

For your information:
Translation of decision No. IV/M.439
- Hüls/Phenolchemie of 6 May 1994

Dear Sirs,

Subject : Case No IV/M.439 - Hüls/Phenolchemie

Your notification pursuant to Article 4 of Council Regulation No 4064/89

1. On April 5, 1994, Hüls AG, Marl notified its intention to acquire all activities of Phenolchemie GmbH, Gladbeck.
2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of Council Regulation No 4064/89 and does not raise serious doubts as to its compatibility with the common market.

I. The undertakings

3. Hüls AG (Hüls) and Phenolchemie GmbH (Phenolchemie) are chemical companies.

Hüls belongs to the German group VEBA. Its activities include basic and specialties chemicals, silicon, thermoplastics, rubber, polymers and plastics processing.

Phenolchemie produces phenol, acetone, alphas-methylstyrol and acetophenon.

II. The operation

4. Hüls is the current owner of 75% of the securities of Phenolchemie. Harpener AG (Harpener), Dortmund, holds the remaining 25%. Hüls intends to increase its participation to 99.5%. The remaining 0.5% will be acquired by the company Induboden GmbH, which is controlled by VEBA and Dredner Bank (50/50).

III. The concentration

5. The acquisition of Phenolchemie is a concentration in the sense of Article 3(1)(b) of the Regulation. With the concentration, the acquired company will go from joint control by Hüls and Harpener to sole control by Hüls (decision of the Commission of November 28, 1990, case No IV/M.023 - ICI/Tioxide).

So far, Hüls and Harpener have been jointly controlling Phenolchemie, since both of them were capable of exercising a decisive influence on the activities of Phenolchemie.

Both are entitled to nominate a representative on the management board.

Both companies are represented at the level of the supervisory board, which ensures the surveillance of the management board. The supervisory board decides in case of disagreement between members of the management board. The supervisory board can give instructions to the management board in all matters. Its consent is necessary for all matters which are of special economic importance for the company.

The individual members of the supervisory boards are able to bring a series of important matters before the partners' assembly if they have been outvoted in the supervisory board. In such cases, the consent of both partners is necessary in the partners' assembly. These matters include decision on the number of members of the management board, the nomination of these members, instructions to the management board, and matters of special economic importance such as expansion into new business areas and activities.

IV. Community dimension

6. The operation meets the thresholds laid down in Article 1(2) of the Regulation. Phenolchemie does not realise more than two-thirds of its turnover in one Member State, contrary to the group VEBA. The concentration has therefore a Community dimension.

V. Compatibility with the common market

7. Phenolchemie produces the chemical substance phenol and the by-products acetone and alphanethylstyrol for Western Europe; the company also manufactures some quantities of acetophenon. Furthermore, high-boiling residue is created.
8. The question can be left open as to whether phenol, acetone, alphanethylstyrol and acetophenol belong to separate product markets, since no dominant position would be created or strengthened even if the market were defined narrowly. For similar reasons, the definition of the relevant geographic market can be left open.

Nevertheless, for reasons of better illustration, turnover figures for Western Europe (European Union and EFTA States) are indicated in relation to the individual business sectors of Phenolchemie in the following paragraphs.

9. It is almost certain that the departure of Harpen will have no significant effects on the position of Phenolchemie. Insofar as no dominant position exists at the moment, the operation cannot create such a position. Neither could it strengthen a dominant position, if such a position did not exist already. Independent of the question, whether a dominant position exists or not, there is therefore no reason for serious doubts.
10. According to the notifying parties, Phenolchemie produced [more than 50%] of the phenol supplied in Western Europe in 1993. As concerns acetone, the company realised a market share of [below 50%]. It reached a share of [more than 50 %] for alphanethylstyrol, while almost a third of these supplies can be attributed to sales of alphanethylstyrol originally purchased in the CIS.

Phenolchemie produces an estimated volume of one third of acetophenone in Western Europe.

11. It has to be noted that the operation will not lead to an addition of market shares between Hüls and Phenolchemie.
12. Controlling 75 % of the securities, Hüls has already been the major beneficiary of the activities of Phenolchemie in the past. The operation will therefore not significantly alter the interest of Hüls to devote financial resources to Phenolchemie.
13. Neither does the operation enable Hüls to contribute additional financial resources to Phenolchemie.

14. A large part of the activities of Phenolchemie is integrated in the group VEBA already. No production links exist between Phenolchemie and Harpen, since Harpen has no other interests in the chemical industry with the exception of its participation in Phenolchemie.

As concerns upstream integration, the production of Phenolchemie is based on the raw material cumol. More than half of the consumption of Phenolchemie is covered by internal supplies from the VEBA, part of it through a sub-contracting arrangement with [a third company]. For reasons of capacities limitations and transport costs, the remaining supplies of cumol are being provided by [third companies]. This applies in particular to the production site of Phenolchemie in Antwerpen. [The quantities of cumol delivered to third parties for the production of phenol are without relevance for the competitive assessment of the case].

Furthermore Phenolchemie sources almost half of its consumption of soda lye and helium within the group VEBA. The company receives also more than two thirds of its electricity and water steam from VEBA.

An important integration of Phenolchemie in the group VEBA exists also in the downstream market. [Below 25 %] of the phenol produced by Phenolchemie was delivered to VEBA in 1993. [Between 25 and 50 %] of the acetone was delivered to VEBA. [A very large part] of the acetophenol produced by Phenolchemie is processed by Hüls. Furthermore, most of high-boiling residue created in the course of the phenol production, is used by VEBA Kraftwerk Ruhr AG for creating steam. As concerns alphamethylstyrol, Phenolchemie delivers [relatively large part of its volume] on the open market, [apart from certain supplies] to Hüls.

15. It follows from the above that Hüls determined the interests of Phenolchemie to a large extent already in the past. For this reason the operation will not significantly change the market position of Phenolchemie.
16. Originally, Harpen used to be a mining company. The participation of Harpen in Phenolchemie for over 40 years can be explained by the fact that tar used to be the raw material for phenol in the past. Therefore, there existed a natural link between coal mining and the production of phenol. This link does not exist anymore, since Harpen gave up mining in the course of the restructuring of the German coal industry at the end of the sixties and the simultaneous creation of Ruhrkohle AG. Today, Harpen does not have any other activities in the chemical industry apart from its participation in Phenolchemie. Anyway, the major part of phenol is produced in a petrochemical process nowadays.

Harpen was acquired by VEW (Vereinigte Elektrizitätswerke AG), Dortmund, and West LB in 1992. After the takeover the strategy of Harpen was changed and as a consequence, the sale of Phenolchemie was decided.

IV. General assessment

17. It follows from the above that the departure of Harpen will have virtually no effects on the situation of Phenolchemie.

It can, therefore, be excluded that the notified operation will create or strengthen a dominant position.

18. For the above 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,