

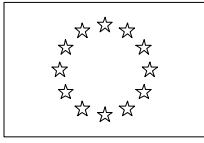
***Case No IV/M.933 - ICI
/ UNILEVER***

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

Article 6(1)(b) NON-OPPOSITION
Date: 23/06/1997

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 23.06.1997

PUBLIC VERSION

MERGER PROCEDURE

ARTICLE 6(1)(b) DECISION

To the notifying parties

Dear Sirs,

Subject: Case No IV/M.933 - ICI/UNILEVER

Notification of 20 May 1997 pursuant to Article 4 of Council Regulation N° 4064/89

1. On 20 May 1997, Imperial Chemical Industries plc (ICI) notified to the Commission details of a transaction by which it will acquire the Specialty Chemicals Division of Unilever Plc ('The Division').
2. After examination of the notification, the Commission has concluded that the notified operation falls under the scope of Council Regulation No. 4064/89 and does not raise any serious doubts with regard to its compatibility with the common market and the functioning of the EEA agreement.

I. THE PARTIES

3. **ICI** is one of the world's largest chemical companies, with three main groups of businesses - materials and performance chemicals, industrial chemicals, and coatings.
4. **Unilever** is one of the world's largest suppliers of consumer goods, notably, foods, detergents, and personal products (e.g. hair and skin care) **The Division** comprises: National Starch, which produces industrial adhesives and starches for food and industrial use; *Quest*, which manufactures fragrances, flavours and food ingredients; *Unichema*, which makes oleochemicals based on natural oils and fats; and *Crosfield*, a manufacturer of silica- and alumina-derived products.

II. THE OPERATION

5. The operation is a concentration for the purposes of the regulation since it will lead to ICI obtaining full control of the Division (via exchange of assets and shares in return for cash). Completion is subject to various conditions, notably an Article 6(1)(b) decision under the regulation.

III. COMMUNITY DIMENSION

6. The concentration has a Community Dimension (Article 3(1)(b) of the regulation). ICI had turnover of ECU 13,036m in 1996, of which ECU 4,992m was generated in the EEA. The Division had turnover of ECU 3,363m in 1996 of which ECU 1,576m was achieved in the EEA. Neither ICI nor the Division achieved more than two-thirds of its turnover in a single Member State.

IV. COMPATIBILITY WITH THE COMMON MARKET AND THE EEA.

MARKET DEFINITION

Product Markets

7. The only direct **horizontal overlap** between the parties' activities arises in the manufacture of Short Chain Polyol Esters (SCPEs). Esters are produced by the reaction of an organic acid with alcohol ('esterisation'), and there are many different types. SCPEs are a type of 'fatty acid ester'; in this process the alcohol (which is usually petrochemically-derived) is reacted with a fatty acid derived from either natural oils and fats or from petrochemicals. An esterisation plant (a type of batch autoclave) can be configured to produce a variety of types of ester in differing proportions. Esters have many and varied uses, which tend to be specific to the type of ester. In volume terms, the main EEA demand for esters is for use as a PVC plasticiser and for biodiesel. Other uses for esters are as surfactants (for detergents etc) and as base-stocks for high performance lubricants (mainly automotive and aviation but also industrial, e.g. for refrigeration and textile finishing); SCPEs are mainly used in the automotive and textile lubricant sectors.
8. Lubricants are made by blending together various natural mineral and/or synthetic materials known as base-stocks, with mineral-oil base stocks forming much the greater part (synthetic base stock sales in the EEA, 1996, were ECU 737m approximately). Neither ICI nor the Division manufactures mineral oil lubricants, of which the major oil producers (Esso, Shell etc) are the leading suppliers.

9. Synthetic lubricant base-stocks are significantly more expensive than mineral ones and are thus used only where conventional stocks cannot provide the necessary performance (range of viscosity and temperature, stability, etc). There are four main categories of synthetic base-stock, as follows. *Poly alpha olefins (PAOs)* and *polyalkylene glycols (PAGs)* are 'commodity' stocks and are used principally in passenger vehicle oils. *Esters* (including SCPEs) and various other types (polyisobutenes -PIBs, alkylbenzenes - ABs) have more specialised applications.
10. ICI (but not the Division) manufactures PAGs. Neither party manufactures PAOs or other non-ester specialist lubricant base stocks. There is little substitutability between PAGs on the demand side, however, so it is unlikely that ICI's PAGs (which are principally used in gear oils and hydraulic fluids) could be substituted for the other lubricant base-stocks which the parties produce, and especially not for SCPEs - which are used primarily in automotive engine oils and for textile coatings. Customers for SCPEs - lubricant formulators (there is virtually no 'wholesale' or 'merchant' market) - appear to be risk-averse because of their need to give extended warranties on their products, and require consistent high quality and technical support. The formulator may be able to exercise some degree of choice between ester and non-ester base-stocks, and within the range of ester stocks, when developing a new product; but thereafter the formulation (and in some instances even the supplier) will generally remain as originally specified throughout the life of the product, in order to safeguard the warranty to customers. Formulators accordingly work closely with the base-stock supplier at all stages, and in consequence, typically use only one or two ester suppliers at any one time, over a period of several years
11. This analysis, which is broadly borne out by comments from third parties, suggests that the **relevant product market arising from the horizontal overlap is that for SCPEs** (rather than, e.g., for all esters or for specific types of SCPE).
12. The concentration also creates **vertical links** between the parties in the following product markets.
13. **Emulsion Resins and Decorative Paints .** Resins are used in paints (and elsewhere - e.g. textiles) to produce a thin film with adhesive qualities. The Division produces **emulsion resins** which are used in water-based decorative paints (the other main decorative paint type - solvent-based - uses a different type of resin). ICI produces **decorative paints** of all types, and also manufactures emulsion resins, though exclusively for its own use; nor is it a major purchaser of emulsion resins. The Division does not produce decorative paints. Resins for use in decorative paints are not substitutable by or for other types of resin, and there are no substitutes for emulsion resins in water-based paints
14. **Methyl Methacrylate (MMA) and Emulsion Resins .** ICI, but not the Division, produces **MMA**, a commodity petrochemical. Its main uses are for the production of 'Perspex' transparent or coloured sheet and mouldings (e.g. lighting, bathroom accessories, car light clusters) and in the production of

resins for paints and other surface coatings; specifically, to produce acrylic **emulsion resins** for decorative paints (which account for around 15% by volume of all emulsion resins) - this use accounts for about 5% of total EEA production of MMA. The Division's emulsion resins are of different types (vinyl acetate- VA - or styrene-based - ST) which account for around 85% of total demand. Technically, it is possible to substitute MMA (acrylic)-based resins and ST- or VA-based ones in some applications, but price /quality considerations are normally preponderant in the customer's decision and may dictate otherwise. Around 40% of ICI's production of MMA is for its own use.

Geographic Markets

15. **SCPEs.** The Commission's enquiries confirmed that this market is at least EEA wide. Several customers indicated that they would be able to source their requirements for SCPEs from throughout the EEA if necessary, and several already sourced (in whole or in part) from outside their home State; transport costs did not appear to be a constraint. On the supply side, the principal manufacturers all supply the whole of the EEA from a single plant and apply an EEA-wide price as the starting point for negotiations with customers.
16. **MMA and Emulsion Resins.** The Commission's enquiries also broadly endorsed the view that these markets, also, are EEA-wide, on the same grounds as for SCPEs.
17. **Decorative Paints.** In an earlier case (Akzo/Nobel, IV/M. 933) the Commission considered that this market could be either EEA or national in scope. However the issue is not material to the present case since the concentration does not increase the parties' shares in this market at either level.

COMPETITIVE ASSESSMENT

18. **SCPEs.** The EEA market for SCPEs amounted to some 16.7m ECU in 1996. The parties' combined share in the EEA would be 25% on this basis (22% by volume, of which ICI accounts for 8%). Main competitors are Mobil (27%), Oleofina (22%) and Henkel (12%) - all by value. The market is growing by about 5% annually, there is some excess capacity in esters as a whole, and it appears to be relatively easy to switch production capacity between different ester types. So although completely new entry, either from within the EEA or outside it, is expensive and unlikely to occur (since it would probably have to be linked to entry in a wider range of petrochemicals) entry barriers to SCPEs for existing petrochemical manufacturers appear low. On the demand side, although fairly long-term relationships are typical, the market is also fairly concentrated so that customers seem likely to have some bargaining power
19. This market structure, although quite concentrated, does not however appear likely to lead to adverse effects on competition and in particular, does not appear to create the risk of a collective dominant position in the present case. SCPEs are highly differentiated products, and their production and development for particular applications typically involves close collaboration

between supplier, lubricant formulator, and end user. For these reasons the risk of parallel behaviour does not appear significant.

20. Accordingly this aspect of the concentration does not appear to raise significant issues of competition, either at individual level or at the collective level, in the common market or the EEA.
21. **MMA and Emulsion Resins.** ICI is the EEA's largest producer of MMA with around 35% of supplies to third parties. Other EEA sources of MMA include Ato, Repsol and Degussa, each with a share of between 10 and 20%. Some 40% of ICI's production is for internal use, and about 50% is produced under a long term supply agreement with Röhm & Haas (a large US producer of MMA). ICI has not, according to the parties, supplied MMA to the Division for use in producing emulsion resins for decorative paints, and in any event the Division's total requirement for MMA for that purpose would represent only around 2% of EEA demand, according to the parties. The vertical link between MMA and resins does not therefore appear significant.
22. **Emulsion Resins and Decorative Paints.** ICI does not produce emulsion resins for supply to third parties. The Division's share (including own-use) of the EEA market for emulsion resins is estimated by the parties at some 3.8% by volume; if all of ICI's production were also included, the total share would rise to around 7.6%, and even on a national level, the shares would not be higher than 11%. ICI has a share of only 6% in decorative paints in the EEA. Its shares are much higher, in some instances, at national level - 44% in Ireland, 31% in the UK (by value). But in both these Member States another competitor - Akzo Nobel - has a larger share. Accordingly, and given that the concentration would not appear to have a significant effect on the production of resins, the link between resins and paints also seems unlikely to raise significant issues of competition.

V. CONCLUSION

23. In the light of the above, it appears that the concentration will not create or strengthen a dominant position as a result of which effective competition will be significantly impeded in the common market or the EEA or a substantial part of it. For these reasons, the Commission has decided not to oppose the notified operation and to declare it compatible with the common market and the functioning of the EEA agreement. This decision is adopted in application of Article 6(1)(b) of Council Regulation No.4064/89.

For the Commission