

***Case No COMP/M.5760 -  
LOTTE GROUP/  
ARTENIUS UK  
LIMITED***

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: 19/03/2010

***In electronic form on the EUR-Lex website under  
document number 32010M5760***



EUROPEAN COMMISSION

Brussels, 19/03/2010  
SG-Greffe(2010) D/3575  
C(2010) 1936

PUBLIC VERSION

MERGER PROCEDURE  
ARTICLE 6(1)(b) DECISION

**To the notifying party:**

Dear Sir/Madam,

**Subject: Case No COMP/M.5760 - Lotte Group/ Artenius UK  
Notification of 12 February 2010 pursuant to Article 4 of Council  
Regulation No 139/2004<sup>1</sup>**

1. On 12 February 2010, the European Commission received a notification of a proposed concentration pursuant to Article 4 of the EC Merger Regulation by which the undertaking Lotte Chemical UK Limited, a special purpose vehicle owned by KP Chemical Corporation ("KP Chemical", Korea) belonging to the Lotte Group (Korea), will acquire within the meaning of Article 3(1)(b) of the EC Merger Regulation control of the whole of Artenius UK Limited ("Artenius", United Kingdom) (in administration) by way of purchase of assets from Artenius UK Limited acting through its administrators.

**I. THE PARTIES**

2. KP Chemical specialises in the production of petrochemicals products, including PET and PTA products. KP Chemical is based in Korea and manufactures products for sale in the domestic Korean market and for export.
3. Lotte Group, a parent company of KP Chemical, is a diversified holding of companies based in Korea. The Lotte Group has interests in foods (particularly confectionery), retail, hotels, chemicals, construction and finance. The Lotte Group's principal business operations are in Korea, but it also has operations in a number of other countries including Japan, Russia, China, India and the USA. The Lotte Group is ultimately controlled by Mr Gyuk-ho Shin. Mr Gyuk-ho Shin does not control any companies other than companies affiliated to the Lotte Group.

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<sup>1</sup> OJ L 24, 29.1.2004 p. 1 (the "EC Merger Regulation").  
Commission européenne, B-1049 Bruxelles / Europese Commissie, B-1049 Brussel - Belgium. Telephone: (32-2) 299 11 11.

4. Artenius is a UK based producer of PET resin and PTA chemicals. On 27 July 2009, Artenius was placed into administration.

## **II. CONCENTRATION**

5. Through the acquisition of the assets of Artenius, KP Chemical would acquire sole control of the plant, freehold property, equipment and stocks of Artenius from the administrators. These assets constitute a business with a market presence, to which a market turnover can be clearly attributed, within the meaning of paragraph 24 of the Jurisdictional Notice <sup>2</sup>. Therefore, the operation constitutes a concentration within the meaning of Articles 3(1)(b) of the EC Merger Regulation.

## **III. COMMUNITY DIMENSION**

6. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million (KP Chemical<sup>3</sup> EUR 21.8 billion, Artenius EUR 392 million). Each of them has a Community-wide turnover in excess of EUR 250 million (KP Chemical EUR 343 million, Artenius EUR 383 million), and they do not achieve more than two-thirds of their aggregate Community-wide turnover within one and the same Member State. The proposed Transaction therefore has a Community dimension within the meaning of Article 1(2) of the EC Merger Regulation.

## **IV. COMPETITIVE ASSESSMENT**

7. The activities of the parties overlap in the sale of Purified Terephthalic Acid ("PTA") and Polyethylene Terephthalate ("PET") resin in the EEA.

### *Relevant Product Market*

8. In a previous Commission decision the question of whether PTA constitutes a product market in itself or is part of a wider market for polyester feedstock including dy-methyl terephthalate (DMT) was left open. However, it was suggested that PTA users are unlikely to regard DMT as an adequate substitute for PTA and that it appears that the product market is restricted to PTA alone.<sup>4</sup> The UK competition authority, the Office of Fair Trading (OFT), has previously held that PTA is a distinct product market.<sup>5</sup> The parties agree with the approach taken in previous decisions and submit that the production and sale of PTA is a relevant product market. In any event, in the present case it is not necessary to decide the exact delineation of the relevant product market as the transaction will not raise serious doubts under any alternative market definition.
9. The Commission has not previously considered PET resin<sup>6</sup>. The OFT has previously held that PET resin is a distinct product market, without the need of any further segmentation. The investigation carried out by OFT indicated that, although a variety of PET resins had

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<sup>2</sup> Commission Consolidated Jurisdictional Notice under Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings, OJ C 95, 16 April 2008, p.1.

<sup>3</sup> Lotte Group.

<sup>4</sup> M.984 - Dupont/ICI, 02/10/1997, paragraph 8.

<sup>5</sup> OFT decision of 4 October 2007 - Anticipated acquisition by La Seda de Barcelona S.A of Amcor PET Packaging Europe, paragraph 8.

<sup>6</sup> Although the Commission has considered the market for PET film in M.984 - Dupont/ICI, 02/10/1997, paragraph 10-13.

been developed for particular applications, the degree of differentiation was low. Further, the existence of multi-sourcing indicated that the quality differences between PET resins were limited.<sup>7</sup> The parties also submit that approximately 90% of all PET resin produced is used for plastic bottles and neither KP Chemical nor Artenius produce PET resin for any use other than bottles. However, the same equipment could be used to make different types of PET resin and it would be easy for a supplier to switch types of PET resin without incurring significant cost. The product market definition can be left open as the transaction does not raise serious doubts under any alternative market definition.

#### *Relevant Geographic Market*

10. In *Dupont/ICI* the Commission noted that the geographic scope of the PTA market appeared to be EEA wide, due to transportation costs and import duties.<sup>8</sup> However, the Commission did not reach a firm view on market definition in that decision. In a recent decision, the OFT also accepted that the relevant geographic market for PTA was the EU.<sup>9</sup> While KP Chemical believes that it is possible that the relevant geographic market for PTA is wider than the EEA, for the purpose of this case KP Chemical agrees with the approach taken in previous decisions that the relevant geographic market for PTA should be EEA-wide. In this case it is not necessary to decide whether the relevant product market is EEA or wider as even under the narrower market definition (EEA-wide) the operation does not raise serious doubts.
11. The OFT considered the EU to be the appropriate geographic market for PET resin, although in its decision it discusses the factors indicating the wider market definition<sup>10</sup>. KP Chemical agrees with the arguments that the geographic market for PET resin should be EU-wide or EEA-wide (given that there are no significant differences in the conditions of competition between the EU and the EEA). In this case it is not necessary to decide whether the relevant product market is EEA or wider as even under the narrower market definition (EEA-wide) the operation does not raise serious doubts<sup>11</sup>.

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<sup>7</sup> OFT decision of 4 October 2007 - Anticipated acquisition by La Seda de Barcelona S.A of Amcor PET Packaging Europe, paragraph 9. Please see also OFT decision of 7 February 2008 - Anticipated acquisition by Beacon Global Limited (Indorama Group) of Eastman Chemical Company's European PTA and PET resin plants.

<sup>8</sup> IV/M.984 - *Dupont/ICI*, 02/10/1997, paragraph 8.

<sup>9</sup> OFT decision of 4 October 2007 - Anticipated acquisition by La Seda de Barcelona S.A of Amcor PET Packaging Europe, paragraph 13.

<sup>10</sup> OFT decision of 4 October 2007 - Anticipated acquisition by La Seda de Barcelona S.A of Amcor PET Packaging Europe, paragraphs 14-15.

<sup>11</sup> As noted above Artenius UK has production facilities only in the EEA, therefore any extension of the geographic scope of the market definition would make the market share increment even smaller.

## *Assessment*

12. KP Chemicals has no EEA-based production capacity and all its sales are realised by imports. Artenius manufactured its output in a facility located in the UK. As Artenius stopped the production of both PTA (in February 2009) and PET resin (in July 2009) the market share analysis is based on 2008 data.
13. As regards PTA, the combined market share of the parties is 18.5% by value in the EEA – Artenius 17.9% and KP Chemical 0.6%. The market shares by volume are even lower. The parties submit that this market share is still much overstated as it also includes Artenius' captive sales, however the parties cannot provide the reliable data which would exclude the captive sales. In any event, the market share of 18.5% is not indicative of market power, the increment is very small and the combined entity would continue to face competitive pressure from other competitors such as BP: 32%, CEPSA: 23%, Indorama: 9% and Polief: 7%. With regard to alternative product market definition, Artenius does not produce DMT so a broader market definition including PTA and DMT would make Artenius' market share lower. With regard to alternative geographic market definition, Artenius UK has production facilities only in the EEA, therefore any extension of the geographic scope of the market definition would also make Artenius' market share smaller. Therefore the transaction does not raise serious doubts as regards to the market for PTA.
14. As regards the PET resin market, the combined market share of the parties is 11.4% by value (Artenius – 5.3% and KP Chemical – 6.1%). By volume the market share is even lower. With regard to alternative product market definition, as noted in paragraph 9 approximately 90% of all PET resin produced is used for plastic bottles and neither KP Chemical nor Artenius produce PET resin for any use other than bottles. Therefore, the market share would not change significantly if all the sub-segments of PET resin market were included in the assessment. Regarding the geographic market definition, as mentioned above, given that Artenius UK has production facilities only in the EEA, an alternative geographical market wider than the EEA would not change the assessment. Therefore no affected markets arise and the transaction does not raise serious doubts with respect to the market for PET resin.

## **V. CONCLUSION**

15. 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 (EC) No 139/2004.

For the Commission  
(signed)  
Joaquín ALMUNIA  
Vice-President of the Commission