

***Case No COMP/M.5814 -
CVC/ UNIVAR
EUROPE/ EUROCHEM***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 16/07/2010

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EUROPEAN COMMISSION

Brussels, 16.7.2010

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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 Where possible the information omitted has been replaced by ranges of figures or a general description.

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying parties:

Dear Sir/Madam,

**Subject: Case No COMP/M.5814 - CVC/ UNIVAR EUROPE/ EUROCHEM
Notification of 28 May 2010 pursuant to Article 4 of Council Regulation
No 139/2004¹**

1. On 28.05.2010, the European Commission received a notification of a concentration by which Univar Europe Holdings B.V. ("Univar", the Netherlands) controlled by funds advised and managed by CVC Capital Partners SICAV-FIS S.A. ("CVC", Luxembourg) acquires sole control of Eurochem Holding B.V. ("Eurochem", the Netherlands) by way of purchase of shares.
2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of the Merger Regulation, and that the parts of the transaction that are not related to France do not raise serious doubts as to their compatibility with the internal market and with the functioning of the EEA Agreement.

¹ 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.

I. THE PARTIES

3. Univar is active in the distribution of chemical products and services, which offers high quality consumables and specialty products for industrial sectors. Univar is mainly active in Europe and North-America.
4. Eurochem is active in the distribution of industrial chemical products, predominantly in the Netherlands, Belgium and France.

II. THE OPERATION

5. On 05 February 2010, the Parties entered into a Sale and Purchase Agreement ("SPA"). Under the terms of the SPA, Univar will purchase all shares in Eurochem. CVC will therefore indirectly acquire sole control of Eurochem. The notified operation is therefore a concentration pursuant to Article 3(1)(b) of the Merger Regulation.

III. EU DIMENSION

6. The combined aggregate worldwide turnover of the undertakings concerned exceeds EUR 2,500 million (CVC EUR [...] and Eurochem EUR [...]). The combined turnover of the undertakings concerned is above EUR 100 million in [...] Member States. In three of these (Belgium, France and the Netherlands), the aggregate turnover of each of the undertakings concerned is above EUR 25 million. Each of the undertakings concerned achieves a Union-wide turnover of more than EUR 100 million. The undertakings concerned do not achieve more than two-thirds of their aggregate Union-wide turnover within one and the same Member State.
7. Therefore, pursuant to Article 1(3) of the Merger Regulation the operation has a EU dimension.

IV. PROCEDURE: ARTICLE 9(2) REFERRAL REQUEST OF FRENCH REPUBLIC

8. By letter dated 22 June 2010, received on the same day, the French Autorité de la concurrence (hereinafter "l'Autorité") informed the Commission pursuant to Article 9(2)(a) of the Merger Regulation that the notified operation would threaten to significantly affect competition in France. By decision of today, the Commission referred the case, as regards the French part, to the competent French authorities.

V. COMPETITIVE ASSESSMENT

9. Outside the French Republic, the proposed transaction leads to horizontal overlaps in Belgium and in the Netherlands, for both commodities and specialties chemical products.
10. There is also a very limited overlap ([0-5%] in the distribution of specialties in a market including United Kingdom and Ireland. As the transaction does not change the competitive structure of the market, the present decision will focus only on Belgium and the Netherlands as regards horizontal issues.

11. The transaction also creates new vertical links between the market for distribution of chemical products and two companies active in the manufacture of chemical products and controlled by CVC: Taminco N.V. (sole control) and Evonik Industries A.G. (joint control).

Relevant product market

a. Distribution of chemical products

12. Distribution of chemical products involves primarily the purchase and resale of solid and liquid chemicals to industrial and commercial end users. The chemicals can be warehoused in the distributor's facilities or, particularly with regard to larger volumes of chemical products, directly shipped from the manufacturer's facilities through either a distributor, or a trader, or by the manufacturer itself.
13. The Parties identify two relevant product markets for the proposed transaction: the markets for the distribution of (i) commodity chemical products ("commodities"); and (ii) specialty chemical products ("specialties").
14. The Commission previously defined three separate product markets in chemical distribution, excluding direct sales by manufacturers: chemical bulk business ("trading"), distribution of commodity chemicals ("commodities"), and distribution of specialty chemicals ("specialties")².
15. Trading consists in delivering commodity chemicals to customers that demand large quantities of a single product. The Parties are not active in this market.
16. In distribution of commodities, chemical distributors buy commodities in large quantities from producers or traders and distribute them to customers that require a large range of different chemicals in smaller quantities, thereby also providing additional services like filling, storing, blending and logistics. According to the Parties, these are in general highly commoditised products, widely available and fairly easy to handle such as alcohol, caustic soda, hydrochloric acid or sulphuric acid. The Parties also consider that no specific knowledge about the customers' industry would be necessary in order for a distributor to sell these products.
17. By contrast, specialties are high-priced, branded products distributed in small quantities to selected customers. Several distributors specialise in specific products for a range of user groups. Specific knowledge about customers' needs is necessary in order for a distributor to sell these products.
18. The market investigation conducted by the Commission in the present case has not brought to light any indication that would contradict these earlier findings with respect to the distribution of chemical products. To the contrary, a majority of customers in the investigation has confirmed that traders sell very large volumes of a few products and producers sell their own products usually also in larger quantities. Therefore, distributors compete with producers and traders only to a limited extent (i.e. mainly for significant volumes of commodities bigger than one truck load).

² See Case IV/M.1073 – *Metallgesellschaft / Klöckner Chemiehandel*.

19. However, the market investigation has also revealed that there is not a consensus within the industry, at least for some chemical products, as regards which products should be categorized as commodities and those that should be categorized as specialties.
20. The Commission therefore decided for the purpose of this decision to leave the product market definition open. The competitive assessment is conducted on the basis of the narrowest market definition as submitted by the parties.³

b. Manufacture of chemical products (upstream markets)

21. The vertical link between the activities of Taminco and the market for distribution of chemical products concerns the following products: (i) N-methylpyrrolidone ("NMP"); (ii) Alkylalkanolamines ("AAA's"); (iii) Dimethylformamide ("DMF") and (iv) Dimethylacetamide ("DMAc").
22. Regarding the vertical relationship between the activities of Evonik and the market for distribution of chemical products the following products are concerned: (i) hydrogen peroxides; (ii) cosmetic additives; and (iii) defoamers.
23. In previous cases concerning the manufacture of chemicals, the Commission either concluded that each chemical is likely to constitute a separate product market, mainly due to a lack of supply-side and demand-side substitutability⁴, or left open the precise product market definition.⁵
24. However, in the present case there is no need to reach a conclusion with respect to the upstream product market definition, since these production activities are insufficient in size and scope to raise competition concerns.

Relevant geographic market

a. Distribution of chemical products

25. In line with Commission's previous decisions, the Parties submit that the scope of the geographic market is at least national for both commodities and specialties, except in the case of the UK and Ireland which comprise one relevant geographical market.
26. In the Commission's past decisional practice, the presumption of national markets was driven by the sales structure of the distributors (*i.e.* they operate warehouses from which they distribute their products to the customers with the usual distribution radius being around 160-480 km). However, the Commission found that at least

³ The Parties have submitted a list of chemicals to the Commission which it considers to be commodities. The market investigation has been carried out on this basis.

⁴ See Case M.3125 *Huntsman / Matlinpatterson / Vantico*; Case M.4179 *Huntsman / Ciba TE Business*; see also Case M.2314 *BASF / Eurodiol / Pantochim*.

⁵ See case M.4836 *CVC / Univar*.

some of the markets (eg. United Kingdom and Ireland or Nordic countries) are larger than national as in those markets a group of countries is served from the same warehouse.⁶

27. The market investigation conducted by the Commission with respect to Belgium and the Netherlands case has not brought to light any indication that would contradict these earlier findings. Therefore, for the purpose of the present decision the markets will be analyzed on a national basis.

b. Manufacture of chemical products (upstream markets)

28. In previous cases concerning the manufacture of chemicals, the Commission either concluded that the geographical scope of the market is EEA-wide⁷ or left open the precise product market definition.⁸ The parties submit that for AAA's and DMF the markets should be defined as worldwide. This is in line with a 2004 UK Competition Commission decision.⁹

29. However, in the present case there is no need to reach a conclusion with respect to the upstream product market definition as the proposed transaction does not raise competition concerns in this area.

Assessment

a. Distribution of chemical products

30. The present assessment is based on a product market definition distinguishing between commodities and specialties for respectively Belgium and the Netherlands.

31. For the purpose of assessing the impact of the proposed transaction, the Parties submitted market shares for themselves (and at the same time data for the size of the market) calculated by taking into account that an important amount of the sales on the market for the distribution of chemical products were achieved by so-called "other competitors". As these market shares provided by the Parties have not been confirmed by the market investigation, the present decision will be based on these market shares as well as on the market shares for the Parties resulting from the data gathered in the market investigation. Since in any event the Parties did not submit market shares for competitors at the national level for Belgium and the Netherlands, the Commission will base its assessment as regards competitors to the Parties on data gathered in the market investigation.

⁶ See Case M.2244 *Royal Vopak/Ellis&Everard*.

⁷ See Case M.3125 *Huntsman / Matlinpatterson / Vantico*; Case M.4179 *Huntsman / Ciba TE Business*; see also Case M.2314 *BASF / Eurodiol / Pantochim*.

⁸ See case M.4836 *CVC/Univar*.

⁹ Taminco/Air Products and Chemicals (see Press release published on 29 November 2004 by the Competition Commission available on http://www.competition-commission.org.uk/press_rel/latest/2004/nov/pdf/70-04.pdf).

Belgium

i. Market shares for commodities

32. On the basis of the market shares submitted by the parties, the combined market shares of the merged entity would be [0-5]% for commodities (Univar: [0-5]%, Eurochem: [0-5]%) and would therefore not lead to any affected market.
33. The market investigation carried out by the Commission has shown that these market shares in the commodities market would be significantly higher (but in any case below [30-40]%).

ii. Market shares for specialties

34. On the basis of the market shares submitted by the parties, the combined market shares of the merged entity would be [0-5]% for specialties (Univar: [0-5]%, Eurochem: [0-5]%) and would therefore not lead to any affected market.
35. The market investigation carried out by the Commission has shown that these market shares in the specialties market would be significantly higher, but in any case below [30-40]%).

iii. Results of the market investigation

36. Even considering the higher combined market shares resulting from the market investigation, sufficient competition will remain on both the commodities and specialties distribution markets in Belgium post-merger. The clear market leader Brenntag for both commodities and specialties would notably be holding a significantly higher market share than the parties. Contrary to the result of the market investigation in France, Caldic is very often described by the respondents as the closest competitor to Univar for both commodities and specialties. It should also be mentioned that, contrary to the result of the market investigation in France, Eurochem is not seen by the respondents as a particularly aggressive player in Belgium. Moreover, no substantiated concerns have been expressed during the market investigation as regards the outcome of the proposed transaction.
37. Specifically with regard to commodities, it is important to note that Caldic appears to hold a similar market presence as the merged entity in Belgium. With regard to specialties, there are a number of additional chemical distributors that are quoted as possible alternative suppliers.

iv. Conclusion

38. Therefore, the proposed transaction does not give rise to serious doubts with regard to the market for the distribution of commodities and specialties in Belgium.

Netherlands

i. Market shares for commodities

39. On the basis of the market shares submitted by the parties, the combined market shares of the merged entity would be [5-10]% for commodities (Univar: [0-5]%, Eurochem: [0-5]%) and would therefore not lead to any affected market.

40. The market investigation carried out by the Commission has shown that these market shares in the commodities market would be significantly higher (but in any case below [10-20]%).

ii. Market shares for specialties

41. On the basis of the market shares submitted by the parties, the combined market shares of the merged entity would be [5-10]% for specialties (Univar: [0-5].%, Eurochem: [0-5]%) and would therefore not lead to any affected market.

42. The market investigation carried out by the Commission has shown that these market shares in the specialties market would be significantly higher (but in any case below [20-30]%).

iii. Results of the market investigation

43. Even considering the higher combined market shares resulting from the market investigation, sufficient competition will remain on both the commodities and specialties distribution markets in the Netherlands post-merger. The clear market leader Brenntag for both commodities and specialties would notably be holding a significantly higher market share than the parties. Contrary to the result of the market investigation in France, Caldic appears to hold a similar market presence to the merged entity in the Netherlands and is described by a number of the respondents as an important player on the market. It should also be mentioned that, contrary to the result of the market investigation in France, Eurochem is not seen by the respondents as a particularly aggressive player in the Netherlands. Moreover, no substantiated concerns have been expressed during the market investigation as regards as regards the outcome of the proposed transaction.

44. Specifically with regard to specialties, there are a number of additional chemical distributors that are quoted as possible alternative suppliers.

iv. Conclusion

45. Therefore, the proposed transaction does not give rise to serious doubts with regard to the market for the distribution of commodities and specialties in the Netherlands.

b. Vertical links

46. The proposed transaction will lead to limited vertical links between the activities of Eurochem and Taminco and Evonik, two producers of chemical products controlled by CVC. The acquisition of Taminco and joint control over Evonik by CVC was cleared by the Commission under the case numbers COMP/M.4821 and respectively COMP/M.5243.¹⁰

47. The significance of these vertical links is very limited, since Taminco and Evonik currently sell a very small part of their output to chemicals distributors such as Univar and Eurochem. Both Taminco and Evonik do not operate on the basis of a

¹⁰ See case COMP M.4821, *CVC/Taminco*; case COMP M. *CVC/RAG/Evonik*.

distribution model and sell the vast majority of their products to large industrial end-users through their own sales offices.

48. Moreover, the total value of purchases by Eurochem from both companies is rather insignificant: EUR [...] from Taminco, while Taminco's 2009 turnover amounted to EUR [...] million out of each only EUR [...] million were realised through chemical distributors; less than EUR [...] from Evonik, while Evonik's 2009 turnover amounted to EUR [...] billion out of each only EUR [...] million were realised through chemical distributors.
49. Furthermore, for all the above-mentioned products which Taminco and Evonik currently sell through Univar, there is sufficient upstream competition by other chemical producers. Given all these elements, the downstream combination of Univar and Eurochem does not provide for an incentive for input foreclosure. Given the downstream competition on the distribution markets in Belgium and the Netherlands, the combination does neither raise any customer foreclosure concern.

VI. CONCLUSION

50. For the above reasons, the European Commission has decided not to oppose the notified operation agreement and to declare compatible with the internal market and with the EEA Agreement the parts of the transaction that are not related to France. This decision is adopted in application of Article 6(1)(b) of the Merger Regulation.

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