EN

Case No IV/M.1163 - BOREALIS / IPIC / OMV / PCD

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REGULATION (EEC) No 4064/89
MERGER PROCEDURE

Article 6(1)(b) NON-OPPOSITION
Date: 24/07/1998

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 24.07.1998

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying parties

Dear Sirs,

Subject: Case No IV/M. 1163 - Borealis/IPIC/OMV/PCD

Notification of 23/06/98 pursuant to Article 4 of (EEC) Council Regulation No 4064/89

1. On 23/06/1998, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89 as amended by Regulation 1310/97 by which the undertakings OMV Aktiengesellschaft (OMV), International Petroleum Investment Company (IPIC), and Statoil acquire joint control over a newly created entity comprising two pre-existing companies, Borealis and PCD.

I. THE PARTIES

2. OMV is an Austrian-based multinational oil, gas and petroleum company.

3. IPIC is an investment company that participates in energy and energy-related projects. IPIC is wholly owned by the Emirate of Abu Dhabi

4. Statoil is a Norwegian-based integrated international oil company. Its activities are divided between three business areas: (i) exploitation and production, (ii) refining and marketing (iii) and natural gas.

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5. Borealis is a Danish company active in the production of thermoplastics and petrochemical feedstock (in particular, olefins and polyolefins). This company is currently jointly owned by Neste (of Finland) and Statoil[1].

6. PCD is a wholly owned subsidiary of OMV that manufactures and sells polyolefins and other products.

II. CONCENTRATION

7. The operation consists of the formation of a joint venture (the JV) which will combine Borealis' and PCD's respective activities.

8. OMV will transfer PCD to Borealis. Neste will sell its 50% interest in Borealis to OMV and IPIC, who have together created a holding company (IOB) in which each of them has 50%. OMV and IPIC will jointly control IOB, and IOB's only function will be to control the 50% stake in Borealis (i.e. including PCD). Statoil will retain the other 50% of Borealis. Each step of the transaction will be conditioned on completion of the other.

9. OMV and IPIC, through IOB, and Statoil will each hold 50% of the new entity. All substantial decisions, […][2] will require unanimity of the shareholders. OMV/IPIC and Statoil will thus jointly control the JV.

10. Borealis and PCD are already full function entities. The combined Borealis /PCD will either own or have dedicated to it all the assets and resources necessary to engage in the R & D, manufacture and sale of olefins, polyolefins and downstream products.

11. The operation consists thus of the formation of a full-function joint venture within the meaning of Article 3(2) of the Merger Regulation.

III. COMMUNITY DIMENSION

12. The undertakings concerned have a combined aggregate worldwide turnover exceeding ECU 5.000 million (OMV: ECU 6.006 million; Borealis: ECU 2.506 million; Statoil: ECU 15.610). Each of them has a Community-wide turnover in excess of ECU 250 million. They do not achieve more than two-thirds of their aggregate Community-wide turnover within one and the same Member State. The notified operation therefore has a Community dimension.

IV. THE RELEVANT MARKETS

Relevant Product Markets

13. Borealis and PCD presently both operate in the EEA in Polypropylene (PP), Polyethylene (PE) and a downstream intermediate product, PP compounds.

14. PP and PE are polyolefins, common thermoplastics derived from olefins by polymerisation, and used as the base material for the manufacture of a wide variety

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1 This concentration was examined and cleared by the Commission in 1994; case no. IV/M.361.

2 Deleted for publication

of household and industrial goods. In previous cases, the Commission has regarded PP and PE as separate product markets[3]. Three main types of PE (High Density, Low Density and Linear Low Density – respectively, HDPE, LDPE and LLDPE) have also been distinguished according to their production methods and performance characteristics, although there appears to be some substitutability between, in particular, LDPE and LLDPE.[4] There are also different grades within the main PE types, produced by varying the polymerisation conditions or introducing additives. However there appears to be a high degree of supply-side substitutability between the grades, suggesting that they may not constitute separate markets[5]. PP compounds are intermediate downstream products, made by adding fibres, rubber etc to PP to provide required properties (eg strength, weather resistance).

15. Third party comments broadly confirmed this analysis. However for the purpose of the present case, it is not necessary to examine further whether the markets for PP and PE should be further subdivided by type and/or grade, or whether PP compounds are a separate market, since on all the possible definitions considered, the concentration does not raise serious doubts as to its compatibility with the common market.

Relevant Geographic Markets

16. In the previous decisions referred to, the Commission found that the relevant geographic market for all the products described above covers the whole of Western Europe. Transport costs are relatively low and there are substantial trade flows between those countries, whereas imports from elsewhere face significant customs duties and are insignificant. Third party responses in the present case supported this view.

V. ASSESSMENT

17. PP

The combined market shares of the parties' amounts to […][6] (based on production capacity) in Western Europe. The main competitors are Montell, leader with a market share of […][7], Targor […][8] and DSM […][9].

18. HDPE

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[3] Case no. IV/M 269: Shell/Montecatini

[4] Case no. IV/M 361: Neste/Statoil; case No IV/M.550 - Union Carbide/Enichem

[5] Case no. IV/M 1041: BASF/Shell

[6] Deleted for publication. Between 10-20%

[7] Deleted for publication. Between 15-25%

[8] Deleted for publication. Between 15-25%

[9] Deleted for publication. Between 5-10%

The parties' Western Europe market combined share amounts to […][10]. Though the new entity will be the leader on this market, strong competitors exist like Hoechst […][11], BP […][12] or Fina […][13].

19. On the <u>LDPE/LLDPE and PP compounds</u> markets, the combined market shares of the parties will be less than 15% and numerous large competitors are active.

<u>Vertical aspects</u>

20. The vertical aspects stem from the fact that Borealis, OMV and Statoil are also active in the production of olefins (propylene and ethylene). In the notification, the parties have considered that there is no vertically affected markets in which either of the parties has a share of 25% or more.

21. The Commission's investigation has confirmed this and did not find that the upstream activities could raise competitive concerns mainly because a substantial part of olefin production (e.g. around […][14] of Borealis' production) is used captively.

<u>Conclusion</u>

22. As the combined shares of the parties in any product or geographic market in which they overlap do not exceed 20% and significant competitors (e.g. Montell, Hoechst, BP, Fina, Solvay) are present throughout the range, it is considered that the operation is unlikely to raise serious doubts as to its compatibility under the Merger Regulation. This conclusion is confirmed by the answers obtained from competitors and customers during the inquiry.

VI. ANCILLARY RESTRAINTS

23. The parties have requested that a number of ancillary restrictions should be assessed in conjunction with the concentration.

The feedstock agreements

24. Completion of the transaction is conditioned on OMV and PCD entering into agreements providing (among other things) for the long-term supply - at least […][15] years - of ethylene and propylene feedstock by OMV to PCD. From the parties' point of view, these agreements are an integral and indispensable part of the concentration. […][16] they suggest, it is not possible to transfer ownership of the OMV crackers to the joint venture because of the unique physical and functional integration of the crackers within OMV's petroleum refinery complexes […][17].These

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10 Deleted for publication. Between 15-25%

11 Deleted for publication. Between 5-15%

12 Deleted for publication. Between 5-15%

13 Deleted for publication. Between 5-15%

14 Deleted for publication. More than 80%

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feedstock agreements nonetheless prevent the J.V. from choosing its sources of supply for at least […][18] years and, therefore, cannot be regarded as a transitional arrangement necessary for the effective implementation of the concentration. Thus, the feedstock agreements can only be considered as ancillary restraints for a duration of five years from the date on which they are brought into effect[19], beyond which they should be examined under the provisions of Article 85 of the EC-Treaty.

The side Agreements

25. The parties have also required a certain number of "side agreements" to be considered as ancillary to the concentration. These agreements concern (i) confidentiality/non-disclosure obligations regarding information acquired during the course of negotiations and due diligence, (ii) an employee non-solicitation agreement, (iii) a parental non-compete agreement by OMV in favour of Borealis/PCD and (iii) a supply agreement for […][20] years between PCD and Polyfelt (an OMV subsidiary) regarding Polyfelt's PP requirements[21].

26. To the extent that they may give rise to restrictions under Article 85 of the EC-Treaty, the relevant provisions in all these agreements can be considered as ancillary restraints in accordance with the Commission's notice on this subject.

VI. CONCLUSION

27. For the above reasons, the Commission decides not to oppose the notified operation and to declare it compatible with the common market. This decision is adopted in application of Article 6(1)(b) of Council Regulation (EEC).

For the Commission

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19 This duration is in conformity with the Commission notice concerning restrictions ancillary to concentrations and with industry practice.

20 Deleted for publication.

21 […] Footnote deleted for publication