

*Case No IV/M.1467 -
*** ROHM AND HAAS
/ MORTON*

Only the English text is available and authentic.

**REGULATION (EEC) No 4064/89
MERGER PROCEDURE**

Article 6(1)(b) NON-OPPOSITION
Date: 19/04/1999

*Also available in the CELEX database
Document No 399M1467*



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 19-04-1999

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 Where possible the information omitted has been replaced by ranges of figures or a general description.

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying parties

Dear Sirs

Subject: Case No IV/M.1467-Rohm + Haas/ Morton.

Notification of 2 March 1999 pursuant to Article 4 of Council
Regulation (EEC) N° 4064/89 (Merger Regulation)

1. On 2 March 1999 "Rohm and Haas" Company ("Rohm and Haas") notified an operation whereby "Rohm and Haas" would acquire sole control of Morton International Inc. (Morton) by means of a cash offer followed by a merger.
2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of Council Regulation (EEC) N° 4064/89 and does not raise serious doubts as to its compatibility with the common market and with the EEA Agreement.

I. THE PARTIES' ACTIVITIES AND THE OPERATION

3. The business activities of the undertakings concerned are for "Rohm and Haas": performance polymers, speciality chemicals and electronic materials and for Morton: the manufacture and marketing of speciality chemicals and salt. Both are present on the Community market and both produce a wide variety of speciality chemicals, "Rohm and Haas" concentrating on polymers derived from acrylic acid and Morton on polyurethane and other non-acrylic chemistries.

4. The concentration concerns the acquisition of full control by “Rohm and Haas” of Morton both U.S. companies. The concentration will be effected in a number of stages. In the first stage a specially formed subsidiary of “Rohm and Haas” made an conditional cash tender offer for up to two thirds of the outstanding stock of Morton. Provided the minimum condition that 50.1% of the outstanding shares of Morton are tendered is met the specially formed subsidiary of “Rohm and Haas” will be merged into Morton. As a result of this merger the outstanding shares of Morton other than those owned by the specially formed subsidiary of “Rohm and Haas” will be converted into the right to receive newly issued shares of “Rohm and Haas”. Following the merger Morton will be a wholly owned subsidiary of “Rohm and Haas”.
5. It is expected that subject to regulatory approval the operation will be completed in the second half of May 1999.

II. COMMUNITY DIMENSION

The parties to the notified concentration have a combined aggregate world-wide turnover in excess of EUR 5000 million. In 1998 “Rohm and Haas”'s turnover was EUR¹ 3320 million and Morton's, for the financial year 1997-98 was EUR 2298 million. Each of the parties has an aggregate Community-wide turnover in excess of EUR 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, meeting the thresholds of the Merger Regulation, as laid down in Article 1. It does not constitute a co-operation case under the EEA Agreement, pursuant to Article 57 of that Agreement.

III. COMPETITIVE ASSESSMENT

A. Relevant product markets

6. Both parties are active in the production and sale of “speciality” chemicals, a term used for chemical compounds with higher added value which have been engineered by the manufacturer to incorporate performance attributes desired for a specific end use, and can thus be distinguished from commodity chemicals.
7. Morton is active in nine speciality chemicals business areas: speciality polymers; adhesives, plastic additives, electronic materials, polysulfide sealants, performance chemicals/advanced materials, dyes and organic specialities, automotive and industrial coatings and powder coatings.
8. The parties' activities overlap in the following limited areas:
 - Water based polymers, latices
 - PVC additives
 - Photo resists
 - Electronic chemicals

¹ Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Notice on the calculation (OJ C66, 2.3.1998, p25). To the extent that the figures include turnover for the period before 1.1.1999, they are calculated on the basis of the average ECU exchange rates and translated into EUR on a one to one basis.

Water based Polymers

9. Water-based polymers (latices), mainly used in the paper, construction, carpet, textile and foam industries. Within this overall product description the Commission has, in previous decisions (Case IV.M. 751-Bayer/Hüls and M. 376-Synthomer/Yule Catto, M. 1049-Akzo/PLV-EPL and M. 1097-Wacker/Air Products), distinguished between styrene acrylic latices (SA) and pure acrylic latices.
10. Alternatively the acrylic polymers may be distinguished by their applications. In the current case there are overlaps in the application of acrylic polymers for the production of floor polishes and for use in the graphic arts (printing ink, overprint varnishes, etc)

PVC Additives

11. In line with previous Commission practice (Case IV/M. 310-Harrison & Crossfield/Akzo, different product markets may be defined according to the function of the additive. Morton produces essential additives, that is stabilisers and lubricants that are essential to any production of PVC products. On the other hand “Rohm and Haas” produces additives that change the characteristics of the PVC. It is not therefore necessary to define relevant product markets by function for this group of products because there are no overlaps at the narrower market definitions.

Photo Resists

12. Photo resists can be divided into two classes, i.e. dry film and liquid. Although these products are used to make the same products, printed wiring (circuit) boards, they are not interchangeable as each requires a different production line suited to the product in question. Liquid photo resists are normally used in sophisticated and expensive dedicated production lines while dry photo resists offer much greater flexibility. In addition liquid photo resists can only be used on printed circuit boards that have no holes in them.
13. The parties’ activities overlap on the market for manufacture and sale of dry film photo resists, which are used in the production of Printed Wiring (or circuit) Boards (PWBs, PCBs) for primary imaging purposes. Dry film photo resist is a light sensitive material composed of a polyester cover sheet, a dry light sensitive photopolymer and a polyethylene release sheet, produced in “master” rolls and then slit to custom size, packaged and shipped to the PWB manufacturer, mainly in the communications equipment sector.
14. There is also an overlap in liquid photo resists. These products are supplied in liquid form and applied in by roller or by passing the board through a curtain of liquid photo resist. To a much smaller degree the boards may be dipped into the material. This last process is used mainly by the smaller producers of PWBs.

Electronic Chemicals

15. As far as the parties are concerned these may be divided between process chemicals and solder masks. Process chemicals are used in the manufacture of PCBs. Both parties make developer spray and stripper spray. It is not necessary to decide whether these products form one or two relevant product markets as whichever definition is used there is no affected market.
16. Solder masks are used for containing the solder that is applied in the last stage of manufacture of PCBs. It is not necessary to specify the relevant product market for these products as even on the narrowest possible market definitions the parties' activities only overlap in the field of liquid photoimageable solder masks and this would not be an affected market.

B. Relevant geographic market

Styrene acrylic latices

17. The geographic market for styrene acrylic (SA) latices is the EEA, in line with previous Commission practice. This finding is based on intra-community trade in latices and the existence of similar price levels (except for small differences due to differing technical specifications). The major suppliers are all present throughout the EEA.
18. The same is true for the applications made of SA latices for graphic arts purposes and for floor polishes.

Pure acrylic latices

19. In a previous decision the Commission has held the geographic market for pure acrylic latices to be at least EEA wide (Case M. 751-Bayer/Hüls) mainly for the same reasons as mentioned under paragraph 12 above, which still are valid. Therefore this market can be held to be EEA wide.
20. The same is thus true for applications of pure acrylic latices for graphic arts and for floor polishes.

PVC additives

21. The geographic market can be held to be EEA wide in view of the high level of intra-Community shipments, relatively low transport costs and the presence of all major suppliers in most Member States.

Dry film photo resists

22. The market for photo resists for PWB's can be taken to be EEA wide. Prices are homogeneous throughout the EEA, not differing by more than 5% for similar types, thickness and volumes. Transport costs are negligible in relation to product costs. A substantial part of Community consumption is supplied as "master rolls" which are imported into the EEA and subsequently slit to custom size and packaged. However this does not imply that the relevant geographic market is larger than the EEA. All of

this imported material is further processed within the Community and consumers require quick and reliable delivery.

Liquid photo resists

23. Similar considerations apply to liquid photo resists. Prices are similar and transport costs are negligible. A certain level of local technical support is necessary so that the relevant geographic market is the EEA.

Process Chemicals

24. The market for process chemicals used in PWB's (development spray and stripper solution spray) and liquid photo-imageable solder masks may be considered to be at least EEA-wide, in view of homogeneous prices and acceptable transport costs overall within the EEA.

C. Competitive Analysis of the Affected markets

25. To a large extent, the operations of the parties to the transaction are complementary, due in part to the different technologies used by the parties, i.e. "Rohm and Haas" is largely active in polymers made from acrylic acid derivatives (constituting 80% of its polymer business) while Morton products are typically based on urethane, polyester, polysulfide and epoxy chemistry and due to the different levels of integration of the parties, i.e. Morton sells formulated products directly to end users, while "Rohm and Haas" typically sells latex emulsions as raw materials to product formulators for further transformation.

Styrene Acrylic Latex

26. The parties combined market share for the supply of styrene acrylic latices in the EEA is approximately [5-15%] in terms of value (Rohm and Haas [5-15%] and Morton [0-10%]).

Pure Acrylic Latex

27. Of the parties, only "Rohm and Haas" has significant activities in the production and sale of this product, with production sites in the EEA. In terms of volume and value, its market share in 1998 was approximately [40-50%] and Morton much less than [5%]. Strongest competitors are BASF with [15-25%], Clariant with [10-20%], and Zeneca with [5-15%], ICAP with [0-10%], Elf Atochem with [0-10%] and others having [5-15%]. The parties claim that there are no capacity constraints in this sector and that capacity loading is about [<80%]. Due to the batch production process, production is very flexible, making added production by adding production shifts easy and enabling producers to switch from one latex type to another.
28. In view of the minimal addition of market share on the part of Morton, the remaining competition and the above capacity factors, the proposed concentration can be considered not to create or strengthen a dominant position

Acrylic Latices for Floor Polishes

29. The market shares of the parties on this market are [20-30%] for "Rohm and Haas" and [5-15%] for Morton, resulting in a combined share of [30-40%], the strongest

competitors being Zeneca with [10-20%], Interpolymer with [10-20%] and Clariant with [10-20%], followed by Cray Valley with [10-20%] and Kahl/Worlee with [0-10%]. According to the parties one of their competitors (Interpolymer) will add significantly to its EEA based production in the near future. Another competitor, S.C. Johnson, is a fully integrated floor polish producer who in addition to producing acrylic latices for its own needs sells about [...] tonnes a year on the merchant market, albeit for other applications. It should be noted that latices for floor polishes only account for some 4% by value of the total sales of acrylic latices. Since the latices used for floor polish are very similar to those used in other applications and because they can be produced on the same equipment, alternative producers of acrylic latices could produce latices for floor polishes and because there is spare production such production would not be to the detriment of their sales of acrylic latices for other applications.

30. Therefore, even on the alternative product market definition of latices for floor polishes for this application the proposed concentration can be considered not to create or strengthen a dominant position

Acrylic latices for graphic arts applications

31. On this market Morton in 1998 had a market share of about [25-35%] based on value and “Rohm and Haas” [0-10%], resulting in a combined share of [30-40%]. The leading supplier of these latices is S.C. Johnson with [35-45%] market share. Zeneca has a [5-15%] share and Allied Colloids (part of Ciba) [5-15%].
32. In this situation the question arises whether the operation would create an oligopolistic dominance. There are three main factors which mitigate against this. This segment of the market is small in relation to the overall tonnage sales of acrylic latices, less than 6%. So that theoretically all the production capacity for acrylic latices could be diverted to producing acrylic latices for graphic arts applications. As capacity utilisation for acrylic latices is [<85%] these alternative producers would be able to supply customers in the graphic arts industries without diverting product from their clients in other applications. The production of acrylic latices is a batch process which means that changes in product specification can easily be made. Alternative acrylic latex producers include most of the major chemical suppliers, BASF, Rhone Poulenc, Clariant and Dow. Finally it should be noted that despite similar conditions in the past, that is to say two players very much larger than their competitors, the parties’ combined market share has fallen since 1996 by about [5-15%] in a business segment which grew by about 25% in volume over the same period. The size of the market in money terms remained static as prices fell. This indicates that companies in this segment have been competing vigorously.
33. Even on this alternative market definition based on the application, the proposed concentration will not result in the creation or strengthening of a dominant position.

Dry film photo resists

34. On the market for dry film photo resists, Morton has a [25-35%] market share by value. “Rohm and Haas” is active on this market through its 50% share holding in a joint venture named Elga Ronal, the remaining 50% of the shares are controlled by an Italian family. Elga Ronal has a 20% share holding but no control of TOK Italia, an Italian company of which the remaining 80% is held by the Japanese company

TOK. TOK is a major producer of dry film resists elsewhere in the world. Elga Ronal is the exclusive European distributor of TOK Italia products. Therefore “Rohm and Haas”, through Elga Ronal is active on the market with a share of about [5-15%].

35. At the level of sales to customers the parties’ combined share of the market is therefore about [40-50%] by value. This market is very concentrated, with the number two (Dupont) having a market share of [30-40%], the remaining 5 competitors having [10-20%], [5-15%] and [<5%] and [<5%] shares each. Furthermore the parties would have high market shares in a number of Member States, [over 35%] in Greece, Italy, the Netherlands and Spain.
36. This situation gives rise to serious doubts as to the compatibility of the proposed operation with the common market because the parties would have a large combined market share with a competitor of a similar size. The remaining competitors are considerably smaller.

Liquid photo resists

37. In this small but growing segment only “Rohm and Haas” produces and sells liquid photo resists. Morton purchases this material from Hoechst and supplies it to a single customer. This results from the acquisition in 1993 by Morton of Hoechst’s electronic chemicals business. In this operation Morton did not acquire the Hoechst’s facilities to produce liquid photo resists. The material is delivered directly from Hoechst to the customer but invoiced by Morton. The parties combined market share is about [25-35%] (“Rohm and Haas” [25-35%]; Morton [0-10%]). In addition the parties face strong competition from Ciba-Geigy, Coates (a member of the Total group) and MacDermid and potential competition from Hoechst.
38. The proposed operation will not therefore create or strengthen a dominant position on the market for liquid photo resists.

Electronic Chemicals

39. The other markets for electronic chemicals where the parties’ activities overlap are the market for process chemicals used in PWB manufacture where the parties’ combined overall share is [less than 5-15%]. The two groups of chemicals constituting process chemicals: developer spray where the combined market share is [5-15%] ([<5%] for “Rohm and Haas” and [0-10%] for Morton) and stripper spray where the combined market share is [0-10%] ([<5%] for “Rohm and Haas” and [0-10%] for Morton). These markets shares will not create or strengthen a dominant position on any market for electronic chemicals.
40. For liquid photo-imageable solder masks the parties’ combined share of the EEA market would be [5-15%], Morton [0-10%] and “Rohm and Haas” [0-10%], through its subsidiary Shipley-Ronal. These markets shares will not create or strengthen a dominant position on any market for solder masks.

D. Undertakings

The undertaking proposed by “Rohm and Haas”

41. In response to the serious doubts as to the compatibility of the concentration on the market for dry film photo resists, “Rohm and Haas” has submitted an undertaking in

phase I, by which the company commit itself to liquidating its interests in the Elga Ronal joint venture, either through a sale of its share capital to an unaffiliated third party, the redemption of its share capital by Elga Ronal, or the dissolution of Elga Ronal. In case of a sale to a third party, the third party would be subject to the approval of the Commission. Should Rohm and Haas not have succeeded in such disposal within 6 months, it will appoint a trustee mandated to divest Rohm and Haas's equity interest in the Elga Ronal joint venture within another 6 months, without the sale being subject to a minimum price. Finally Rohm and Haas undertake not to distribute, within the European Community, any dry film photo resists made by other manufacturers on an exclusive basis for a period of three years. The parties and if necessary the trustee will report to the Commission on the progress of the operation.

42. The full text of the undertaking is attached to this decision as Annex 1 and forms an integral part of the decision.

Assessment of the Undertaking

43. The undertaking will completely eliminate "Rohm and Haas" from the production and distribution of dry film photo resists. In this case there will be no aggregation of market shares. The TOK Italia production of dry film photo resists will continue unchanged. However, "Rohm and Haas"'s interest in the exclusive distribution of TOK dry film photo resists will be eliminated, as will its indirect shareholding in TOK Italia.

IV. CONCLUSION

44. The Commission considers that the undertakings are sufficient to address the competition concerns raised by this concentration. Accordingly it has, in application of Article 6(1)(b) of Council Regulation (EEC) No 4064/89, concluded that, subject to the complete implementation of the undertakings proposed by the notifying party, the proposed concentration will not create or strengthen a dominant position as a result of which effective competition would be significantly impeded in the common market or a substantial part of it.

For the Commission,

ANNEX 1

Case No. IV/M.1467

Rohm and Haas/Morton

Undertaking to the European Commission Pursuant to Article 6(2) of Council Regulation (EEC) No 4064/89

A. Rohm and Haas Company, a Delaware corporation (“Rohm and Haas”) is the sole shareholder of LeaRonal, Inc., a New York corporation (“LRI”). In turn LRI owns all of the outstanding equity of LeaRonal (U.K.) Ltd., a limited company organized under the laws of the United Kingdom (“LR UK”).

B.LR UK owns 50% of the total outstanding share capital of Elga Ronal S.r.l., a limited liability company organised under the laws of Italy (“Elga Ronal”). The other 50% of the share capital is owned by two Italian nationals, Carlo Favini and Anna Maria Stevanin.

C.Elga Ronal, by virtue of a contract with TOK Italia, a producer of dry film photoresists, in which Elga Ronal holds a 20% interest, acts as the sole distributor for TOK dry film photoresists within the European Union. Elga Ronal resells the TOK dry film Photoresists itself in Italy and Greece; LR UK and other affiliated companies are responsible for distributing these products in other member countries of the European Union.

UNDERTAKING

Pursuant to Article 6(2) of Council Regulation (EEC) No 4064/89 (as amended) (“the Regulation”) Rohm and Haas hereby gives the commitments set out below to the Commission of the European communities with respect to Rohm and Haas’ acquisition of Morton International , Inc., Chicago/USA (Morton). These commitments shall take effect on receipt of the Commission’s decision declaring Rohm and Haas’ acquisition of Morton compatible with the common market pursuant to Article 6(1)(b) of the Regulation.

1. Rohm and Haas undertakes in accordance with the provisions set out below, to cause its wholly owned interest indirect subsidiary, LeaRonal (U.K.) Ltd., to liquidate its interest in Elga Ronal (either through a sale of its share capital to an unaffiliated third party, the redemption of its share capital by Elga Ronal, or the dissolution of Elga Ronal). In the event of a sale to a third party, such third party shall be subject to the approval of the Commission which shall not be unreasonably withheld.
2. Rohm and Haas will use reasonable efforts to cause the actions described in 1. above to be completed within six months following the date on which this commitment becomes effective (subject to the provisions set out below). Rohm and Haas shall file a report with the Commission promptly upon completion of its obligations pursuant to

this undertaking indicating the actions which have been taken pursuant hereto and verifying Rohm and Haas's compliance with the terms of the undertaking.

3. If Rohm and Haas shall not have succeeded in divesting its direct or indirect equity interest in Elga Ronal prior to the six month anniversary of this undertaking and the Commission shall so request, Rohm and Haas shall nominate an independent trustee (the "Trustee") who shall be given an irrevocable mandate to conclude the divestment of Rohm and Haas' direct or indirect equity interest within a period of six months of the date of the mandate. The appointment of the Trustee as well as the terms of its mandate shall be subject to the approval of the Commission which shall nor be unreasonably withheld. The mandate shall provide that the sale shall nor be subject to any minimum sales price. Rohm and Haas undertakes to provide the Trustee with all reasonable assistance and information as shall be necessary for the fulfilment of the responsibilities of the Trustee. The Trustee shall provide periodic reports to Rohm and Haas and the Commission regarding its efforts to discharge its responsibilities pursuant to the agreement.
4. If so requested by the Commission, from and after the second month anniversary date of this undertaking, Rohm and Haas shall cause its representatives to resign from any position as an officer or director of Elga Ronal and shall cease any involvement in the business affairs of Elga Ronal except as a shareholder therein.
5. Rohm and Haas undertakes not to distribute within the European Union any dry film photo resists of other manufacturers on an exclusive basis for a period of three years starting with the date of effective withdrawal of Rohm and Haas from Elga Ronal.

24, March, 1999

ROHM AND HAAS COMPANY

.....

Pierre R. Brondeau

Vice President

duly authorised for and on

behalf of Rohm and Haas