is active.

#### **4.1. Market definition**

##### *4.1.1. Supply of chemicals to the paper industry*

- (7) In previous decisions<sup>4</sup> the Commission has distinguished between the supply of chemicals (i) to the paper industry and (ii) for water treatment in general.
- (8) The same decisions concluded that the chemical products used in the paper manufacturing process can be subdivided into (i) commodity chemicals, (ii) process chemicals and (iii) functional chemicals. AWT is active only in process chemicals and functional chemicals.
- (9) As regards process chemicals (that is, chemicals used to improve the efficiency of the production process), AWT produces [...] defoamers and contaminant control agents. As regards functional chemicals, AWT is active [...] in the supply of surface sizing agents.

##### *4.1.1.1. Process chemicals (defoamers and contaminant control agents)*

- (10) The Commission has previously analysed the market of supply of defoamers and the market of supply of contaminant control agents as separate markets.<sup>5</sup> The Notifying Party agrees with this definition.
- (11) In the same decision<sup>6</sup> the Commission has considered the geographic market for both the supply of defoamers and of contaminant control agents as EEA-wide.
- (12) In the present case both the product and geographic market definition for the supply of defoamers and the supply of contaminant control agents can be left open since the notified transaction would not give rise to serious doubts as to its compatibility with the internal market under any plausible market definition.

##### *4.1.1.2. Functional chemicals (sizing agents)*

- (13) The Commission in its previous decisions<sup>7</sup> has indicated that sizing agents could be further segmented into internal and surface agents and that within the segment of internal agents, a delineation could be made between AKD, ASA and rosin sizes, but ultimately left the market definition open. The Notifying Party submits that internal and surface agents are substitutable across a wide range of applications and so are viewed as being part of the same market.
- (14) In the same decisions,<sup>8</sup> the Commission considered that the relevant geographic market is no wider than, and most likely, EEA-wide.

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<sup>4</sup> Case M.5327 of October 6, 2008, Ashland/Hercules, para. 13. See also Case M.3424 of 26 May 2004, Ciba Raisio Chemical, para. 8; Case M.1304 of October 5, 1998, Hercules/Betz Dearborn, para. 6.

<sup>5</sup> Case M.5327 of October 6, 2008, Ashland/Hercules, para. 13.

<sup>6</sup> Case M.5327 of October 6, 2008, Ashland/Hercules, para. 41-46.

<sup>7</sup> Case M.1304 of October 5 1998, Hercules/BetzDearborn, Case No COMP/M.3424 of May 26 2004, CIBA / RAISIO CHEMICALS, Case COMP/M.5355 of March 12 2009, BASF/CIBA.

<sup>8</sup> Case M.1304 of 5 October 1998, Hercules/BetzDearborn, Case No COMP/M.3424 of 26 May 2004, CIBA / RAISIO CHEMICALS, Case COMP/M.5355 of 12 March 2009, BASF/CIBA.

- (15) In the present case both the product and geographic market definition for the supply of sizing agents can be left open since the notified transaction would not give rise to serious doubts as to its compatibility with the internal market under any plausible market definition.

#### *4.1.2. Supply of chemicals for water treatment*

- (16) As far as water treatment in general is concerned, in the past the Commission distinguished between (i) chemicals for municipal water treatment and (ii) chemicals for industrial water treatment.<sup>9</sup>

##### *4.1.2.1. Chemicals for municipal water treatment*

- (17) Apart from the fact that the Commission has previously considered chemicals for municipal water treatment to be different from chemicals for industrial water treatment, the Commission has not previously analysed this market. The Notifying Party suggests that the major difference between the two types of water treatment chemicals is that municipal applications require little or no servicing work apart from the chemical treatment of the water, whereas industrial applications require the intervention of specialised technical personnel. In addition, the Notifying Party submits that chemicals for municipal water treatment could be further segmented into chemicals for municipal wastewater treatment and chemicals for potable water treatment. However, in this case, the product market definition pertaining to chemicals for municipal water treatment can be left open as the transaction does not give rise to serious doubts as to its compatibility with the internal market under any possible plausible market definition as AWT is active [...] in chemicals for municipal wastewater treatment.

- (18) As regards the relevant geographic market, the Notifying Party submits that both the market for the supply of chemicals for industrial water treatment and the market for the supply of chemicals for municipal water treatment is EEA-wide in scope.

- (19) In the present case both the product and geographic market definition for the supply of chemicals for municipal water treatment can be left open since the notified transaction would not give rise to serious doubts as to the compatibility with the internal market under any plausible market definition.

##### *4.1.2.2. Chemicals for industrial water treatment*

- (20) While within the market for the supply of chemicals for industrial water treatment the Commission has concluded that there is no need to differentiate between industries, in several cases the Commission distinguished between the following categories of different chemicals used in industrial water treatment: (i) chemicals for influent and effluent water treatment and (ii) chemicals for water cooling and boiling applications.<sup>10</sup>

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<sup>9</sup> Case Comp/M.1631 of 20 October 1999, Suez-Lyonnaise / Nalco, Case M.5327 Ashland/Hercules, of October 6, 2008, Ashland/Hercules, para. 33-40.

<sup>10</sup> Case M.5327 of October 6, 2008, Ashland/Hercules, para. 33-40; Case M.6388 of November 8, 2011, Ecolab/Nalco, para. 8-21.

#### *A. Influent and effluent water treatment*

- (21) In a previous decision<sup>11</sup>, the Commission noted that the market for influent and effluent water treatment chemicals comprises both coagulants and flocculants. It further considered distinguishing between the physical forms in which influent and effluent water treatment chemicals are sold (dry powders, dry beads, liquid dispersion and emulsions) and the organic or inorganic character of such chemicals. However, the precise market definition was left open.
- (22) In the same decision,<sup>12</sup> the Commission considered that the geographic scope of the market for water chemicals for the treatment of influent and effluent water could be considered EEA-wide in scope, although it ultimately left the question open.
- (23) In the present case, both the product and geographic market definition can be left open since the notified transaction would not give rise to serious doubts as to its compatibility with the internal market under any plausible market definition.

#### *B. Chemicals for water cooling and boiling applications*

- (24) In a recent decision,<sup>13</sup> the Commission considered that water treatment chemicals for cooling and boiler applications can further be segmented according to the industry of application (e.g. food and beverages, paper or energy) and to the specific chemicals used (e.g. corrosion chemicals, scale inhibitors, dispersant agents or biocides).
- (25) In the same decision, the Commission considered that the geographic market is EEA-wide.<sup>14</sup>
- (26) In the present case, both the product and geographic market definition can be left open since the notified transaction would not give rise to serious doubts as to its compatibility with the internal market under any plausible market definition.

#### *4.1.3. Chemicals distribution*

- (27) In previous decisions<sup>15</sup> the Commission has distinguished three relevant product markets in the chemicals distribution sector: (i) the market for bulk chemicals (“trading”), (ii) the market for the distribution of commodity chemicals (“commodities”) and (iii) the market for the distribution of specialty chemicals (“specialties”).
- (28) In previous cases,<sup>16</sup> the geographic markets for all three segments were considered to be at least national in scope. Some markets, such as the United Kingdom and

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<sup>11</sup> Case M.5327 of October 6, 2008, Ashland/Hercules, para 36.

<sup>12</sup> Case M.5327 of October 6, 2008, Ashland/Hercules, paras 41-46.

<sup>13</sup> Case COMP/M.6388 of November 8 2011, Ecolab/Nalco, paras 8-13.

<sup>14</sup> Case COMP/M.6388 of November 8, 2011, Ecolab/Nalco, paras 14-17.

<sup>15</sup> Case COMP/M.6012 of November 25, 2010, CD&R/CVC/Univar, para. 14; Case COMP/M.5814 of July 16 2010, CVC/Univar Europe/Eurochem, para. 14.

<sup>16</sup> Case COMP/M.6012 of November 25, 2010, CD&R/CVC/Univar, para. 26; Case COMP/M.5814 of July 16 2010 CVC/Univar Europe/Eurochem, para. 26.

Ireland or Nordic countries, are considered to be at least regional in scope due to the fact that a group of countries is served from the same warehouse.<sup>17</sup> The Notifying Party agrees with this definition.

- (29) However, in the present case, both the product and geographic market definition can also be left open since the notified transaction would not give rise to serious doubts as to its compatibility with the internal market under any plausible market definition.

#### *4.1.4. Facility management*

- (30) Facility management services comprise a broad variety of auxiliary support services to companies. In previous decisions,<sup>18</sup> the Commission has considered it possible to distinguish between: (a) technical facility management; (b) commercial facility management; and (c) general facility management.
- (31) The geographic market for all three types of facility management was considered EEA-wide.
- (32) In the present case, both the product and geographic market definition can also be left open since the transaction would not give rise to serious doubts as to its compatibility with the internal market under any plausible market definition.

#### **4.2. Competitive assessment**

- (33) The Notifying Party submits that there are no horizontal overlaps, and the only vertical relationships arising, between AWT, Univar and SPIE, that is between (i) the distribution of chemicals (upstream markets) and the supply of process chemicals (downstream markets) and (ii) the supply of water treatment products (upstream market) and facility management (downstream market) do not involve significant market shares on either the upstream or downstream markets,.
- (34) Concerning the vertical relationship arising between the distribution of chemicals (upstream markets) and the supply of process chemicals (downstream markets), according to data submitted by the Notifying Party, the Parties' combined market shares are less than [20-30]%, with the exception of AWT's market shares on the market of supply of contaminant control chemicals to the paper industry, where it reaches a market share of [30-40]% in the EEA. This is the only affected market resulting from the proposed transaction.
- (35) The Notifying Party argues that there is no risk of input foreclosure, because firstly Univar is not a major player in the upstream markets, either on the commodities distribution market or on the speciality distribution market, its market shares being consistently below [10-20]%, except for the four Nordic countries (Denmark, Finland, Norway and Sweden) where they reach [20-30]% [...]. Second, AWT purchases around [90-100]% of its needs directly from the chemical companies themselves and only [0-5]% from distributors. Third, potentially foreclosed

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<sup>17</sup> Case COMP/M.6012 of November 25, 2010 *CD&R/CVC/Univar*, para. 26; Case COMP/M.5814 of July 16 2010 *CVC/Univar Europe/Eurochem*, para. 26.

<sup>18</sup> Case COMP/M.3653 of July 13, 2005, *Siemens /VA Tech*; COMP/M.6020 of January 14, 2011, *ACS/HOCHTIEF*.

competitors of AWT could either look for another supplier, or also buy directly from the chemical companies. Finally, the Notifying Party underlines that while AWT will be under sole control of CD&R, Univar is jointly controlled by CD&R and [...]. [...] to lose some degree of sales (and profits) for Univar in order to achieve a competitive advantage for AWT.

- (36) Along the same lines, the Notifying Party argues that there is no risk of customer foreclosure, given that AWT is not an important customer for chemicals sold by distributors, given that under all scenarios, the volumes it sources through this channel represent well below [0-5]% of the sales by chemical distributors in the EU.
- (37) Indeed, considering the relatively low market shares of Univar in the upstream market, the presence of other important competitors, like Kemira ([20-30]% market share), Nalco ([10-20]% market share), BASF ([5-10]% market share) and also the small percentage that AWT purchases from distributors for its needs, the proposed transaction is unlikely to raise any competition concerns.
- (38) As regards the vertical relationship arising between the supply of water treatment products (upstream market) and facility management (downstream market), the Notifying Parties submit that there are no affected markets. The market shares of both AWT and SPIE in their respective markets are significantly lower than 30% and SPIE only purchases minor amounts of water treatment chemicals for its facility management business. Hence the resulting vertical relationship is minor and unlikely to raise any competition concerns.

## **5. CONCLUSION**

- (39) For the above reasons, the European Commission has decided not to oppose the notified operation and to declare it compatible with the internal market and with the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of the Merger Regulation.

*For the Commission*

*Signed*  
*Joaquín ALMUNIA*  
*Vice-President*