



EUROPEAN COMMISSION

Competition DG

Policy and Strategy

Antitrust and Mergers – Policy and Scrutiny

OPINION

of the ADVISORY COMMITTEE on MERGERS

given at its meeting of 8 December 2008

regarding a draft decision relating to

CASE COMP/M.5153 - ARSENAL/ DSP

Rapporteur : CZECH REPUBLIC

1. The Advisory Committee agrees with the Commission that the notified operation constitutes a concentration of undertakings within the meaning of Article 3(1)(b) of the Council Regulation No 139/2004, on the control of concentrations between undertakings ("the Merger Regulation").
2. The Advisory Committee agrees with the Commission that the Commission's jurisdiction has been established by means of Article 22(3) decision of 16 May 2008 further to the requests for referral by the Competition Authorities of Spain and Germany under Article 22(1) of the Merger Regulation.
3. The Advisory Committee agrees with the Commission that for the purposes of assessing the present concentration the relevant product markets are:
 - a) solid technical grade benzoic acid
 - b) sodium benzoate as a product market separate from sorbates while leaving open whether potassium benzoate and calcium benzoate are part of the same market
 - c) di-benzoate plasticizers

4. The Advisory Committee agrees with the Commission that for the purposes of assessing the present concentration:
 - a) the relevant geographic market for solid technical grade benzoic acid is EEA-wide in scope
 - b) the relevant geographic market for sodium benzoate may be left open
 - c) the relevant geographic market for di-benzoate plasticizers is EEA-wide in scope
5. The Advisory Committee agrees with the Commission that the proposed concentration would lead to unilateral effects in the EEA-wide market for solid technical grade benzoic acid, as a result of which effective competition would be significantly impeded in the common market or in a substantial part of it.
6. The Advisory Committee agrees with the Commission that the proposed concentration will not lead to unilateral effects in the market for sodium benzoate irrespective of its geographic definition, as a result of which effective competition would be significantly impeded in the common market or a substantial part of it.
7. The Advisory Committee agrees with the Commission that the proposed concentration will not lead to coordinated effects in the market for sodium benzoate, as a result of which effective competition would be significantly impeded in the common market or in a substantial part of it.
8. The Advisory Committee agrees with the Commission that the merged entity will have limited ability and no incentive to foreclose the competitors in the EEA-wide downstream market for di-benzoate plasticizers and, as a result, the proposed concentration will have no adverse impact on this downstream market.
9. The Advisory Committee agrees with the Commission that the commitments submitted by the parties i.e. the divestment of the entire liquid benzoic acid as well as the two downstream products of solid benzoic acid and sodium benzoate are sufficient to remove competition concerns raised by the concentration in the EEA-wide market for solid technical grade benzoic acid.

A minority abstains.
10. The Advisory Committee agrees with the Commission that, subject to full compliance with the commitments submitted by the parties, the proposed transaction does not significantly impede effective competition in the Common Market or a substantial part of it, in particular as a result of the creation or strengthening of a dominant position, within the meaning of Article 2(2), 8(2) and 10(2) of the Merger Regulation, and that the

proposed concentration should therefore be declared compatible with the Common Market and with the EEA Agreement.

A minority abstains.

11. The Advisory Committee recommends the publication of its opinion in the Official Journal of the European Communities.

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