EN

Case No IV/M.1293 - BP / AMOCO

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REGULATION (EEC) No 4064/89
MERGER PROCEDURE

Article 6(1)(b) NON-OPPOSITION
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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 11/12/1998

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EEC) No 4064/89 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 Where possible the information omitted has been replaced by ranges of figures or a general description.

To the notifying parties

Dear Sirs,

Case IV/M.1293 – British Petroleum / Amoco
Notification of 29.10.1998 pursuant to Article 4 of Council Regulation N° 4064/89

1. On 29.10.1998, the Commission received notification pursuant to Article 4 of Council Regulation (EC) n° 4064/89 of a proposed concentration by which the undertakings The British Petroleum Company p.l.c. ("BP") and Amoco Corporation ("Amoco") enter into a full merger.

I. THE PARTIES

2. BP and Amoco are international oil exploration, petroleum and petrochemical groups. They each have three core business activities, that is, oil and gas exploration and production; refining, marketing, supply and transportation of oil and gas; and manufacturing and marketing of petrochemicals and related products. In addition, both undertakings are involved in the solar energy field.

II. THE OPERATION AND THE CONCENTRATION

3. The operation consists of a full legal merger between the two undertakings. The concentration will be brought about by Amoco merging with a newly formed subsidiary of BP, incorporated under the laws of the United States. It will be effected in accordance with the terms of an Agreement and Plan of Merger entered into among BP, Amoco and

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the newly formed subsidiary of BP. On completion of the concentration, the current BP shareholders will hold approximately 60 per cent, and the current Amoco shareholders will hold approximately 40 per cent, of the share capital of the combined entity.

III. COMMUNITY DIMENSION

4. The combined aggregate world-wide turnover of the undertakings concerned was more than ECU 5 000 million in 1997. The aggregate Community-wide turnover of each of the undertakings concerned was more than ECU 250 million in 1997. Moreover, neither BP nor Amoco achieved more than two-thirds of their 1997 Community-wide turnover in any one Member State. Consequently, the concentration has a Community dimension within the meaning of Article 1(2) of Council Regulation n° 4064/89.

IV. RELEVANT MARKETS AND COMPETITIVE ASSESSMENT

5. The operation will create overlaps in the areas of crude oil and natural gas exploration and production, refining and marketing of oil and gas, and petrochemicals. The only affected markets have been identified in the field of petrochemicals.

6. In petrochemicals, BP's and Amoco's activities are complementary, with BP being involved in a broad range of products and Amoco focusing on fewer products. The operation will create horizontal overlaps in polypropylene and polyisobutylene ("PIB"), of which only PIB is an affected market. Moreover, the operation will give rise to three vertical relationships amounting to affected markets, that is, polypropylene carpet backing, purified terephthalic acid (PTA) and linear alpha olefins (LAOs).

A. Polypropylene carpet backing

7. Amoco produces polypropylene fibre carpet backing which is derived from polypropylene, a product which both Amoco and BP produce and sell. A vertical relationship is therefore created between polypropylene and polypropylene carpet backing.

8. According to the parties, the market for polypropylene carpet backing is the EEA. This statement is mainly based on the very limited volume of imports into the EEA (i.e., 1.2% of total EEA market) and on the relatively high EU import duties (i.e., 10.1%). Although primary carpet backing customers tend to concentrate in the countries where the manufacturers are mainly based (i.e., the UK, the Netherlands, Belgium, Germany and France), there is sufficient trade among Member States to conclude that the relevant geographic market for carpet backing is the EEA.

9. The combination of BP's and Amoco's production in polypropylene, on the one hand, and Amoco's production of polypropylene carpet backing, on the other, does not raise serious doubts as to the compatibility of the operation with the common market. Amoco has a market share of [30%-40%] in the sales of polypropylene carpet backing in the EEA. BP and Amoco have insignificant market shares in the up-stream EEA polypropylene market. The combined presence in polypropylene is not therefore likely to affect competition in the downstream market for polypropylene fibre carpet backing.

B. Purified terephthalic acid (PTA)

10. BP produces acetic acid, which, inter alia, is a feedstock for PTA which Amoco produces and sells in Europe. PTA is a raw material for polyester, similarly to di-methyl terephthalate (DMT), another derivative used to produce polyester. In a previous decision, the question whether PTA constitutes a product market in itself or is part of a market for polyester feedstock including DMT was finally left open[1]. The question may be left open in the present case as well, as, no matter the exact delineation of the market, the operation does not give rise to any serious doubts.

11. According to the parties, the geographic market for PTA is the EEA. The Commission has defined the market for PTA as being EEA-wide[2], mainly due to transportation costs and import duties (i.e., 7.9%). The same geographic definition may be also retained in the present case.

12. Amoco has a market share of [20%-30%] in the EEA-wide market for PTA, or [10%-20%] within the combined market for PTA and DMT - the latter being not produced by Amoco. BP produces acetic acid, one of the minor uses of which is in the oxidation of paraxylene to produce PTA (i.e., acetic acid constitutes some 0.05% of the cost of PTA production). BP's market share in the sales of acetic acid in the EEA amounts to approximately [25%-35%]. Only 6% of the acetic acid produced in the EEA is used in PTA production, whereas the remainder is utilised in the production of vinyl acetate (37%), solvent acetate (18%), acetic anhydride (12%) and in other agricultural products and food additives (27%).

13. Given the small proportion accounted for in the PTA production and the market position of each of the parties in the vertically related markets, the competitive conditions of the supply of acetic acid to the PTA production process will not be adversely affected by the concentration.

C. <u>Linear alpha olefins (LAOs)</u>

14. BP produces ethylene which is a feedstock for LAOs, which Amoco produces and sells in Europe. LAOs are in turn involved in the production process of some grades of polyethylene, which is also produced by BP in Europe. LAOs are also used in a range of applications varying from detergents and cleaning products to oil field drilling muds.

15. The parties suggest that the relevant geographic market is at least the EEA, if not the world. This is due to the fact that LAOs are traded widely from manufacturing plants around the world. The main importing countries into the EEA are the Czech Republic, the USA, South Africa and Japan, representing approximately 37% of EEA demand. Accordingly, the geographic market for LAOs may be defined as being at least the EEA and probably the world.

16. Ethylene is a feedstock for the production of LAOs. BP's share in the EEA production capacity of ethylene is [5%-10%]. Amoco's EEA market share in the market for LAOs amounts to [20%-30%]. BP also produces polyethylene, some grades of which are produced by a process that uses minor quantities of LAOs as a chemical reactant. In the EEA, BP's market share across polyethylene grades, including those in which LAOs are used, amounts to [less than 10%].

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[1] Case IV/M.984 – Dupont/ICI

[2] Case IV/M.984 – Dupont/ICI

17. The vertical relationships between Amoco's production of LAOs and BP production of ethylene and between Amoco's production of LAOs and BP's production of polyethylene, do not give rise to serious doubts as to the compatibility of the operation with the common market.

D. Polyisobutylene (PIB)

Relevant product market

18. PIB is produced through polymerisation of isobutylene, a by-product of the crude oil refining process. PIB is used in two broad categories of applications, that is, as a raw material for the manufacture of fuels and lubricants additives, on the one hand, and in a number of industrial applications relating to the manufacture of sealants and adhesives and as an insulating material in the lining of cables, on the other hand.

19. Accordingly, purchasers of PIB may be grouped into two distinct categories:

- those in the Additives sector, in which PIB is used for its chemical properties as a chemical reactant for intermediates in the manufacture of detergents/dispersants for lubricants and fuels. The Additives sector accounts for 77% of global demand and 84% of Western European demand;

- those in the Industrials sector, in which PIB is used for its various physical properties, such as viscosity, tackiness, water resistance or electrical insulation. The Industrials sector accounts for 23% of global demand and 16% of Western European demand.

20. The Additives sector is highly concentrated. In Western Europe, there are only five major PIB users, that is, Exxon, Lubrizol, BASF, Chevron and Ethyl. With the exception of Ethyl and Chevron[3], they are back-integrated, having thus the option of either making or buying PIB.

21. Additives customers place orders for substantial volumes of PIB (i.e., each one more than 20,000 tons per year) under contracts which extend over several years (i.e., 3 to 4 years). The PIB demand of a typical Additives customer is comparable to the output of a world scale PIB plant. They take direct delivery from the manufacturer by maritime vessel, road tanker or ISO-container. Some degree of technical assistance and service is generally provided to such customers concerning the chemical performance of purchased PIB. Depending on its molecular weight and packaging mode, PIB prices charged to Additives customers vary between 610 and 809 Ecu/ton.

22. PIB may be distinguished in different grades and qualities. The Additives customers generally use specific types of PIB which are adapted to their down-stream requirements, that is, the manufacture of lubricant and fuels additives.

23. On the opposite side, the Industrials sector is not back-integrated, therefore rendering recourse to PIB manufacturers necessary. Customers in this sector purchase PIB in relatively smaller volumes. They are usually supplied via local chemical distributors, which also provide a range of other chemical products to that sector. Although delivery by ISO-containers is possible, they most frequently tend to buy drums of PIB. Technical service is not generally provided to these customers. Prices charged in Western Europe to Industrials

[3] Chevron has announced plans to create its own PIB production plant in the United States.

customers vary between 685 and 2.420 Ecu/ton. The parties to the concentration are viewed by industrial customers as being the only significant suppliers of PIB to their sector.

24. Industrial customers require specific grades and qualities of PIB suitable to their down-stream activities. According to their replies to the Commission's investigation, there are no readily available substitutes for PIB in the Industrials sector, although some processes are currently being tested in laboratories. Moreover, some customers stated that other products, such as parafinic white oils or polypropylene materials, could be used in the production of hot melt adhesives and stretch wrapping films, respectively; however, according to these customers, these products are not viewed as direct substitutes to PIB, due to the high switching costs that such a substitution would involve in terms of time and finance.

25. Consequently to the above description, a separate market for the supply of PIB to the Additives sector, and another one for the supply of PIB to the Industrials sector are defined as relevant markets for the assessment of the operation. From a demand perspective, customers in each group are clearly identifiable, not only as a result of the differences described in the preceding paragraphs, but also as a matter of the internal sales organisation within PIB producers, in terms of supplies to either Additives or Industrials customers. Moreover, there are clear borderlines between the two categories, which make it rather unattractive to be present on both markets. Thus, from a supply perspective, integrated producers other than the parties as well as Additives users sell PIB to Industrials customers only to a limited extent. In their replies to the Commission's request for information, Additives customers stated that selling PIB to Industrials customers is outside the scope of their business, and that this was mainly due to two reasons: first, there are limited overlaps in the range of grades and qualities used in the two applications; second, supplying the Industrials sector is a stand-alone business which necessitates considerable dedication (bulk-breaking facilities, drum-packaging, transportation and distribution networks etc.). Finally, such Additives customers stated that they would not consider assuming such an activity even though price differential between the groups would make it look profitable.

26. On the basis of the above considerations, the PIB supply consists of two markets, namely, the Additives market, on the one hand, and the Industrials market, on the other hand.

<u>Relevant geographic market</u>

27. The parties claim that the market for PIB is world-wide. In support of this statement, they refer to the level of imports of PIB from the USA, Latin America and Japan into the EU, as well as to the fact that neither custom duties nor transport costs are factors impeding trade.

28. The investigation carried out by the Commission lead to the opposite conclusion, that is, that both the Additives and the Industrials PIB markets are not wider than the EEA.

29. In 1997, imports of PIB into the EU amounted to some 12% of domestic demand. Approximately 85% of such imports originated in the USA, the remaining part being equally distributed between Argentinean and Japanese origin product. The great majority of imports into the EU, therefore, come from one geographic origin, namely the USA, whereby Amoco's product represent some 70% of the total US shipments.

30. In their replies to questionnaires, both categories of customers stated that they would not consider importing PIB as a readily available alternative to locally supplied PIB, the main reasons for such a reluctance being cost factors related to custom duties, transportation, handling and storage.

31. The import tariff for PIB is 10.7%. On average, transportation cost for intercontinental shipments vary between 8.5% and 10.5% of the product's price, depending on the grade and qualities.

32. The only successful importer of PIB into Europe has been Amoco, making intra-group transactions. Their successful establishment in Europe is due to historical reasons, mainly to the extensive European presence of Amoco across various activities in petrochemicals. Amoco has an important logistics network in place, enabling it to expand to the import and distribution of PIB from its storage and blending terminals in Belgium to the rest of the EEA.

33. This is not the case for other non-Community PIB suppliers, as their product has been imported into Europe on a spot rather than on a systematic basis. With the exception of Amoco, the market shares of non-Community producers are consistently low throughout time. Indeed, taking actively part in the European supply of PIB necessitates dedicated investment, in both financial and marketing terms, which the main PIB suppliers are not willing to commit to. Overall, each continent is self-sufficient in terms of PIB, which makes trade happen rather on an ad hoc basis, such as for instance an important temporary price differential making imports/exports a profitable activity. In Europe, according to the replies of customers to the Commission's questionnaires, the availability of locally produced PIB generally makes the recourse to imported PIB unattractive

34. Finally, some customers indicated their preference to European, or at least US origin PIB, compared to the various qualities of PIB produced in Latin America or South East Asia. More specifically, industrial customers have clearly given their preference to the qualities supplied by BP and Amoco.

35. For the above reasons, the geographic market for PIB sold to either Additives or Industrials customers consists, at maximum, of the EEA.

Competitive assessment

36. The combined entity will account for around [more than 65%] of the European merchant demand for PIB, whereby [%] will come from BP, the remaining [%] from Amoco.

37. The combined market share of the merged entity in terms of merchant sales to Additives customers will be of approximately [more than 65%]. The PIB Additives market is characterised by the presence of back-integrated operators. In fact, Additives producing customers in the EEA, with the exception of Ethyl, are large petrochemical groups which also produce PIB, whilst using part of their own PIB production captively. Most of the production which is not utilised captively is sold to Additives customers, and to a lesser extent to Industrial customers. The combination of BP and Amoco would not amount to a dominant position likely to impede competition in the Additives market. In fact, production capacities of back-integrated Additives customers are not fully utilised, and therefore, their ability to produce PIB for sale will act as a competitive deterrent to any attempt by the merged entity unilaterally to increase prices. In addition, BASF has re-entered this market recently, effectively increasing its production by the capacity of a new

plant. Barriers to entry in this market seem therefore rather modest. In these circumstances it is dubious that any price increase might be successful as any of the PIB Additives customers has strong countervailing power stemming from the large volumes of purchases and the possibility, due to vertical integration, to make or buy PIB.

38. By contrast, the Industrials market is fragmented in a multitude of medium-sized enterprises which use PIB in a wide range of industrial applications. In their replies to the Commission's enquiry, the Industrials customers indicated that BP and Amoco are the only two viable suppliers of PIB to Industrials users in Europe. The combined entity would account for approximately [more than 75%] of PIB sales made to Industrials customers, whereas the immediate major competitor, that is, BASF would account for approximately [5%-15%]. Price negotiations usually involve trading one off against another. For the reasons exposed in paragraph 25 above, it is not likely that other vertically integrated Additives customers would sell PIB to Industrials customers. Therefore the reduction in the number of suppliers would be likely to affect the cost structure of their final respective products. They also stressed that no readily available alternatives to PIB existed, although some processes are tested in laboratories. Most of them placed emphasis on the fact that they did not consider importing PIB, in particular because of the availability of supplies at a competitive price in Europe and the easier logistics of local sourcing. Finally, the majority of Industrials customers expressed concerns about the impact of the concentration on their competitive conditions.

39. Should the notifying parties not have proposed a modification to the original plan of their concentration, the operation would have raised serious doubts as to its effects on the Industrials customer market.

V. MODIFICATION TO THE ORIGINAL PLAN OF CONCENTRATION

40. In anticipation of serious doubts that could be raised with respect to the effects of the operation on the Industrials customers market, the notifying parties modified their original merger plan.

41. The modification consists of the divestiture of Amoco's European PIB business in the Industrials market in the EEA to Pakhoed Distribution Europe B.V., a major distributor of chemicals in Europe. Following this modification, the status quo ante is maintained, that is, the overlap created on the supply of PIB to the Industrials market is removed.

42. Amoco produces its PIB in the United States and transports it to Antwerp where it is stored before being distributed. In 1997, Amoco sold [tons] of PIB in Europe, of which [tons] was to Industrial customers. [%] of these Industrial sales was made through distributors, the balance of [%] was made directly to Amoco customers. The Amoco assets and facilities to be transferred to Pakhoed include:

- Amoco's direct customer business (i.e., the list of its industrial customers and customer contracts), goodwill and know-how related to each specific customer (i.e. technical specifications for grades, delivery modes, etc.);

- Amoco's supply agreements with other PIB chemical distributors, in those cases where such distributors intervene between the supplier and the final customer;

- Amoco's bulk storage, drumming and blending facilities in Antwerp.

43. The transfer secures to Pakhoed, for a period of five years, the supply of PIB for a volume of [tons] per year, reflecting the quantities sold historically by Amoco to Industrials customers. This volume will be sold at a fixed price to be indexed to the daily average quote of naptha. Pakhoed has the option to purchase PIB in excess of the above [tons] per year, on a price which will be negotiated in good faith and on commercial terms. This extra volume may guarantee Pakhoed the possibility of growth in this sector. Pakhoed has no obligation to purchase from Amoco, but can turn to other suppliers. Both the sale of the business and the supply of PIB to Pakhoed are the subject matter of agreements already entered into by Amoco and Pakhoed on 14.11.1998. These are subject to the Commission's approval of the modification and of the concentration.

VI. ASSESSMENT OF THE MODIFICATION

44. The modification provides for the transfer of Amoco's customers contracts, stock and inventory of PIB and its Antwerp storage, blending and handling facilities. Customers to be transferred include both industrial end users and local chemicals distributors. In addition, goodwill in relation to distribution and supply of PIB is transferred (i.e., customer lists and customers' technical specifications), blending know how related to formulations of PIB is made available and logistics and technical support services are provided for. The above modification has as a result to remove the competitive overlap created by the concentration on the market for the supply of PIB to industrial customers. Therefore, Amoco's supplies will remain available in the EEA, however, they will be traded via an independent operator, namely Pakhoed, on whom neither Amoco nor BP may exert any commercial influence.

45. Pakhoed is a large and established company with sufficient technical and commercial know-how in this product market to make them a strong competitor. Being able to perform valuable technical consulting services makes them a strong competitor vis-à-vis for instance BP's distribution network. Moreover, Pakhoed has secured a competitive price for PIB during the first five years of operation, which puts them in a very advantageous position to effectively win the Amoco customers over after the five years period. The price will be determined according to a formula which is mainly based on the prevailing price of naptha, a feedstock for PIB. The price resulting from this formula is such that it enables Pakhoed to operate under the same cost structure as a producer. Amoco and BP cannot have any other control over prices charged to Pakhoed. Moreover, Amoco cannot refuse to supply Pakhoed, as the latter has secured a minimum volume of supplies of [tons] per year. Finally, Pakhoed is not bound to purchase only Amoco's product, but has kept the possibility to shop around, for instance from other PIB suppliers' unutilised production capacity. Pakhoed has its own laboratory to formulate and blend the product in close co-operation with industrial customers. Given that the divestiture package includes the various technical specifications of such customers, and having regard to Pakhoed's blending and packaging facilities, distribution network and established know-how in blending and formulation of the final product, Pakhoed will be able to consolidate the fragmented demand of the Industrials market and make Additives PIB from other sources available to the Industrials market.

46. Moreover, since there is no overlap between BP and Amoco at the level of production in Europe, but rather at the level of distribution, the choice of Pakhoed is sufficient to preserve competitive conditions in the supply of PIB to Industrials customers. By consolidating the demand of smaller buyers and end-users, Pakhoed will possess strong buying power and will have the capability of playing BP/Amoco off against other producers.

47. The above modification was tested in the market place. In their replies to the Commission's questionnaires, the majority of customers stated that the modification would be sufficient to preserve effective competitive conditions in their market.

48. On the basis of the above modification, it is expected that Industrials customers will continue having an array of suppliers which they could play off in a competitive manner.

VII. CONCLUSION

49. For the above reasons, the Commission has decided not to oppose the notified operation, to the extent that, following the modification brought about by the undertakings concerned to their original concentration plan, the operation does not give rise to serious doubts. The notified concentration is therefore declared compatible with the common market and with the functioning of the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of Council Regulation (EEC) No 4064/89.

For the Commission,