COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 04.12.1997

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying parties

Dear Sirs,

Subject: Case No IV/M.1049 - AKZO/PLV-EPL
Notification of 5.11.1997 to Article 4 of Council Regulation N/ 4064/89

1. On 5 November an operation was notified under which Akzo Nobel Chemicals International BV ("ANC") and Polymer Latex Verwaltungs-GmbH ("PLV") acquire joint control within the meaning of the Merger Regulation of Eka Polymer Latex Oy ("EPL").

I The parties

2. ANC is a holding company representing the chemicals branch of the Netherlands-based Akzo Nobel NV group, which is active in health care, coatings (to a great extent paints), chemicals and fibres. PLV is the general partner of Polymerlatex GmbH & Co KG, a joint venture of the German-based Hüls AG (a subsidiary of VEBA AG) and Bayer AG, and concentrates on the manufacture and distribution of latices.

3. EPL, the subject of the joint venture, is a Finnish-based wholly-owned subsidiary of ANC. It is active, through its Oulu plant in Finland, in the production of carboxylated latices (X-SB) used for coatings for paper and cardboard.

II The operation and the concentration

4. ANC will transfer 50% of the shares in EPL to PLV pursuant to the terms of a share purchase agreement, and enter into a joint venture agreement with PLV.

A. Joint control

5. The Board of EPL will consist of four members, with ANC and PLV each having the right to appoint two members. The chairmanship of the Board will alternate

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every two years, with ANC nominating the Chairmanship for 1997 and 1998. The Chairman will have no special voting rights, and Board decisions will be taken by simple majority. The business plan will be decided unanimously by ANC and PLV. Thus the parties share equally the voting rights to the joint venture, and the formal agreement between them does not contradict this principle.

B. Full functionality

(1) adequacy of finance

6. EPL operates from its Oulu plant in Finland, which has been in operation since 1974. The plant is basically profitable, subject to clearing off debts arising from the deferred payment terms on which the business was acquired by ANC from Enso, which is to happen during the course of 1998. In any event the parties to the joint venture have given commitments to EPL to provide interim finance to enable it to continue in operation until the loan is fully paid off.

(2) Intellectual property rights

7. EPL is already producing at the Oulu plant using licences of intellectual property from PLV. New licences giving EPL exclusive rights in Finland Norway Sweden and parts of Russia will be granted by PLV, and put in place for a minimum period of at least 10 years, subject to withdrawal/dissolution provisions which are consistent with the 'long lasting' basis of the arrangement.

(3) Business activity

8. EPL will be free to determine its raw material purchases for the production of X-SB latices, ie styrene and butadiene, but will purchase some raw materials from its parents on an arms' length commercial basis. Supplies to be obtained from parents will not exceed 9% of the total production costs of the joint venture, and will represent less than 1% of the parents' overall sales in the relevant sectors. All the chemicals concerned are freely available on the open market.

9. PLV is active in the production of X-SB latices, but is not in the territory to be assigned to the joint venture. Neither parent is active on the downstream side of EPL's business (paper production).

(4) Staff, management and other services

10. A service agreement is to be put in place between EPL, and Eka Chemicals Oy ("ECO", a wholly owned subsidiary of ANC) which provides for a range of services to be provided on an arms' length commercial basis by ECO to EPL. This covers many functions, such as technical, operational, administrative and financial services, and the provision of the company's entire staff. Although EPL will be initially staffed by personnel who will remain formally employed by ECO, some three-quarters of them are individuals working full-time and exclusively for EPL. The personnel concerned are those who are currently operating the plant (and who operated it prior to its acquisition by ANC), and the service agreement arrangement reflects their desire to retain their employment rights in the ANC group rather than transfer them to the joint venture. However, EPL's management remains subject to control by the board of directors, who may terminate the agreement at any time

(with 12 month's notice) should this be necessary for the successful operation of the joint venture. The joint venture can thus be taken as fully functional.

C. Co-operative aspects

11. No co-operation will arise between the parents, because ANC was only active in the market for X-SB latices through EPL. As a result of the joint venture it will be effectively be withdrawing from this market, as well as from any involvement in upstream or downstream markets.

III Community dimension

12. The 1996 world-wide turnovers and Community-wider turnovers of the Akzo Nobel group, the VEBA and the Bayer groups were all in excess of ECU 5000 million, and the undertakings did not each earn more than two-thirds of their aggregate turnover in one and the same Member State. The combined turnover of the groups in the territory of the EFTA states did not equal of 25% or more of their total turnover in the territory of the EEA. Therefore this is not a co-operation case under the EEA agreement.

IV Competitive assessment

A. Product market

13. X-SB latices are used in paper and carpet making. According to evidence received there are no effective substitutes for such latices for the particular paper-making applications for which they are used. One respondent suggested that X-SB latices might be substitutable in carpet manufacturing for High Solid latices, another type of latex based on styrene/butadiene polymers. No wider applications for this particular type of latex were suggested. Given however that no competition concerns would arose in the present case if the market were defined at its narrowest, ie limited to X-SB latices, it was unnecessary to consider this point further.

B. Geographic market

14. The high water content of carboxylated latices (50%) mean relatively high transport costs which limit the extent of geographic markets for sale of the product. Whilst the markets are unlikely to be as narrow as national, as evidenced by the area of territory in which EPL will be active, they are unlikely to be as wide as the EU or the EEA. However, as the market shares were not such as to give rise to competition concerns arose in the present case, whatever way the geographic market was defined, the question could be left open.

C. Assessment

15. EPL's production is concentrated in Finland, where in 1996 it had about a [25% - 30%][1] market share (the figures do not differ significantly whether taken by value or volume). PLV is not currently active in Finland, and the terms of the joint venture would prevent it from being so. No overlap would have arisen therefore if the geographic market were taken purely as Finland. And because PLV's activities in other Scandinavian countries are also negligible, no significant overlap would have arisen even if the market were taken as Scandinavia-wide.

16. If the market were taken as the EEA as a whole, the combined market share of PLV and EPL would be in the order of 20% [...][2]. Geographic markets wider than Scandinavia but short of the EEA as a whole are a possibility, but there are no countries in Europe for which the sales in that country or the strength of PLV are such as to make any significant change to the percentage degree of overlap. Accordingly the notified operation does not give rise to competition concerns.

V. CONCLUSION

17. 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 (EEC) No 4064/89.

For the Commission,

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1 [Deleted for publication]

2 [Deleted for publication]